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HOUSE OF REPRESENTATIVES

Presented and read a first time

A New Tax System (Income Tax Assessment) Bill 1999

No. , 1999

(Treasury)

A Bill for an Act about income tax to implement A New Tax System, and for related purposes

Contents

A Bill for an Act about income tax to implement A New Tax System, and for related purposes

The Parliament of Australia enacts:

Chapter 1—Introduction and core rules

Part 1-1—Preliminary

Division 1—Preliminary

1-1 Short title

This Act may be cited as the *A New Tax System (Income Tax Assessment) Act 1999*.

Part 1-2—A Guide to this Act

Division 2—What this Act is about

Table of sections

2-5 Annual income tax

(1) Income tax is payable for each year by each individual and each tax entity, and by some other taxpayers.

Note 1: A taxpayer who is exempt under [*equivalent of Division 50 of the Income Tax Assessment Act 1997*] does not have to pay income tax.

Note 2: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See [*equivalent of Division 785 of the Income Tax Assessment Act 1997*].

Note 3: Income tax is imposed by the *Income Tax Act 1986* and the other Acts referred to in the definition of ***income tax*** in section 995-1.

(2) To help meet their annual income tax liability, most taxpayers are required to pay amounts of their income at regular intervals as it is earned during the year, before the income tax they *actually* have to pay can be worked out.

Note: The system for collecting these amounts is called “Pay as you go” (PAYG), and is established by Parts 2-1, 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) This Act answers these questions:

What this Act is about

Item	Question	Where to look
1	How do you work out how much income tax you must pay?	Division 4, starting at section 4-1

[*]To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

What this Act is about		
Item	**Question**	**Where to look**
2	What happens if your income tax is *more* than the amounts you have paid during the year under the PAYG system? When and how must you pay the rest?	Division 1 (sections 204 to 220) of Part VI of the *Income Tax Assessment Act 1936*
3	What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?	[*Equivalent of section 750-20 of the Income Tax Assessment Act 1997*]
4	What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?	Section 2-10
5	Do you have any other obligations under the income tax law?	Section 2-15
6	If a dispute between you and the Commissioner of Taxation cannot be settled by agreement, what procedures for objection, review and appeal are available?	See Part IVC (sections 14ZL to 14ZZS) of the *Taxation Administration Act 1953*

2-10 Your other obligations as a taxpayer

(1) Besides paying amounts under the PAYG system, and the rest of your income tax, your main obligations as a taxpayer are:

(a) to keep records and provide information as required by:
- the *Income Tax Assessment Act 1936*; and
- [*equivalent of Division 900 (which sets out substantiation rules) of the Income Tax Assessment Act 1997*]; and

(b) to lodge returns as required by:
- the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax file numbers

(2) Under Part VA of the *Income Tax Assessment Act 1936*, a tax file number can be issued to you. You are not obliged to apply for a tax file number. However, if you do not quote one in certain situations:

- you may become liable for instalments of income tax that would not otherwise have been payable; and
- the amount of certain of your instalments of income tax may be increased.

2-15 Your obligations *other than* as a taxpayer

Your main obligations in relation to income tax, other than as a taxpayer are:

- to provide information and documents to the Commissioner as required under section 264 of the *Income Tax Assessment Act 1936*; and
- in certain situations, to withhold an amount from a payment you make to another taxpayer, and to pay the withheld amount to the Commissioner.

Note: The withholding is part of the PAYG system. See Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 3—How to use this Act

Table of Subdivisions

Subdivision 3-A—How to find your way around

3-1 The design

(1) This Act is designed to help you identify accurately and quickly the provisions that are relevant to your purpose in reading the income tax law.

(2) The Act contains tables, diagrams and signposts to help you navigate your way.

(3) To find out about your income tax liability, you can start at Part 1-3 (Core rules) and follow the signposts as far into the Act as you need to go. You may also encounter signposts to several areas of the law that are relevant to you. You need to follow each one.

(4) Sometimes they will lead down through several levels of detail. At each successive level, the rules are structured in a similar way. They will often be preceded by a Guide to the rules at that level. The rules themselves will usually deal first with the general or most common case and then with the more particular or special cases.

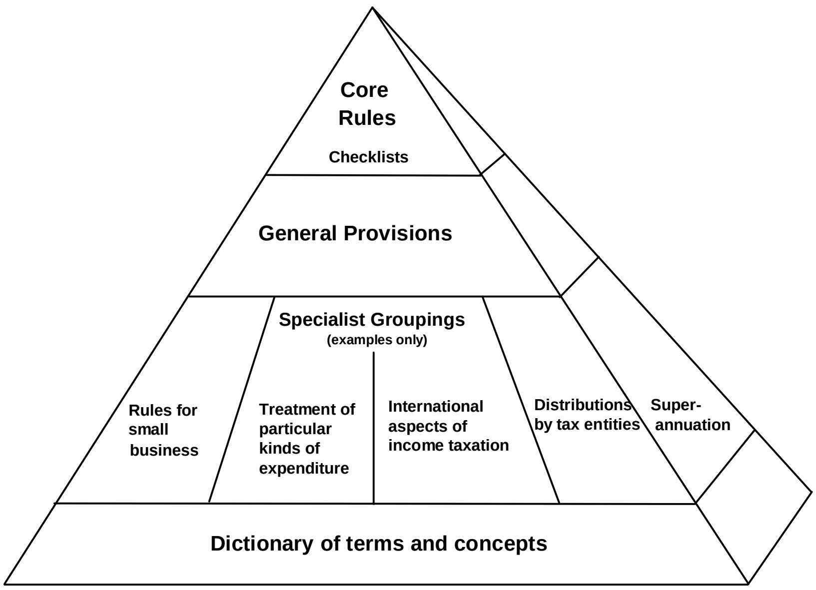
*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 3-B—How the Act is arranged

3-5 The pyramid

(1) This Act is arranged in a way that reflects the principle of moving from the general case to the particular.

(2) In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.



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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 3-C—How to identify defined terms and find the definitions

Table of sections

3-10 When defined terms are identified

(1) Many of the terms used in the income tax law are defined.

(2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in "*business". The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 995-1.

3-15 When terms are *not* identified

(1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are *not* usually asterisked.

(2) Terms are *not* asterisked in the non-operative material contained in this Act.

Note: The non-operative material is described in Subdivision 3-E.

(3) The following basic terms used throughout the Act are *not* identified with an asterisk. They fall into 2 groups.

(4) This is the first:

Key participants in the income tax system

Item	This term:	is defined in:
1	Australian resident	section 995-1
2	Commissioner	section 995-1
3	company	section 995-1

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Key participants in the income tax system		
Item	**This term:**	**is defined in:**
4	foreign resident	section 995-1
5	individual	section 995-1
6	partnership	section 995-1
7	person	section 995-1
8	tax entity	section 960-105
9	taxpayer	section 960-100
10	trustee	section 995-1
11	you	section 4-5

(5) This is the second:

Core concepts		
Item	**This term:**	**is defined in:**
1	amount	section 995-1
2	assessment	section 995-1
3	asset	section 6-15
4	income tax	section 995-1
5	income year	section 995-1
6	liability, liable	section 6-20
7	net income	section 5-55
8	pay	sections 5-60 and 5-65
9	receive	sections 5-60 and 5-65
10	right	section 995-1
11	taxable income	section 5-15
12	tax value	Division 6

3-20 Identifying the defined term in a definition

Within a definition, the defined term is identified by ***bold italics***.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 3-D—The numbering system

Table of sections

3-25 Purposes

Two main purposes of the numbering system in this Act are:

- To indicate the relationship between units at different levels.

  For example, the number of Part 2-15 indicates that the Part is in Chapter 2. Similarly, the number of section 165-70 indicates that the section is in Division 165.

- To allow for future expansion of the Act. The main technique here is leaving gaps between numbers.

3-30 Gaps in the numbering

(1) There are gaps in the numbering system to allow for the insertion of new Divisions and sections.

(2) Notes are sometimes included at the end of one group of units to indicate the number of the next unit.

(3) Each of these notes is a ***link note***.

Subdivision 3-E—Status of Guides and other non-operative material

Table of sections

3-35 Non-operative material

(1) In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the provisions that are relevant to you and to help you understand them.

(2) This other material falls into 2 main categories.

3-40 Guides

(1) The first is the "Guides". A ***Guide*** consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

(2) Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 950-150.

3-45 Other material

The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions, but are not kept separate from them.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 1-3—Core rules

Division 4—How to work out the income tax payable on your taxable income

Table of sections

4-1 Who must pay income tax

Income tax is payable by each individual and each tax entity, and by some other taxpayers.

For a full list of who must pay income tax, see Division 14, starting at section 14-1.

Note 1: The actual amount of income tax payable may be nil.

Note 2: A taxpayer who is exempt under [*equivalent of Division 50 of the Income Tax Assessment Act 1997*] does not have to pay income tax.

Note 3: There are special rules in Division 161 for applying the Act to tax entities that are not legal persons.

4-5 Meaning of *you*

If a provision of this Act uses the expression ***you***, it applies to taxpayers generally, unless its application is expressly limited.

Note: The expression ***you*** is not used in provisions that apply only to taxpayers that are *not* individuals.

4-10 Annual income tax

(1) You must pay income tax for each year ending on 30 June, called the ***financial year***.

(2) Your income tax is worked out by reference to your taxable income for the ***income year***. The income year is the same as the *financial year, except in these cases:

(a) for a company, the income year is the *previous* financial year;

(b) if you adopt an accounting period ending on a day other than 30 June, the income year is the accounting period adopted in place of the financial year or previous financial year, as appropriate.

Note: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

4-15 Australian residents and foreign residents

You are liable to income tax even if you are not an Australian resident. The table tells you where to find the rules for working out your income tax, depending on your status as an Australian resident or as a foreign resident.

Where to find the rules for working out your income tax

Item	**In this case:**	**See:**
1	You are an Australian resident throughout the income year	Division 5
2	You are an Australian resident during only part of the income year (and items 6 and 7 do not apply)	[*Rules to be drafted*]
3	You are a foreign resident throughout the income year, but throughout the income year you carry on business in Australia through a permanent establishment	[*Rules to be drafted*]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Where to find the rules for working out your income tax

Item	In this case:	See:
4	You are a foreign resident throughout the income year, but you carry on business in Australia through a permanent establishment during only part of the income year	[*Rules to be drafted*]
5	You are a foreign resident throughout the income year, but items 3 and 4 do not apply	[*Rules to be drafted*]
6	You are a foreign resident during only part of the income year, but throughout that part of the income year you carry on business in Australia through a permanent establishment	[*Rules to be drafted*]
7	You are a foreign resident during only part of the income year, but you carry on business in Australia through a permanent establishment during only some of that part of the income year	[*Rules to be drafted*]
8	[*Further cases to be added as required*]	

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 5—How to work out the income tax payable by an Australian resident

Table of Subdivisions

Subdivision 5-A—Income tax and taxable income

Table of sections

5-10 How to work out your income tax

$$\text{Income tax} = [\text{Taxable income} \times \text{Rate(s)}] - \text{Tax offsets}$$

(1) Work out your income tax for the income year as follows if you are an Australian resident throughout the income year:

Method statement

Step 1. Work out your taxable income for the income year.

To do this, see section 5-15.

Step 2. Work out your basic income tax liability on your taxable income using:

(a) the income tax rate or rates that apply to you for the income year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) any special provisions that apply to working out that liability.

See the *Income Tax Rates Act 1986*.

Step 3. Work out your tax offsets for the income year. A ***tax offset*** reduces the amount of income tax you have to pay.

For the list of tax offsets, see [*list being developed*].

Step 4. Subtract your *tax offsets from your basic income tax liability. The result is how much income tax you owe for the income year.

Excess tax offsets

(2) If you have a *tax offset that is a private health insurance tax offset and it exceeds your basic income tax liability, you can, after allowing certain other tax offsets, get a refund of the excess under [*equivalent of section 67-25 of the Income Tax Assessment Act 1997*].

Under the new imputation rules proposed in the Report as part of the consistent treatment of tax entities and their members, a member of a tax entity will be entitled to a refund of excess imputation tax offsets for franked distributions by the entity to the member if the member is an individual who is an Australian resident, or if the member is a complying superannuation fund or complying approved deposit fund.

(3) If the total of your other tax offsets exceeds your basic income tax liability, you are not entitled to a refund or to offset the excess against any other liability.

Note: However, some tax offsets can be carried forward to a later year. See, for example:

- Division 65 of this Act, which deals with carrying forward excess tax offsets; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- section 160AFE of the *Income Tax Assessment Act 1936*, which deals with the carry forward of excess foreign tax credits.

5-15 How to work out your taxable income for an income year

(1) Your ***taxable income*** for an income year is worked out using this formula:

*Net income + *Income tax law adjustment – *Unused tax losses

(2) If the result of the formula is a positive amount, it is your ***taxable income*** for the income year.

(3) If not, you do not have a ***taxable income*** for the income year.

Note: You may, however, have a tax loss for the income year, which may reduce your taxable income in a later income year. See Division 36.

(4) There are cases where taxable income is worked out in a special way:

Special cases

Item	**For this case:**	**See:**
1	A company does not maintain continuity of ownership and control during the income year	[*equivalent of Subdivision 165-B of the Income Tax Assessment Act 1997.*]
	[*Further cases to be added as required*]	

Rules are being developed to give effect to Recommendations 17.1 and 17.2 (about a simplified tax system for small business).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 5-B—Net income

Table of sections

Rules are being developed to give effect to Recommendation 4.4 (under which individuals would take into account only specified assets and liabilities in working out their taxable income).

5-50 Object of this Subdivision

The object of this Subdivision is to create the concept of net income, which is the main component of taxable income, and to do so in a way that:

(a) provides a sound framework for the more detailed rules that come later in this Act; and

(b) takes account of all your receipts and payments during the income year, and of the tax value of all your assets and liabilities at the start and end of the income year (except so far as any of them are excluded by other provisions of this Act).

Example: In working out an individual's net income, most items of a private or domestic nature are disregarded. See Division 12.

5-55 How to work out your net income

Receipts – Payments ± Net change in tax value of assets and liabilities

Work out your ***net income*** for the income year using the following method statement. (The result of any step after step 1 may be a negative amount.)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Method statement

Step 1. Add up all amounts you received during the income year.

Step 2. Subtract from the step 1 result all amounts you paid during the income year.

Step 3. Add to the step 2 result the *closing tax value of each asset (other than *money) that you *held at the *end* of the income year.

Step 4. Subtract from the step 3 result the *opening tax value of each asset (other than *money) that you *held at the *start* of the income year.

Step 5. Subtract from the step 4 result the *closing tax value of each liability that you owed at the *end* of the income year.

Step 6. Add to the step 5 result the *opening tax value of each liability that you owed at the *start* of the income year.

Note: In working out an individual's net income, most items of a private or domestic nature are disregarded. See Division 12.

5-60 Receipts and payments: credits and debits to a money account

(1) If an amount is credited to a *money account you have, you are taken to have ***received*** the amount.

Note: A credit balance in a money account is money (as defined in section 995-1) and so is not taken into account as an asset under section 5-55. This is because subsection (1) of this section treats the amounts credited to the account as receipts, which are taken into account under section 5-55.

(2) If an amount is debited to a *money account you have, you are taken to have ***paid*** the amount.

(3) A debit balance in a *money account you have is not taken into account as a liability under section 5-55.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: This is because subsection (2) of this section treats the amounts debited to the account as payments, which are taken into account under section 5-55.

Meaning of money account

(4) An account of a taxpayer is a ***money account*** at a particular time during an income year if:

(a) it is maintained (whether in Australia or not) with an *authorised deposit-taking institution; or

(b) it is maintained in a foreign country with a financial institution similar to an authorised deposit-taking institution;

and the taxpayer chooses to treat the account as a money account for that income year (even if the choice is made after the end of that income year).

(5) However, an account is not a ***money account*** if the balance in the account:

(a) is an asset covered by item 2 (tax value of a financial asset worked out on an accruals basis) or 6 (tax value of a financial asset worked out on a market value basis) in the table in section 45-15; or

(b) is a liability covered by item 2 (tax value of a financial liability worked out on an accruals basis) or 6 (tax value of a financial liability worked out on a market value basis) in the table in subsection 45-40(1).

5-65 Receipts and payments: amounts that are applied or dealt with for you

(1) You are taken to ***receive*** an amount as soon as it is applied or dealt with in any way on your behalf or as you direct (otherwise than by the amount being credited to a *money account you have).

(2) You are also taken to have ***paid*** the amount at that time, just as if you had received the amount and then applied or dealt with it in that way yourself.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

5-70 Closing and opening tax values

(1) The ***closing tax value*** of an asset or liability for an income year is its tax value at the *end* of the income year (see Division 6).

(2) The ***opening tax value*** of an asset or liability for an income year is the same as the *closing tax value of the asset or liability that was taken into account in working out your net income for the previous income year. (If no closing tax value was so taken into account, the ***opening tax value*** is a nil amount.)

(3) However, the ***opening tax value*** for an income year of:

(a) an asset that is the credit balance in an account that was a *money account for the previous income year; or

(a) a liability that is the debit balance in an account that was a *money account for the previous income year;

is the balance in the account at the end of the previous income year.

> *The transitional provisions will deal with the opening tax value of assets and liabilities for the first income year to which this Act applies.*

Subdivision 5-C—Income tax law adjustment

Table of sections

5-90 How to work out your income tax law adjustment

(1) Your ***income tax law adjustment*** for an income year is worked out using this formula:

*Increasing adjustments – *Decreasing adjustments

(2) The result of the formula can be a positive or negative amount.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

5-95 Table of adjustments

(1) You have ***increasing adjustments*** and ***decreasing adjustments*** for the income year as shown in the table.

Adjustments

Item	**If this happens:**	**There is this adjustment:**
Liability that is partly private or domestic		
1	[*Rules are being developed for increasing and decreasing adjustments for liabilities that are partly private or domestic.*]	
Net exempt income		
5	You have *net exempt income for the income year	(a) If the net exempt income is a positive amount—a decreasing adjustment equal to that amount; or (b) If the net exempt income is a negative amount—an increasing adjustment equal to that amount (expressed as a positive amount).
Gifts		
10	During the income year you pay an amount by way of gift or contribution, otherwise than for the purpose of gaining an economic benefit for yourself	An increasing adjustment equal to the amount, except so far as: (a) it is covered by [*equivalent of Division 30 (Gifts or contributions) in the Income Tax Assessment Act 1997*]; or (b) the amount is *not* taken into account under section 5-55 in working out your net income (for example, because it is of a private or domestic nature).
15	During the income year you pay an amount by way of gift or contribution, all or some of which is *not* taken into account under section 5-55 in working out your net income (for example, because it is of a private or domestic nature).	A decreasing adjustment equal to so much of the amount as is covered by [*equivalent of Division 30 (Gifts or contributions) in the Income Tax Assessment Act 1997*].

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Adjustments

Item	If this happens:	There is this adjustment:
Tax imposed by an Australian law		
20	During the income year you pay an amount of income tax	An increasing adjustment equal to the amount. (However, see also subsection (2).)
25	During the income year you receive an amount by way a refund of income tax	A decreasing adjustment equal to the amount. (However, see also subsection (2).)
30	The total of the *closing tax values of each liability to pay *tax imposed by an Australian law that you owed at the *end* of the income year is different from the total of the *opening tax values of each liability of that kind that you owed at the *start* of the income year.	An adjustment equal to the difference: (a) an increasing adjustment, if the total of the closing tax values *exceeds* the total of the opening tax values; and (b) otherwise, a decreasing adjustment. (However, see also subsection (2).)
35	The total of the *closing tax values of each asset consisting of your right to a refund of *tax imposed by an Australian law that you held at the *end* of the income year is different from the total of the *opening tax values of each asset of that kind that you held at the *start* of the income year.	An adjustment equal to the difference: (a) a decreasing adjustment, if the total of the closing tax values *exceeds* the total of the opening tax values; and (b) otherwise, an increasing adjustment. (However, see also subsection (2).)

(2) Item 20, 25, 30 or 35 in the table in subsection (1) does not apply to a receipt, payment, liability or asset to the extent that it is of a private or domestic nature.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

5-100 Table of other rules about adjustments

This table sets out a list of other provisions of this Act under which you can have ***increasing adjustments*** and ***decreasing adjustments*** for the income year.

Adjustments under other provisions of this Act

Item	**In this case:**	**See:**
1	Asset stops being, or becomes, a private asset	Section 12-30 or 12-35
2	Liability stops being, or becomes, a private liability	Section 12-40 or 12-45
3	*Distribution by a tax entity	Subsection 153-15(2) and sections 152-5, 153-20, 153-25, 153-35, 157-60 and 157-75
4	*On-market buy back by a tax entity	Section 152-15
5	Net accretion or reduction to a common fund of a tax entity	Section 158-1
6	Expenditure on research and development	[*provisions to be developed*]
7	Depreciating asset used otherwise than for taxable purpose	Section 40-80
8	You stop *holding a *depreciating asset that you have used otherwise than for taxable purpose	Section 40-85
9	Electricity supply or telephone line to which an *amortisable payment relates is used otherwise than for specified purposes	Section 40-550
10	You stop *holding *land to which an *amortisable payment for electricity supply or telephone line relates	Section 40-555
11	Luxury car limit applies	Section 40-630
12	Entertainment expenditure	[*provisions corresponding to Division 32 of the Income Tax Assessment Act 1997*]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Adjustments under other provisions of this Act		
Item	**In this case:**	**See:**
13	General anti-avoidance rules	[*provisions being developed*]

Subdivision 5-D—Net exempt income

> *The concept of net exempt income will be constructed in a similar way to net income, based on exempt receipts, and payments, assets and liabilities that relate to exempt receipts. A taxpayer's net exempt income for an income year will be an adjustment in working out their taxable income: see section 5-95.*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 6—The tax value of an asset or liability

Table of Subdivisions

Subdivision 6-A—Object of this Division

6-1 Object

(1) The object of this Division is to create these concepts:
  (a) asset;
  (b) liability;
  (c) tax value of an asset;
  (d) tax value of a liability;
  (e) cost of an asset.

(2) They play a crucial role in determining the extent to which changes in your economic position are brought to account in working out your net income, and hence your income tax result.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Role of the concepts of asset, liability, tax value and cost

Item	These concepts are critical in determining:	Because:
1	How much of a receipt relating to an asset or liability actually *increases* your net income	Some or all of the receipt may be matched by: (a) a reduction in the tax value of the asset; or (b) an increase in the tax value of the liability.
2	How much of a payment relating to an asset or liability actually *reduces* your net income	Some or all of the payment may be matched by: (a) an increase in the tax value of the asset; or (b) a reduction in the tax value of the liability.
3	Whether a change in the economic value of an asset increases or reduces your net income, and if so, by how much	The tax value of most assets starts with the cost of the asset, and generally changes only when you spend more money on the asset (so that a further amount is included in the cost of the asset). For these assets, your profit or loss when you realise some or all of the asset is the only way that a change in the asset's economic value while you held it can increase or decrease your net income. For assets of the types listed in: (a) item 2 (depreciating assets) in the table in section 6-40; and (b) item 2 (financial assets whose tax value is worked out on an accruals basis) in the table in section 45-15; the tax value is adjusted over time to reflect estimated changes in the asset's economic value.
4	Whether a change in the economic value of a liability increases or reduces your net income, and if so, by how much	The tax value of most liabilities changes only as the liability is progressively discharged (for example, by a part payment). The tax value of some financial liabilities is adjusted over time to reflect estimated changes in their economic value (for example, the accruing of unpaid interest on a debt).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 6-B—What is an asset or liability?

Table of sections

6-15 Meaning of *asset* and *hold* an asset

(1) An ***asset*** is any thing (tangible or intangible) that embodies future economic benefits.

Note: The 2 main kinds of future economic benefits come from using the asset, and from disposing of it.

(2) Whether a particular composite item is itself an ***asset*** or whether its components are separate ***assets*** is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is an asset rather than each component. This is because the components are integrally linked to create a single larger item having its own individual function.

Example 2: An airport runway is an asset separate from the control tower at the airport because it is functionally and structurally separate from the tower.

(3) Use the table to work out who ***holds*** an asset:

The table lists major cases where a specific rule is necessary. Further cases will be added, for example, to deal with the effect of interests granted over an asset to secure a loan.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Identifying the holder of an asset

Item	This kind of asset:	Is held by this taxpayer:
1	[*A depreciating asset that is a tangible asset, and in respect of which a lease, or a right to possess and use the asset, has been granted*]	[*Rules are being developed to determined who holds the asset*]
2	A *depreciating asset that is a *tangible asset, and is hired under a contract of hire purchase	The taxpayer to whom the asset is hired (while the contract exists)
3	A *luxury car in respect of which a lease has been granted	The lessee (while the lease exists)
4	An asset that is affixed to leased land and that the lessee has a right to remove	The lessee (while that right exists)
5	A non-removable improvement that a lessee of land makes to the land for the lessee's own use or benefit	The lessee (while the lease exists)
6	An asset that is capable of ownership (except an asset covered by an earlier item)	The owner (or the legal owner if there is both a legal owner and an equitable owner)
7	Any other asset	The taxpayer that: (a) has used the asset, or intends to use it, to gain economic benefits; and (b) has the right to deny or regulate access by others to the future economic benefits that the asset embodies.

Rules are being developed for the treatment as assets that are held by 2 or more taxpayers. An example of this treatment is in Subdivision 40-C about depreciating assets.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

6-20 Meaning of *liability*

(1) A ***liability*** is a present obligation to provide future economic benefits.

(2) The obligation need not be legally binding, and the taxpayer to whom it is owed need not be the taxpayer to whom the benefits are to be provided.

(3) The balance of the *contributed capital account of a tax entity is taken to be a ***liability*** that the tax entity owes.

6-25 Special rules for identifying assets and liabilities

The table shows where to find special rules for identifying assets and liabilities.

Special rules for identifying assets and liabilities

Item	For special rules on this matter:	See:
1	Land is treated as a separate asset from any capital improvements on the land	[*Specialist rules to be drafted later*]
2	[*Further cases to be added as required.*]	

Subdivision 6-C—Tax value of an asset

6-40 Tax value of an asset

The table tells you how to work out the ***tax value*** at a particular time of an asset you *hold.

Tax value of an asset

Item	For this kind of asset:	The tax value at that time is:
1	An item of *trading stock	The amount worked out under Division 38
2	A *depreciating asset (or something that is treated as a depreciating asset: see Note 5)	The amount worked out under Division 40

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax value of an asset

Item	For this kind of asset:	The tax value at that time is:
3	An asset consisting of your right to receive an amount that is *due and payable	The amount you have the right to receive
4	An asset consisting of your right to receive: (a) an amount for a supply of goods or services on terms that require payment within a period of 6 months or less; or (b) an amount by way of interest on such an amount	The amount you have the right to receive
5	A *membership interest (except one for which you have elected under Subdivision 45-D to work out the tax value on a market value basis)	The *cost of the asset as at that time (unless its tax value has changed under a provision of Part 3-5 (about tax entities and their members))
6	An asset covered by the table in section 6-145 (arising from the relationship between a tax entity and its members)	Nil
7	A *financial asset (except one covered by another item in this table (except item 9))	The amount worked out under Division 45
8	An asset consisting of a right, in respect of a *routine lease or a *routine right, of the grantor or grantee	The amount worked out under Subdivision 96-A
9	An asset consisting of a right, in respect of a *non-routine lease or a *non-routine right, of the grantor or grantee	The amount worked out under Subdivision 96-B
10	An asset consisting of your right to have an amount applied in discharging your liability to pay *tax imposed by an Australian law	That amount

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax value of an asset

Item	For this kind of asset:	The tax value at that time is:
11	An asset that is capable of ownership (except an asset covered by an earlier item, and goodwill)	The *cost of the asset as at that time
12	Goodwill	(a) To the extent (if any) that the goodwill includes goodwill that you have acquired from another taxpayer—the *cost of the acquired goodwill when you acquired it; and (b) Otherwise—nil
13	Any other asset that you have acquired from another taxpayer	The *cost of the asset as at that time
14	Any other asset	Nil

Note 1: How you work out an asset's *tax* value determines how an increase or decrease in the asset's *economic* value is taken into account for income tax purposes. For example:

- An asset covered by item 5, 11 or 13 in the table is taxed on a "realisation" basis.
- The tax value of a depreciating asset (item 2) declines over the asset's effective life, taking account of the decline in its economic value.
- Most financial assets covered by item 7 are taxed on an "accruals" basis (see Division 45).
- Assets covered by item 14 (for example, an intangible asset arising from expenditure on an advertising campaign that achieves market presence) always have a tax value of nil, so expenditure on them reduces your net income in the same income year.

Note 2: To work out the tax value of assets created by splitting an asset, see section 6-130.

Note 3: To work out the tax value of an asset created by merging assets, see section 6-135.

