

- (a) was not a *creditable importation; or
- (b) was *partly creditable;

but only to the extent that that payment of assessed GST exceeds the *input tax credit (if any) to which you are entitled for that importation.

SECTION 27-20 Elements in calculation of amounts

27-20 In calculating an amount that you may be able to deduct:

- (a) an element in the calculation that is an amount paid or payable is treated as not including an amount equal to any *input tax credit for an *acquisition related to the amount paid or payable, or any *decreasing adjustment related to that amount; and
- (b) an element in the calculation that is an amount received or receivable is treated as not including an amount equal to any *GST payable on a *taxable supply related to the amount received or receivable, or any *increasing adjustment related to that amount.

* * *

SECTION 27-35 Certain sections not to apply to certain assets or expenditure

27-35 Sections 27-5, 27-10, 27-15 and 27-20 do not apply to assets, or to expenditure, for which you can deduct amounts under Division 40 or 328.

Note: See instead Subdivision 27-B.

Subdivision 27-B — Effect of input tax credits etc. on capital allowances

SECTION 27-80 Cost or opening adjustable value of depreciating assets reduced for input tax credits

27-80(1) A *depreciating asset's *cost is reduced if:

- (a) an entity's acquisition or importation of the asset constitutes a *creditable acquisition or *creditable importation; and
- (b) the entity is or becomes entitled to an *input tax credit for the acquisition or importation; and
- (c) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

27-80(2) A *depreciating asset's *cost is also reduced if:

- (a) the entity that *holds the asset incurs expenditure that is included in the second element of the asset's cost for the income year in which the asset's *start time occurs; and
- (b) the entity is or becomes entitled to an *input tax credit for the *creditable acquisition or *creditable importation to which the expenditure relates; and
- (c) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

27-80(3) However, subsections (1) and (2) do not apply if the *cost of the *depreciating asset is modified under Division 40 to be its *market value.

27-80(3A) A *depreciating asset's *opening adjustable value for an income year and its *cost is reduced if:

- (a) an entity's acquisition or importation of the asset constitutes a *creditable acquisition or *creditable importation; and

- (b) the entity is or becomes entitled to an *input tax credit in an income year (the *credit year*) for the acquisition or importation and the credit year occurs after the income year in which the acquisition or importation occurred; and
- (c) the income year is after the one in which the asset's *start time occurs; and
- (d) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

27-80(4) A *depreciating asset's *opening adjustable value for an income year and its *cost is reduced if:

- (a) the entity that *holds the asset incurs expenditure that is included in the second element of the asset's cost for that income year; and
- (b) that income year is after the one in which the asset's *start time occurs; and
- (c) the entity is or becomes entitled to an *input tax credit for the *creditable acquisition or *creditable importation to which the expenditure relates for the income year in which the expenditure was incurred; and
- (d) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

27-80(5) If the reduction under subsection (2), (3A) or (4) is more than:

- (a) for a subsection (2) case — the *depreciating asset's *cost; or
- (b) for a subsection (3A) or (4) case — the depreciating asset's *opening adjustable value;

the excess is included in the entity's assessable income unless the entity is an *exempt entity.

Exception: pooling

27-80(6) This section does not apply to:

- (a) a depreciating asset allocated to a low-value pool or a pool under Division 328 for or in the *current year; or
- (b) *in-house software if expenditure on the software is allocated to a software development pool for the current year; or
- (c) a project pool.

SECTION 27-85 Cost or opening adjustable value of depreciating assets reduced: decreasing adjustments

27-85(1) This section applies to an entity if:

- (a) the entity can deduct amounts for a *depreciating asset under Division 40 or 328; and
- (b) the entity has a *decreasing adjustment in an income year that relates directly or indirectly to the asset.

27-85(1A) However, this section does not apply to a *decreasing adjustment that arises under Division 129 or 132 of the *GST Act.

Note: See instead section 27-87.

27-85(2) The asset's *cost is reduced by an amount equal to the *decreasing adjustment if the adjustment arises in the income year in which the asset's *start time occurs.