Note 4: Some of the provisions referred to in the table contain signposts to more specialised provisions for working out the tax value of assets.

Note 5: These things are treated as depreciating assets:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- project development pools, low-value asset pools and in-house software pools (see Subdivision 40-B);
- amortisable payments (see Subdivision 40-F).

Recommendation 4.3 in the Report lists a range of assets that are to have a tax value of nil. Item 13 in the above table deals with one of these (an intangible asset arising from expenditure on advertising). Further rules giving effect to the recommendation are being developed.

Recommendation 4.6 in the Report deals with prepayments. Rules for the treatment of assets arising from prepayments are being developed.

Subdivision 6-D—Tax value of a liability

6-75 Tax value of a liability

The table tells you how to work out the ***tax value*** at a particular time of a liability you owe.

Tax value of a liability

Item	For this kind of liability:	The tax value at that time is:
1	A liability to pay an amount that is *due and payable	The amount you are liable to pay
2	A liability to pay: (a) an amount for a supply of goods or services on terms that require payment within a period of 6 months or less; or (b) an amount by way of interest on such an amount	The amount you are liable to pay
3	The balance of the *contributed capital account of a tax entity	The amount of that balance at that time
4	A liability covered by the table in section 6-145 (arising from the relationship between a tax entity and its members)	Nil

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax value of a liability		
Item	**For this kind of liability:**	**The tax value at that time is:**
5	A liability, in respect of a *routine lease or a *routine right, of the grantor or grantee	The amount worked out under Subdivision 96-A
6	A liability, in respect of a *non-routine lease or a *non-routine right, of the grantor or grantee	The amount worked out under Subdivision 96-B
7	A *financial liability (except one covered by another item in this table)	The amount worked out under Division 45
8	[*Rules are being developed for working out the tax value of a liability to do something other than pay an amount of money.*]	
9	A liability that has not yet been incurred	Nil

Subdivision 6-E—What is the cost of an asset?

Table of sections

6-100 General rule

The ***cost*** at a particular time (the ***test time***) of an asset you *hold consists of 2 elements.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

6-105 First element of cost

(1) The first element is worked out as at the time when you began to hold the asset (the ***starting time***).

General cases

(2) It is worked out using the table in subsection (3), *unless* the asset is covered by a provision referred to in the table in section 6-140 (in which case it is worked out under that provision).

(3) If more than 1 item in the table covers the asset, apply the last item that covers it.

First element of the *cost* of an asset

Item	In this case:	The first element is:
1	You have paid one or more amounts in order to *hold the asset	The amount (or the total of the amounts)
2	In order to *hold the asset, you have incurred a liability to pay money, or increased a liability of that kind that you already owed	The amount of the tax value of the liability at the starting time, or the amount by which that tax value has increased because of what you have done in order to hold the asset, as appropriate
3	Both items 1 and 2 apply	The total of the amounts referred to in those items
4	In order to *hold the asset, you have provided a *non-cash benefit (except one covered by item 2)	The market value of the *asset* just before the starting time
5	The asset is a *financial asset whose tax value is worked out under Subdivision 45-C (on an accruals basis), and in order to *hold the asset, you provided a *non-cash benefit (otherwise than by incurring or increasing a liability to pay money) and nothing else	The amount worked out under section 45-70

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

First element of the *cost* of an asset		
Item	**In this case:**	**The first element is:**
6	You *hold the asset because of item 2 in the table in subsection 6-15(3) (about a tangible depreciating asset that is subject to a contract of hire purchase)	The market value of the *asset* when the contract was entered into
7	You *hold the asset because of item 3 in the table in subsection 6-15(3) (about a luxury car that is subject to a lease)	The market value of the *asset* when the lease was granted
8	An asset you *hold is split into 2 or more assets	For each of the assets into which it is split, the amount worked out under section 6-130
9	Two or more assets that you *hold are merged into a single asset	For the single asset, the amount worked out under section 6-135
10	No other item in this table applies	The market value of the *asset* just before the starting time

Note: These are examples of the first element of cost, as worked out under item 1 in the table:

- In the case of an asset you acquire from someone else, the cost is what you paid for the asset.
- In the case of an asset you create, the cost is what you paid in order to create it.
- Payments incidental to acquiring or creating the asset.

6-110 Second element of cost

(1) The second element is worked out as at the test time (see section 6-100).

General cases

(2) For each economic benefit you have received that has contributed to bringing the asset to its present condition and location from time to time until the test time, the second element includes the amount worked out using the table.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Second element of the *cost* of an asset		
Item	**In this case:**	**The second element includes:**
1	You have paid one or more amounts for that economic benefit	The amount (or the total of the amounts)
2	In order to receive that economic benefit, you have incurred a liability to pay money, or increased a liability of that kind that you already owed	The amount of the tax value of the liability when you received the benefit, or the amount by which the tax value of the liability has increased because of what you have done in order to receive the benefit, as appropriate
3	Both items 1 and 2 apply	The total of the amounts referred to in those items
4	In order to receive that economic benefit, you have provided a *non-cash benefit (except one covered by item 2)	The market value of the benefit when you received it
5	No other item in this table applies	The market value of the benefit when you received it

Note: These are examples of items within the second element of cost:

- payments in improving the asset or otherwise increasing its economic value;
- expenditure in making the asset ready for use or sale.

(3) To the extent that an amount has already been included in the second element of the asset's *cost because of an application of an item in the table in subsection (2), that amount is not included in the second element by another item in that table, or by another application of the same item.

Additional items included for some private or domestic payments relating to land

(4) If the asset is *land, the second element of its *cost includes all payments made at or before the test time that are directly

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

attributable to the land, but only to the extent that they are of a private or domestic nature.

Note: These are examples of items covered by this subsection:

- interest on money borrowed in order to pay for the land;
- rates and land tax.

6-115 Items excluded from cost

(1) The ***cost*** of an asset does *not* include:

(a) interest on money borrowed; or

(b) an amount paid, in so far as it is paid in order to maintain, repair or insure the asset; or

(c) an amount in respect of a *non-cash benefit provided, in so far as it is provided in order to maintain, repair or insure the asset; or

(d) rates or land tax.

(2) If the asset is *land, subsection (1) has effect subject to subsection 6-110(4).

6-120 Apportioning payment covering several benefits that include an asset

If you pay a single amount for 2 or more *non-cash benefits that include one or more assets, you are treated as having paid for each asset so much of the amount as is reasonably attributable to the asset.

6-125 Meaning of *non-cash benefit*

(1) If a taxpayer provides to another taxpayer an asset or services in any form except *money, the asset or services are a ***non-cash benefit***.

(2) If a taxpayer incurs a liability, or increases a liability that the taxpayer already owes, the liability or increase is a ***non-cash***

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

benefit that the taxpayer provides to the taxpayer to which the liability is owed.

(3) If a taxpayer terminates all or part of a liability owed to the taxpayer by another taxpayer, the termination is a ***non-cash benefit*** that the taxpayer provides to the other taxpayer.

(4) If a *non-cash benefit is dealt with on behalf of a taxpayer, or is provided or dealt with as a taxpayer directs, the benefit is taken to be provided to the taxpayer. (This does not affect the treatment of another taxpayer to which the benefit is provided as mentioned in subsection (1), (2) or (3).)

6-130 Splitting an asset

(1) If an asset (the ***original asset***) you *hold is split into 2 or more assets, this Act applies as if you had stopped holding the original asset and started holding the assets into which it is split.

(2) You must work out the tax value of the original asset just before it is split, and apportion that amount on a reasonable basis between each of the assets into which it is split. The amount you apportion to each of those assets is the first element of its ***cost***.

Example: Michael buys land on 1 July 2005 at a cost of $1,200,000.

On 1 July 2006, he subdivides the land into 3 blocks. Each block is of the same size and none has a locational advantage over any of the others.

The tax value of the land just before it is subdivided is $1,200,000. That tax value is apportioned among the 3 blocks so that each has a cost of $400,000.

(3) If you stop *holding part of an asset (the ***original asset***), this Act applies to you as if, just before you stopped holding that part, you had split the original asset into the part you stopped holding and the rest of the original asset. (The rest of the original asset is then taken to be a different asset from the original asset.)

Example: Barry owns a spectrum licence that covers 3 areas: Area A, area B and area C. The licence has a tax value of $160,000. He sells area A to Chris. Barry is taken to have split the licence into 2 assets.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

On the basis of their relative market values, Barry apportions $100,000 to area A and the remaining $60,000 to the licence he still holds for areas B and C.

6-135 Merging assets

(1) If 2 or more assets (the ***original assets***) that you hold are merged into a single asset, this Act applies as if you had stopped holding the original assets and started holding the merged asset.

(2) The first element of the ***cost*** of the merged asset is the sum of the tax values of the original assets just before you merged them.

6-140 Special rules for particular assets

Special rules about cost

Item	For special rule about cost in this case:	See:
1	You pay amounts to make a *depreciating asset operational	section 40-40
2	A project development *pool is treated as a *depreciating asset	section 40-140
3	An *in-house software *pool is treated as a *depreciating asset	section 40-180
4	A *depreciating asset is only partially completed	section 40-330
5	A *depreciating asset is a *landcare asset or a *water facility	section 40-440
6	An *amortisable payment is treated as a *depreciating asset	section 40-545
7	For cars, the cost is limited to the luxury car limit	section 40-625
8	An additional *membership interest in a tax entity is issued to you because of a *rearrangement of membership interests	Subdivision 153-D
9	You hold an animal as live stock that you acquired by natural increase	section 385-55

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 6-F—Assets and liabilities arising from the relationship between a tax entity and its members

6-145 Assets and liabilities with a tax value of nil

This table sets out a list of assets and corresponding liabilities that have a ***tax value*** of nil. They are assets and liabilities that might arise because of the relationship between a tax entity and another taxpayer, typically a *member of the entity.

Assets and liabilities with a tax value of nil

Item	Assets	Corresponding liabilities
1	Right of a taxpayer to receive a particular *distribution from a tax entity	Liability of a tax entity to make a particular distribution
2	Right of a tax entity to a *contribution of capital	Liability of a *member of a tax entity to contribute capital to the entity
3	Rights of a member, or an associate of a member, of a *closely-held tax entity under a *non-commercial loan to the entity by the member or associate [if the loan is a contribution of capital]	Liability of a closely-held tax entity under a non-commercial loan made to the entity by a member, or an associate of a member, of the entity [if the loan is a contribution of capital]
4	Rights of a closely-held tax entity under a non-commercial loan to a member or an associate of a member by the entity [if the loan is a distribution]	Liability of a member, or an associate of a member, of a closely-held tax entity under a non-commercial loan to the member or associate by the entity [if the loan is a distribution]

Note 1: The consistent entity treatment rules deal with membership-related distributions and contributions of capital once they are actually made.

Note 2: Under subsection 154-40(6), a non-commercial loan by a member of a closely-held tax entity to the entity is treated as a contribution of capital. Under subsection 960-145(3), a non-commercial loan by a closely-held tax entity to a member or associate is treated as a distribution to the member or associate.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Further work is being done on items 3 and 4 in the table, and on the treatment of receipts and payments relating to those items.

[The next Division is Division 8.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 8—Recasting non-cash transactions in terms of notional receipts and payments

Rules are being developed to simplify the treatment of:

- *two-sided non-cash transactions (transactions involving the exchange of non-cash benefits); and*
- *one-sided non-cash transactions (transactions with a non-cash benefit on one side and nothing on the other side).*

The purpose of these rules will be to deal generically with the income tax consequences of these transactions under other provisions of this Act.

[The next Division is Division 12.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 12—Excluding private items in working out individual's taxable income

Table of sections

12-1 Object of this Division

(1) The object of this Division is to exclude from an individual's taxable income (and hence from the income tax base) receipts, payments, liabilities, and most assets, of a private or domestic nature.

(2) It is recognised that receipts, payments, assets and liabilities of taxpayers other than individuals are never of a private or domestic nature.

12-5 Application

This Division applies in working out an individual's taxable income.

12-10 Private receipts and payments of an individual

A receipt or payment is *not* taken into account under section 5-55 to the extent that it is of a private or domestic nature.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Here are some examples of payments of a private or domestic nature that are not taken into account under section 5-55:

- Olga buys a monthly train pass to travel to and from work.
- Andrew and Sonja both work full-time and pay for childcare for their children.

12-15 Tax value of asset or liability that is wholly private

(1) The *closing tax value of an asset that you *held, or of a liability that you owed, at the *end* of the income year is *not* taken into account under section 5-55 if the asset was a *private asset, or the liability was a *private liability, at that time.

(2) The *opening tax value of an asset that you *held, or of a liability that you owed, at the *start* of the income year is *not* taken into account under section 5-55 if the asset was a *private asset, or the liability was a *private liability at that time.

Note 1: If an asset *is* taken into account under section 5-55, there may be an increasing adjustment under section 40-80 to the extent that you use the asset for private or domestic purposes.

Note 2: If a liability is only partly of a private or domestic nature, there may be an adjustment under item 1 in the table in section 5-95 for a change in the liability's tax value.

12-20 Meaning of *private asset* and *private liability*

(1) An asset that an individual *holds is a ***private asset*** as shown in the table.

Meaning of *private asset*

Item	This kind of asset:	Is a *private asset*:
1	A *depreciating asset (except a *collectable)	If: (a) the individual *holds and uses the asset, or holds the asset for use, solely for private or domestic purposes; and (b) he or she intends to use it solely for private or domestic purposes so long as he or she holds it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Meaning of *private asset*		
Item	**This kind of asset:**	**Is a *private asset*:**
2	*Land	Never
3	Any other asset (including a *collectable)	If: (a) the individual *holds and uses the asset, or holds the asset for use, at least partly for private or domestic purposes; and (b) the asset's *cost when the individual starts to hold it is $10,000 or less.

(2) A ***private liability*** is a liability that is owed by an individual and is, for the individual, wholly of a private or domestic nature.

Note 1: If an asset stops being, or becomes, a private asset, see sections 12-30 and 12-35.

Note 2: If a liability stops being, or becomes, a private liability, see sections 12-40 and 12-45.

12-25 Payment or receipt that affects the tax value of an asset or liability

(1) This section covers a payment or receipt, even if some or all of it is of a private or domestic nature (so that section 12-10 would prevent it from being taken into account under section 5-55).

Note: Whether the payment or receipt is taken into account under section 5-55 is instead determined by the character of the asset or liability it relates to.

Payment included in an asset's tax value

(2) To the extent that an amount you pay during the income year becomes included at a particular time in the tax value of an asset you *hold, the amount is taken into account under section 5-55 for the income year, but not if the asset is a *private asset at that time.

Proceeds of realisation event for an asset

(3) To the extent that an amount you receive during the income year is (or forms part of) the *proceeds of a *realisation event for an asset

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

you *held, the amount is taken into account under section 5-55 for the income year, but not if the asset was a *private asset at the time of the realisation event.

Receipt included in a liability's tax value

(4) To the extent that an amount you receive during the income year becomes included at a particular time in the tax value of a liability you owe, the amount is taken into account under section 5-55 for the income year, but not if the liability is a *private liability at that time.

Payment reducing a liability's tax value

(5) To the extent that an amount you pay during the income year reduces the tax value of a liability you owe, the amount is taken into account under section 5-55 for the income year, but not if the liability was a *private liability at the time of the reduction.

12-30 Effects when asset stops being private asset

(1) If an asset you already *hold stops being a *private asset, you are treated as if:

(a) just before that happened, you had sold the item to someone else (at arm's length) and received for it the amount of its market value at the time of sale; and

(b) you had immediately bought it back for a payment of the same amount.

Note: The amount you are treated as *receiving* is not taken into account under section 5-55 because of subsection 12-25(3).

(2) The amount that subsection (1) treats you as having *paid* is not taken into account under section 5-55. Instead, you have a ***decreasing adjustment*** equal to that amount.

Note: The amount will also be taken into account in working out the cost, and the tax value, of the asset at and after the time when it stops being a private asset.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

12-35 Effects when asset becomes private asset

(1) If an asset you already *hold becomes a *private asset, you are treated as if:

(a) just before that happened, you had sold the item to someone else (at arm's length) and received for it the amount of its market value at the time of sale; and

(b) you had immediately bought it back for a payment of the same amount.

Note: The amount you are treated as *paying* is not taken into account under section 5-55 because of subsection 12-25(2).

(2) The amount that subsection (1) treats you as having *received* is not taken into account under section 5-55. Instead, you have a ***increasing adjustment*** equal to that amount.

12-40 Effects when liability stops being private liability

(1) If a liability you already owe stops being a *private liability, you are treated as if:

(a) just before that happened, you had paid the taxpayer to which you owed the liability the amount of the market value of the liability at the time of payment, and that taxpayer had released you from the liability; and

(b) you had immediately re-incurred the same liability to that taxpayer and received the same amount for doing so.

Note: The amount you are treated as *paying* is not taken into account under section 5-55 because of subsection 12-25(5).

(2) The amount that subsection (1) treats you as having *received* is not taken into account under section 5-55. Instead, you have a ***increasing adjustment*** equal to that amount.

Note: The amount will also be taken into account in working out the tax value of the liability at and after the time when it stops being a private liability.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

12-45 Effects when liability becomes private liability

(1) If a liability you already owe becomes a *private liability, you are treated as if:

(a) just before that happened, you had paid the taxpayer to which you owed the liability the amount of the market value of the liability at the time of payment, and that taxpayer had released you from the liability; and

(b) you had immediately re-incurred the same liability to that taxpayer and received the same amount for doing so.

Note: The amount you are treated as *receiving* is not taken into account under section 5-55 because of subsection 12-25(4).

(2) The amount that subsection (1) treats you as having *paid* is not taken into account under section 5-55. Instead, you have a ***decreasing adjustment*** equal to that amount.

12-50 Special rules about other assets that have a private character

The table shows where to find special rules about the extent to which certain assets are taken into account under section 5-55.

Other assets having a private or domestic character

Item	For rules about this kind of asset:	See:
1	Your main residence	[*Main residence exemption*]
2	A decoration for valour or brave conduct	[*Equivalent of section 118-5 in the Income Tax Assessment Act 1997*]
3	[*Further cases to be added as required.*]	

[The next Division is Division 14.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 1-4—Checklists of what is covered by concepts used in the core provisions

Division 14—Who must pay income tax

14-1 List of taxpayers

The table lists who must pay income tax.

Who must pay income tax		
Item	**Income tax is payable by:**	**Because of:**
1	An individual	section 4-1
2	A company, that is: • a body corporate; or • an unincorporated body (except a partnership)	section 4-1 and paragraph 960-105(1)(a)
3	A trust (except one covered by a later item in this table)	section 4-1 and paragraph 960-105(1)(b)
4	A limited partnership	section 4-1 and paragraph 960-105(1)(e)
5	Any other tax entity (except one covered by a later item in this table)	section 4-1 and paragraphs 960-105(1)(c) and (d)
6	A trustee (except one covered by a later item in this table), but only in respect of some kinds of income of the trust	sections 98, 99, 99A and 102 of the *Income Tax Assessment Act 1936*.
7	A mutual insurance association (as described in section 121 of the *Income Tax Assessment Act 1936*)	section 121 of the *Income Tax Assessment Act 1936*
8	The trustee of a complying superannuation fund	section 278 of the *Income Tax Assessment Act 1936*
9	The trustee of a non-complying superannuation fund	section 286 of the *Income Tax Assessment Act 1936*
10	The trustee of a complying approved deposit fund	section 289 of the *Income Tax Assessment Act 1936*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Who must pay income tax		
Item	**Income tax is payable by:**	**Because of:**
11	The trustee of a non-complying approved deposit fund	section 294 of the *Income Tax Assessment Act 1936*
12	The trustee of a pooled superannuation trust	section 296 of the *Income Tax Assessment Act 1936*

[The next Division is Division 36.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2—Rules of general application

Part 2-1—Income tax law adjustments

Division 36—Tax losses of earlier income years

Table of Subdivisions

Subdivision 36-A—Object of this Division

36-1 Object

(1) The object of this Division is to create the concept of a tax loss, which arises when the result of working out your taxable income for an income year is less than zero.

(2) If this happens, you do not pay income tax for the income year. Also, the tax loss can be carried forward, and may reduce your taxable income in later income years.

Subdivision 36-B—Deductions for tax losses of earlier income years

36-10 How to calculate your tax loss for an income year

(1) You have a ***tax loss*** for an income year if the result of this formula is a negative amount:

*Net income + *Income tax law adjustment

(2) However, if your *net exempt income for the income year is a positive amount, you have a ***tax loss*** for the income year if the result of this formula is a negative amount:

*Net income + *Income tax law adjustment + *Net exempt income

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) The amount of the tax loss is the result of the formula (expressed as a positive amount).

> *Rules are being developed about how tax losses are carried forward and applied in working out taxable income for later income years.*

[The next Division is Division 38.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 2-10—Tax value of assets and liabilities

Division 38—Trading stock

Table of sections

38-10 Meaning of *trading stock*

Trading stock includes:

(a) any *tangible asset produced, manufactured or acquired that a taxpayer *holds for purposes of manufacture, sale or exchange in the ordinary course of a *business; and

(b) *live stock;

but does *not* include an asset that is not a *tangible asset.

38-20 Default rule: tax value of trading stock is lesser of cost and net realisable value

(1) The ***tax value*** of an item of your *trading stock at a particular time is the lesser of:

(a) its *cost at that time; and

(b) its *net realisable value at that time;

unless the item is covered by an election in force under section 38-40.

Note: Under these provisions you can choose a different method to work out the tax value of certain kinds of trading stock:

- section 38-40 (for each item in a class of items you choose);
- section 385-60 (for horse breeding stock).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) The ***net realisable value*** at a particular time of an item of *trading stock is the estimated proceeds of selling the item, reduced by:

(a) if the item is not yet completed—your costs of completing the item; and

(b) your costs of selling the item.

38-40 Choosing to work out tax value of a class of trading stock on the basis of market selling value

(1) The purpose of this section is to make it easier for you to work out the tax value of your *trading stock. (Its purpose is *not* to enable you to manipulate the tax value of your trading stock so as to reduce your income tax or some other taxpayer's income tax.)

(2) You may choose market selling value as the ***tax value*** of each item in a class of items of your *trading stock. You must make the choice in writing.

Class of items covered by choice

(3) The choice must specify the class of items that it covers.

(4) A class must be specified in a way that is consistent with the purpose of this section (see subsection (1)), otherwise the choice is invalid.

(5) In particular, the choice is invalid if it specifies a class in such a way that whether the class covers an item depends on when you start to *hold the item, the purpose for which you hold the item, or any characteristic that can change while you hold the item.

When choice takes effect

(6) The choice takes effect when it is made, unless it specifies a later time of effect. A choice that would otherwise take effect at the start of an income year takes effect immediately afterwards.

(7) After the choice has taken effect, you can revoke or vary it only if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) the Commissioner is satisfied that there has been a material change in circumstances that justifies the revocation or variation; and

(b) the revocation or variation is consistent with the purpose of this section (see subsection (1)); and

(c) you do so in writing.

(Subsection (6) applies to a revocation or variation in the same way as it applies to the original choice.)

> *Rules are being developed about how to deal with items that you already hold that become trading stock, and items that stop being trading stock but that you continue to hold.*

[The next Division is Division 40.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 40—Depreciating assets

Table of Subdivisions

Guide to Division 40

40-1 What this Division is about

The purpose of this Division is to allow you to take into account the decline in tax value of *depreciating assets* (assets that have a limited useful life) when calculating your taxable income.

That decline is generally measured by reference to the effective life of each asset.

The closing tax value of a depreciating asset for an income year will almost always be less than its opening tax value for the year (or its cost for the year when you started to hold it).

That difference is an estimate of the part of the asset's cost that is used up in each year. Your taxable income will be reduced to that extent.

Subdivision 40-A contains the rules that apply to most depreciating assets. The other Subdivisions apply to specific depreciating assets.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

> Subdivisions 40-B and 40-F also treat some expenditure in the same way as depreciating assets.

Subdivision 40-A—Core provisions

Guide to Subdivision 40-A

40-5 What this Subdivision is about

> This Subdivision contains the rules that apply to most depreciating assets. It explains:
>
> - what a *depreciating asset* is; and
> - how to work out the tax value of a depreciating asset; and
> - when you take the decline in that tax value into account in calculating your taxable income.
>
> It also contains rules for when you pay additional amounts in relation to a depreciating asset.

Table of sections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

[This is the end of the Guide.]

Operative provisions

40-10 *Tax value* of depreciating assets

(1) The ***tax value*** of a *depreciating asset at a particular time is:

(a) if you started to *hold it during the income year—its *cost less its decline in tax value worked out under this Division as if that time were the end of an income year; or

(b) otherwise—its *opening tax value for the relevant income year less its decline in tax value for the year worked out under this Division as if that time were the end of an income year.

(2) The tax value of a *depreciating asset cannot be less than zero.

Note: For the tax value of assets being constructed or created: see subsection 40-25(5). For the tax value of assets and amounts in pools: see Subdivision 40-B. For the tax value of partially completed assets: see Subdivision 40-D.

40-15 Meaning of *depreciating asset*

A ***depreciating asset*** is an asset that has a limited useful life, except:

(a) an item of *trading stock (see Division 38); or

(b) a *financial asset (see Division 45); or

(c) a *routine lease or a *routine right (see Subdivision 96-A); or

(d) a *non-routine lease or a *non-routine right (see Subdivision 96-B); or

(e) an asset that is not capable of ownership.

Note 1: Generally, only one taxpayer can take the decline in tax value of a depreciating asset into account. However, if you and another taxpayer

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

jointly hold a depreciating asset, each of you can take the decline of your interest in the asset into account: see Subdivision 40-C.

Note 2: Low-cost assets are not treated individually if they go into a pool: see Subdivision 40-B.

40-20 Assets whose decline in tax value is not measured under this Subdivision

You cannot take the decline in tax value of a *depreciating asset into account under this Subdivision if you or another taxpayer has started to take the decline into account under Subdivision 40-E or you choose to claim a *tax offset under Division 388 for expenditure on the asset.

Note: Subdivision 40-E deals with landcare assets, water facilities, grapevines and horticultural plants. Division 388 deals with tax offsets for landcare assets and water facilities.

40-25 When you start taking the decline into account

(1) You start taking the decline in tax value of a *depreciating asset into account for the income year in which the asset's *start time occurs.

Note 1: You start taking into account the decline in tax value of an in-house software pool that is treated as an asset from a later time: see Subdivision 40-B.

Note 2: You may be able to take the decline in tax value into account in a limited way for a partially completed asset before its start time: see Subdivision 40-D.

(2) The asset's ***start time*** is:

(a) the time when you first use it, or have it installed ready for use and held in reserve, for a *taxable purpose; or

(b) if the asset is being constructed or created—the time when you first use it, or have it installed ready for use and held in reserve, for a taxable purpose after the construction or creation is finished; or

(c) if the asset is being constructed or created as part of a project—the time when the construction or creation stage of

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the project is completed and the project starts to operate for a *taxable purpose; or

(d) if the asset is a right—when you started to *hold the right.

Example: A mining project's construction stage would cover the construction of all the infrastructure necessary before commercial extraction of minerals can start.

(3) A ***taxable purpose*** is any purpose that is not a private or domestic purpose or a purpose of gaining or producing *exempt amounts.

(4) However, you do not use a *leisure facility or a boat for a ***taxable purpose*** at a time unless, at that time:

(a) its use constitutes a *fringe benefit; or

(b) you use the leisure facility or hold it for use as mentioned in subsection 26-50(3); or

(c) you use the boat or hold it for use as mentioned in paragraph 26-50(5)(b), (c) or (d).

(5) The ***tax value*** of an asset referred to in paragraph (2)(b) (except one whose decline in tax value you start to take into account under Subdivision 40-D) before its *start time is its total *cost from time to time.

Note: Subdivision 40-D deals with partially completed assets.

40-30 Calculation

You work out the decline in tax value of a *depreciating asset for an income year in this way:

$$\frac{\text{Base value} \times \text{Rate} \times \dfrac{\text{Days you }^{*}\text{hold the}}{\text{asset in income year}}}{365}$$

where:

days you hold the asset in income year is:

(a) if the asset's *start time occurred during the income year—the number of days that you *held the asset in the income year after that time; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) otherwise—the number of days that you held the asset in the income year.

base value is:

(a) if you are using the *diminishing value rate:

(i) for the income year in which the asset's *start time occurs—its *cost; or

(ii) for a later year—its *opening tax value for that year; and

(b) if you are using the *prime cost rate—its cost.

Note: The base value may change if you recalculate effective life, incur additional costs or extend your joint ownership: see sections 40-60, 40-65, 40-140 and 40-265.

rate is the rate applicable under section 40-50.

Note: You do not need to make the calculation if you have an immediate decline in tax value: see section 40-35.

Example: Greg acquires an asset for $3,500 and first uses it on the 26th day of the income year. If the prime cost rate is 30%, the asset would decline in tax value in that year by:

$$\left[\$3{,}500 \times 30\% \times \left(365 - 25\right)\right] \div 365 = \$978$$

The asset's closing tax value is:

$$\$3{,}500 - \$978 = \$2{,}522$$

40-35 Immediate decline in tax value

(1) The tax value of a *depreciating asset you use in *exploration or prospecting for minerals or quarry materials is zero at the end of the income year in which its *start time occurs.

Meaning of exploration or prospecting

(2) ***Exploration or prospecting*** includes:

(a) for mining in general, and quarrying:

(i) geological mapping, geophysical surveys, systematic search for areas containing minerals (other than petroleum) or quarry materials, and search by drilling or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

other means for such minerals or materials within those areas; and

(ii) search for ore within, or in the vicinity of, an ore-body or search for quarry materials by drives, shafts, cross-cuts, winzes, rises and drilling; and

(b) for petroleum mining:

(i) geological, geophysical and geochemical surveys; and

(ii) exploration drilling and appraisal drilling; and

(c) feasibility studies to evaluate the economic feasibility of mining minerals or quarry materials once they have been discovered.

(3) These are not ***exploration or prospecting***:

(a) development drilling for petroleum;

(b) operations in the course of working a mining property, quarrying property or petroleum field.

40-40 Modification of cost

Amounts you pay to make a *depreciating asset operational and that would otherwise be included in the ***cost*** of the asset under section 6-110 are reduced by any amounts you receive from the use of the asset during the period that it is being made operational.

40-45 Apportionment of receipts

If you receive an amount for assets you stop *holding and only part of the amount relates to a *depreciating asset, you take into account as what you receive for the depreciating asset that part of the amount that is reasonably attributable to it.

Example: Dan sells 3 assets (one depreciating asset and 2 collectable private assets each of which cost less than $10,000) under the one transaction. He receives $30,000 for the 3 assets. $25,000 of that amount is reasonably attributable to the depreciating asset.

That $25,000 is included in Dan's net income as a receipt under section 5-55. The remaining $5,000 is not taken into account under that section because it is a receipt that is wholly of a private or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

domestic nature for collectables which had an initial tax value of $10,000 or less each.

40-50 Rates

(1) You have a choice of 2 rates for each asset:

(a) the *diminishing value rate; and

(b) the *prime cost rate.

(2) You make the choice for the income year in which the asset's *start time occurs. Once you have made the choice for an asset, you cannot change it.

(3) The ***diminishing value rate*** for a *depreciating asset is:

$$\frac{150\%}{\text{Asset's }{}^{*}\text{effective life (in years)}}$$

Example: If the asset's effective life is 5 years, the diminishing value rate is:

$$150\% \div 5 = 30\%$$

Note: For the diminishing value rate for a project development pool, you use the expected life of the project: see Subdivision 40-B.

(4) The ***prime cost rate*** for a *depreciating asset is:

$$\frac{100\%}{\text{Asset's }{}^{*}\text{effective life (in years)}}$$

Example: If the asset's effective life is 5 years, the prime cost rate is:

$$100\% \div 5 = 20\%$$

Note: For the prime cost rate for a project development pool, you use the expected life of the project: see Subdivision 40-B.

40-55 Effective life

(1) You must choose either:

(a) to work out the *effective life of a *depreciating asset yourself; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) to use an effective life specified by the Commissioner for the asset under subsection (5).

(2) You must make the choice for the income year in which the asset's *start time occurs.

(3) You work out the ***effective life*** of the asset yourself by estimating how long it will be until its useful life ends, having regard to your expected circumstances of use.

Note: If you work out the effective life of an asset under subsection (3) or subsection 40-60(1), and you do not use subsection (5) of this section, you must indicate this fact in the appropriate place in your return of income: see section [*to be drafted*].

(4) The regulations may prescribe guidelines to assist you in working out the *effective life of an asset under subsection (3) or section 40-60.

(5) The Commissioner may make a written determination specifying the ***effective life*** of *depreciating assets.

Exception

(6) The ***effective life*** of *in-house software is $2^1/_2$ years.

(7) ***In-house software*** is computer software, or a right to use computer software:

(a) that is principally for you to use in performing the functions for which the software or right was acquired or developed; and

(b) whose tax value is not reduced to zero in the income year in which its *start time occurs under a provision of this Act outside this Subdivision.

40-60 Recalculating effective life

(1) You may recalculate the ***effective life*** of the asset if, in a later income year, you conclude that your estimate is no longer accurate having regard to the circumstances of the case, including your actual use.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: If you work out the effective life of an asset under subsection 40-55(3) or subsection (1) of this section, and you do not use subsection 40-55(5), you must indicate this fact in the appropriate place in your return of income: see section [*to be drafted*].

(2) If you have already taken an amount into account for the decline in the asset's value, you must also adjust the rate. Use subsection (3) if you are using the *diminishing value rate, or subsection (4) if you are using the *prime cost rate.

Diminishing value rate

(3) You work out the rate adjustment in this way:

$$\frac{150\%}{\text{Remaining }{}^{*}\text{effective life}}$$

where:

remaining effective life is the asset's remaining *effective life, in years (including the income year for which the change is made).

Prime cost rate

(4) You work out the rate adjustment in this way:

$$\frac{100\%}{\text{Remaining }{}^{*}\text{effective life}}$$

(5) If you are using the *prime cost rate, you work out, under section 40-30, the asset's decline in tax value for the income year (the ***recalculation year***) for which you recalculated its *effective life and later years as if its *opening tax value for the recalculation year were its *cost.

Example: Andrew purchases a printing machine at the start of the 2001-02 income year for $50,000. He estimates its effective life to be 10 years. Andrew uses the prime cost rate.

He takes into account a decline in tax value of $5,000 for that income year. In the next income year, he realises that the machine is wearing out more quickly than he expected, so he recalculates its effective life. The new effective life is 8 years, of which 7 remain.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Andrew needs to take into account the remaining $45,000 of the asset's tax value over the last 7 years of effective life, so he adjusts the rate, and uses the opening tax value of $45,000 as the cost.

The rate will be:

$$100\% \div 7 = 14.29\%$$

40-65 Additional costs

(1) If an amount you pay for a *depreciating asset after you start to *hold it is included in its *cost under subsection 6-110, and the amount increases the economic value of the asset, you must add that amount to the asset's *closing tax value for the income year in which you paid it.

(2) For the purposes of calculating the asset's decline in tax value under section 40-30, you must also:

(a) if you are using the *diminishing value rate, add that amount to its base value for the formula in that section for that income year; and

(b) if you are using the *prime cost rate, add that amount to the asset's *opening tax value for that income year and use the result as its *cost for that year and later years.

Example: On 30 June 2001, Colleen purchases a digital photocopier for $10,000 for use in her legal practice. She estimates its effective life to be 5 years. Using the prime cost rate, she takes into account a decline in tax value of $2,000 for the 2001-02 income year.

On 1 July 2002, Colleen decides to spend $5,000 to upgrade the photocopier so that it can be used also as a printer. She concludes that the effective life remains the same.

Colleen adds the $5,000 to the asset's opening tax value, so that its cost becomes $13,000.

(3) You must also recalculate the asset's *effective life.

Note: You may conclude that the effective life is the same.

(4) You must also adjust the rate using subsections 40-60(3) and (4) (and using the remaining expected life of the asset).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: To continue the example, Colleen needs to take into account the remaining $13,000 of the asset's tax value over the last 4 years of effective life, so she adjusts the rate.

The rate will be:

$$100\% \div 4 = 25\%$$

40-75 Replacement statutory licences

(1) If a *statutory licence you *hold is replaced by another statutory licence that covers exactly the same rights as the original licence, this Act applies to you as if the replacement licence were the original licence.

(2) If a *statutory licence you *hold is replaced by 2 or more statutory licences that together cover exactly the same rights as the original licence, this Act applies to you as if the original licence had been split into the replacement licences.

Example: Katy owns a broadcasting licence that covers 2 areas: Area A and area B. The licence has a tax value of $200,000. The issuing authority replaces the licence with 2 licences so that she can sell one of the areas.

Katy apportions the $200,000 to areas A and B on the basis of their relative values.

40-80 Increasing adjustment for non-taxable use

(1) You have an *increasing adjustment if, during an income year, you use a *depreciating asset for purposes other than *taxable purposes.

(2) The adjustment is the part of the decline in tax value of the asset for the income year that is attributable to that use.

Example: Ben owns an asset that has an opening tax value for the income year of $10,000. He uses it for taxable purposes only to the extent of 50% in the income year.

If the asset's tax value declines by $1,000 in the year, Ben would have an increasing adjustment of $500 (50% of 1,000).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) Your *increasing adjustment under this section for a *car is different if you are using any of the methods specified in this table for your *car expenses:

Result where you use a Division 28 method for *car expenses		
Item	**Method**	**Result**
1	Cents per kilometre, or 12% of original value	You have an *increasing adjustment equal to the decline in tax value taken into account under this Division for the income year
2	One-third of actual expenses	You have an *increasing adjustment equal to 2/3 of the decline in tax value taken into account under this Division for the income year

40-85 Further adjustment where you stop holding asset

(1) You have a *decreasing adjustment or an *increasing adjustment if:

(a) you stop *holding a *depreciating asset; and

(b) you have an *increasing adjustment under section 40-80 for the asset in any income year (including the current income year); and

(c) what you receive for the asset is more or less than its tax value just before you stopped holding it.

(2) You have a *decreasing adjustment if the receipts are more than that amount.

(3) You have an *increasing adjustment if the receipts are less than that amount.

(4) Work out the adjustment in this way:

$$\frac{\text{Difference between tax value (just before you stopped *holding it) and receipts} \times \text{Non-deductible decline}}{\text{Total decline}}$$

where:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

non-deductible decline is the sum of the *increasing adjustments made under section 40-80 for the asset for every income year in which you *held the asset (including the current income year).

total decline is the total decline in tax value of the asset under this Division while you *held it.

Example: To continue the example from section 40-80, assume Ben sells the asset for $9,000 half-way through the following income year, and that he used it 100% for taxable purposes in that 6 months.

Ben's receipts are more than the amount that would be the asset's closing tax value just before he stopped holding it, and therefore he has a decreasing adjustment.

His decreasing adjustment is:

$$\left[\left(9{,}000 - 8{,}500\right) \times 500\right] \div 1{,}500 = \$167$$

40-90 Application of this Division to capital works

This Division applies to capital works of a kind referred to in section 43-20 only if the capital works:

(a) start being constructed on or after 1 July 2000; and

(b) do not consist of an extension, alteration or improvement to capital works that started being constructed before that day.

Subdivision 40-B—Pooling

Guide to Subdivision 40-B

40-120 What this Subdivision is about

> You can treat certain expenditure as if it were a depreciating asset by allocating it to a pool.
>
> For project amounts, you take the decline in that asset's value into account over the life of the project if you carry it on for taxable purposes.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

> You may take the decline in tax value of low-cost assets into account through a low-value asset pool. You may also allocate certain other assets to such a pool.
>
> You can also treat expenditure on developing in-house software as if it were a depreciating asset by allocating it to an in-house software pool.

Table of sections

[This is the end of the Guide.]

Operative provisions

40-125 Pooling

(1) A ***pool*** is a grouping of expenditure, or of *low-cost assets and assets referred to in subsection 40-160(3), that is treated as if it were a single *depreciating asset.

(2) You take into account, under Subdivision 40-A, the decline in tax value of a *pool as if it were such an asset.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) The tax value of the single *depreciating asset that is a *pool cannot be less than zero.

40-130 Project development pools

(1) If you pay a *project amount, you must allocate it to a project development *pool (***PDP***).

(2) You may create a PDP for 2 or more discrete sub-projects that are part of a project if they have different expected lives. You must allocate *project amounts between the sub-projects on a reasonable basis.

(3) A ***project amount*** is an amount:

- (a) you pay as part of a project that includes a construction or creation stage before the project starts to operate for a *taxable purpose; and
- (b) that is not included in the *cost of a *depreciating asset that you *hold; and
- (c) that is one of these:
  - (i) an amount paid to create or upgrade community infrastructure for a community associated with the project; or
  - (ii) an amount paid for site preparation costs for mine or quarry development; or
  - (iii) an amount paid for feasibility studies for the project; or
  - (iv) an amount paid for environmental assessments for the project; or
  - (v) an amount paid to obtain exploration, prospecting or mining information associated with the project; or
  - (vi) an amount paid for ornamental trees or shrubs; or
  - (vii) another amount of a kind prescribed by the regulations.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-135 *Tax value* of PDPs

(1) The ***tax value*** of a PDP at a particular time after the time when the construction or creation stage of the project is completed and the project starts to operate for a *taxable purpose is:

(a) the PDP's *opening tax value for the relevant income year less the pool's decline in tax value for the year worked out under Subdivision 40-A as if that time were the end of an income year; or

(b) if the *start time of the PDP occurred during that income year—the PDP's *cost less that decline.

(2) The ***tax value*** of a PDP before that time is its total *cost.

(3) The ***tax value*** of a PDP for a project or sub-project is reduced to zero at the end of the income year in which the project or sub-project ends.

40-140 Cost of PDPs

(1) The ***cost*** of a PDP at a particular time is the sum of the *project amounts you have allocated to the PDP before that time.

(2) If you pay a further *project amount for the project or sub-project after you start taking the decline in tax value of a PDP into account for an income year, the ***cost*** of the PDP includes that amount.

(3) You must add that amount to the PDP's *closing tax value for the income year in which you paid the amount.

(4) For the purposes of calculating the PDP's decline in tax value under section 40-30, you must also:

(a) if you are using the *diminishing value rate, add that amount to its base value for the formula in that section for that income year; and

(b) if you are using the *prime cost rate, add that amount to the PDP's *opening tax value for that income year and use the result as its *cost for that year and later years.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(5) You must also adjust the rate using subsections 40-60(3) and (4) (and using the remaining expected life of the project or sub-project).

40-145 When you start taking the decline into account

(1) You start taking the decline in tax value of a PDP into account for the income year in which its *start time occurs.

(2) The ***start time*** of a PDP is the time when the construction or creation stage of the project or sub-project is completed and it starts to operate for a *taxable purpose.

40-150 Rates

You work out the rate for a PDP under section 40-50 as if it had an *effective life equal to the expected life of the project or sub-project (in years).

40-155 Expected life of project or sub-project

(1) You work out the expected life of the project or sub-project yourself by estimating how long it will be until it ends.

(2) You may recalculate the expected life of the project or sub-project if, in a later income year, you conclude that your estimate is no longer accurate.

(3) If you recalculate the expected life, you must also adjust the rate using subsections 40-60(3) and (4) (and using the remaining expected life of the project or sub-project).

40-160 Low-value asset pools

(1) You may choose to allocate a *low-cost asset to a low-value asset *pool for the income year in which you start to *hold it.

(2) A ***low-cost asset*** is an asset whose *cost is $1,000 or less.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) You may also choose to allocate to a low-value asset *pool an asset:

(a) whose decline in tax value you have taken into account under this Division for a previous income year using the *diminishing value rate; and

(b) that has an *opening tax value for the income year of $1,000 or less; and

(c) that you have never used for purposes other than *taxable purposes.

(4) The *closing tax value of any assets that you have allocated to a low-value asset *pool is zero for the income year for which you allocate them. The *opening tax value of those assets is also zero for that year (except for the purposes of sections 40-165 and 40-170).

(5) Once you have made a choice to allocate a *low-cost asset to a low-value asset *pool for an income year, you must allocate all low-cost assets you start to *hold in that income year or a later one to such a pool.

(6) Once you allocate an asset to a low-value asset *pool, it must remain in the pool.

40-165 *Tax value* of low-value asset pools

The ***tax value*** of a low-value asset *pool at a particular time is the sum of:

(a) the *opening tax value (if any) of the pool for the relevant income year; and

(b) the sum of:

(i) the *costs of *low-cost assets you allocate to the pool for that year; and

(ii) the *opening tax values of any assets you allocate to the pool for that year under subsection 40-160(3);

less the pool's decline in tax value for the year worked out under Subdivision 40-A as if that time were the end of an income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-170 Decline in tax value of low-value asset pools

You work out the decline in tax value of a low-value asset pool for an income year under Subdivision 40-A using these 2 calculations (and ignoring pro-rating for the number of days you *held the assets):

(a) take $18^{3}/_{4}$% of the *costs of *low-cost assets you allocated to the pool for that year; and

(b) add to it $37^{1}/_{2}$% of the sum of:

(i) the *opening tax value of the pool for that year; and

(ii) the *opening tax values of assets you allocated to the pool for that year under subsection 40-160(3).

Note: This means that you use the diminishing value rate and you do not have to work out an effective life.

40-175 Rules for assets in low-value asset pools

(1) When you allocate a *low-cost asset to a low-value asset pool, you must make an estimate of the percentage (if any) of your proposed use of the asset that will be for purposes other than *taxable purposes.

(2) You must reduce the *cost of such an asset by an amount representing the percentage (if any) you estimated for the asset under subsection (1).

(3) If, in an income year, you stop *holding an asset you have allocated to a low-value asset *pool, you must reduce the *closing tax value of the pool by the amount you receive for stopping to hold it.

(4) If the asset you stopped *holding was one for which you had estimated a percentage under subsection (1), you must reduce the *closing tax value of the *pool by the part of the amount you receive for stopping to hold it that is attributable to the percentage of the use you estimated would be for *taxable purposes.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-180 In-house software pools

(1) You can choose to create an *in-house software *pool for an income year for an amount you paid in the income year in developing (or getting another taxpayer to develop) in-house software by allocating the amount to the pool. The sum of the amounts allocated for the year is your ***cost*** for the pool.

(2) However, an amount can only be allocated to an *in-house software pool for an income year if you intend to use the software solely for a *taxable purpose.

(3) Once you choose to create an *in-house software *pool for an income year, any amounts of the kind referred to in subsection (1) you pay after the pool is created must be allocated to an in-house software pool (unless you do not intend to use the software solely for a *taxable purpose).

40-185 *Tax value* of in-house software pools

The ***tax value*** of an *in-house software *pool at a particular time is:

(a) if you allocated an amount to the pool for that income year—the sum of the amounts you allocated to the pool for that income year before that time; or

(b) otherwise—the pool's *opening tax value for the relevant income year less the pool's decline in tax value for the year worked out under Subdivision 40-A as if that time were the end of an income year.

40-190 Decline in tax value of in-house software pools—timing and rate

(1) If you are using the *prime cost rate, you take into account the decline in tax value of an amount in an *in-house software pool that was paid in a particular income year (***year 1***) as if it were a *depreciating asset in accordance with this table:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Decline for amount in *in-house software pool	
Income year	**Percentage decline (*prime cost rate)**
Year 1	Nil
Year 2	40%
Year 3	40%
Year 4	20%

(2) If you are using the *diminishing value rate, use this table:

Decline for amount in *in-house software pool	
Income year	**Percentage decline (*diminishing value rate)**
Year 1	Nil
Year 2 and subsequent years	60%

(3) If you allocate an amount you spend on the development of software to an *in-house software pool, any item of software developed from amounts allocated to the pool has a tax value of zero.

Note: Subsection (3) ensures that, when the software is first used, you cannot take its decline into account under Subdivision 40-A.

Subdivision 40-C—Jointly held depreciating assets

Table of sections

40-250 Assets to which this Subdivision applies

This Subdivision applies to a *depreciating asset (the ***underlying asset***) that you jointly *hold with one or more other taxpayers. However, it does not apply if you and those other taxpayers choose instead to treat the asset as if it were held by one taxpayer.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-255 Decline in tax value of your interest in a jointly held asset

(1) You take the decline in tax value of *your interest in* the underlying asset into account under this Division. The decline in tax value of the underlying asset is not itself taken into account.

(2) The *effective life of your interest (including its effective life as recalculated under this Division) is the effective life of the underlying asset.

40-260 Creating or reducing joint ownership

(1) This section applies to you if you *hold an interest (the ***former interest***) in a *depreciating asset and you stop holding part of that interest in an income year while retaining an interest (the ***retained interest***) in it.

(2) You must work out the amount that would be the tax value of the former interest just before you stop *holding the part of it.

(3) Then, you must:

(a) apportion that amount, on a reasonable basis, between the retained interest and the part you stopped *holding; and

(b) take into account the decline in the part of that amount that you apportioned to the retained interest over the remainder of the income year.

Example: Amanda purchases a tractor for use in her flower growing business on 1 July 2001. The tractor costs $25,000. Amanda estimates the tractor's effective life to be 10 years. She writes-off $2,500 for the 2001-02 income year, leaving a closing tax value of $22,500.

On 31 December 2002, Amanda sells a half share in the tractor to Jan for $12,000.

The tax value of the tractor at 31 December 2002 would be $21,250. Half of this amount ($10,625) is apportioned to Amanda's retained interest. She writes-off $531 for the remainder of the income year.

Jan writes-off her $12,000 share over the effective life of the tractor.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-265 Extending joint ownership

(1) This section applies to you if you *hold an interest in an underlying asset and you start holding an additional interest in it (but not so that you hold all interests in it).

Note: If you now hold all interests in the asset, section 6-135 (merging assets) applies.

(2) For the purposes of calculating the decline in tax value of your total interests in the underlying asset under section 40-30, you must add the amount you paid for the additional interest in the asset to the *closing tax value of the interest you already *held for the income year in which you paid the amount.

(3) You must also:

(a) if you are using the *diminishing value rate, add that amount to the base value of the interest you already held for the formula in section 40-30 for that income year; and

(b) if you are using the *prime cost rate, add that amount to the *opening tax value of the interest you already held for that income year and use the result as your *cost for that year and later years; and

(c) adjust the rate using subsections 40-60(3) and (4) (as if you had recalculated the *effective life).

Subdivision 40-D—Special rules for partially completed assets

Guide to Subdivision 40-D

40-320 What this Subdivision is about

> This Subdivision allows you to start taking the decline in tax value of a depreciating asset into account before the asset's construction or creation is finished.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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[This is the end of the Guide.]

Operative provisions

40-325 When you can take the decline in tax value of a partially completed asset into account

You can choose to start to take the decline in tax value of a partially completed *depreciating asset into account under Subdivision 40-A for the income year in which you start to use it for a *taxable purpose.

40-330 What is your cost and effective life?

(1) The ***cost*** of the partially completed *depreciating asset for the purposes of starting to take its decline in tax value into account is the sum of:

(a) the amount you paid that directly relates to the construction or creation of the part of the partially completed asset that you are using for a *taxable purpose; and

(b) the proportion of the amounts actually paid for the partially completed asset as reasonably relates to the part being used.

(2) You use the period that will be the *effective life of the asset when its construction or creation is finished.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-335 Limit on decline in tax value

However, the decline in tax value of the partially completed *depreciating asset that you can take into account for an income year is limited to the lesser of:

(a) the decline that you could take into account under section 40-30 for the partially completed asset; and

(b) the receipts you obtain directly from the partially completed asset for that year.

Example: Damian is building a suburban shopping centre. There are to be 9 shops of equal size. Some tenants of Damian's move into the first 3 shops and begin trading.

So far Damian has spent a total of $4 million. $1 million of this relates directly to the first 3 shops, a further $1 million is pre-building costs and the remaining $2 million relates to foundations. Damian receives a total of $40,000 from those tenants for the income year.

Damian can start to take the decline in the value of the partially completed asset into account to the extent of a cost of $2 million, the $1 million that relates to the first 3 shops plus one-third of the remaining $3 million. The relevant effective life is 40 years.

For the first full year, the decline is limited to the lesser of 2.5% of $2 million ($50,000) and the $40,000 receipts.

40-340 Tax value of asset under this Subdivision

The ***tax value*** of a partially completed *depreciating asset whose decline in tax value you start taking into account is the total *cost of the asset from time to time less the total decline in tax value you have taken into account for it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 40-E—Landcare and primary production

Guide to Subdivision 40-E

40-400 What this Subdivision is about

This Subdivision also deals with taking the decline in tax value of depreciating assets into account, but it differs from Subdivision 40-A in that:

- it is restricted to landcare assets, water facilities, grapevines and horticultural plants; and
- the decline in tax value is measured only by reference to the original cost of creating or establishing the asset; and
- the decline is taken into account using the prime cost rate only; and
- you never recalculate the asset's effective life.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

[This is the end of the Guide.]

Operative provisions

40-405 Assets whose decline in tax value is measured under this Subdivision

(1) You can choose to take the decline in tax value of any of these *depreciating assets into account under this Subdivision:

(a) a *landcare asset for *land in Australia;

(b) a *water facility for land in Australia;

(c) a grapevine in Australia;

(d) a *horticultural plant in Australia.

(2) However, you must use the asset for a *taxable purpose.

(3) For a *water facility, the *taxable purpose must include use in carrying on a *primary production business.

(4) For a grapevine or *horticultural plant, the *taxable purpose must be only in carrying on a *primary production business.

Note: If you do not meet these tests for an asset, or you do not choose to use this Subdivision for an asset (but still use it for taxable purposes), you use Subdivision 40-A.

(5) If you choose to claim a *tax offset under Division 388 for expenditure on a *landcare asset or a *water facility:

(a) you cannot take the asset's decline in tax value into account under this Division; and

(b) the asset's tax value is zero.

40-410 *Tax value* of assets to which this Subdivision applies

(1) The ***tax value*** of a *depreciating asset to which this Subdivision applies at a particular time is:

(a) if you started to hold it during the income year:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(i) if you are the taxpayer that first *held the asset—its *cost less its decline in tax value worked out under this Subdivision as if that time were the end of an income year; or

(ii) if not—its *cost less its total decline in tax value worked out under this Subdivision as if that time were the end of an income year; or

(b) otherwise—its *opening tax value for the relevant income year less its decline in tax value for the year worked out under this Subdivision as if that time were the end of an income year.

(2) The tax value of the *depreciating asset cannot be less than zero.

40-415 Meaning of *landcare asset* and *approved management plan*

(1) An asset is a ***landcare asset*** for *land if it is:

(a) a fence that separates different land classes on the land in accordance with an *approved management plan for the land; or

(b) a fence primarily for the purpose of excluding animals from an area of the land affected by land degradation:

(i) to prevent or limit extension or worsening of the land degradation; and

(ii) to help reclaim the area; or

(c) a levee, or similar improvement, on the land; or

(d) drainage works on the land primarily for controlling salinity or assisting in drainage control; or

(e) some other asset for preventing or fighting land degradation on the land; or

(f) an extension, alteration or addition to an asset specified in an earlier paragraph.

(2) An ***approved management plan*** for *land is a plan that:

(a) shows the different classes within the land and the location of any fencing needed to separate any of the land classes to prevent land degradation; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) describes the kind of fencing and how it will prevent land degradation; and

(c) has been prepared by, or approved in writing as a suitable plan for the land by:

(i) an officer of an *Australian government agency responsible for land conservation who has authority to do so; or

(ii) an individual who was at the time approved as a farm consultant under this Subdivision or under Subdivision 387-B of the *Income Tax Assessment Act 1997*.

Note: For approval of farm consultants, see section 40-465.

40-420 Meaning of *water facility*

(1) A ***water facility*** is equipment or a structural improvement, or an alteration, addition or extension to equipment or a structural improvement, that is primarily for the purpose of conserving or conveying water.

(2) Examples of a *water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill.

40-425 Meaning of *horticultural plant*

A ***horticultural plant*** is a plant or fungus that is cultivated or propagated for any of its products or parts.

40-430 When you start taking the decline into account

(1) You start taking the decline in tax value of a *depreciating asset into account under this Subdivision for the income year in which the asset's *start time occurs.

(2) The asset's ***start time*** is:

(a) for a *landcare asset or a *water facility—when you first have it installed for a *taxable purpose; or

(b) for a grapevine—when it is planted; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) for a *horticultural plant:

(i) if you are the first taxpayer to hold the plant—the start of the income year in which the first expected commercial season starts; or

(ii) if you are not—the later of the time when you first use it for a *taxable purpose and the time referred to in subparagraph (i).

40-435 Calculation

Immediate decline

(1) The tax value of these assets is reduced to zero in the income year in which their *start time occurs:

(a) a *landcare asset; and

(b) a *horticultural plant if its *effective life is shorter than 3 years.

Decline over time

(2) You work out the decline in tax value of a *water facility, grapevine or *horticultural plant (except one referred to in paragraph (1)(b)) for an income year in this way:

$$\frac{{}^{*}\text{Cost} \times \text{Rate} \times \dfrac{\text{Days you }{}^{*}\text{hold the}}{\text{asset in income year}}}{365}$$

where:

rate is:

(a) for a *water facility—$33^1/_3$%; or

(b) for a grapevine—25%; or

(c) for a *horticultural plant—the applicable rate from this table:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Rates for *horticultural plants		
Item	**For a plant with this *effective life:**	**The rate is:**
1	3 to fewer than 5 years	40%
2	5 to fewer than 7 years	27%
3	7 to fewer than 10 years	20%
4	10 to fewer than 13 years	17%
5	13 to fewer than 30 years	13%
6	30 years or more	7%

40-440 Cost

(1) The ***cost*** of a *landcare asset or a *water facility is the amount paid to *hold the asset by the taxpayer that first held it.