SECTION 40-520 Meaning of water facility and horticultural plant**40-520(1)** A *water facility* is:

- (a) *plant or a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to plant or a structural improvement, that is primarily and principally for the purpose of conserving or conveying water; or
- (b) a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to conserving or conveying water.

Example:

Examples of a water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill. Examples of things reasonably incidental to conserving or conveying water include a culvert, a fence to prevent livestock entering an irrigation channel and a bridge over an irrigation channel.

40-520(2) A *horticultural plant* is a live plant or fungus that is cultivated or propagated for any of its products or parts.**SECTION 40-525 Conditions***Water facilities***40-525(1)** The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility must have been incurred:

- (a) primarily and principally for the purpose of conserving or conveying water for use in a *primary production business that you conduct on land in Australia; or
- (b) for expenditure incurred by an *irrigation water provider — primarily and principally for the purpose of conserving or conveying water for use in primary production businesses conducted by other entities on land in Australia, being entities supplied with water by the irrigation water provider.

Note: If Division 250 applies to you and an asset that is a water facility:

- (a) if section 250-150 applies — the condition in this subsection is taken to be satisfied for the facility to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise — the condition in this subsection is taken not to be satisfied for the facility.

*Horticultural plants***40-525(2)** One of the conditions in this table must be satisfied:**Conditions relating to horticultural plants**

Item	Condition
1	You own the *horticultural plant and any holder of a lease, lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land
2	The *horticultural plant is attached to land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and: <ul style="list-style-type: none"> (a) the lease or quasi-ownership right enables you to carry on a *business of *horticulture on the land; and (b) any holder of a lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land.

Conditions relating to horticultural plants

Item	Condition
3	You: <ul style="list-style-type: none"> (a) hold a licence relating to the land to which the *horticultural plant is attached; and (b) carry on a *business of *horticulture on the land as a result of holding the licence.

Note: If Division 250 applies to you and an asset that is a horticultural plant:

- (a) if section 250-150 applies — a condition in this subsection is taken to be satisfied for the plant to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise — the conditions in this subsection are taken not to be satisfied for the horticultural plant.

SECTION 40-530 When a water facility or horticultural plant starts to decline in value**40-530** A *water facility or horticultural plant starts to decline in value in the income year worked out using this table:

Start of decline in value		Starts to decline in value in:
Item	This asset:	
1	A *water facility	the income year in which you first incur expenditure on the facility
2	A *horticultural plant	(a) if you are the first entity to satisfy a condition in subsection 40-525(2) for the plant — the income year in which the first commercial season starts; or (b) if not — the later of the income year in which you first satisfied that condition and the income year in which the first commercial season starts

SECTION 40-540 How you work out the decline in value for water facilities**40-540** You work out the decline in value of a *water facility for an income year in this way for the income year in which you incurred the expenditure and the 2 following years:Expenditure \times 33 $\frac{1}{3}$ %

where:

expenditure is the amount of capital expenditure (disregarding expenditure that you cannot deduct because of section 26-100 (about water infrastructure improvement expenditure)) you incurred on the construction, manufacture, installation or acquisition of the water facility.

SECTION 40-545 How you work out the decline in value for horticultural plants**40-545(1)** The decline in value of a *horticultural plant for the income year in which it starts to decline in value is all of the capital expenditure attributable to the establishment of the plant if its *effective life is less than 3 years.

SECTION 83A-315 Market value of ESS interest

83A-315(1) Whenever this Division uses the *market value of an *ESS interest, instead use the amount specified in the regulations for the purposes of this section in relation to the interest, if the regulations specify such an amount.

83A-315(2) To avoid doubt, apply the rule in subsection (1) to the *market value component of any calculation for the purposes of this Division that involves market value.

Example:

If the regulations specify an amount in relation to an ESS interest, use that amount instead of the market value of the interest in working out:

- (a) whether there is a discount given in relation to interest; and
- (b) if so — the amount of the discount.