(2) The ***cost*** of a grapevine or *horticultural plant is the amount paid (whether by you or by a taxpayer that previously *held it) that is attributable to its establishment.

Exceptions

(3) The ***cost*** of an asset for this Subdivision does not include any amount paid for these things:

(a) draining swamp or low-lying *land; or

(b) clearing land.

40-445 Effective life of horticultural plants

(1) The taxpayer that first holds a *horticultural plant must choose either:

(a) to work out the *effective life of the plant itself; or

(b) to use an effective life specified by the Commissioner for the plant under subsection 40-55(5).

(2) The choice must be made for the income year in which the plant's *start time occurs.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) The taxpayer works out the ***effective life*** of the *horticultural plant by estimating how long it will be from the start of its first expected commercial season to the end of its last expected commercial season.

(4) The *effective life chosen for the *horticultural plant under subsection (1) applies to all later *holders.

40-450 Increasing adjustment for certain use

(1) You have an *increasing adjustment if, during an income year, you use a *landcare asset, whose decline in tax value you are taking into account under this Subdivision, for purposes other than *taxable purposes.

(2) You have an *increasing adjustment if, during an income year, you use a *water facility, grapevine or *horticultural plant, whose decline in tax value you are taking into account under this Subdivision, for purposes other than use in carrying on a *primary production business.

(3) The adjustment is the part of the decline in tax value of the asset for the income year that is attributable to that use.

40-455 Adjustments on stopping to hold asset

(1) If, at a time:

(a) you stop *holding a *depreciating asset whose decline in tax value you are taking into account under this Subdivision because you stop holding the asset (the ***underlying asset***) on which the depreciating asset is situated or to which it is attached; and

(b) its tax value is not zero;

you have an *increasing adjustment equal to its tax value.

(2) The tax value of the underlying asset is increased by the amount of the *increasing adjustment (as from just before you stop *holding it).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-460 Providing information on stopping to hold asset

(1) If a taxpayer stops *holding a *water facility, grapevine or *horticultural plant and you start holding it, you may give the taxpayer a notice within 60 days after you start holding it requiring the taxpayer to give you all or any of this information within a specified period of at least 60 days:

(a) its *cost and *start time;

(b) for a *horticultural plant:

(i) its *effective life; and

(ii) the start of the first expected commercial season.

The notice must also set out the effect of subsection (2).

Requirement to comply with notice

(2) The taxpayer must not, without reasonable excuse, intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Limits on giving a notice

(3) You can only give one notice for the same *depreciating asset.

40-465 Approval of individuals as farm consultants

(1) An individual may be approved in writing as a farm consultant by:

(a) the Secretary to the Department of Agriculture, Fisheries and Forestry; or

(b) an officer of that Department who has been authorised in writing by that Secretary to approve individuals as farm consultants.

Note: This subsection also allows the approval of an individual as a farm consultant to be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The following matters must be taken into account when deciding whether to approve an individual as a farm consultant:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) the individual's qualifications, experience and knowledge relating to *land conservation and farm management;

(b) the individual's standing in the professional community;

(c) any other relevant matters.

40-470 Review of decisions relating to approvals

An individual may apply to the *AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*):

(a) to refuse to approve the individual as a farm consultant; or

(b) to revoke the approval of the individual as a farm consultant.

Subdivision 40-F—Amortisable payments

Guide to Subdivision 40-F

40-520 What this Subdivision is about

This Subdivision treats certain payments (*amortisable payments*) as if they were depreciating assets, and shows you how to take their decline in tax value into account.

The payments are:

- a payment to connect electricity to land or to upgrade the connection; and
- a payment for a telephone line on land; and
- a payment to achieve the incorporation of a company; and
- a payment to obtain a loan or to raise equity; and
- other prescribed payments.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Operative provisions

[This is the end of the Guide.]

Operative provisions

40-525 Treatment of amortisable payments

(1) An *amortisable payment is treated as if it were a *depreciating asset, and its decline in tax value is taken into account under this Subdivision. You are treated as if you *held the asset.

(2) An ***amortisable payment*** is:

(a) a payment to connect, or upgrade the connection of, mains electricity supply to a metering point on *land; and

(b) a payment for a telephone line on land; and

(c) a payment to achieve the incorporation of a company; and

(d) a payment to obtain a loan or to raise equity; and

(e) another payment of a kind prescribed by the regulations.

Note: For mains electricity supply and telephone lines, the payment may have been made by a previous holder of the land.

(3) The tax value of any asset created by making an *amortisable payment is zero.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-530 *Tax value* of amortisable payments

(1) The ***tax value*** of an *amortisable payment at a particular time is:

(a) if you started to *hold it during the income year:

(i) if you are the taxpayer that first held the asset—its *cost less its decline in tax value worked out under this Subdivision as if that time were the end of an income year; or

(ii) if not—its cost less its total decline in tax value worked out under this Subdivision as if that time were the end of an income year; or

(b) otherwise—its *opening tax value for the relevant income year less its decline in tax value for the year worked out under this Subdivision as if that time were the end of an income year.

Note: Subparagraph (1)(a)(ii) is relevant only for electricity supply and telephone lines.

(2) The ***tax value*** of an *amortisable payment cannot be less than zero.

40-535 When you start taking the decline into account

(1) You start taking the decline in tax value of an *amortisable payment into account for the income year in which the payment's *start time occurs.

(2) The payment's ***start time*** is:

(a) for an electricity connection or a telephone line—when it is first used for a *taxable purpose; or

(b) for a payment to achieve the incorporation of a company—when the company is incorporated; or

(c) for a payment to obtain a loan—when the loan is obtained and you start using the borrowed *money for taxable purposes; or

(d) for a payment to raise equity—when the equity is obtained; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(e) for another payment of a kind prescribed by the regulations—the time prescribed by the regulations for payments of that kind.

(3) For a telephone line, the *taxable purpose must include use in carrying on a *primary production business.

40-540 Calculation

You work out the decline in tax value of an *amortisable payment for an income year in this way:

$$\frac{{}^{*}\text{Cost} \times \text{Rate} \times \dfrac{\text{Days you }{}^{*}\text{hold the}}{\text{asset in income year}}}{365}$$

where:

days you hold the asset in income year is:

(a) for a payment for an electricity connection or a telephone line:

(i) if you are the taxpayer that first *held the asset and the asset's *start time occurred during the income year—the number of days that you held the asset in the income year after that time; or

(ii) otherwise—the number of days you held the *land to which the payment relates in the income year; or

(b) for any other *amortisable payment:

(i) if the asset's *start time occurred during the income year—the number of days that you *held the asset in the income year after that time; or

(ii) otherwise—the number of days that you held the asset in the income year.

rate is:

(a) for a payment for an electricity connection or a telephone line—10%; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) for a payment to achieve the incorporation of a company or to raise equity—20%; or

(c) for a payment to obtain a loan:

(i) if the *term of the loan is 5 years or more—20%; or

(ii) if the term is shorter—the rate worked out by dividing 100% by the term of the loan (in years); or

(d) for another payment of a kind prescribed by the regulations—the rate prescribed by the regulations for payments of that kind.

40-545 *Cost* of amortisable payments

The ***cost*** of an asset that is an *amortisable payment is the amount paid to *hold the asset by the taxpayer that first held it.

40-550 Increasing adjustment for certain use

(1) You have an *increasing adjustment if, during an income year, you use an electricity supply or a telephone line to which an *amortisable payment relates for purposes other than:

(a) for an electricity supply—*taxable purposes; or

(b) for a telephone line—in carrying on a *primary production business.

(2) The adjustment is the part of the payment's decline in tax value for the income year that is attributable to that use.

(3) You have an *increasing adjustment for an income year for an *amortisable payment to obtain a loan if, during the income year, you use some or all of the borrowed *money for purposes other than the *taxable purposes.

(4) The adjustment is the part of the payment's decline in tax value for the income year that is attributable to that use.

40-555 Adjustments on stopping to hold asset

(1) If, at a time:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) you stop *holding the *land to which an *amortisable payment for electricity supply or a telephone line relates; and

(b) the payment's tax value is not zero;

you have an *increasing adjustment equal to its tax value.

(2) The tax value of the *land is increased by the amount of the *increasing adjustment (as from just before you stopped *holding the land).

40-560 Providing information on stopping to hold land

(1) If a taxpayer stops *holding *land to which an *amortisable payment for electricity supply or a telephone line relates and you start holding it, you may give the taxpayer a written notice within 60 days after you start holding it requiring the taxpayer to give you this information within a specified period of at least 60 days:

(a) the amount of the amortisable payment; and

(b) its *start time.

The notice must also set out the effect of subsection (2).

Requirement to comply with notice

(2) The taxpayer must not, without reasonable excuse, intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Limits on giving a notice

(3) You can give only one notice for the same *amortisable payment.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 40-G—Luxury car limit

Guide to Subdivision 40-G

40-620 What this Subdivision is about

> This Subdivision imposes a limit (the *luxury car limit*) on the cost that you can use in calculating the decline in tax value that you can take into account for cars.
>
> It also provides adjustments to taxable income where that limit applies for the income year when you first hold a car, and for the year you stop holding it, to reflect the fact that part of the cost of the car is not taken into account for taxation purposes.

Table of sections

[This is the end of the Guide.]

Operative provisions

40-625 Luxury car limit

(1) The ***cost*** of a *car is reduced to the *luxury car limit for the financial year in which you started to *hold it if its cost exceeds that limit.

(2) However, the *luxury car limit does not apply to a *car:

(a) you use primarily in a business of conveying members of the public; or

(b) you use primarily in a business of hiring to members of the public under *short-term hire agreements; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) whose *cost exceeds that limit only because of modifications made to enable an individual with a disability to use it for *taxable purposes.

(3) The ***luxury car limit*** for the 2000-01 *financial year is $[*to be inserted*]. The limit is indexed annually.

Note: [*The equivalent of Subdivision 960-M* of the *Income Tax Assessment Act 1997*] shows you how to index amounts.

Exception—associates

(4) The Commissioner may limit your ***cost*** if you start to hold a *car and a taxpayer who previously held it is an associate of yours (or was an *associate at the time when the taxpayer last held it). Your ***cost*** of the car may be limited to the associate's *cost if what you paid exceeds that amount.

(5) A ***short-term hire agreement*** is an agreement for the intermittent hire of a *car on an hourly, daily, weekly or monthly basis.

(6) However, an agreement for the hire of a *car is not a ***short-term hire agreement*** if, having regard to any other agreements for the hire of the same car to the same taxpayer or an *associate of that taxpayer, there is a substantial continuity of hiring so that the agreements together are for longer than a short-term basis.

40-630 Adjustments where luxury car limit applies

(1) You have an *increasing adjustment for an income year if, during the income year, the *cost of a *car you start to hold in that year is reduced to the *luxury car limit.

Note: The reduction is made under section 40-625.

(2) The adjustment is the difference between:

(a) the *cost of the *car (ignoring section 40-625); and

(b) the *luxury car limit for the *financial year in which you started to hold it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) You have a *decreasing adjustment for an income year if you stop *holding a *car in that year and, in that year or an earlier one, the *cost of the car was reduced to the *luxury car limit. The adjustment is:

$$\frac{\begin{array}{c}\text{What you receive}\\ \text{for stopping to}\\ {}^{*}\text{hold the } {}^{*}\text{car}\end{array} \times \begin{array}{c}\text{Difference between } {}^{*}\text{luxury car}\\ \text{limit for the } {}^{*}\text{financial year in which}\\ \text{you started to } {}^{*}\text{hold the car and the } {}^{*}\text{cost}\\ \text{of the } {}^{*}\text{car (ignoring section 40-625)}\end{array}}{\text{The } {}^{*}\text{cost of the } {}^{*}\text{car (ignoring section 40-625)}}$$

(4) If you *hold the *car because of item 2 or 3 of the table in subsection 6-15(3), you have a *decreasing adjustment for an income year if you stop holding the car because the lease or hire purchase contract terminates in that year and, in that year or an earlier one, the *cost of the car was reduced to the *luxury car limit. The adjustment is:

$$\frac{\begin{array}{c}\text{The } {}^{*}\text{opening tax value}\\ \text{of your liability for the}\\ {}^{*}\text{car for the income year}\end{array} \times \begin{array}{c}\text{Difference between } {}^{*}\text{luxury car limit}\\ \text{for the } {}^{*}\text{financial year in which you}\\ \text{started to hold the } {}^{*}\text{car and the } {}^{*}\text{cost}\\ \text{of the car (ignoring section 40-625)}\end{array}}{\text{The } {}^{*}\text{cost of the } {}^{*}\text{car (ignoring section 40-625)}}$$

[The next Division is Division 43.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 43—Deductions for capital works

This Division will be substantially the same as Division 43 of the Income Tax Assessment Act 1997, but will include the provision set out below, and other consequential changes.

43-19 Time limit on application of this Division to capital works

This Division applies to capital works of a kind referred to in section 43-20 only if:

(a) they started being constructed before 1 July 2000; or

(b) they start being constructed on or after 1 July 2000, and consist of an extension, alteration or improvement to capital works that started being constructed before that day.

[The next Division is Division 45.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 45—Financial assets and liabilities

Table of Subdivisions

Subdivision 45-A—How to work out the tax value of a financial asset

Table of sections

45-10 Meaning of *financial asset*

Rules about the scope of the concept of financial asset are being developed.

45-15 Tax value of financial assets

The table tells you how to work out the ***tax value*** at a particular time of a *financial asset you *hold.

Tax value of a financial asset		
Item	**For this kind of financial asset:**	**The tax value at that time is:**
1	A *financial asset covered by item 3 or 4 in the table in section 6-40 (about certain receivables and interest on them)	The amount worked out under that item

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax value of a financial asset		
Item	**For this kind of financial asset:**	**The tax value at that time is:**
2	A *financial asset that is not covered by another item in this table	The amount worked out under Subdivision 45-C
3	A *membership interest (except one covered by item 6)	The *cost of the asset as at that time (unless its tax value has changed under a provision of Part 3-5 (about tax entities and their members))
4	An asset covered by the table in section 6-145 (arising from the relationship between a tax entity and its members)	Nil
5	An option	The *cost of the asset as at that time
6	A *financial asset (but not one to which item 1 in this table applies) for which you have elected under Subdivision 45-D to work out the tax value on a market value basis	The asset's market value at that time

Note: How you work out an asset's *tax* value determines how an increase or decrease in the asset's *economic* value is taken into account for income tax purposes. For example:

- Some financial assets are taxed on an "accruals" basis (see item 2).
- An asset covered by item 3 or 5 in the table is taxed on a "realisation" basis.
- A financial asset covered by item 6 in the table is taxed on a "market value" basis.

Further rules about specific exclusions from accruals treatment are being developed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 45-B—How to work out the tax value of a financial liability

Table of sections

45-35 Meaning of *financial liability*

A ***financial liability*** is a liability to provide some or all of the future economic benefits that are embodied in a *financial asset.

45-40 Tax value of financial liabilities

(1) The table tells you how to work out the ***tax value*** at a particular time of a *financial liability you owe.

Tax value of a financial liability

Item	For this kind of financial liability:	The tax value at that time is:
1	A liability covered by item 1 or 2 in the table in section 6-75 (about amounts that are due and payable, or payable within 6 months)	The amount worked out under that item
2	A *financial liability (except one covered by another item in this table) if the tax value at that time of a notional *financial asset held by you, and identical to the financial asset *corresponding to the liability, would be worked out under Subdivision 45-C (on an accruals basis)	The tax value of that identical financial asset at that time, worked out on the basis that the *cost of that identical financial asset (when you began to *hold it) was equal to the cost of the financial asset *corresponding to the liability (when you began to owe it)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax value of a financial liability		
Item	**For this kind of financial liability:**	**The tax value at that time is:**
3	A *financial liability (except one covered by another item in this table) if the tax value at that time of a notional *financial asset held by you, and identical to the financial asset *corresponding to the liability, would be the *cost of that identical financial asset at that time	The tax value of that identical financial asset at that time, worked out on the basis that the *cost of that identical financial asset (when you began to *hold it) was equal to the cost of the financial asset *corresponding to the liability (when you began to owe it)
4	A liability covered by the table in section 6-145 (arising from the relationship between a tax entity and its members)	Nil
5	[*Rules are being developed for working out the tax value of a liability that has come into existence under a warranty, or under an insurance policy, but in respect of which no claim has yet been made.*]	
6	A *financial liability (but not one covered by item 1 in this table) for which you have elected under Subdivision 45-D to work out the tax value on a market value basis	The liability's market value at that time

Note: How you work out a liability's *tax* value determines how an increase or decrease in the liability's *economic* value is taken into account for income tax purposes. For example:

- Some financial liabilities are taxed on an "accruals" basis (see item 2).
- A liability covered by item 3 in the table is taxed on a "realisation" basis.
- A financial liability covered by item 6 in the table is taxed on a "market value" basis.

(2) Use this table to identify the *financial asset that ***corresponds*** to a *financial liability.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Identifying the financial asset that corresponds to a financial liability		
Item	**In this case:**	**The *financial asset that *corresponds* to the liability is:**
1	The liability is to provide future economic benefits that are embodied in a single *financial asset *held by a taxpayer	That financial asset
2	The liability is to provide future economic benefits that are embodied in 2 or more *financial assets *held by one or more taxpayers	A notional *financial asset that embodies all those future economic benefits
3	Neither of items 1 and 2 applies	A notional *financial asset that embodies all the future economic benefits that are to be provided to discharge the liability

Note: An example of a case covered by item 3 is a liability to provide only some of the future economic benefits that are embodied in a financial asset.

Subdivision 45-C—Tax value worked out on an accruals basis

Table of sections

45-60 Application

Work out under this Subdivision the ***tax value*** of a *financial asset you *hold if the table in section 45-15 tells you to do so.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

45-65 Tax value of the financial asset when you begin to hold it

The ***tax value*** of the *financial asset when you begin to *hold it is the *cost of the asset at that time, reduced by the total of each amount you receive in respect of the asset at or before that time.

45-70 Cost of financial asset in some cases

(1) Work out under this section the first element of the ***cost*** of the *financial asset at the time (the ***start time***) when you begin to *hold it if, in order to *hold the asset, you provided a *non-cash benefit (otherwise than by incurring or increasing a liability to pay money) and nothing else.

(2) The first element is the *market value of the *non-cash benefit when you provided it.

Example: Wayne is in business selling heavy machinery. He sells to Jim a bulldozer worth $75,000. The terms of sale provide for immediate delivery of the bulldozer, and payment of $80,000 by equal instalments over 9 months.

Wayne's right to payment of the instalments is a financial asset whose tax value is to be worked out under this Subdivision. Under this subsection, the cost of the financial asset is $75,000, which is the market value of the bulldozer on delivery.

45-75 Tax value at a later time if all receipts are certain when you begin to hold the financial asset

(1) If, when you begin to *hold the *financial asset, all of the amounts that you will receive after that time in respect of the asset are certain, the ***tax value*** of the asset at a particular time (the ***test time***) *after* you begin to hold it is worked out using this formula:

$$\left[\text{Last tax value} \times \left(1 + \text{Interest\%}\right)\right] - \text{Receipts at the test time}$$

The rest of this section explains the terms used in the formula.

> *Rules are being developed about the criteria for determining what receipts are certain.*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Last tax value

(2) ***Last tax value*** means the tax value of the *financial asset (worked out under this Subdivision) at the most recent time (the ***previous time***) before the test time when one or more of these things happened:

(a) you received an amount in respect of the asset for a period;

(b) an income year ended;

(c) you began to *hold the asset.

Interest%

(3) ***Interest%*** means the annualised compounded rate of return (expressed as a percentage) that, if used in working out the net present value of the following at the time when you began to *hold the asset, results in that net present value equalling 0:

(a) a payment by you at that time of an amount equal to the *cost of the asset at that time;

(b) the amounts that you will receive after that time in respect of the asset, assuming that:

(i) you will hold the asset for the rest of its life; and

(ii) that you will receive each amount at the earliest time when it is liable to be paid.

(4) If the period starting at the previous time and ending at the test time is less than 365 days, ***interest%*** means the rate of return referred to in subsection (3) multiplied by:

$$\frac{\text{Number of days in that period}}{365}$$

Receipts in respect of the asset

(5) ***Receipts at the test time*** means the total of each amount you received in respect of the *financial asset at the test time, or 0 if there is no such amount.

Note: The receipts *reduce* the tax value of the financial asset at the test time (and hence its closing tax value if you still hold it at the end of the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

income year), but they also *increase* your net income for the income year: see subsection 5-55(1).

45-80 Tax value at a later time in other cases

The formula in this section is being further developed to deal with additional cases.

(1) The ***tax value*** of the *financial asset at a particular time (the ***test time***) *after* you begin to *hold it is worked out using this formula:

$$\text{Last tax value} + \left[\text{Last face value} \times \left(\text{Interest\%} + \text{Index\%}\right)\right] + \text{Amortisation of discount or premium} - \text{Receipts at the test time}$$

The rest of this section explains the terms used in the formula.

Last tax value

(2) ***Last tax value*** means the tax value of the *financial asset (worked out under this Subdivision) at the most recent time (the ***previous time***) before the test time when one or more of these things happened:

(a) you received an amount in respect of the asset for a period;

(b) the interest rate (see subsection (6)) changed;

(c) the face value (see subsection (4)) of the asset changed by reference to an index number;

(d) an income year ended;

(e) you began to *hold the asset.

Last face value

(3) ***Last face value*** means the face value (see subsection (4)) of the *financial asset at the previous time.

(4) The ***face value*** of the *financial asset at a particular time is:

(a) the amount on the basis of which an amount receivable by you in respect of the asset for a period is worked out; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the amount that you will become entitled to receive because of the asset ending (assuming that you will hold the asset for the rest of its life);

as appropriate.

Interest%

(5) ***Interest%*** means the interest rate (see subsection (6)) during the period (the ***test period***) starting at the previous time and ending at the test time, expressed as a percentage. If the test period is less than 365 days, it means that rate multiplied by:

$$\frac{\text{Number of days in the test period}}{365}$$

(6) The ***interest rate*** is the annual rate of return (compounded as appropriate) applying for the purposes of working out an amount receivable by you in respect of the *financial asset for a period, on the basis of the face value of the asset at the start of that period.

Index%

(7) If the test time is an indexation time (see subsection (8)), ***index%*** means the amount worked out using this formula, expressed as a percentage:

$$\frac{\text{Index at test time } - \text{ Index at previous indexation time}}{\text{Index at previous indexation time}}$$

Otherwise, ***index%*** means 0.

(8) ***Indexation time*** for the asset means each of the following:

(a) a time when the face value of the asset changes by reference to an index number;

(b) the time when the asset began to exist.

(9) The ***index*** at a particular time is:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) if the index number by reference to which the face value of the asset changes is an index number for a period—that index number for the last period that ends before that time; or

(b) otherwise—that index number at that time.

Amortisation of discount or premium

(10) ***Amortisation of discount or premium*** is the amount worked out using this formula:

$$\text{Adjusted cost} \;-\; \text{Last adjusted cost}$$

(11) ***Adjusted cost*** is the amount worked out using this formula:

$$\text{Last adjusted cost} \times \left(1 + \text{Amortisation rate}\right)$$

(12) ***Last adjusted cost*** means:

(a) if you began to *hold the asset at the previous time—the *cost of the asset at that time; or

(b) otherwise—the adjusted cost worked out under subsection (11) for the purposes of working out the tax value of the *financial asset at the previous time.

(13) ***Amortisation rate*** means the annual compounded rate of return (expressed as a percentage) that, if used in working out the net present value of the following at the time when you began to *hold the asset, results in that net present value equalling 0:

(a) a payment by you at that time of an amount equal to the *cost of the asset at that time;

(b) a receipt by you, at the earliest time when you will become entitled to receive the final face value of the asset (assuming that you will hold the asset for the rest of its life), of an amount equal to the *face value of the asset when you began to hold it.

(14) If the test period is less than 365 days, ***amortisation rate*** means that rate multiplied by:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\frac{\text{Number of days in the test period}}{365}$$

Receipts in respect of the asset

(15) ***Receipts at the test time*** means the total of each amount you received in respect of the asset at the test time, or 0 if there is no such amount.

Note: The receipts *reduce* the tax value of the financial asset at the test time (and hence its closing tax value if you still hold it at the end of the income year), but they also *increase* your net income for the income year: see subsection 5-55(1).

Subdivision 45-D—Tax value worked out on a market value basis

These rules are being developed.

[The next Division is Division 96.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 2-50—Leases and other rights over assets

Division 96—Effect of leases and rights on tax value of assets and liabilities involved

Table of Subdivisions

Subdivision 96-A—Routine leases and rights over assets

Table of sections

96-100 Routine lease or right over depreciating asset

If a taxpayer grants to another taxpayer a *routine lease of a *depreciating asset, or a *routine right in respect of a *depreciating asset:

(a) the table tells you how to work out the ***tax value*** of assets and liabilities of the grantor and grantee in respect of the lease or right; and

(b) the lease or right has no effect on the tax value of the depreciating asset.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Assets and liabilities in respect of a routine lease or right over depreciating asset		
Item	**For this asset or liability:**	**The tax value is:**
1	An asset consisting of the grantor's right to receive an amount, in respect of the lease or right, that is *due and payable	That amount
2	An asset consisting of other rights of the grantor in respect of the lease or right	Nil
3	A liability of the grantor to the grantee in respect of the lease or right	Nil
4	A liability of the grantee to pay an amount in respect of the lease or right, if the amount is *due and payable	That amount
5	An asset consisting of rights of the grantee in respect of the lease or right	Nil
6	A liability of the grantee to the grantor in respect of the lease or right (except a liability covered by item 4)	Nil

Recommendation 4.6 in the Report deals with prepayments. Rules for the treatment of assets and liabilities arising from prepayments are being developed and will be integrated with section 96-100.

Rules are also being developed to ensure the correct treatment of assets and liabilities representing amounts that become payable under a lease or right after the period to which they relate.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

96-105 Meaning of *routine lease* or *routine right* over a depreciating asset

(1) A lease of a *depreciating asset, or a right in respect of a *depreciating asset, granted by a taxpayer to another taxpayer is a ***routine lease*** or a ***routine right*** if:

(a) the grantee is liable to pay, in respect of the lease or right, specified equal payments at equal intervals (of not more than 12 months) during the *term of the lease or right; and

(b) the total of those payments is worked out on the basis of:

(i) the market value of the asset when the lease or right is granted; and

(ii) a reasonable estimate of what will be the market value of the depreciating asset at the end of that term.

> *Rules to exclude long leases and rights over high value assets from the scope of routine leases and rights are being developed on the basis of Recommendation 10.7.*

(2) A lease of a *depreciating asset, or a right in respect of a *depreciating asset, granted by a taxpayer to another taxpayer is also a ***routine lease*** or a ***routine right*** if its maximum possible *term is less than 12 months.

(3) Subsection (2) does not apply to:

(a) a contract of hire purchase; or

(b) a lease granted in respect of a *luxury car.

96-110 Meaning of *term* of a lease or right

(1) The ***term*** of a lease includes:

(a) the term of any extension or renewal of the lease; and

(b) the term of one or more later leases of the same asset to the same grantee (whether or not by the same grantor) that result in substantial continuity of the asset being leased to that grantee.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) The ***term*** of a right includes:

(a) the term of any extension or renewal of the right; and

(b) if the right relates to an asset—the term of one or more later rights that relate to the same asset, are not substantially different from the first right, are granted to the same grantee (whether or not by the same grantor) and result in substantial continuity of the grantee having a right relating to the asset; and

(c) otherwise—the term of one or more later rights that are not substantially different from the first right, are granted to the same grantee (whether or not by the same grantor) and result in substantial continuity of the grantee having the right.

96-200 Routine lease or right over non-depreciating asset

If a taxpayer grants to another taxpayer a *routine lease of a *non-depreciating asset, or a *routine right in respect of a *non-depreciating asset:

(a) the table tells you how to work out the ***tax value*** of assets and liabilities of the grantor and grantee in respect of the lease or right; and

(b) the lease or right has no effect on the tax value of the non-depreciating asset.

Assets and liabilities in respect of a routine lease or right over non-depreciating asset

Item	For this asset or liability:	The tax value is:
1	An asset consisting of the grantor's right to receive an amount, in respect of the lease or right, that is *due and payable	That amount
2	An asset consisting of other rights of the grantor in respect of the lease or right	Nil

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Assets and liabilities in respect of a routine lease or right over non-depreciating asset

Item	For this asset or liability:	The tax value is:
3	A liability of the grantor to the grantee in respect of the lease or right	Nil
4	A liability of the grantee to pay an amount in respect of the lease or right, if the amount is *due and payable	That amount
5	An asset consisting of rights of the grantee in respect of the lease or right	Nil
6	A liability of the grantee to the grantor in respect of the lease or right (except a liability covered by item 4)	Nil

Recommendation 4.6 in the Report deals with prepayments. Rules for the treatment of assets and liabilities arising from prepayments are being developed and will be integrated with section 96-200.

Rules are also being developed to ensure the correct treatment of assets and liabilities representing amounts that become payable under a lease or right after the period to which they relate.

96-205 Meaning of *routine lease* or *routine right* over a non-depreciating asset

(1) A lease of a *non-depreciating asset, or a right in respect of a *non-depreciating asset, granted by a taxpayer to another taxpayer is a ***routine lease*** or a ***routine right*** if:

(a) the grantee is liable to make specified payments, in respect of the lease or right, at equal intervals (of not more than 12 months) during the *term of the right; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the respective amounts of those payments are in reasonable proportion to each other, having regard to:

(i) the benefits that, when the lease or right is granted, it is reasonable to expect that the grantee will receive from the right during the respective periods to which those payments relate; and

(ii) ordinary commercial practice (if any) in the granting of leases or rights of a similar kind.

(2) A lease of a *non-depreciating asset, or a right in respect of a *non-depreciating asset, granted by a taxpayer to another taxpayer is also a ***routine lease*** or a ***routine right*** if its maximum possible *term is less than 12 months.

Subdivision 96-B—Non-routine leases and rights over assets

Rules are being developed for treatment of grantors and grantees of non-routine leases and rights

The draft provisions in Subdivision 45-C dealing with the tax value of financial assets and liabilities (especially the accruals formula in section 45-75) indicate how the general cashflow/tax value approach will apply to these aspects of non-routine leases and rights:

- *part disposals of financial assets and liabilities (see Recommendation 9.8)*
- *temporary disposal of rights over non-depreciating assets (see Recommendation 10.5)*
- *non-routine leases over depreciating asset, including under the sale and loan approach (see Recommendation 10.8).*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3—Specialist rules

Part 3-5—Tax entities

Division 150—Overview of rules for tax entities

Table of Subdivisions

Subdivision 150-A—Guide to the whole tax entity regime

Table of sections

150-1 What Part 3-5 is about

This Part contains special rules for:

(a) the taxation of tax entities (basically all companies, limited partnerships and trusts); and

(b) the taxation of dealings between those entities and their members (such as distributions, contributions of capital and rearrangements of membership interests).

Note: Co-operatives and unincorporated bodies are companies for tax purposes.

150-5 A single set of rules for most kinds of tax entity

The consistent entity treatment rules found in Divisions 151 to 156 are designed to provide a single set of rules that can be applied, as far as possible, to all tax entities, regardless of their legal structure.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

150-10 Limited exceptions to the consistent entity treatment rules

Range of exceptions

(1) This Part contains:

(a) additional rules that depart in some respects from the consistent entity treatment rules for collective investment vehicles (see Division 157); and

(b) rules for certain trusts that are not subject to the consistent entity treatment rules (see Division 159).

Note: Superannuation business, and superannuation business of life insurers, remain in the special retirement income investment regime designed to encourage savings for retirement.

Collective investment vehicles

(2) Collective investment vehicles receive special treatment so that everyone can enjoy the same tax position as those who can afford to invest directly in a broad portfolio of assets.

Excluded trusts

(3) Certain trusts are specifically excluded from consistent entity treatment, generally because they are:

(a) simply mechanisms for the indirect holding of assets; or

(b) engaged in a short-term process of transferring assets.

*This Subdivision is a *Guide.*

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

Subdivision 150-B—Object of Part 3-5

150-15 Basic object of Part 3-5

(1) The basic object of this Part is to apply, as far as possible, a single set of rules to all tax entities, regardless of their legal structure.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) By applying this set of rules in this way:

(a) limited partnerships and some trusts receive the same tax treatment as companies; and

(b) *distributions by those entities receive the same tax treatment as company dividends.

Note: This subsection is included to clarify the application of the definitions of ***company*** and ***dividends*** in international tax agreements.

Subdivision 150-C—Guide to the consistent entity treatment rules

Table of sections

150-20 Overview of consistent entity treatment rules (general)

The consistent entity treatment rules are mostly framed as common rules that apply to all tax entities. In certain limited cases, there are:

(a) special rules that apply only to a certain type of tax entity; or

(b) supplementary rules that apply together with the common rules:

(i) to make compliance with the common rules easier; or

(ii) to clarify the application of the common rules to certain types of tax entity.

150-25 Basic design of the consistent entity treatment rules

Limited integration of tax treatment of tax entity and members

(1) The consistent entity treatment rules provide a system that partially integrates the tax treatment of a tax entity and its members. Distributions of profits by the tax entity generally carry a refundable imputation credit, for taxable Australian resident individuals and complying superannuation funds, for tax paid at the entity level. This integration results in tax being applied on the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

underlying income when distributed at the tax rates of these members.

(2) There are 2 main respects in which the rules do not fully integrate the tax treatment of the tax entity and its members:

(a) profits retained in the entity are not assessed at member level; and

(b) distributions generally do not retain the character they had when received by the entity.

The non-assessment of retained profits creates potential for streaming of profits and for tax deferral. The rules restrict streaming and allow deferral only until available profits are in effect distributed to members.

Source of distributions

(3) A taxpayer who holds a membership interest in a tax entity shares in ongoing profits while he or she remains a member. The rules therefore provide that while the member maintains his or her relative interest in the tax entity, any distributions by the entity to the member are taken to be made from the entity's profits so far as realised or unrealised profits are available to fund the distribution. This is known as the ***profits first rule***.

(4) Once available profits are exhausted, the distribution is treated as coming from contributed capital (rather than being treated as coming from income and giving rise to a corresponding increased loss or reduced gain that will arise on cancellation or realisation of the membership interest).

(5) If a member receives a distribution from the tax entity as consideration for giving up part of his or her relative interest in the entity, the distribution is treated as coming first from the contributed capital relating to the interest the member gives up. Any excess is treated as coming proportionately from available taxed and untaxed profits of the entity. This is known as the ***slice rule***.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(6) This treatment cannot be given to on-market buy backs for practical reasons: a member selling on-market is generally unable to choose a particular purchaser.

(7) If a distribution passes from one tax entity to another, any untaxed profits in that distribution will then be taxed, so deferral of tax at the entity rate will go no further.

150-30 Key features of the consistent entity treatment rules

(1) The following are the key features of the consistent entity treatment rules:

(a) applying tax at the tax entity level on the taxable income of the entity (see sections 2-5 and 4-1 in the Core Rules);

(b) taking consistent account of all distributions from a tax entity to its members, including indirect distributions involving associates and third parties (see the definition of ***distribution*** in Subdivision 960-C);

(c) taking consistent account of all amounts contributed to a tax entity (***contributed capital***) and the return by the entity of those amounts;

(d) recognising tax paid at the tax entity level when profits are distributed by the entity to its members (profits being any amount other than contributed capital, whether taxable to the entity or not);

(e) providing general objective rules to determine the extent to which a distribution by a tax entity to a member is from available profits or from contributed capital;

(f) ignoring the value of certain assets and liabilities that arise for a tax entity and its members in respect of distributions by the entity to the members or contributions to the entity by the members (see section 6-145 in the Core Rules).

(2) Although a distribution is most typically a simple distribution by a tax entity to one of its members, the tax entity-member relationship can give rise to dealings between the entity and taxpayers who are not members. As a result, the consistent entity treatment rules need

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

to use a concept of ***distribution*** that captures dealings between the entity and such taxpayers as:

(a) former or prospective members of the entity; and

(b) associates.

It also needs to capture transactions that the entity itself is not a party to but rather associates of the entity and third parties who have entered into certain arrangements with the entity.

Note: Sections 960-135 and 960-140 deal with these matters.

(3) Division 161 makes it easier to apply the consistent entity treatment rules to tax entities that are not legal persons by creating a standard set of equivalents for things done in relation to entities that are legal persons.

*This Subdivision is a *Guide.*

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 151—Consistent entity treatment rules (coverage)

Guide to Division 151

151-1 What this Division is about

> This Division tells you which tax entities are covered by the consistent entity treatment rules.

Table of sections

[This is the end of the Guide]

Operative provisions

151-5 Consistent entity treatment rules apply to all tax entities unless expressly excluded

The *consistent entity treatment rules apply to all tax entities except to the extent to which this Act expressly provides otherwise.

Note: The consistent entity treatment rules do not apply at all to some tax entities (see section 151-10) and only apply in part to other tax entities.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

151-10 Some tax entities not covered at all by the consistent entity treatment rules

Certain funds and trusts

(1) None of the *consistent entity treatment rules apply to the following tax entities:

(a) a *complying superannuation fund;

(b) a *complying approved deposit fund;

(c) a *pooled superannuation trust.

Note: Some trusts that arise by operation of law in certain circumstances are disregarded for the purposes of this Act (see subsection 960-105(2)).

Rules are being developed to identify the kinds of trust that will need to be excluded from the consistent entity treatment rules.

Deceased estates

(2) The *consistent entity treatment rules do not apply to a *deceased estate until:

(a) the administration of the estate is complete; or

(b) 2 years have passed since the deceased person died;

whichever happens first.

(3) The Commissioner may extend the period referred to in paragraph (2)(b).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 152—Consistent entity treatment rules (taxation of the entity)

Guide to Division 152

152-1 What this Division is about

> This Division tells you what offsetting adjustments to make for:
>
> (a) distributions by a tax entity; and
>
> (b) contributions of capital to a tax entity; and
>
> (c) on-market buy backs of membership interests by a tax entity;
>
> when working out the tax entity's taxable income.

Table of sections

[This is the end of the Guide]

Operative provisions

152-5 Effect of distribution on entity's taxable income

(1) If a tax entity makes a *distribution in an income year, there is an *increasing adjustment for the entity for the income year to the extent to which the distribution:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) is a payment by the entity; or

(b) produces a decrease in the tax value of the entity's assets; or

(c) produces an increase in the tax value of the entity's liabilities.

(2) Subsection (1) does not apply to the extent to which the *distribution is from *contributed capital.

Note: Contributed capital is treated as a liability under subsection 6-20(3) in the Core Rules. A distribution from contributed capital therefore reduces the amount of this liability to offset the effect the distribution would otherwise have on the entity's taxable income.

(3) If a tax entity makes a *distribution in an income year from *contributed capital, there is a *decreasing adjustment for the entity for the income year to the extent to which the distribution:

(a) is not a payment by the entity; and

(b) does not produce a decrease in the tax value of the entity's assets; and

(c) does not produce an increase in the tax value of the entity's liabilities.

152-10 Effect of contribution of capital on entity's taxable income

*Contributed capital is treated as a liability under subsection 6-20(3) in the Core Rules. As a result, a *contribution of capital to a tax entity increases the amount of this liability to offset the effect the contribution would otherwise have on the entity's taxable income.

152-15 Effect of on-market buy back on entity's taxable income

(1) If a tax entity gives consideration for an *on-market buy back of a *membership interest in the entity in an income year, there is:

(a) an *increasing adjustment for the entity for the income year equal to the amount or value of the consideration (except to the extent to which the consideration is from *contributed capital); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) a *decreasing adjustment for the entity for the income year equal to the *taxed profit component of the consideration.

Note 1: The consideration is not a distribution (see subsection 960-150(5)).

Note 2: The decreasing adjustment gives the entity the equivalent of a capital loss.

(2) For the purposes of working out the components of the consideration, apply sections 154-85 to 154-100 as if the consideration were a *distribution.

An evaluation of the provisions dealing with potential capital losses arising from the disposal of membership interests after the distribution of pre-acquisition profits is noted in Recommendation 6.6.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 153—Consistent entity treatment rules (taxation of distribution recipients)

Table of Subdivisions

Guide to Division 153

153-1 What Division 153 is about

(1) This Division tells you what effect:

(a) distributions from a tax entity to a taxpayer; and

(b) rearrangements of a taxpayer's membership interests in a tax entity;

have on the taxpayer's taxable income.

(2) The tax treatment for distributions depends on their source (contributed capital, available profits or prior taxed amounts). The tax treatment of a distribution from available profits is generally provided for in the Core Rules and the rules dealing with franking and imputation in Division 156. The special treatment for distributions from contributed capital and prior taxed amounts is provided for in this Division.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 153-A—Taxation of recipient (general)

153-5 Distributions always brought to account in working out recipient's taxable income

A *distribution by a tax entity to a taxpayer in an income year is taken to be a receipt by the taxpayer in that income year to the extent to which it:

(a) is not a receipt by the taxpayer; and

(b) does not produce an increase in the tax value of the taxpayer's assets; and

(c) does not produce a decrease in the tax value of the taxpayer's liabilities.

Note 1: In almost all cases, the Core Rules will bring the distribution to account.

Note 2: Distributions are not fringe benefits for the purposes of the *Fringe Benefits Assessment Act 1986*.

Subdivision 153-B—Taxation of recipient (distribution from contributed capital)

Table of sections

153-10 Object of this Subdivision

The object of this Subdivision is to ensure that there is symmetry between the tax treatment of:

(a) returns of *contributed capital by a tax entity to its *members or their *associates (a receipt offset by a reduced tax value of the asset that is the *membership interest); and

(b) *contributions of capital to the entity (a payment offset by an increased tax value of the asset that is the membership interest).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 1: If a member (or their associate) receives a distribution of contributed capital greater than the tax value of the relevant membership interest, the member's taxable income will increase by the excess amount. This is because that amount is a gain to the member on their investment in the entity.

Note 2: Section 153-20 provides an exception for cases in which the membership interest has never had a tax value and the contribution of an amount to a tax entity did not give rise to a corresponding increase in the tax value of the membership interest.

153-15 General rule for distributions from contributed capital

Distribution to member

(1) If:

(a) a tax entity makes a *distribution to a *member from *contributed capital in an income year; and

(b) the distribution is not by way of a *rearrangement of *membership interests;

the tax value of each *membership interest of the member to which the distribution relates is adjusted by taking the tax value of the interest immediately before the distribution and decreasing it by the amount worked out under subsection (3) or (4).

Note: If the recipient is not a current member (but rather a former or prospective member) when the distribution is made, there is no membership interest whose tax value can be adjusted under this section and there will therefore be no reduction in tax value to off-set against the amount of the distribution in the income year in which the distribution is made.

See sections 153-45 to 153-65 for the rules that apply when the distribution is by way of a rearrangement of interests.

Distribution to associate of member

(2) If a tax entity makes a *distribution to an *associate of a member from *contributed capital in an income year:

(a) there is a *decreasing adjustment for the associate for the income year equal to the amount of the distribution; and

(b) there is an *increasing adjustment for the member for the income year equal to the amount of the distribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the tax value of each *membership interest of the member to which the distribution relates is adjusted by taking the tax value of the interest immediately before the distribution and decreasing it by the amount worked out under subsection (3) or (4).

Note: If the recipient is not the associate of a current member (but rather an associate of a former or prospective member) when the distribution is made, there is no membership interest whose tax value can be adjusted under this section and there will therefore be no reduction in tax value to off-set against the amount of the distribution in the income year in which the distribution is made.

Spreading tax value adjustment across membership interests to which the distribution relates

(3) The tax value of the *membership interest is decreased by the amount of the *distribution if the distribution relates to that *membership interest.

(4) If the *distribution relates to a group of *membership interests, the total decrease in tax value of all membership interests in the group is equal to the amount of the distribution. The extent to which the tax value of a particular membership interest is decreased depends upon the tax value of that interest as compared to the tax value of other membership interests to which the distribution relates. The reduction is proportionate.

153-20 Distribution in relation to interest in trust with zero tax value

If:

(a) a taxpayer has a *membership interest in a tax entity that is a trust; and

(b) the tax value for the interest is zero and has been zero at all times since the interest came into existence; and

(c) the entity makes a *distribution in an income year to the taxpayer, or an associate, from *contributed capital; and

(d) the distribution is not by way of a *rearrangement of membership interests;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

there is a *decreasing adjustment for the taxpayer for the income year equal to the amount of the distribution.

153-25 Distribution relating to pre-CGT membership interests

If:

(a) a tax entity makes a *distribution to a taxpayer in an income year from *contributed capital; and

(b) the whole or a part of the distribution from contributed capital relates to a *pre-CGT membership interest held by the taxpayer; and

(c) the distribution is not by way of a *rearrangement of *membership interests;

there is a *decreasing adjustment for the taxpayer for the income year equal to the excess of the value of that part of the distribution that relates to the pre-CGT membership interest over the tax-value of the interest.

Note: In most cases pre-CGT assets will not have a tax value and section 153-20 will apply. Section 153-25 covers the rare case where a pre-CGT asset somehow does acquire a tax value.

Subdivision 153-C—Taxation of recipient (distribution of prior taxed amount)

Table of sections

153-30 Object of this Subdivision

The object of this Subdivision is to prevent double taxation of *prior taxed amounts distributed by a tax entity to certain *members.

Note: The prior taxed amounts are generally amounts retained in the entity that have been fully taxed before the entity comes under the consistent entity treatment rules.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

153-35 Effect of distribution of prior taxed amounts

If:

(a) a tax entity makes a *distribution to a taxpayer of a *prior taxed amount in an income year; and

(b) the taxpayer is a *tax-free recipient of the prior taxed amount;

there is a *decreasing adjustment for the taxpayer for the income year equal to the amount of the distribution.

Note: As there is no decreasing adjustment if a prior taxed amount is distributed to a member who is not a tax-free recipient, the distribution will result in an increase in the recipient's taxable income.

153-40 Prior taxed amounts and tax-free recipients

(1) An amount is a ***prior taxed amount*** if:

(a) the amount was assessable income of a beneficiary of a trust under section 97 of the *Income Tax Assessment Act 1936* in an income year that ended before commencement; and

(b) the amount was not paid to, or applied for the benefit of, the beneficiary before commencement.

The beneficiary is the ***tax-free recipient*** for that amount.

(2) An amount is a ***prior taxed amount*** if:

(a) the amount was net income on which the trustee of the trust was liable to pay tax under section 98 of the *Income Tax Assessment Act 1936* in an income year that ended before commencement; and

(b) before commencement, the amount was not paid to, or applied for the benefit of, the beneficiary who was presently entitled to the amount.

The beneficiary is the ***tax-free recipient*** for that amount.

(3) An amount is a ***prior taxed amount*** if:

(a) the amount was net income on which the trustee of the trust was liable to pay tax under section 99 or 99A of the *Income Tax Assessment Act 1936* in an income year that ended before commencement; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) before commencement, the amount was not paid to, or applied for the benefit of, a beneficiary.

Any beneficiary of the trust is a ***tax-free recipient*** for that amount.

(4) If a *distribution is taken to have been made to a taxpayer under subsection 960-145(2) because:

(a) an interest in a trust asset vests in the taxpayer; or

(b) the taxpayer preserves a vested interest in a trust asset which might have been divested if a discretion had been exercised;

an amount equal to the amount of the distribution is a ***prior taxed amount***. The taxpayer is the ***tax-free recipient*** for that amount.

> *After commencement, a tax entity may not be subject to the consistent entity treatment rules for a period and then become subject to those rules. The entity may have prior taxed amounts because of the provisions that replace the provisions of Division 6 of the Income Tax Assessment Act 1936 referred to in subsections (1) to (3) above. Rules are being developed to cover such cases.*
>
> *Consideration is being given to whether certain amounts of exempt income should receive similar treatment to prior taxed amounts.*

Subdivision 153-D—Taxation of recipient (rearrangement of membership interests)

Table of sections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

153-45 Object of this Subdivision

The object of this Subdivision is to provide rules for determining or adjusting the tax value of *membership interests if there is a *rearrangement of *membership interests in a tax entity (an increase or reduction in the number of membership interests held by an existing *member or members).

Note 1: If the rearrangement is a distribution, section 153-5 ensures that it is brought to account in working out the recipient's taxable income.

Note 2: The rules increase the total tax value of a member's membership interests to the extent to which:

(a) the additional interests received by the member are received as a distribution from available profits or prior taxed amounts or both; or

(b) the member provides consideration for the additional interests.

Note 3: A proportionate rearrangement of membership interests (for example, additional membership interests provided pro rata to existing holdings or existing holdings reduced pro rata) does not change the tax value of a member's total membership interests (other than in respect of consideration paid or received).

The following provisions are not intended to deal with the situation where there is a rearrangement under which all the interests of a member are cancelled and replaced by a larger new parcel of interests. The rules dealing with the setting of the tax values of that new parcel of interests are being developed.

153-50 Rearrangement funded entirely from available profit or prior taxed amounts

(1) If:

(a) a tax entity makes a *distribution to a *member; and

(b) the distribution is by way of a *rearrangement of *membership interests; and

(c) the distribution is from *available profit or of a *prior taxed amount or both; and

(d) none of the distribution is from *contributed capital;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the tax value of each additional *membership interest held by the member immediately after the distribution is equal to the sum of the following:

(e) that part of the distribution that relates to that membership interest; and

(f) that part of the consideration given by the member that was given for that membership interest.

(2) Section 960-170 does not apply for the purposes of this section.

153-55 Rearrangement funded in whole or in part from contributed capital

Spreading existing tax value across all interests involved in the rearrangement

(1) If:

(a) a tax entity makes a *distribution to a *member; and

(b) the distribution is by way of a *rearrangement of membership interests; and

(c) the distribution is in whole or in part from *contributed capital;

the tax values of the *membership interests involved in the rearrangement are adjusted in accordance with subsections (3), (4) and (5) to spread the tax value of those interests immediately before the distribution across all of those interests.

(2) A *membership interest is ***involved in a rearrangement*** if it is either:

(a) a *membership interest to which the distribution relates (an ***existing interest***); or

(b) an additional membership interest created as part of the *rearrangement (a ***new interest***).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Tax value of existing interest

(3) The tax value of an existing interest immediately after the distribution is worked out using the formula:

$$\text{Existing interests' share of existing tax value} \times \frac{\text{Tax value of the existing interest immediately before } ^{*}\text{distribution}}{\text{Total existing tax value}}$$

where:

existing interests' share of existing tax value is worked out using the method statement in subsection (5).

total existing tax value is worked out using the method statement in subsection (5).

Tax value of new interest

(4) The tax value of a new interest immediately after the *distribution is worked out using the formula:

$$\left(\begin{array}{c}\text{New interests'}\\\text{share of}\\\text{existing}\\\text{tax value}\end{array} + \text{Consideration} + \begin{array}{c}\text{Profit}\\\text{component}\\\text{of the}\\{}^{*}\text{distribution}\end{array}\right) \times \frac{\text{Market value of the new interest immediately after } ^{*}\text{distribution}}{\text{Total new market value}}$$

where:

consideration has the meaning given by subsection (6).

new interests' share of existing tax value is worked out using the method statement in subsection (5).

profit component of the distribution has the meaning given in subsection (6).

total new market value is worked out using the method statement in subsection (5).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Components for formulae

(5) Use the following method statement to work out components used in the formulae in subsections (3) and (4).

Method statement

Step 1. Work out the total of the tax values of the existing interests as they are immediately before the distribution is made: this is the ***total existing tax value***.

Step 2. Work out the total of the market values of the existing interests as they are immediately after the distribution is made: this is the ***total existing market value***

Step 3. Work out the total of the market values of the new interests as they are immediately after the distribution is made: this is the ***total new market value***.

Step 4. Take away from the total new market value any consideration and any profit component of the distribution: this is the ***adjusted total new market value***.

Step 5. Add the total existing market value and the adjusted total new market value: the result is the ***total market value of all interests involved***.

Step 6. Divide the total existing market value by the total market value of all interests involved to get the ***existing interest factor*** and multiply the total existing tax value by this factor to get the ***existing interests' share of existing tax value***.

Step 7. Divide the adjusted total new market value by the total market value of all interests involved to get the ***new interest factor*** and multiply the total existing tax value by this factor to get the ***new interests' share of existing tax value***.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(6) In this section:

consideration means the amount of any consideration given by the *member, or an *associate of the member for the new interests.

profit component of the distribution means the amount of any distribution made by way of the new interests that is made from *available profit.

Consideration is being given to what special rules are needed for pre-CGT membership interests affected by rearrangements.

(7) Section 960-170 does not apply for the purposes of this section.

153-60 Effect on tax values of creation of new membership interests where there is no distribution

If:

(a) a tax entity gives additional *membership interests in the entity to a *member:

(i) as part of a *proportionate *rearrangement of membership interests; and

(ii) for less than market value; and

(b) there is no *distribution to the member;

the tax value of the member's membership interests is adjusted as if there were a distribution from *contributed capital.

153-65 Effect on tax values of a rearrangement of membership interests involving termination of membership interests

(1) If:

(a) there is a proportionate *rearrangement of membership interests for less than market value; and

(b) a *membership interest of a particular *member of the entity ceases to exist (whether by the interest being cancelled or redeemed, an obligation being satisfied or otherwise); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) no new membership interest is issued in connection with the rearrangement;

the tax value of each remaining membership interest (other than a *pre-CGT membership interest) held by that member in the *class of membership interests to which the interest belonged is worked out in accordance with the following formula:

$$\text{Tax value of interest before cessation} + \left(\frac{\text{Tax value of interests ceasing to exist} - \text{Consideration}}{\text{Number of remaining interests in the } {}^{*}\text{class}} \right)$$

where:

consideration means consideration received by the member for the cessation of membership interests of that class (other than a pre-CGT membership interest).

number of remaining interests in the class means the number of membership interests (other than *pre-CGT membership interests) still held by the member in that class immediately after the cessation.

tax value of interests ceasing to exist means the sum of the tax values of all membership interests (other than pre-CGT membership interests) held by the member in that class that are cancelled or surrendered by the member.

(2) Disregard subsection (1) if the tax value of a remaining *membership interest after a cancellation or surrender worked out under that subsection would be less than the tax value of that interest immediately before the cancellation. The tax value of the interest is not changed by the cancellation or surrender.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 154—Consistent entity treatment rules (source of distribution)

Table of Subdivisions

Subdivision 154-A—Profits first rule

Table of sections

154-1 Profits first rule

A *distribution by a tax entity:

(a) is from profits to the extent to which the entity has *available profits immediately before the distribution is made; and

(b) is from *contributed capital to the extent to which the entity does not have available profits immediately before the distribution is made.

This rule is the ***profits first rule***.

Note 1: The profits first rule is designed to restrict the potential for tax deferral that would otherwise arise because profits retained in a tax entity are not assessed to members (see section 150-25).

Note 2: Exceptions to the profits first rule are found in:

(a) section 154-10 (distributions of prior taxed amounts); and

(b) section 154-15 (distributions subject to the slice rules); and

(c) section 154-20 (distribution by associated tax entity); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(d) section 154-25 (distributions from assets held by a trust before a certain date); and

(e) subsection 157-50(3) (collective investment vehicles).

154-5 How to deal with multiple distributions

If:

(a) a tax entity makes *distributions to 2 or more taxpayers at the same time; and

(b) immediately before the distributions are made, the entity's *available profits are less than the total amount to be distributed;

the proportion of each distribution that is from profits is:

$$\frac{{}^{*}\text{Available profits}}{\text{Total amount of }{}^{*}\text{distributions}}$$

Note: Section 154-105 provides that in certain circumstances distributions made under a single decision are treated as being made when the first of those distributions is made.

Subdivision 154-B—Exceptions to the profits first rule

Table of sections

154-10 First exception—prior taxed amounts

Distribution of prior taxed amount exception to profits first rule

(1) The *profits first rule does not apply to a *distribution of a *prior taxed amount. A distribution of a prior taxed amount may be made even if there are *available profits from which the distribution could be made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Other rules about distributions of prior taxed amounts

(2) A tax entity:

(a) may make a distribution from contributed capital if the profits first rule allows it to do so even if the entity has a prior taxed amount it could distribute; and

(b) must distribute a prior taxed amount if the entity:

(i) makes a distribution; and

(ii) has a prior taxed amount it could distribute; and

(iii) has no available profits or contributed capital from which it could make the distribution.

154-15 Second exception—termination of membership interest

(1) The *profits first rule does not apply to a *distribution to a taxpayer if the distribution:

(a) is made as part of a process that results directly in:

(i) a *membership interest of the taxpayer in the entity ceasing to exist (whether by the interest being cancelled or redeemed, the entity being dissolved, an obligation being satisfied or otherwise); or

(ii) proportional rights attaching to a *membership interest of the taxpayer in the entity in relation to distributions by the entity being reduced; and

(b) is not made by way of a *rearrangement of *membership interests.

The distribution is dealt with under the slice rule in Subdivision 154-D instead.

(2) The ***membership interest in relation to which the distribution is made*** is taken to be:

(a) the membership interest that ceases to exist (see subparagraph (1)(a)(i)); or

(b) so much of the membership interest whose proportional rights are reduced as it existed before the reduction as represents the effect of the reduction.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) Subsection (1) does not apply to a distribution by a liquidator.