* * *

PART 2-42 — PERSONAL SERVICES INCOME**Division 84 — Introduction****Guide to Part 2-42****SECTION 84-1 What this Part is about**

This Part is about 2 issues relating to personal services income.

Division 85 limits the entitlements of individuals to deductions relating to their personal services income.

Division 86 sets out the tax consequences of individuals' personal services income being diverted to other entities (often called alienation of the income).

These Divisions do not affect individuals or other entities that conduct personal services businesses. Division 87 defines personal services businesses.

Note: This Part may not apply until the 2002-03 income year to participants in the prescribed payments system on 13 April 2000: see item 26 of Schedule 1 to the *New Business Tax System (Alienation of Personal Services Income) Act 2000*.

Operative provisions**SECTION 84-5 Meaning of personal services income**

84-5(1) Your *ordinary income or *statutory income, or the ordinary income or statutory income of any other entity, is your *personal services income* if the income is mainly a reward for your personal efforts or skills (or would mainly be such a reward if it was your income).

Example 1:

NewIT Pty. Ltd. provides computer programming services, but Ron does all the work involved in providing those services. Ron uses the clients' equipment and software to do the work. NewIT's ordinary income from providing the services is Ron's personal services income because it is a reward for his personal efforts or skills.

Example 2:

Trux Pty. Ltd. owns one semi-trailer, and Tom is the only person who drives it. Trux's ordinary income from transporting goods is not Tom's personal services income because it is produced mainly by use of the semi-trailer, and not mainly as a reward for Tom's personal efforts or skills.

Example 3:

Jim works as an accountant for a large accounting firm that employs many accountants. None of the firm's ordinary income or statutory income is Jim's personal services income because it is produced mainly by the firm's business structure, and not mainly as a reward for Jim's personal efforts or skills.

84-5(2) Only individuals can have personal services income.

84-5(3) This section applies whether the income is for doing work or is for producing a result.

84-5(4) The fact that the income is payable under a contract does not stop the income being mainly a reward for your personal efforts or skills.

* * *

Division 85 — Deductions relating to personal services income**Guide to Division 85****SECTION 85-1 What this Division is about**

This Division sets out amounts, relating to personal services income, that an individual cannot deduct. In particular, deductions that are unavailable to an employee are similarly unavailable to an individual who has personal services income and who is not an employee.

However, this Division does not apply if the individual is conducting a personal services business or receives the income as an employee or office holder.

Operative provisions**SECTION 85-5 Object of this Division**

85-5 The object of this Division is to ensure that individuals who are not conducting *personal services businesses cannot deduct certain amounts (such as amounts that employees cannot deduct).

Note: This Division also affects the extent to which a personal services entity is entitled to deductions relating to gaining or producing an individual's personal services income: see section 86-60.

SECTION 85-10 Deductions for non-employees relating to personal services income

85-10(1) You cannot deduct under this Act an amount to the extent that it relates to gaining or producing that part of your *ordinary income or *statutory income that is your *personal services income if:

- (a) the income is not payable to you as an employee; and
- (b) you would not be able to deduct the amount under this Act if the income were payable to you as an employee.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvement: see section 116-40.

Related improvements to pre-CGT assets

108-70(3) Capital improvements to a *CGT asset (the *original asset*) that you *acquired before 20 September 1985 that are related to each other are taken to be a separate *CGT asset if the total of their *cost bases (assuming each one were a separate CGT asset) when a *CGT event happens in relation to the original asset is:

- (a) more than the *improvement threshold for the income year in which the event happened; and
- (b) more than 5% of the *capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvements: see section 116-40.

Some improvements not relevant

108-70(4) This section does not apply to a capital improvement:

- (a) that took place under a contract that you entered into before 20 September 1985; or
- (b) if there is no contract — that started or occurred before that day.