Distribution as part of entity termination process

(4) The *profits first rule does not apply to a *distribution if the distribution:

(a) is believed, at the time it is made, to be the final distribution to *members to be made in relation to:

(i) all *membership interests in the tax entity; or

(ii) a *class of membership interests in the entity;

as part of the winding up, dissolution or termination of the entity; or

(b) is made as part of a process that results directly in the market value of the entity's assets being reduced to nil or to a negligible amount.

The distribution is dealt with under the slice rule in Subdivision 154-D instead.

(5) For the purposes of this section, if:

(a) a taxpayer is a *member of a tax entity that is a trust; and

(b) the member's *membership interest is not a fixed entitlement to a particular trust asset or trust assets generally;

the membership interest:

(c) does not cease to exist merely because the trustee exercises a discretion in the member's favour; and

(d) ceases to exist if:

(i) the trust terminates; or

(ii) all the trust assets that could be vested, and could ever be vested, in members with the same *class of membership interest vest in members with that class of interest; or

(iii) all the trust assets vest in members of the entity.

154-20 Third exception—certain indirect distributions by entity

If:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) a tax entity (the ***associated tax entity***) is an *associate of another tax entity (the ***primary tax entity***); and

(b) the associated tax entity makes a *distribution to a taxpayer that would not be a distribution to the taxpayer if the associated tax entity were not an associate of the primary tax entity; and

(c) the associated tax entity:

(i) is not excluded from the consistent entity treatment rules by section 151-5; and

(ii) is not a *collective investment vehicle;

the *profits first rule does not apply to the distribution and the distribution is taken to be wholly from profits of the associated tax entity. This is so even if the associated tax entity does not have *available profits.

154-25 Fourth exception—other distributions from assets held by trusts before a certain date

There will also be an exception to the profits first rule to cover the following cases:

(a) realised gains on pre-CGT assets; and

(b) the indexation component of post-CGT gains or equivalents; and

(c) the CGT exempt component of a capital gain attributable to the goodwill of a business or equivalents;

if the relevant asset was held by a trust before a certain date, the asset is disposed of afterwards and the amount is distributed in the income year in which the gain is realised.

Subdivision 154-C—Available profits and contributed capital

Table of sections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

154-30 Objects of this Subdivision

The objects of this Subdivision are:

(a) to provide rules for determining the *available profits and *contributed capital of a tax entity; and

(b) to reduce compliance costs by allowing tax entities to rely on appropriately kept accounting records if they indicate that a *distribution would entirely be from available profits.

Note 1: Available profits are determined at the time a distribution is made. They include:

(a) unrealised gains and losses; and

(b) any component of the distribution that is not a transfer of cash or other assets or the reduction of a liability.

Contributed capital and prior taxed amounts are not part of available profits.

Note 2: Contributed capital consists of amounts provided to a tax entity in respect of membership interests in the entity. In limited cases other amounts are taken to be contributed capital.

Note 3: Tax entities are required to maintain a contributed capital account and sub-accounts for each class of membership interests.

154-35 Available profits

(1) A tax entity's ***available profits*** at a particular time are:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\text{Net market value of assets} + \text{Non-asset component of }^{*}\text{distribution} - \text{Prior taxed amounts}$$

where:

net market value of assets is the difference between the market value of the entity's assets and the amount of the entity's liabilities at that time.

Note: In calculating the net market value of the entity's assets, its contributed capital will be deducted as a liability. The tax value of the liability is the balance of the contributed capital account. Sections 154-50 to 154-75 tell you how to work out the balance in the entity's contributed capital account.

non-asset component of distribution is so much of the *distribution as is not a payment of cash, not the transfer of a non-cash asset and not the reduction of a liability.

Note: The provision of services by the entity is an example of something that involves neither the payment of cash nor the transfer of an asset.

prior taxed amounts is the sum of the entity's *prior taxed amounts at that time.

Reliance on accounting records showing profit

(2) If:

(a) the tax entity's accounting records and statements indicate that the *distribution is wholly from profits; and

(b) those accounting records and statements are kept and prepared in accordance with generally accepted accounting practices and principles;

the distribution is taken to be from *available profits unless the entity proves the contrary.

In calculating assets and liabilities, ignore membership-related assets and liabilities

(3) In calculating the net market value of the tax entity's assets under subsection (1), disregard any asset or liability of the entity that has

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

a nil tax value under section 6-145 in working out the entity's net income.

154-40 Contributing capital to a tax entity

General rule—amounts paid for issue of, or to meet liability attaching to, membership interest

(1) A taxpayer ***contributes capital*** to a tax entity if the taxpayer:

- (a) makes a payment to, or transfers an asset to, the entity:
  - (i) as consideration for the issue of a *membership interest in the entity; or
  - (ii) to satisfy a liability to the entity that attaches to a membership interest; or
- (b) makes a payment to, or transfers an asset to, the entity with the sole purpose of:
  - (i) allowing membership interests in the entity to be created; or
  - (ii) enhancing the value of existing membership interests in the entity; or
  - (iii) enhancing the value of the assets in respect of which a discretion may be exercised in favour of *members of the entity.

Note: Under subsection 6-20(3) in the Core Rules, contributed capital is treated as a liability of the tax entity.

(2) A payment, or transfer of an asset, may be made as consideration for the issue of a *membership interest whether it is made before, at the same time as, or after the membership interest is issued.

Note: For example, a taxpayer contributes capital to a company when the taxpayer pays a call on an already issued partly-paid share.

Rearrangement of membership interests

(3) If a distribution is made by way of a rearrangement of membership interests, there is a contribution of capital to the extent to which the distribution is made by way of rearrangement. This provision will

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

not, however, give rise to a contribution of capital if, under another provision, a contribution of capital already arises.

Periodic membership fees

(4) A periodic fee paid by a *member to a tax entity to maintain membership of the entity is not a contribution of capital to the entity.

Consideration is being given to the need for further rules dealing with membership fees.

Amounts paid for options

(5) A taxpayer ***contributes capital*** to a tax entity if:

(a) the taxpayer makes a payment to, or transfers an asset to, the entity as consideration for an option to acquire a *membership interest in the entity; and

(b) the option is not itself a membership interest in the entity; and

(c) the taxpayer exercises the option so as to acquire a membership interest in the entity.

The contribution is the amount of the consideration given for the option and is taken to be made only when the option is exercised.

Note 1: The amount paid on the exercise of the option will itself be a contribution of capital under subsection (1).

Note 2: If the option is itself a membership interest it will be covered by subsection (1).

Non-commercial loan to closely-held entity

(6) A member of a *closely-held tax entity ***contributes capital*** to the entity if the member makes a *non-commercial loan to the entity.

(7) A taxpayer ***contributes capital to a tax entity in relation to membership interests of a particular class*** to the extent to which the *contribution of capital is made:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) as consideration for the issue of *membership interests of that *class; or

(b) to satisfy a liability that attaches to membership interests of that class; or

(c) with the sole purpose of:

(i) allowing membership interests of that class to be created; or

(ii) enhancing the value of existing membership interests in that class; or

(iii) enhancing the value of the assets in respect of which a discretion may be exercised in favour of members of the entity who hold membership interests of that class; or

(d) as consideration for an option to acquire membership interests of that class; or

(e) as a *non-commercial loan that relates to membership interests of that class.

154-45 Tax entity to maintain contributed capital account and sub-accounts

A tax entity must maintain:

(a) a *contributed capital account; and

(b) a sub-account of that account for each *class of *membership interest.

154-50 Credits

There is a credit to a tax entity's *contributed capital account for each amount of capital a taxpayer *contributes to the entity.

> *Further rules are being developed for:*
>
> *(a) assets (including goodwill) acquired by a trust before commencement and realised after a certain date; and*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

> *(b) goodwill acquired and realised by a trust after a certain date; and*
>
> *(c) in a liquidation, pre-CGT assets of a company.*

154-55 Debits

There is a debit to a tax entity's *contributed capital account for:

(a) each *distribution the entity makes from *contributed capital; or

(b) consideration given by the entity for an *on-market buy back of a *membership interest in the entity to the extent to which the consideration comes from contributed capital.

Note: Paragraph (b)—subsection 152-15(2) applies the slice rules in sections 154-85 to 154-100 to work out how much of the consideration provided for an on-market buy back is from contributed capital.

154-60 Contributed capital account—opening balance on commencement of new entities regime

(1) The opening balance of the *contributed capital account of a tax entity to which the *consistent entity treatment rules apply on commencement is worked out using the following table:

~~Opening contributed capital account balances on commencement~~

Item	Entity	Opening balance [amounts as they are immediately before commencement]
1	Company limited by shares (with no par value)	The paid-up share capital of the company (ignoring any reduction of the company's share capital under section 258F of the Corporations Law) less any net tainted amount in the company's share capital account
2	Company limited by shares (with par value)	The sum of the amounts paid up on shares of the company and any premiums received by the company on shares issued by it

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Opening contributed capital account balances on commencement		
Item	**Entity**	**Opening balance** **[amounts as they are immediately before commencement]**
3	Company limited by guarantee	The sum of the amounts paid to the entity in satisfaction of the guarantees
4	Other companies	The amount that would have been the balance of the company's contributed capital account if the consistent entity treatment rules had applied to the company at all times since it came into existence

Rules are being developed for setting the opening balance of the contributed capital account for:

(a) trusts generally; and

(b) corporate unit trusts (trusts that are taxed like companies under Division 6B of Part III of the Income Tax Assessment Act 1936); and

(c) public trading trusts (trusts that are taxed like companies under Division 6C of Part III of the Income Tax Assessment Act 1936); and

(d) limited partnerships; and

(e) testamentary trusts.

(2) Items 1 and 3, or 2 and 3, may both apply to a company if it is limited both by shares and by guarantee. In that case, the opening balance of the contributed capital account is the sum of the item 1 or 2 amount and the item 3 amount.

(3) In the table in subsection (1):

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

net tainted amount has the same meaning as in item 9 of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1999*.

paid up share capital has the same meaning as in the *Income Tax Assessment Act 1936*.

154-65 Contributed capital account—opening balance of entity entering the consistent entities regime after commencement

The opening balance of the *contributed capital account of a tax entity that becomes subject to the *consistent entity treatment rules after it comes into existence and to which those rules did not apply on commencement is:

(a) if the entity was in existence immediately before commencement—the amount that would have been the balance of its contributed capital account if the consistent entity treatment rules had applied to it at all times since commencement; or

(b) if the entity comes into existence after commencement—the amount that would have been the balance of its contributed capital account if:

  (i) section 154-60 had applied to the entity when it came into existence as if references in that section to the time immediately before commencement were references to the time at which the entity came into existence; and

  (ii) the consistent entity treatment rules had applied to it at all times since it came into existence.

154-70 Balance not affected by demutualisation

The balance of a tax entity's contributed capital account is not affected by its demutualisation.

Consideration is being given to whether further rules are needed to deal effectively with demutualisations.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

154-75 What happens if balance in contributed capital account, or sub-account, is less than nil

For the purposes of:

(a) working out the tax value of the liability of a tax entity constituted by its *contributed capital at a particular time; or

(b) calculating the *available profits of a tax entity at a particular time; or

(c) applying the slice rule in sections 154-85 to 154-100;

the balance of the entity's *contributed capital account, or a sub-account of that account, is taken to be nil if it would otherwise be less than nil.

154-80 Contributed capital sub-accounts for each class of membership interests

Sub-account for each class

(1) There is to be a sub-account within a tax entity's *contributed capital account for each *class of *membership interest in the entity. If the entity has only one class of membership interests, the contributed capital account is also the sub-account for that class.

Credits to class sub-account

(2) There is a credit to the *contributed capital sub-account for a *class of *membership interests to the extent to which:

(a) a taxpayer *contributes capital to the tax entity in relation to a membership interest in that class; or

(b) if the payment of an amount, or the realisation of an asset, is treated under this Act as a *contribution of capital—membership interests in that class carry rights to distributions of amounts or proceeds of that kind; or

(c) the balance of the account is increased under subsection (4).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Debits

(3) There is a debit to the *contributed capital sub-account for a *class of *membership interests to the extent to which:

(a) a *distribution from contributed capital is made in relation to a membership interest in that class; or

(b) the consideration for an *on-market buy back of membership interests in that class comes from contributed capital; or

(c) the balance of the account is decreased under subsection (5).

Spreading certain amounts across sub-accounts

(4) If an amount of *contributed capital cannot be fully allocated under subsection (2), the balance of the contributed capital sub-account for each *class of *membership interest is to be increased by the amount worked out using the formula:

$$\text{Amount to be allocated} \times \frac{\text{Balance of class sub-account before allocation}}{\text{Balance of } {}^{*}\text{contributed capital account before allocation}}$$

where:

amount to be allocated is the amount that cannot be allocated under subsection (2).

balance of class sub-account before allocation is the balance of the sub-account for that class immediately before the entity acquires the amount to be allocated.

balance of contributed capital account before allocation is the balance of the entity's *contributed capital account immediately before the tax entity acquires the amount to be allocated.

(5) If:

(a) the tax entity makes a *distribution in relation to a *membership interest of a particular *class from contributed capital; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the distribution is greater than the balance of the *contributed capital sub-account for that class;

the following rules apply:

(c) the balance of the sub-account for that class is reduced to nil;

(d) the balance of the sub-account of each other class is reduced by the amount worked out using the formula:

$$\text{Excess distributed} \times \frac{\begin{array}{c}\text{Balance of class sub-account}\\ \text{after }{}^{*}\text{distribution}\end{array}}{\begin{array}{c}\text{Balance of }{}^{*}\text{contributed capital account}\\ \text{after }{}^{*}\text{distribution}\end{array}}$$

where:

balance of class sub-account after distribution is the amount that would otherwise be the balance of the sub-account for that class immediately after the distribution is made.

balance of contributed capital account after distribution is the amount that would otherwise be the balance of the entity's contributed capital account immediately after the distribution is made.

excess distributed is the difference between the amount distributed, or the consideration provided, from *contributed capital and the balance of the sub-account for the interests in relation to which the distribution is made.

Subdivision 154-D—The slice rule

Table of sections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

154-85 Object of Subdivision

The object of this Subdivision is to set out the rules for determining the extent to which a *distribution made by a tax entity in connection with:

(a) the complete or partial termination of a *membership interest; or

(b) consideration in respect of an on-market buy back;

is attributable to the contributed capital and available profits (taxed or untaxed) of the entity.

Note: Prior taxed amounts distributed in connection with the termination of a membership interest, or an on-market buy back, are not subject to the slice rules.

154-90 Slice rule—identifying the components

(1) Subsections 154-15(1) and (4) apply this Subdivision to certain *distributions made in relation to a *membership interest.

Note: Section 152-15 also applies this Subdivision to work out the components of consideration provided for an on-market buy back.

(2) If this Subdivision applies to a *distribution, this is how the distribution is dealt with:

Method statement

Step 1. Use section 154-95 to work out how much of the balance of the tax entity's *contributed capital account is attributable to the interest in relation to which the distribution is made: this is the ***interest's share of contributed capital***.

Step 2. The distribution is wholly from contributed capital if the distribution is less than or equal to the interest's share of contributed capital.

Step 3. If the distribution is greater than the interest's share of contributed capital, the distribution is:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) from contributed capital to the extent of the interest's share of contributed capital; and

(b) from *available profits to the extent of the excess of the distribution over the interest's share of contributed capital.

Step 4. If the distribution is to some extent from available profits, use section 154-100 to work out the taxed profit component of the distribution.

Step 5. The distribution is wholly from taxed profits if the distribution from available profits is less than or equal to the taxed profit component.

Step 6. If the distribution from available profits is greater than the taxed profit component, the distribution is:

(a) from taxed profits to the extent of the taxed profit component; and

(b) from untaxed profits to the extent of the excess of the distribution from available profits over the taxed profit component.

(3) If:

(a) a series of *distributions are made in relation to *membership interests in a particular *class; and

(b) this Subdivision applies to each of those distributions; and

(c) the extent to which the first of those distributions is from *contributed capital, taxed profits and untaxed profits has been worked out under subsection (2);

the contributed capital, taxed profits and untaxed profits components for the later distributions in the series are the same as those for the first distribution until:

(d) the tax entity's *franking account balance changes (otherwise than as a result of one of the distributions in the series); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(e) the balance of the entity's *contributed capital sub-account for interests in that class changes (otherwise than as a result of one of the distributions in the series); or

(f) there is a change to the amount of the distributions to be made in the series.

154-95 Slice rule—working out the interest's share of contributed capital

Overall calculation

(1) To work out how much of the balance of a tax entity's *contributed capital account is attributable to a *membership interest in relation to which the *distribution is made, it is necessary to start with the balance of the *contributed capital sub-account for the *class to which the interest belongs using section 154-80.

(2) The ***interest's share of contributed capital*** is worked out using the formula:

$$\begin{array}{c}\text{Balance of }^{*}\text{contributed capital}\\ \text{sub-account for }^{*}\text{class}\end{array} \times \begin{array}{c}\text{Contributed capital}\\ \text{factor for the }^{*}\text{membership interest}\end{array}$$

where:

contributed capital factor for the membership interest is the factor worked out using subsection (3).

Factor for membership interest

(3) The ***contributed capital factor for the membership interest*** is worked out using the following table:

Contributed capital factor for membership interests

Item	Circumstances	Contributed capital factor
1	The membership interests in the *class are unitised	$\dfrac{1}{\text{Number of }^{*}\text{membership interests in the }^{*}\text{class}}$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Contributed capital factor for membership interests		
Item	**Circumstances**	**Contributed capital factor**
2	The membership interests in the class are fixed but not unitised	Proportion of the interest to all the interests in the *class
3	The membership interests in the class are not unitised or fixed	$\dfrac{\text{*Distribution in relation to *membership interest}}{\text{*Distribution in relation to all *membership interests}}$

Note: Item 3—Under subsection 154-15(5) membership interests in a trust are taken to cease to exist in certain circumstances.

154-100 Slice rule—working out the taxed profit component of a distribution

Overall calculation

(1) The ***taxed profit component*** for the *membership interest in relation to which the *distribution is made is worked out using the formula:

$$\text{Grossed up franking account balance} \times \text{Taxed profit factor for the *membership interest}$$

grossed up franking account balance is the amount worked out using subsection (3) or (4).

taxed profit factor for the membership interest is the factor worked out using subsection (2).

Taxed profit factor for membership interest

(2) The ***taxed profit factor for the membership interest*** is worked out using the following table:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Taxed profit factor for membership interests

Item	Circumstances	Taxed profit factor
1	The tax entity has only one *class of membership interest; and the membership interests are unitised	$\dfrac{1}{\text{Number of *membership interests in the *class}}$
2	The tax entity has only one class of membership interests; and the interests in the class are fixed but not unitised	Proportion of the interest to all the interests in the *class
3	The tax entity is *widely-held; and the entity has more than one class of membership interests; and all membership interests in the entity are quoted	$\dfrac{\text{Market value of the *membership interest} - \text{Interest' s share of contributed capital}}{\text{Market value of all *membership interests in entity} - \text{Balance of entity' s *contributed capital account}}$
4	All of the membership interests in the tax entity are ceasing to exist at the same time	$\dfrac{\text{*Distribution in relation to the *membership interest} - \text{Interest' s share of contributed captial}}{\text{*Available profits}}$
5	Any other case	$\dfrac{\text{*Distribution in relation to the *membership interest} - \text{Interest' s share of contributed capital}}{\text{*Available profits}}$

Grossed up franking account balance

(3) The grossed up balance of the tax entity’s franking account is worked out using the formula:

$$\text{*Franking account balance} \times \frac{100 - \text{*Company tax rate}}{\text{*Company tax rate}}$$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(4) When applying this section in accordance with subsection 152-15(2) to work out the taxed profit component of an amount of consideration for an *on-market buy back of a *membership interest, the interest's grossed up share of the entity's franking account is worked out using the formula:

$$\text{*Franking account balance} \times \frac{100}{\text{*Company tax rate}}$$

> *The need for subsection (3), and the form of subsection (4), will depend on whether the rules for franking and imputation treat the franking account as representing tax paid or income on which tax has been paid.*

Subdivision 154-E—Timing of distributions made under a single scheme

154-105 The 5 day rule

(1) If:

(a) a tax entity makes 2 or more *distributions; and

(b) the distributions are made:

(i) pursuant to the same decision by the entity; and

(ii) within a period of 5 business days;

all the distributions are taken to be made at the time when the first of those distributions is made for the purposes of:

(c) working out the entity's *available profits when applying the profits first rule in section 154-1; and

(d) applying section 154-5 to work out the proportion of each distribution that is from the entity's available profits; and

(e) working out whether a *rearrangement of membership interests is proportionate under section 960-180.

(2) If the *distributions are made from *contributed capital, the tax entity's *contributed capital account is reduced for all the distributions when the first distribution is made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) Subsections (1) and (2) may apply to 2 or more periods during which distributions are made pursuant to the one decision but a day cannot be part of more than one 5 business days period.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 155—Consistent entity treatment rules (taxation of transfer of membership interests)

The provisions on this topic are being developed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 156—Consistent entity treatment rules (franking and imputation)

The provisions on this topic are being developed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 157—Collective investment vehicles

Table of Subdivisions

Guide to rules for collective investment vehicles

157-1 What this Division is about

(1) This Division provides additional rules for the tax treatment of certain tax entities (***collective investment vehicles***) and their members.

(2) These rules:

(a) remove the requirement for the collective investment vehicle to pay tax on its taxable income for an income year if all, or virtually all, of that income is distributed within, or shortly after the end of, the income year; and

(b) ensure that distributions of that income to a member are treated as having the same source and character as if the income were received directly by the member.

Taxable income that flows through a collective investment vehicle to its members in this way is taxed at the investor level only, resulting in distributions of that taxable income being taxed on a flow-through basis.

(3) To ensure that collective investment vehicles cannot compete unfairly with other entities and to address certain compliance and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

streaming issues, a tax entity that wants to be treated as a collective investment vehicle must satisfy requirements to:

(a) engage only in defined investment activities; and

(b) have an Australian presence; and

(c) satisfy a number of restrictions on the ownership and control of the entity.

Subdivision 157-A—Taxation of the collective investment vehicle itself

Guide to Subdivision 157-A

157-5 What this Subdivision is about

> This Subdivision tells you when a collective investment vehicle does not have to pay tax on its taxable income. It also tells you how to work out how much tax it has to pay when it does have to pay tax on that income.

Table of sections

[This is the end of the Guide]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

157-10 When collective investment vehicle pays no tax

(1) A *collective investment vehicle is not liable to pay income tax on any of its taxable income for an income year if it fully *distributes that taxable income before the end of the *distribution period.

(2) A *collective investment vehicle is not liable to pay income tax on any of its taxable income for an income year if:

(a) it *distributes 98% or more of that taxable income during the *distribution period; and

(b) it failed to fully distribute all of that taxable income before the end of the distribution period because of an error or miscalculation on its part.

(3) A *collective investment vehicle ***fully distributes*** its taxable income for an income year if the total of the *distributions it makes from that taxable income equals the amount of that taxable income.

157-15 When collective investment vehicle pays tax

If section 157-10 does not apply to a *collective investment vehicle for an income year, it is liable to pay income tax on its taxable income for that income year only to the extent of the difference between:

(a) the amount of that taxable income; and

(b) the amount of that taxable income that it *distributes before the end of the *distribution period.

> ***Effect of amendment of assessment of collective investment vehicle's taxable income***
>
> *Rules are being developed to deal with what happens if an assessment of a collective investment vehicle's taxable income is amended after the end of the distribution period.*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

If an amendment increases the collective investment vehicle's taxable income, it will be required to pay income tax as if the increased taxable income was not distributed within the distribution period for that income year. The income tax assessments of the members would not be amended.

If an amendment decreased the collective investment vehicle's taxable income, it will be required to give revised annual distribution statements to members affected by the amendment. Members may be able to seek amendments of their income tax assessments to reflect any changes.

Effect of incorrect annual statements

Rules are also being developed to deal with situations where the collective investment vehicle has provided members with an annual distribution statement that incorrectly identifies the source and character of the distributions made to members.

157-20 Amount distributed from taxable income

The ***amount distributed*** by a *collective investment vehicle from its taxable income for an income year is the sum of:

(a) the amounts of *distributions it makes from that income; and

(b) the amounts of the imputation credits (attributable to that income) that it passes on to *members; and

(c) the amount of foreign tax credits (attributable to that income) that it passes on to members.

Rules are being developed for passing franking credits and foreign tax credits of the collective investment vehicle on to its members.

157-25 Distribution period

The ***distribution period*** for an income year starts at the beginning of that income year and ends 2 months after the end of that income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

157-30 Calculating collective investment vehicle's taxable income

The taxable income of a *collective investment vehicle is worked out on the basis that it is an *Australian resident tax entity to which the *consistent entity treatment rules apply.

> *Rules are being developed for the modifications that may need to be made in calculating a collective investment vehicle's taxable income. For example, a collective investment vehicle will not be able to make use of:*
>
> *(a) research and development concessions; and*
>
> *(b) concessions under section 23AH (foreign branch profits) and section 23AJ (non-portfolio dividends from foreign companies) of the Income Tax Assessment Act 1936.*

Subdivision 157-B—Taxation of distributions by collective investment vehicle

Guide to Subdivision 157-B

157-35 What this Subdivision is about

> This Subdivision tells you how a distribution from a collective investment vehicle is taxed in the hands of the recipient.

Table of sections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

157-40 Overview of rules for taxing distributions by collective investment vehicle

(1) If a collective investment vehicle makes a distribution from its taxable income for an income year within the distribution period, the distribution retains its source and character as if that income had been received directly by the recipient.

(2) Taxable income for an income year that is not distributed within the distribution period is given less favourable tax treatment. This is done to support full distribution.

(3) Similarly, taxable income and tax-preferred income that is existing in a tax entity before it becomes a collective investment vehicle is given the same less favourable tax treatment (unless, in the case of taxable income, it is distributed soon after the entity becomes a collective investment vehicle). This is done to ensure that income existing before the entity becomes a collective investment vehicle is not treated as if the entity had been a collective investment vehicle at the time the income was received.

Note: For ***tax-preferred income*** see subsection 157-65(5).

(4) The consistent entity treatment rules are applied to distributions from most other sources as if they were distributions of contributed capital.

(5) This treatment is extended to distributions made in relation to the cancellation or redemption of membership interests in a collective investment vehicle. There are, however, special rules on such distributions when made during a wind down period ending with the dissolution of the collective investment vehicle. These rules parallel the slice rule in the consistent entity treatment rules and are

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

designed to ensure that all recipients receive equally favourable tax treatment during the wind down.

[This is the end of the Guide]

Operative provisions

157-45 Income year in which recipient taxed on taxable income distributions

If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer from its taxable income for an income year; and

(b) the distribution is made:

(i) after the end of the income year; and

(ii) before the end of the *distribution period for that year;

the taxpayer is taken to receive the distribution on the last day of that income year.

157-50 Tax treatment of distributions depends on source of distribution

Taxation treatment depends on source of distribution

(1) The taxation of a *distribution by a *collective investment vehicle depends on whether the distribution is made from:

(a) taxable income; or

(b) an *accumulated taxable amount; or

(c) some other source.

Distribution taken to be from taxable income if source unclear

(2) If it is not possible to establish which of these the distribution is made from, the distribution is taken to be from taxable income in the form of an unfranked dividend paid by an *Australian resident company out of profits derived by it from sources in Australia.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Profits first rule does not apply

(3) The *profits first rule (see section 154-1) does not apply to *distributions by a *collective investment vehicle to a taxpayer.

157-55 Taxable income distributed within distribution period retains its source and character in recipient's hands

(1) If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer from its taxable income for an income year; and

(b) the distribution is made within the *distribution period for that income year; and

(c) the whole, or a part, of the distribution is from taxable income:

(i) from a particular source; or

(ii) with a particular character; or

(iii) from a particular source and with a particular character;

the distribution, or that part of the distribution, retains that source, character or source and character when received by the taxpayer to whom the distribution is made.

(2) If it is not possible to establish the source or character of a *distribution by a *collective investment vehicle from taxable income, the distribution is taken to be from taxable income in the form of an unfranked dividend paid by an *Australian resident company out of profits received by it from sources in Australia.

157-60 Special rule on distributions of taxable income from foreign source to foreign resident

If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer who is a *foreign resident; and

(b) the distribution is made from taxable income for an income year; and

(c) the taxable income is from a foreign source;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

there is a *decreasing adjustment for the taxpayer for that income year to the extent to which the distribution or that part of the distribution:

(d) is a receipt of the taxpayer; or

(e) produces an increase in the tax value of the taxpayer's assets; or

(f) produces a decrease in the tax value of the taxpayer's liabilities.

Note: This provision is necessary because international tax agreements might otherwise require the distribution to be treated as being attributable to an Australian permanent establishment.

157-65 Tax treatment of distributions from an accumulated taxable amount

(1) A *distribution by a *collective investment vehicle from an *accumulated taxable amount is treated as a distribution from taxable income in the form of an unfranked dividend paid by an *Australian resident company out of profits received by it from sources in Australia.

(2) If a *collective investment vehicle does not *distribute the whole or a part of its taxable income for an income year within the *distribution period for that income year, the taxable income, or that part of the taxable income, becomes an ***accumulated taxable amount*** of the collective investment vehicle.

(3) If a tax entity that becomes a *collective investment vehicle does not *distribute the whole or a part of its prior taxable income before the end of 2 months after it becomes a collective investment vehicle, the taxable income, or that part of the taxable income, becomes an ***accumulated taxable amount*** of the collective investment vehicle. For these purposes, ***prior taxable income*** is taxable income for an income year that ends before the entity becomes a collective investment vehicle.

(4) If a tax entity that becomes a *collective investment vehicle after commencement does not *distribute the whole or a part of its

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

tax-preferred income before it becomes a collective investment vehicle, the tax-preferred income, or that part of the tax-preferred income, becomes an ***accumulated taxable amount*** of the collective investment vehicle.

(5) For the purposes of subsection (4), a *collective investment vehicle's ***tax-preferred income*** is worked out using the formula:

$$\text{Net market value of assets} - \text{Contributed capital} - \text{Taxable income}$$

where:

contributed capital is the balance of the tax entity's *contributed capital account immediately before it becomes a collective investment vehicle.

net market value of assets is the net market value of the tax entity's assets immediately before it becomes a collective investment vehicle.

taxable income is the tax entity's taxable income for the income year that ends immediately before it becomes a collective investment vehicle.

Note: Section 157-145 provides that the period ending immediately before the entity becomes a collective investment vehicle is treated as a separate income year.

> *Consideration is being given to the need for special rules to deal with situations in which a tax entity converts into a collective investment vehicle after commencement and the entity has unrealised capital gains at the time of conversion. There are several options that could be developed. One is to require the entity to liquidate before converting to a collective investment vehicle after an appropriate transition period. Another is to reduce the accumulated taxable amount when the unrealised gains that existed at the time of conversion are realised and to tax the distribution as an unfranked dividend.*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

157-70 Distributions otherwise than from taxable income, accumulated taxable amount or certain other amounts

If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer; and

(b) the distribution is not, in whole or in part, from one or more of the following:

(i) taxable income;

(ii) an *accumulated taxable amount;

(iii) receipts arising from shares in a *pooled development fund to which section 124ZM or 124ZN of the *Income Tax Assessment Act 1936* applies;

(iv) payments relating to infrastructure borrowings to which section 159GZZZZE of the *Income Tax Assessment Act 1936* applies;

the *consistent entity treatment rules apply to the distribution, or that part of the distribution, as if it were from *contributed capital.

157-75 Some distributions give rise to decreasing adjustment

If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer in an income year; and

(b) the distribution is from:

(i) receipts arising from shares in a *pooled development fund to which section 124ZM or 124ZN of the *Income Tax Assessment Act 1936* applies; or

(ii) payments relating to infrastructure borrowings to which section 159GZZZZE of the *Income Tax Assessment Act 1936* applies;

there is a *decreasing adjustment for the taxpayer for the income year equal to the amount of the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

157-80 Distributions made on cancellation or redemption of membership interest

Consistent entity treatment slice rule does not apply

(1) Sections 154-85 to 154-100 do not apply to a *distribution made by a *collective investment vehicle. Subsections (2) and (3) apply instead.

Cancellation or redemption outside wind down period

(2) If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer; and

(b) the distribution is made in relation to the cancellation or redemption of a *membership interest in the collective investment vehicle; and

(c) the distribution is not made during the *wind down period for the collective investment vehicle;

the whole of the distribution is taken to be a distribution from *contributed capital.

Note: Subsection 157-110(8) sets the wind down period.

Cancellation or redemption during wind down period

(3) If:

(a) a *collective investment vehicle makes a *distribution to a taxpayer; and

(b) the distribution is made in relation to the cancellation or redemption of a *membership interest in the collective investment vehicle; and

(c) the distribution is made during the *wind down period for the collective investment vehicle;

the following rules apply:

(d) the amount of the distribution that is taken to be from taxable income is:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\text{Amount of } {}^*\text{distribution} \times \frac{\text{Available taxable income immediately before } {}^*\text{distribution}}{\text{Net market value of assets immediately before } {}^*\text{distribution}}$$

(e) the amount of the distribution that is taken to be from an *accumulated taxable amount is:

$$\text{Amount of } {}^*\text{distribution} \times \frac{\text{Sum of accumulated taxable amounts immediately before } {}^*\text{distribution}}{\text{Net market value of assets immediately before } {}^*\text{distribution}}$$

(f) the balance of the distribution is taken to be from neither taxable income nor an accumulated taxable amount.

Note: See section 157-70 for the taxation treatment of a distribution covered by paragraph (f).

Rules are being developed that will ensure that the amounts withheld by collective investment vehicles from payments to foreign residents out of amounts they receive as dividends, interest and royalties are based on gross receipts. The amounts they withhold from payments to foreign residents out of amounts they receive from other sources will be based on net receipts.

Subdivision 157-C—Becoming a collective investment vehicle

Guide to Subdivision 157-C

157-85 What this Subdivision is about

This Subdivision tells you what requirements a tax entity must meet to become a collective investment vehicle and what procedure a tax entity must follow to become a collective investment vehicle.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Table of sections

157-90 Overview of requirements for being a collective investment vehicle

(1) The requirements a tax entity must meet to be a collective investment vehicle are set out in section 157-95 and are designed to ensure that collective investment vehicles cannot compete unfairly with other entities and to address certain compliance and streaming issues.

(2) Allowance is made for tax entities that cannot meet some of these requirements because they are in a start up or wind down phase or because of minor fluctuations in membership numbers due to ordinary trading in their membership interests.

(3) To ensure that tax entities cannot move between consistent entity rules treatment and collective investment vehicle treatment from year to year, only those tax entities that have not been treated as a collective investment vehicle in the past are permitted to become a collective investment vehicle.

[This is the end of the Guide]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

157-95 Which entities are eligible to be treated as a collective investment vehicle?

Eligibility criteria

(1) Subject to section 157-110, a tax entity must satisfy all of the following requirements at a particular time to be eligible to be treated as a *collective investment vehicle for the purposes of this Act at that time:

(a) the entity must be a *fixed trust that is a unit trust;

(b) the central management and control of the entity must be in Australia;

(c) at least one trustee of the entity must be an *Australian resident;

(d) either:

(i) the entity is *widely-held (see section 960-110); or

(ii) every *member of the entity is either a pooled investment entity (see subsection (2)), a *government body not subject to tax or a *foreign resident (other than an individual); or

(iii) the entity is a *registered managed investment scheme and at least 75% of the *membership interests in the entity are held by taxpayers who are pooled investment entities;

(e) all the *membership interests in the entity must be equivalent (see subsection (3));

(f) the entity's activities must be limited to investment activities (see subsection (4)).

Pooled investment entities

(2) The following are ***pooled investment entities*** for the purposes of paragraph (1)(d):

(a) a *collective investment vehicle;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) a *complying superannuation fund (other than an *excluded fund);

(c) a *complying approved deposit fund;

(d) a *pooled superannuation trust;

(e) a statutory fund of a *life insurance company;

(f) a *friendly society (in respect of its life insurance business);

Equivalent interests

(3) For the purposes of this section, a tax entity has *membership interests that are all ***equivalent*** if:

(a) each membership interest in the entity carries the same fixed beneficial interest in all of the entity's assets; and

(b) each membership interest in the entity carries a right to share equally in:

(i) any *distributions made from its taxable income from a particular source or with a particular character; and

(ii) any distributions made otherwise than from its taxable income.

Activities limited to investment activities

(4) A tax entity's activities are limited to ***investment activities*** if its activities consist wholly of either, or wholly of both of:

(a) investing in land, or an interest in land, for the purpose, or primarily for the purpose, of receiving rent; or

(b) investing or trading in any or all of the following:

(i) secured or unsecured loans (including deposits with a bank, building society or other financial institution);

(ii) bonds, debentures, stock or other securities;

(iii) shares in a company;

(iv) units in a unit trust;

(v) futures contracts;

(vi) forward contracts;

(vii) interest rate swap contracts;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(viii) currency swap contracts;

(ix) forward exchange rate contracts;

(x) forward interest rate contracts;

(xi) life insurance policies;

(xii) a right or option in respect of such a loan, security, share, unit, contract or policy;

(xiii) any similar financial instruments.

(5) The activities of a tax entity (the ***first entity***) are not limited to investment activities if:

(a) the first entity controls, or is able to control, directly or indirectly, the affairs or operations of another tax entity (the ***second entity***); and

(b) the activities of the second entity are not limited to investment activities.

(6) The activities of a tax entity (the ***first entity)*** are not limited to investment activities if:

(a) *membership interests in the first entity are stapled to membership interests in another entity (the ***active entity***); and

(b) the activities of the active entity are not limited to investment activities; and

(c) the first entity and the active entity are parties to an agreement under which the active entity pays rent, interest, dividends or other returns to the first entity.

The activities of the active entity may not be limited to investment activities because of the previous application of this subsection to the active entity.

(7) For the purposes of subsection (6), *membership interests in 2 tax entities are ***stapled*** if, by becoming a *member of one of the entities, a taxpayer becomes or may become a member of the other entity.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

157-100 Becoming a collective investment vehicle

(1) To be a *collective investment vehicle at a particular time, a tax entity must:

(a) be eligible at that time to be treated as a collective investment vehicle; and

(b) have made an election under section 157-105; and

(c) not have ceased to be a collective investment vehicle at any time.

(2) A tax entity:

(a) starts to be a *collective investment vehicle when its election under section 157-105 takes effect; and

(b) ceases to be a collective investment vehicle when it ceases to be eligible to be a collective investment vehicle.

157-105 Making an election to become a collective investment vehicle

(1) A tax entity may elect to be treated as a *collective investment vehicle for the purposes of this Act. The election:

(a) must be made in writing; and

(b) cannot be revoked.

A tax entity can only make one election under this subsection.

(2) The election must set out:

(a) the day on which the election is to take effect; and

(b) the name, address and *TFN of the tax entity if it has one; and

(c) the Australian Business Number of the tax entity if it has one; and

(d) any other information required by the Commissioner.

(3) The day specified in paragraph (2)(a) must be later than the day on which the election is made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(4) The tax entity must give the Commissioner a copy of the election within 21 days after it makes the election.

(5) The tax entity may apply to the Commissioner before the arrival of:

(a) the day set out in the election under paragraph (2)(a); or

(b) a day previously approved by the Commissioner under subsection (6);

for approval of a different day as the day on which the election is to take effect.

(6) The Commissioner may approve in writing a different day as the day on which the election is to take effect.

Note: The day approved by the Commissioner replaces the day that was going to be the day on which the election took effect before the approval was given.

(7) The election takes effect on:

(a) the day specified under paragraph (2)(a); or

(b) the day last approved by the Commissioner under subsection (6) if the Commissioner has given an approval under that subsection.

157-110 When the widely-held and minimum membership requirements need not be met

Meaning of widely-held and minimum membership requirements

(1) The ***widely-held requirement*** is the requirement that a tax entity be widely-held (see section 960-110) in order to be eligible to be a collective investment vehicle.

(2) The ***minimum membership requirement*** is the requirement that a tax entity have at least 300 members to be eligible to be a *collective investment vehicle (see subsection 960-110(1)).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Widely-held requirement need not be met during start up period

(3) The *widely-held requirement does not apply to a tax entity for the first 6 months after it becomes a *collective investment vehicle.

Minimum membership requirement need not be met for short term fluctuations due to normal trading

(4) A tax entity continues to be eligible to be a *collective investment vehicle even though it does not satisfy the *minimum membership requirement for a period if:

(a) the entity's failure to satisfy the minimum membership requirement during that period is due to fluctuations in membership numbers through ordinary trading in membership interests; and

(b) either:

(i) the period is a continuous period of not more than 21 days; or

(ii) within that period the entity gives notice under subsection (6) of its intention to wind up.

(5) The Commissioner may extend the period of 21 days referred to in paragraph (4)(b) having regard to:

(a) the nature of the failure to satisfy the minimum membership requirement; and

(b) the events that led to the failure; and

(c) the duration of the failure; and

(d) the extent to which there might have been previous failures to satisfy the minimum membership requirement; and

(e) any other matters the Commissioner considers relevant.

Widely-held requirement need not be met during wind down period

(6) A tax entity that is a *collective investment vehicle may give its members written notice that the entity is to be wound up. The notice is to be given to members in the same way as members are given notice under the entity's constituent document.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(7) The tax entity must give the Commissioner a copy of the notice within 21 days after it is given to the entity's members.

(8) If a tax entity gives notice under subsection (6), the entity remains eligible to be treated as a *collective investment vehicle even though it does not satisfy the *widely-held requirement during the period that:

(a) starts when the notice is given to members; and

(b) ends:

(i) when the entity is wound up; or

(ii) the period of 12 months after the notice is given ends;

whichever happens first.

(9) The Commissioner may extend the period referred to in subsection (8).

Subdivision 157-D—Obligations of a collective investment vehicle

Guide to Subdivision 157-D

157-115 What this Subdivision is about

> This Subdivision requires a collective investment vehicle to keep certain records and provide each recipient of a distribution with sufficient information to allow the recipient to account for those distributions in his or her tax return.

Table of sections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

[This is the end of the Guide]

Operative provisions

157-120 Obligation to keep records

A *collective investment vehicle must keep records that show the following for each income year:

(a) the sources and character of its taxable income for that income year;

(b) how much of its taxable income for that income year is from each of those sources or has that character;

(c) what *distributions it makes from:

(i) its taxable income for that income year; or

(ii) an *accumulated taxable amount; or

(iii) other sources;

(d) any other matters necessary for giving statements to members under section 157-125 or 157-130.

Note: If it is not possible to establish the character of a distribution from the collective investment vehicle's records, the distribution will be treated as having been made from taxable income in the form of an unfranked dividend from an Australian resident company (see subsection 157-55(2)).

157-125 Distribution statements to be given when distribution made

If a *collective investment vehicle makes a *distribution to a taxpayer, the collective investment vehicle must give the taxpayer, at the time the distribution is made, a statement that sets out the following details:

(a) the amount of the distribution;

(b) how much of the distribution is made from:

(i) taxable income; or

(ii) an *accumulated taxable amount; or

(iii) other sources;

(c) to the extent to which the distribution is made from taxable income:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(i) the extent to which the taxable income comes from a particular source or has a particular character; and

(ii) any withholding taxes that have been deducted if the taxable income was in the form of dividends, interest or royalties; and

(iii) any amounts withheld if the taxable income was not in the form of dividends, interest or royalties; and

(iv) the extent to which the taxable income was franked;

(d) the effect that the distribution may have on the tax value of the taxpayer's *membership interests in the collective investment vehicle and, if the distribution does change that value, how the change in value should be reflected in the taxpayer's tax return;

(e) the nature and amount of any *decreasing adjustment that may be required because the distribution includes amounts referred to in section 157-75;

(f) any other information required by the Commissioner.

157-130 Annual distribution statement

(1) A *collective investment vehicle must give each taxpayer to whom a *distribution was made during the *distribution period for an income year a statement, within 21 days after the end of the distribution period, that sets out the following:

(a) the total amount of the distributions made to the taxpayer from taxable income during the distribution period for the income year;

(b) the total amount of other distributions made to the taxpayer during the income year;

(c) the extent to which those other distributions are from:

(i) an *accumulated taxable amount; or

(ii) sources other than taxable income and accumulated taxable amounts;

(d) to the extent to which those distributions are made from taxable income:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(i) the extent to which the taxable income comes from a particular source or has a particular character; and

(ii) the total amount of withholding taxes that have been deducted from the taxable income that was in the form of dividends, interest or royalties; and

(iii) the total amount withheld from the taxable income that was not in the form of dividends, interest or royalties; and

(iv) the extent to which the taxable income was franked; and

(v) the extent to which foreign tax has been paid on the taxable income;

(e) the effect that the distributions may have on the tax value of the taxpayer's *membership interests in the collective investment vehicle and, if a distribution does change that value, how the change in value should be reflected in the taxpayer's tax return;

(f) the nature and amount of any *decreasing adjustment that may be required because the distribution includes amounts referred to in section 157-75;

(g) any other information required by the Commissioner.

(2) The Commissioner may extend the period within which a *collective investment vehicle must give statements under subsection (1).

157-135 Obligation to notify Commissioner when cease to be eligible to be collective investment vehicle

If a tax entity that is a *collective investment vehicle ceases to be eligible to be a collective investment vehicle, it must notify the Commissioner of the cessation within 21 days after it ceases to be eligible.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 157-E—Entities entering and leaving the collective investment vehicle regime

Guide to Subdivision 157-E

157-140 What this Subdivision is about

> This Subdivision sets out special rules for dealing with entities that are *collective investment vehicles for only part of an income year.

Table of sections

[This is the end of the Guide]

Operative provisions

157-145 Tax entity entering or leaving the collective investment vehicle regime part way through an income year

If a tax entity:

(a) becomes a *collective investment vehicle after the start of an income year of the entity; or

(b) ceases to be a collective investment vehicle before the end of an income year of the entity;

each of the following periods during the year is treated as if it were a separate income year of the entity:

(c) any period before the entity becomes a collective investment vehicle;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(d) the period during which the entity is a collective investment vehicle;

(e) any period after the entity ceases to be a collective investment vehicle.

157-150 Use of franking account balance available when entity enters the collective investment vehicle regime

A *collective investment vehicle may frank a *distribution to a particular extent if:

(a) immediately before it becomes a collective investment vehicle, it has a franking surplus in its franking account; and

(b) within 2 months after becoming a collective investment vehicle, it makes the distribution from its taxable income for an income year before it became a collective investment vehicle; and

(c) it would have been able to frank the distribution to that extent if it had not become a collective investment vehicle.

Note 1: Collective investment vehicles do not have franking accounts. Once the 2 months are over, the collective investment vehicle will not be able to make any further use of the former franking account balance.

Note 2: The surplus cannot increase after the entity becomes a collective investment vehicle.

Rules are being developed to provide transitional roll-over relief in certain circumstances for the transfer of a company's business, or all of a company's assets, to a unit trust that comes under the collective investment vehicle regime.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 158—Mutuality principle

158-1 Mutuality principle

(1) There is a *decreasing adjustment for a tax entity for an income year equal to the amount of any net accretion to a common fund of the entity for that income year.

Note: This rule applies to all tax entities whether or not the consistent entity treatment rules apply to them.

(2) There is an *increasing adjustment for a tax entity for an income year equal to the amount of any net reduction in a common fund of the entity for that income year.

Note: This rule applies to all tax entities whether or not the consistent entity treatment rules apply to them.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 159—Special rules for some trusts

These rules will be a somewhat simplified version of the rules currently contained in Division 6 of Part III of the Income Tax Assessment Act 1936.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 160—Partnerships

These rules will be based on the rules currently contained in Division 5 of Part III of the Income Tax Assessment Act 1936.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 161—Applying Act to entities that are not legal persons

Table of sections

161-1 Actions, assets and liabilities of the entity

(1) For the purposes of applying this Act to a tax entity that is not a legal person:

(a) anything done by, to or in relation to a *representative of the entity as a representative of the entity is taken to be done by, to or in relation to the entity; and

(b) a liability owed by or to a representative of the entity as a representative of the entity is taken to be a liability owed by or to the entity; and

(c) each representative of the entity is responsible for the performance of the entity's obligations under this Act; and

(d) each representative of the entity may exercise powers (including a power to make an election) conferred on the entity by this Act; and

(e) the following are taken to be assets held by the entity:

(i) if the entity is a trust—any asset that forms part of the trust estate or that is otherwise held by the trustee in the trustee's capacity as trustee of the trust;

(ii) if the entity is a limited partnership—an asset that forms part of the partnership assets;

(iii) if the entity is an unincorporated association—an asset that is dedicated solely or principally to use in the association's activities.

(2) The following table shows which people are ***representatives*** for each of the different kinds of entities that are not legal persons:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Representatives of entities that are not legal persons

Item	Type of entity	Representative	Capacity
1	Trust	The trustee, or any of the trustees	Acting as trustee of the trust
2	Limited partnership	A partner	Acting in the affairs of the partnership
3	Unincorporated association	A member of the committee of management of the association	Acting in the management of the association

(3) If there are 2 or more *representatives of a tax entity that is not a legal person, their liabilities and obligations as representatives are joint and several.

Rules are being developed for liability and recovery for entities that are not legal persons.

161-5 Working out the net income of the representative

When working out the net income of a *representative of a tax entity in his or her personal capacity:

(a) disregard as a payment anything that is a payment of the entity; and

(b) disregard as a receipt anything that is a receipt of the entity; and

(c) disregard as an asset anything that is an asset of the entity; and

(d) disregard as a liability anything that is a liability of the entity.

Note: The purpose of this provision is to avoid double counting as between the tax entity and the representative.

[The next Division is Division 385.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 3-45—Rules for particular industries and occupations

Division 385—Primary production

Subdivision 385-D—Rules affecting tax value of certain live stock

Table of sections

385-55 Working out the cost of natural increase of live stock

(1) The ***cost*** of an animal you hold as *live stock that you acquired by natural increase is whichever of these you elect:

(a) the actual cost of the animal;

(b) the cost prescribed by the regulations for each animal in the applicable class of live stock.

(2) However, if you incur a service fee for insemination and, as a result, acquire a horse by natural increase, its ***cost*** is the greater of:

(a) the amount worked out under subsection (1); and

(b) the part of the service fee that is attributable to your acquiring the horse.

(3) An election under this section must be made by the time you lodge your *income tax return for the income year in which you acquired the animal. However, the Commissioner can allow you to make it later.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

385-60 Tax value of horse breeding stock

(1) If you *hold for breeding a horse that is at least 3 years old and that you acquired under a contract, you can choose to work out its ***tax value*** under subsection (2).

(2) The horse's ***tax value*** at a particular time (the ***test time***) during an income year is worked out using this table.

Tax value of horse breeding stock

Item	If the horse is:	The tax value is this amount:
1	female and 12 years or over	$1
2	any other horse	the greater of: (a) the horse opening value less the horse reduction amount (see section 385-65); and (b) $1

The horse's age is to be measured in whole years as at the test time. If the horse was *not* born on 1 August, its age is determined as if it had been born on the last 1 August before it was actually born.

When choice takes effect

(3) The choice takes effect when it is made, unless it specifies a later time of effect. A choice that would otherwise take effect at the start of an income year takes effect immediately afterwards.

(4) The choice cannot be revoked after it has taken effect.

385-65 Working out the horse opening value and the horse reduction amount

(1) The ***horse opening value*** is:

(a) if the horse has been your *live stock ever since the start of the income year—its *opening tax value at the start of the income year; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) otherwise—the horse's base amount (see subsection (3)).

(2) The ***horse reduction amount*** is worked out as follows:

(a) for female horses under 12 years of age:

$$\frac{\text{Base amount}}{\text{Reduction factor}} \times \frac{\text{Breeding days}}{\text{Days since start of income year}}$$

(b) for any male horse:

$$\text{Base amount} \times \begin{array}{c}\text{Nominated}\\\text{percentage}\end{array} \times \frac{\text{Breeding days}}{\text{Days since start of income year}}$$

(3) For the purposes of the formula in subsection (2):

base amount is the lesser of:

(a) the horse's *cost; and

(b) the horse's tax value when it most recently became your *live stock.

breeding days is the number of whole days, in the period starting at the start of the income year and ending on the day in which the test time occurs, that are later than the day when you most recently began to hold the horse for breeding.

days since start of income year is the number of whole days in the period starting at the start of the income year and ending on the day in which the test time occurs.

nominated percentage is any percentage, up to 25%, you nominate when you make the choice under section 385-60.

reduction factor is the greater of:

(a) 3; and

(b) the difference between 12 and the horse's age when you most recently began to hold it for breeding.

[The next Division is Division 950.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 4—The Dictionary

Part 4-1—Concepts and topics

Division 950—Rules for interpreting this Act

Table of sections

950-100 What forms part of this Act

(1) These all form part of this Act:

(a) the headings of the Chapters, Parts, Divisions and Subdivisions of this Act;

(b) *Guides;

(c) the headings of the sections and subsections of this Act;

(d) the headings for groups of sections of this Act (***group headings***);

(e) the notes and examples (however described) that follow provisions of this Act.

(2) The asterisks used to identify defined terms form part of this Act. However, if a term is *not* identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

950-105 What does *not* form part of this Act

These do *not* form part of this Act:

(a) footnotes and endnotes;

(b) Tables of Subdivisions;

(c) Tables of sections.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

950-150 Guides, and their role in interpreting this Act

(1) A ***Guide*** consists of:

(a) sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.; or

(b) a Subdivision, Division or Part that is identified as a Guide by a provision in the Subdivision, Division or Part.

(2) Guides form part of this Act, but they are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered:

(a) in determining the purpose or object underlying the provision; or

(b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or

(c) in determining the provision's meaning if the provision is ambiguous or obscure; or

(d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

[The next Division is Division 960.]

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 960—General

Table of Subdivisions

Subdivision 960-A—Taxpayers and tax entities

Table of sections

960-100 Taxpayers

(1) ***Taxpayer*** means any of the following:

(a) an individual;

(b) a body corporate;

(c) a body politic;

(d) a corporation sole;

(e) a partnership;

(f) any other unincorporated association or body of persons;

(g) a trust;

(h) a superannuation fund;

(i) any other tax entity.

Note 1: The term ***taxpayer*** is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

Note 2: ***Taxpayer*** and its grammatical forms are not asterisked in this Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) The trustee of a trust or of a superannuation fund is taken to be a ***taxpayer*** consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

(3) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different ***taxpayer***.

Example: In addition to his or her personal capacity, an individual may be:

- sole trustee of one or more trusts; and
- one of a number of trustees of a further trust.

In his or her personal capacity, he or she is one taxpayer. As trustee of each trust, he or she is a different taxpayer. The trustees of the further trust are a different taxpayer again, of which the individual is a member.

(4) If a provision refers to a particular kind of taxpayer, it refers to the taxpayer in its capacity as that kind of taxpayer, not to that taxpayer in any other capacity.

Example: A provision that refers to an individual does not cover an individual in a capacity as trustee, unless it also refers to a trustee.

960-105 Tax entities

(1) ***Tax entity*** means any of the following:

(a) a company;

(b) a trust;

(c) a person in the person's capacity as an executor administering a *deceased estate;

(d) an arrangement or situation that:

(i) is entered into or arises outside Australia; and

(ii) does not give rise to a trust; and

(iii) would have given rise to a trust if it had been entered into or had arisen in Australia;

(e) a limited partnership.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 1: A partnership that is not a limited partnership is not a tax entity for the purposes of this Act.

Note 2: ***Tax entity*** and its grammatical forms are not asterisked in this Act.

Certain trusts disregarded when amount to which beneficiary presently entitled not paid or transferred

(2) If:

(a) a beneficiary of a trust (the ***original trust***) becomes presently entitled to a trust asset; and

(b) the trust asset is not paid or transferred to the beneficiary; and

(c) there is no express or implied agreement between the trustee and the beneficiary that the asset:

(i) be held on a new trust; or

(ii) be loaned by the beneficiary to the trustee; and

(d) a new trust arises over the asset by operation of law;

the following rules apply:

(e) the new trust is disregarded for the purposes of this Act;

(f) the asset is taken for the purposes of this Act to form part of the trust estate of the original trust.

Note: Subsection 960-145(1) deals with the case where there is an express or implied agreement that the unpaid amount be held on a new trust or be lent to the trustee.

960-110 Widely-held tax entity

(1) A tax entity is ***widely-held*** if the entity has at least 300 members. It will not be widely-held under this subsection, however, if it is not widely-held because of the operation of subsection (2) or (3) (the ***concentrated ownership test***) or subsection (5) (the ***discretionary test***).

Consideration is being given to extending the definition of widely-held tax entity to include subsidiaries of widely-held tax entities and entities that are wholly owned by widely-held tax entities.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Concentrated ownership

(2) A tax entity is not ***widely-held*** if an individual holds, or up to 20 individuals hold between them directly or indirectly and for their own benefit, *membership interests:

(a) carrying fixed entitlements to:

(i) at least 75% of the entity's income; or

(ii) at least 75% of the entity's capital; or

(b) carrying at least 75% of the voting rights in the entity.