108-70(5) Subsections (2) and (3) do not apply if the capital improvement is made to:

- (a) a *Crown lease; or
- (b) a *prospecting entitlement or *mining entitlement; or
- (c) a *statutory licence; or
- (d) a *depreciating asset to which Subdivision 124-K applies.

Note: Section 108-75 deals with this situation.

108-70(6) This section does not apply to a capital improvement consisting of repairs to or restoration of a *CGT asset *acquired before 20 September 1985 in circumstances where there is a roll-over under Subdivision 124-B.

* * *

SECTION 108-85 Meaning of improvement threshold

108-85(1) The *improvement threshold* for the 1997-98 income year is \$89,992.

108-85(2) The *improvement threshold is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

108-85(3) The Commissioner must publish before the beginning of each *financial year the *improvement threshold for that year.

[CCH Note: The following table sets out the improvement threshold for the specified financial years:

Financial year	Threshold (\$)	Financial year	Threshold (\$)
		2004/05	106,882
1998/99	89,992	2005/06	109,447
1999/2000	91,072	2006/07	112,512
2000/01	92,802	2007/08	116,337
2001/02	97,721	2008/09	119,594
2002/03	101,239	2009/10	124,258
2003/04	104,377	2010/11	126,619

Div 109 — Acquisition of CGT assets

Subdiv 109-A — Operative rules

Financial year	Threshold (\$)	Financial year	Threshold (\$)
2011/12	130,418	2013/14	136,884
2012/13	134,200	2014/15	140,443]

Division 109 — Acquisition of CGT assets

Guide to Division 109

SECTION 109-1 What this Division is about

This Division sets out the ways in which you can *acquire* a CGT asset and the time of acquisition.

The time of acquisition is important for indexation, and for the exemption of assets acquired before 20 September 1985.

Generally, you *acquire* a CGT asset when you become its owner. You can also *acquire* a CGT asset:

- as a result of a CGT event happening: see section 109-5; or
- in other circumstances: see section 109-10.

This Division also directs you to special acquisition rules in other Divisions.

Subdivision 109-A — Operative rules

SECTION 109-5 General acquisition rules

109-5(1) In general, you *acquire* a *CGT asset when you become its owner. In this case, the time when you *acquire the asset is when you become its owner.

109-5(2) This table sets out specific rules for the circumstances in which, and the time at which, you *acquire* a *CGT asset as a result of a *CGT event happening.

Note: The full list of CGT events is in section 104-5.

Acquisition rules (CGT events)

Event Number	In these circumstances:	You acquire the asset at this time:
AI (case 1)	An entity *disposes of a CGT asset to you (except where you compulsorily acquire it)	when the disposal contract is entered into or, if none, when the entity stops being the asset's owner
AI (case 2)	You compulsorily acquire a *CGT asset from another entity	the earliest of: <ul style="list-style-type: none"> (a) when you paid compensation to the entity; or (b) when you became the asset's owner; or (c) when you entered the asset under the power of compulsory acquisition; or (d) when you took possession of it under that power

surrendered or forfeited) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the lease property.

The payment or expenditure can include giving property: see section 103-5.

SECTION 132-10 Grant of a long-term lease

132-10(1) These rules apply if *CGT event F2 happens for a lessor of property.

132-10(2) For any later *CGT event that happens to the land or the lessor's lease of any building, part of a building, structure or improvement that is treated as a separate *CGT asset) excludes:

- (a) any expenditure incurred before *CGT event F2 happens; and
- (b) the *cost of any *depreciating asset for which the lessor has deducted or can deduct an amount for the asset's decline in value under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

132-10(3) The fourth element of the property's *cost base and *reduced cost base includes any payment by the lessor to the lessee to vary or waive a term of the lease for the forfeiture or surrender of the lease, reduced by the amount of any *input tax credit to which the lessor is entitled for the variation or waiver.

132-10(4) The expenditure or payment can include giving property: see section 103-5.

SECTION 132-15 Lessee of land acquires reversionary interest of lessor

132-15(1) This table sets out what happens if:

- (a) the lessee of land *acquires the reversionary interest of the lessor in the land; and
- (b) Subdivision 124-J (roll-over provisions for Crown leases) does not apply to the acquisition.