> *Consideration is being given to the rules needed for a fixed trust where there are no voting rights or voting rights are limited (for example, limited to resolutions to remove the trustee).*

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

(3) A tax entity is not ***widely-held*** if, because of:

(a) any provision in the entity's constituent document, or in any contract, agreement or instrument:

(i) authorising the variation or abrogation of rights attaching to any of the *membership interests in the entity; or

(ii) relating to the conversion, cancellation, extinguishment or redemption of any of the membership interests; or

(b) any contract, *arrangement, option or instrument under which a person has power to acquire any of the membership interests; or

(c) any power, authority or discretion in a person in relation to the rights attaching to any of the membership interests;

it is reasonable to conclude that the rights attaching to any of the membership interests are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, the entity would not be widely-held under subsection (2).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Single individual

(4) For the purposes of subsection (2), all of the following are taken to be a single individual:

(a) an individual, whether or not the individual holds *membership interests in the entity; and

(b) the individual's *associates; and

(c) in relation to any membership interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

Discretionary interest stops entity being widely-held

(5) A tax entity is not ***widely-held*** if the entity may exercise a discretion in such a way as to alter a member's rights in relation to distributions by the entity of all or any entity assets.

Subdivision 960-B—Tax entities (members and membership interests)

Table of sections

960-115 Member of a tax entity

General test for membership

(1) A taxpayer is a ***member*** of a tax entity if the taxpayer holds a *membership interest in the entity.

Extension—nominee and bare trust situations

(2) If:

(a) a trust is a *member of a tax entity because the trust holds a particular interest or rights; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the trustee is a bare trustee of that interest or those rights for the absolute benefit of a particular beneficiary or beneficiaries; and

(c) the beneficiary's or beneficiaries' absolute entitlement exists at all times while the trust is in existence;

the beneficiary or beneficiaries are also ***members*** of the entity.

Joint membership of an entity

(3) If 2 or more people jointly hold interests or rights that give rise to membership of a tax entity, each of them is a ***member*** of the entity.

960-120 Membership interest in tax entity

(1) The following table sets out interests in various kinds of tax entity that are ***membership interests***:

Membership interests

Item	Entity	Membership interests
1	Company limited by shares	A share
2	Company limited by guarantee	A guarantee given by a member
3	Registered managed investment scheme	An interest in the scheme
4	Trust	A beneficial interest in an asset of the trust estate; or an interest of a taxpayer as a discretionary object of a non-fixed trust (that is, an interest in the proper administration of the trust because the taxpayer is an object of a discretion that can be exercised by the trustee of a non-fixed trust)
5	Limited partnership	An interest of a taxpayer as a partner in the partnership

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Membership interests

Item	Entity	Membership interests
6	Any tax entity	An interest that carries a right to a variable or fixed return from the entity that is: (a) contingent on the economic performance of the entity; or (b) at the discretion of the entity
7	Any tax entity	An interest in the entity that carries any voting rights beyond the following: (a) a right to vote while a payment or part of a payment in respect of the interest by the entity is unpaid; (b) a right to vote on a proposal to reduce the entity's contributed capital; (c) a right to vote on a resolution to approve the terms of an agreement under which the entity would buy back interests in the entity; (d) a right to vote on a proposal that affects the rights attached to the interest; (e) a right to vote on a proposal to wind the entity up; (f) a right to vote on a proposal for the disposal of the whole of the entity's property, business or undertaking; (g) a right to vote during the entity's winding up
8	Any tax entity	A right to participate in the management or control of the entity
9	Any tax entity	An interest issued by the entity that: (a) gives its holder a right to be issued with a membership interest in the entity of a kind referred to in items 1 to 8; or (b) will, or may, convert into a membership interest in the entity of a kind referred to in items 1 to 8.

(2) Terms used in items 1, 2 and 3 of the table in subsection (1) that are defined in the Corporations Law have the same meaning as in the Corporations Law.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) The interest referred to in item 6 of the table in subsection (1) may take the form of a proprietary right, a chose in action or any other form.

> *No interest will be a membership interest if it is characterised as debt under rules that are being developed in common with the rules for the taxation of financial arrangements.*

(4) If a contract of employment between the tax entity and a taxpayer provides for remuneration on the basis of the entity's economic performance, the contract is not a ***membership interest*** to the extent to which it provides for that remuneration.

Subdivision 960-C—Tax entities (distributions)

Guide to Subdivision 960-C

960-125 What this Subdivision is about

> This Subdivision tells you how to work out:
>
> (a) whether there is a distribution by a tax entity; and
>
> (b) the amount of that distribution.
>
> To work out whether there is a distribution you will usually need to ask whether a benefit is provided, who provided the benefit, who received the benefit and whether the benefit was provided because of a particular relationship between the parties.

See section 960-155 to identify the kinds of benefits that are relevant when deciding whether there is a distribution.

See sections 960-130 to 960-140 to identify the relevant parties and relationships when deciding whether there is a distribution.

See section 960-165 to work out the amount of a distribution.

See section 960-145 for special circumstances in which a distribution is taken to have been made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

See section 960-150 for special circumstances in which there is no distribution.

Table of sections

Operative provisions

[This is the end of the Guide]

Operative provisions

960-130 Distribution—basic rule

(1) A tax entity makes a ***distribution*** to a taxpayer if the entity provides a benefit to the taxpayer because the taxpayer is a *member of the entity.

Note: See section 960-155 for the form the benefit may take.

(2) The entity is taken to provide a benefit to a taxpayer who is a *member of the entity because he or she is a member of the entity unless a reasonable person would conclude (having regard to all the circumstances) that the benefit is not provided to the taxpayer because he or she is a member of the entity.

960-135 Benefit to former or prospective member or to associate

(1) A tax entity makes a ***distribution*** to a taxpayer if:

(a) the entity provides a benefit to the taxpayer; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) a reasonable person would conclude (having regard to all the circumstances) that the benefit is provided because the taxpayer:

(i) was formerly a *member of the entity; or

(ii) is likely to become a member of the entity.

(2) A tax entity makes a ***distribution*** to a taxpayer if:

(a) the entity provides a benefit to the taxpayer; and

(b) an *associate of the taxpayer is:

(i) a *member of the entity; or

(ii) a taxpayer who was formerly a member of the entity; or

(iii) a taxpayer who is likely to become a member of the entity; and

(c) a reasonable person would conclude (having regard to all the circumstances) that the benefit is provided to the taxpayer because:

(i) the taxpayer's associate is, was formerly or is likely to become a member of the entity; and

(ii) the taxpayer and the associate are associates.

960-140 Benefits not provided directly by entity to member etc.

(1) A tax entity that is a CET entity makes a ***distribution*** to a taxpayer (the ***recipient***) if:

(a) the entity (the ***benefit provider***) provides a benefit to the recipient; and

(b) the benefit-provider has an *associate (the ***associated entity***) that is also a CET tax entity; and

(c) the recipient:

(i) is a *member of the associated entity; or

(ii) was formerly a member of the associated entity; or

(iii) is someone who is likely to become a member of the associated entity; or

(iv) is an associate of a taxpayer referred to in subparagraph (i), (ii) or (iii); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(d) a reasonable person would conclude (having regard to all the circumstances) that the benefit is provided to the recipient because the recipient is a taxpayer of the kind referred to in subparagraph (c)(i), (ii), (iii) or (iv).

(2) A tax entity makes a ***distribution*** to a taxpayer (the ***recipient***) if:

(a) the entity enters into an agreement with:

(i) an *associate of the entity that is not a CET tax entity (the ***associated tax entity***); or

(ii) a taxpayer who is not an *associate of the entity (the ***third party***);

under which the associated tax entity or third party will, for consideration by the entity, provide a benefit to the recipient; and

(b) the associate or third party provides a benefit to the recipient; and

(c) the recipient:

(i) is a *member of the entity; or

(ii) was formerly a member of the entity; or

(iii) is someone who is likely to become a member of the entity; or

(iv) is an associate of a taxpayer referred to in subparagraph (i), (ii) or (iii).

(3) For the purposes of this section, a tax entity is a ***CET tax entity*** unless it:

(a) is excluded from the consistent entity treatment rules by section 151-5; or

(b) is a *collective investment vehicle.

960-145 Situations in which distribution is taken to have been made

Reinvestment of amount beneficiary is presently entitled to

(1) If:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) during an income year, a *member of a tax entity that is a trust becomes presently entitled to a trust asset as a consequence of holding a fixed interest in the trust; and

(b) there is an express or implied agreement between the entity and the member that the asset is:

(i) to be held by the trustee on a separate trust; or

(ii) lent by the member to the trustee;

the entity is taken to have made a ***distribution*** to the member during that income year and the amount of the distribution is the market value of the asset.

Vesting of interest in object of a discretionary trust

(2) If:

(a) a tax entity is a trust; and

(b) because of the exercise or non-exercise by the trustee of a discretion:

(i) an interest in a trust asset vests in a taxpayer; or

(ii) a taxpayer preserves a vested interest in the trust asset which might have been divested if the discretion had been exercised; and

(c) the taxpayer knows, or ought reasonably to know, that the exercise or non-exercise of the discretion has vested, or preserved the vesting of, the interest in the taxpayer;

the entity is taken to have made a ***distribution*** to the taxpayer at the time when the taxpayer became aware, or ought reasonably to have become aware, of the vesting or preservation and the amount of the distribution is the market value of the interest.

Note: If the vesting, or the preservation of vesting, of an interest is a distribution to a taxpayer under this subsection, the payment or transfer made to satisfy the vested interest is taken to be a distribution from a prior taxed amount (see subsection 152-70(4)).

Non-commercial loans by closely-held tax entities

(3) A loan by a tax entity to a person is taken to be a ***distribution*** if:

(a) the entity is *closely-held; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the loan is a *non-commercial loan.

A loan by a tax entity to a person is not otherwise a distribution.

> *Further rules, along the lines of existing Division 7A of Part III of the Income Tax Assessment Act 1936 (sections 109B—109ZE) will be developed in relation to the treatment of non-commercial loans.*

Payment in respect of non-commercial loan from member of a closely-held tax entity

(4) A payment to a taxpayer by a tax entity in respect of a loan to the entity from a person who:

(a) is a *member of the associated entity; or

(b) was formerly a member of the associated entity; or

(c) is someone who is likely to become a member of the associated entity; or

(d) is an associate of a taxpayer referred to in paragraph (a), (b) or (c);

is a ***distribution*** to the taxpayer if:

(e) the entity is *closely-held; and

(f) the loan is a *non-commercial loan.

It does not matter whether the payment is a repayment of capital or a payment of interest.

960-150 Benefits that are not distributions

General

(1) This section sets out special circumstances in which the provision of a benefit by a tax entity to a taxpayer is taken not to be a ***distribution***.

Market value given for benefit

(2) There is no ***distribution*** by the tax entity to the taxpayer if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) the taxpayer gives consideration for the benefit to the entity; and

(b) the consideration is equal to, or greater than, the market value of the benefit.

(3) In determining the amount of consideration given by the taxpayer, disregard any consideration in the form of a surrender, cancellation or redemption of a *membership interest of the taxpayer in the entity making the distribution.

Proportionate rearrangement of membership interests

(4) There is no ***distribution*** by the tax entity to the taxpayer if the benefit is provided by way of a proportionate *rearrangement of membership interests.

On-market buy back consideration

(5) There is no ***distribution*** by the tax entity to the taxpayer if the benefit is provided as consideration for an *on-market buy back.

Same benefit not to be distribution both to a taxpayer and to the taxpayer's associate

(6) If a benefit provided to an *associate of a *member of a tax entity is a *distribution to the associate, the provision of the benefit is taken not to be a ***distribution*** to the member.

Creation of right to receive a distribution not itself a distribution

(7) The coming into existence of a right in a taxpayer to receive a *distribution from a tax entity is not itself a ***distribution*** by the entity to the taxpayer.

Rules are being developed to make the treatment of distributions consistent with the tax relief recommended in Recommendations 13.5 and 13.6 in the Report.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

960-155 Form that benefit may take

For the purposes of this Subdivision, a benefit to a taxpayer may take any form, including:

(a) paying money to the taxpayer (including paying an amount in satisfaction of a right to receive an asset from the tax entity); or

(b) reducing a liability of the taxpayer (including forgiving a debt or offsetting an amount against a liability); or

(c) crediting an amount in the taxpayer's favour; or

(d) transferring an asset, or an interest in an asset, to the taxpayer; or

(e) providing an asset to, or making an asset available for use by, the taxpayer; or

(f) conferring a right or privilege on, or making a facility available to, the taxpayer; or

(g) providing services to the taxpayer; or

(h) applying money, an asset or services for the taxpayer's benefit or at the taxpayer's direction (including by way of reinvestment, accumulation or capitalisation); or

(i) issuing a membership interest to the taxpayer.

Note 1: Paragraph (a)—Subsection 960-150(7) provides that the creation of the right to receive the payment is not itself a distribution.

Note 2: A loan is only a distribution if the tax entity is closely-held and the loan is a non-commercial loan (see subsection 960-145(3)).

Consideration is being given to the special rules needed for particular kinds of benefit (for example, to exclude some member discounts under loyalty schemes).

Consideration is being given, for example, to the need to exclude benefits that are incidental to the proper administration of the tax entity (such as the provision of refreshments to members at AGMs or to directors at directors' meetings and the distribution of annual and quarterly reports to members).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Special rules are being developed to exclude benefits that take the form of the use of certain kinds of assets such as a main residence and assets excluded from the tax system.

960-160 Distributions by liquidators etc.

For the purposes of this Subdivision, a benefit provided by a liquidator, receiver, receiver and manager or other external administrator of a tax entity is taken to be provided by the entity.

960-165 Amount of distribution

(1) The amount of a ***distribution*** by a tax entity to a taxpayer is:

(a) the amount of the benefit less the consideration (if any) provided to the entity for the benefit if it is in the form of a payment of money; or

(b) the fair market value of the benefit less the consideration (if any) provided to the entity for the benefit if the benefit is not in the form of a payment of money.

For these purposes, the ***fair market value*** of a benefit is the market value the benefit would have for a person who intended to make the same use of the benefit as the recipient.

Note: Subsections 960-145(1) and (2) also provide for the quantification of certain distributions.

(2) If a *widely-held tax entity gives its members the choice of:

(a) a *distribution by way of a *rearrangement of *membership interests; or

(b) payment of an amount;

the amount of the distribution by way of rearrangement of membership interests is the equal to the amount of the payment.

(3) In determining the amount of consideration given by a taxpayer for a benefit, disregard any consideration in the form of a surrender, cancellation or redemption of a *membership interest of the taxpayer in the tax entity making the *distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(4) For the purposes of applying this section to a *distribution that consists of a payment by a *closely-held tax entity under a *non-commercial loan to the entity (see subsection 960-145(4)), the making of the loan is not consideration given to the entity for the payment.

960-170 Distributions from mixed sources

For the purposes of this Act, a reference to a ***distribution*** being made from, or not being made from, one of the following sources:

(a) available profits;

(b) contributed capital;

(c) a prior taxed amount;

(d) an accumulated taxed amount;

(e) a tax preferred amount;

is a reference to a distribution to the extent to which it is made from, or not made from, that source if the distribution is made from 2 or more sources.

Subdivision 960-D—Tax entities (rearrangement of membership interests)

Table of sections

960-175 Rearrangement of membership interests

There is a ***rearrangement of membership interests*** in a tax entity if:

(a) the *membership interests in the entity are unitised; and

(b) the entity does something that changes the number of membership interests of a particular *class that a particular *member of the entity holds.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The rearrangement might occur because the entity issues membership interests, splits them, consolidates them, cancels them or redeems them.

960-180 Proportionate rearrangement of membership interests

A *rearrangement of *membership interests in a tax entity is a ***proportionate*** rearrangement if:

(a) the market value of each *member's parcel of membership interests can reasonably be expected not to change directly as a result of the rearrangement itself; or

(b) the market value of a member's parcel of membership interests can reasonably be expected to change directly as a result of the rearrangement itself but:

(i) in a case where the market value of a member's parcel of membership interests can reasonably be expected to fall directly as a result of the rearrangement—the entity gives the member consideration equal to the expected fall in market value; or

(ii) in a case where the market value of the member's parcel of membership interests can reasonably be expected to rise directly as a result of the rearrangement—the member gives the entity consideration equal to the expected rise in market value.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 4-5—Dictionary definitions

Division 995—Definitions

995-1 Definitions

(1) In this Act, except so far as the contrary intention appears:

A

accumulated taxable amount for a collective investment vehicle has the meaning given by subsections 157-65(2) to (5).

amortisable payment has the meaning given by section 40-525.

amount includes a nil amount and an amount in currency of a foreign country.

> *The Report proposes a treatment for amounts in overseas currency, including their conversion to Australian currency and any resulting foreign exchange gains or losses.*

approved management plan has the meaning given by section 40-415.

arrangement means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

assessment has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

asset has the meaning given by section 6-15.

Note: ***Asset*** and its grammatical forms are not asterisked in this Act.

associate has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Australian resident means a taxpayer who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

authorised deposit-taking institution means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

Note: This includes banks, building societies and credit unions.

available profits has the meaning given by section 154-35.

B

business includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

C

class: *Membership interests in a tax entity form a ***class*** if they all carry strictly identical or proportional rights to *distributions by the entity (even if they carry different rights in relation to some other matter such as voting rights). It is possible for a tax entity to have only one class of membership interests.

closely-held: A tax entity is ***closely-held*** if it is not *widely-held within the meaning of section 960-110.

closing tax value of an asset or liability for an income year has the meaning given by section 5-70.

collectable means

(a) *artwork, jewellery, an antique, or a coin or medallion; or
(b) a rare folio, manuscript or book; or
(c) a postage stamp or first day cover;

that is used or kept mainly for your (or your *associate's) personal use or enjoyment. These are also ***collectables***:

(d) an interest in any of the things covered by paragraphs (a), (b) and (c); or
(e) a debt that arises from any of those things; or
(f) an option or right to *acquire any of those things.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

collective investment vehicle means a tax entity that is a collective investment vehicle in accordance with Subdivision 157-C.

Commissioner means the Commissioner of Taxation.

company means:

(a) a body corporate; or

(b) any other unincorporated association or body of persons;

but does not include a *partnership.

complying approved deposit fund means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

complying superannuation fund means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

consistent entity treatment rules means the rules in Divisions 151 to 156.

contributed capital: A *distribution by a tax entity is made from ***contributed capital*** if it is made from the entity's *contributed capital account.

contributed capital account means an account of a tax entity that complies with sections 154-50 to 154-65.

contributed capital sub-account means a sub-account of a tax entity's contributed capital account that complies with section 154-80.

contributes capital has the meaning given in section 154-40.

corresponds: Use the table in subsection 45-40(2) to identify the *financial asset that ***corresponds*** to a *financial liability.

cost of an asset has the meaning given by Subdivision 6-E and section 45-70.

D

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

deceased estate means any trust for the administration of the estate of a deceased person.

decreasing adjustment has the meaning given by section 5-95 and the provisions listed in the table in section 5-100.

depreciating asset has the meaning given by section 40-15.

diminishing value rate has the meaning given by section 40-50.

distribution has the meaning given by sections 960-130 to 960-170.

distribution period has the meaning given by section 157-25.

due and payable: an amount is ***due and payable*** if the time for payment of the amount has arrived.

E

effective life: The ***effective life*** of a *depreciating asset:

(a) for depreciating assets (except *horticultural plants)—has the meaning given by section 40-55; and

(b) for horticultural plants—has the meaning given by section 40-445.

excluded fund has the same meaning as in the *Superannuation Industry Supervision Act 1993*.

exploration or prospecting has the meaning given by section 40-35.

F

financial asset has the meaning given by section 45-10.

financial liability has the meaning given by section 45-35.

financial year means a period of 12 months beginning on 1 July.

fixed trust: A trust is a ***fixed trust*** if taxpayers have fixed entitlements to all of the income and capital of the trust.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

foreign resident means a taxpayer who is not an Australian resident.

franking account balance [*will be defined when the provisions on franking an imputation are included*].

friendly society means a society registered as a friendly society under an *Australian law.

G

government body not subject to tax means:

(a) a government, or an authority of a government, that is not liable to income tax; or

(b) an STB (State/Territory Body) (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose income is wholly exempt from income tax; or

(c) a body or association to which one of the following provisions of the *Income Tax Assessment Act 1997* applies:

  (i) subsection 30-20(1) (hospitals and other health bodies); or

  (ii) subsection 30-25(1) (educational bodies); or

  (iii) section 50-25 (municipal, local government and other government bodies).

H

hold:

(a) ***hold*** an asset has the meaning given by section 6-15; and

(b) ***hold*** a *car has the meaning given by [*equivalent of section 28-90 in the Income Tax Assessment Act 1997*].

horticultural plant has the meaning given by section 40-425.

I

income tax means income tax imposed by any of these:

(a) the *Income Tax Act 1986*;

(b) the *Income Tax (Diverted Income) Act 1981*;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the *Income Tax (Former Complying Superannuation Funds) Act 1994*;

(d) the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*;

(e) the *Income Tax (Fund Contributions) Act 1989*.

income tax law adjustment has the meaning given by section 5-90.

income year: the basic meaning is given by subsection 4-10(2). Some provisions refer to a particular income year. (They may describe it in different ways: for example, as the income year ending on 30 June 2001, or the 2000-01 income year.) For a taxpayer who adopts an accounting period in place of the particular income year, the reference includes that accounting period.

Note: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

increasing adjustment has the meaning given by section 5-95 and the provisions listed in the table in section 5-100.

individual means a natural person.

in-house software has the meaning given by section 40-55.

L

land has a meaning affected by paragraph 22(1)(c) of the *Acts Interpretation Act 1901* (which extends the meaning to include, for example, interests in land).

*The definition of **land** will be extended as necessary to ensure that it covers interests like company share title to part of a building.*

landcare asset has the meaning given by section 40-415.

liable: To avoid doubt, ***liable*** is another part of speech or grammatical form of *liability, and so has a corresponding meaning.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: This clarifies the application of section 18A of the *Acts Interpretation Act 1901*, which gives a corresponding meaning to other parts of speech and grammatical forms of a word that is given a particular meaning by an Act.

liability has the meaning given by section 6-20.

Note: ***Liability*** and its grammatical forms are not asterisked in this Act.

life insurance company means a company registered under the *Life Insurance Act 1995*.

limited partnership means a partnership where the liability of at least one of the partners is limited.

live stock does *not* include animals used as beasts of burden or working beasts in a *business other than a *primary production business.

low-cost asset has the meaning given by section 40-160.

luxury car has the same meaning as in Division 42A in Schedule 2E to the *Income Tax Assessment Act 1936*.

luxury car limit has the meaning given by section 40-625.

M

market value of a *non-cash benefit: In working out the market value of a *non-cash benefit, disregard anything that would prevent or restrict conversion of the benefit to money.

member of a tax entity has the meaning given by section 960-115.

membership interest in a tax entity has the meaning given by section 960-120.

minimum membership requirement has the meaning given by subsection 157-110(2).

money means:
- (a) money in hand (whether or not in Australian currency); and
- (b) a credit balance in a *money account.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

> *The Report proposes a treatment for amounts in overseas currency, including their conversion to Australian currency and any resulting foreign exchange gains or losses.*

money account has the meaning given by section 5-60.

N

net exempt income has the meaning given by Subdivision 5-D.

net income has the meaning given by section 5-55.

net realisable value of an item of *trading stock has the meaning given by section 38-20.

non-cash benefit has the meaning given by section 6-125.

non-commercial loan means a loan by a tax entity to a taxpayer, or by a taxpayer to a tax entity, in relation to which one or more of the following conditions is satisfied:

(a) the loan is not made under a written agreement;

(b) the interest rate payable on the loan for an income year after the income year in which the loan is made is less than the interest rate known as the "Indicator Lending Rates—Bank variable housing loan rate" most recently published by the Reserve Bank of Australia before the start of the income year in which the loan is made;

(c) the maximum term of the loan must exceed:

(i) 25 years for a loan secured over real property; or

(ii) 7 years for any other kind of loan.

non-depreciating asset means an asset that is not a *depreciating asset.

non-routine lease means [*to be defined in Subdivision 96-B*].

non-routine right means [*to be defined in Subdivision 96-B*].

O

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

on-market buy back: A tax entity makes an ***on-market buy back*** of a *membership interest in the entity if:

(a) the membership interest is listed for quotation in the official list of a stock exchange in Australia or elsewhere; and

(b) the entity buys the membership interest in the ordinary course of trading of the stock exchange.

A membership interest is not bought in the ordinary course of trading of a stock exchange if it is described as "special" when it is reported to the stock exchange under the exchange's rules.

opening tax value of an asset or liability for an income year has the meaning given by section 5-70.

P

partnership means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company.

pay has a meaning affected by sections 5-60 and 5-65.

Note: ***Pay*** and its grammatical forms are not asterisked in this Act.

person includes a company.

pool has the meaning given by section 40-125.

pooled superannuation trust means a pooled superannuation trust within the meaning of section 48 of the *Superannuation Industry (Supervision) Act 1993*.

pre-CGT membership interest held by a taxpayer means a *membership interest that was acquired by the taxpayer before 20 September 1985.

primary production business means a *business of:

(a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or

(c) manufacturing dairy produce from raw material that you produced; or

(d) conducting operations relating directly to taking or catching fish, turtles, dugong, beche-de-mer, crustaceans or aquatic molluscs; or

(e) conducting operations relating directly to taking or culturing pearls or pearl shell; or

(f) planting or tending trees in a plantation or forest that are intended to be felled; or

(g) felling trees in a plantation or forest; or

(h) transporting trees, or parts of trees, that you felled in a plantation or forest to the place:

  (i) where they are first to be milled or processed; or

  (ii) from which they are to be transported to the place where they are first to be milled or processed.

prime cost rate has the meaning given by section 40-50.

prior taxed amount has the meaning given by section 153-40.

private asset has the meaning given by section 12-20.

private liability has the meaning given by section 12-20.

proceeds of a *realisation event for an asset means [*to be defined*].

profits first rule means the rule in section 154-1.

project amount has the meaning given by section 40-130.

proportionate rearrangement of membership interests has the meaning given by section 960-180.

R

realisation event for an asset [*to be defined*].

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

rearrangement of membership interests has the meaning given by section 960-175.

receive has a meaning affected by sections 5-60 and 5-65.

Note: ***Receive*** and its grammatical forms are not asterisked in this Act.

registered managed investment scheme means a managed investment scheme (within the meaning of the Corporations Law) that is registered under section 601EB of that Law.

representative for a tax entity that is not a legal person has the meaning given in subsection 161-1(2).

right includes a right that is not recognised by law or is not legally enforceable.

Note: ***Right*** and its grammatical forms are not asterisked in this Act.

routine lease:

(a) of a *depreciating asset, has the meaning given by section 96-105; and

(b) of a *non-depreciating asset, has the meaning given by section 96-205.

routine right:

(a) in respect of a *depreciating asset, has the meaning given by section 96-105; and

(b) in respect of a *non-depreciating asset, has the meaning given by section 96-205.

S

short-term hire agreement has the meaning given by section 40-625.

start time: The ***start time*** for an asset or an *amortisable payment is worked out as set out in this table:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***Start time* for assets**		
Item	**Type of asset**	**See:**
1	*Depreciating assets—general	Section 40-25
2	Project development pools	Section 40-145
3	*Depreciating assets—landcare and primary production	Section 40-430
4	*Amortisable payment	Section 40-535

T

tangible asset includes *land.

tax means:

(a) income tax imposed by the *Income Tax Act 1986*, as assessed under this Act; or

(b) income tax imposed as such by any other Act, as assessed under this Act.

(This definition does not apply for the purposes of the definition of ***tax imposed by an Australian law***.)

taxable income has the meaning given by section 5-15.

taxable purpose has the meaning given by section 40-25.

taxed profit component has the meaning given by sections 154-90 to 154-100.

tax entity has the meaning given by section 960-105.

Note: ***Tax entity*** and its grammatical forms are not asterisked in this Act.

tax free recipient: The tax-free recipient of a *prior taxed amount is the taxpayer specified as the tax-free recipient for that amount in section 153-40.

tax imposed by an Australian law means an amount of tax (however described) imposed by an *Australian law.

Note: For a list of cases where taxable income is worked out in a special way, see subsection 5-15(4).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

tax offset has the meaning given by section 5-10.

taxpayer has the meaning given by section 960-100.

Note: ***Taxpayer*** and its grammatical forms are not asterisked in this Act.

tax value of an asset or liability at a particular time has the meaning given by Division 6.

Note: ***Tax value*** and its grammatical forms are not asterisked in this Act.

term of a lease or right has the meaning given by section 96-110.

TFN means a tax file number as defined in Part VA of the *Income Tax Assessment Act 1936*.

trading stock has the meaning given by section 38-10.

trustee means [*to be defined*].

U

unused tax losses means [*to be defined*].

W

water facility has the meaning given by section 40-420.

widely-held has the meaning given by section 960-110.

wind down period for a collective investment vehicle has the meaning given by subsection 157-110(8).

(2) So far as a provision of the *A New Tax System (Income Tax Assessment) Act 1999* gives an expression a particular meaning, the provision does *not* also have effect for the purposes of the *Income Tax Assessment Act 1936* (***the 1936 Act***), except as provided in the 1936 Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Do not delete the above section break