Lessee acquires reversionary interest of lessor

Item	In this situation:	The lessee is taken to have *acquired the land at this time:	The lessee is taken to have acquired the land for:
1	The lease was originally granted for 99 years or more	When the lease was granted or assigned to the lessee	Any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to *acquire the reversionary interest
2	The lease was originally granted for less than 99 years	When the lessee *acquired the reversionary interest	<p>(a) if the lessee *acquired the lease after 19 September 1985 — any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to acquire the reversionary interest; or</p> <p>(b) if the lessee acquired the lease before 20 September 1985 — the *market value of the land when the lessee acquired it</p>

132-15(2) All the payments can include giving property: see section 103-5.

Sec 132-10(1)

Note: CGT events F1 to F5 deal specifically with leases. See also (in particular) CGT event C2 (about cancellation, surrender and similar endings).

Division 134 — Options

SECTION 134-1 Exercise of options

134-1(1) This table sets out the effects of the exercise of an option (including an option that has been renewed or extended) on the *cost bases and *reduced cost bases of the grantor and the entity that exercises the option (the *grantee*).

Exercise of options

Item	In this situation:	Effect of cost base and reduced cost base:
1	Option binds grantor to: (a) *dispose of a *CGT asset; or (b) create (including grant or issue) a CGT asset (call option)	<p><i>For the grantee</i> The first element of the grantee's *cost base and *reduced cost base for the CGT asset is what the grantee paid for the option (or to renew or extend it) plus any amount the grantee paid to exercise it</p> <p><i>For the grantor</i> See section 116-65</p>
2	Option binds grantor to *acquire a *CGT asset (put option)	<p><i>For the grantor</i> The first element of the grantor's *cost base and *reduced cost base for the asset acquired is any amount paid to exercise the option reduced by any payment received by the grantor for the option (or to renew or extend it)</p> <p><i>For the grantee</i> The second element of the grantee's cost base and reduced cost base for the asset acquired by the grantor includes any payment the grantee made to acquire the option (or to renew or extend it)</p>

Note 1: If you granted, renewed or extended an option, CGT event C3 or D2 may happen.

Note 2: Item 1 in the table is modified for certain options granted before 20 September 1985: see section 134-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: Item 1 in the table is modified for ESS interests acquired under employee share schemes: see Division 83A and section 112-97.

Note 4: This Division has no operation in relation to an option acquired under an employee share scheme if the option is exercised before the ESS deferred taxing point for the option: see Subdivision 130-D. Division 83A applies instead.

134-1(2) All the payments can include giving property: see section 103-5.

Example 1:

Steven obtains an option to buy a yacht (for \$75,000) from Tom. Steven pays \$5,000 for the option.

Steven exercises the option. The first element of his cost base and reduced cost base for the yacht includes the expenditure he incurred for the option.

So, the first element of his cost base and reduced cost base for the yacht is:

$$\$75,000 + \$5,000 = \$80,000$$

SECTION 160APHQ PERSONS QUALIFIED BY HOLDING SHARES OR INTERESTS IN SHARES WHERE THE SHARES WERE ISSUED IN CONNECTION WITH A WINDING UP

160APHQ A taxpayer who has held shares, or an interest in shares, in a company on which a dividend is paid is a *qualified person* in relation to the dividend if:

- (a) the shares were issued in connection with a proposed winding up of the company; and
- (b) the shares or interest was not disposed of by the taxpayer before the commencement of the winding up; and
- (c) neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend.

[S 160APHQ inserted by No 93 of 1999.]

SECTION 160APHR PERSONS QUALIFIED BY ELECTING TO HAVE FRANKING CREDIT CEILINGS AND FRANKING REBATE CEILINGS APPLIED BY REFERENCE TO FRANKING CREDITS OR REBATES ON A BENCHMARK PORTFOLIO OF SHARES

160APHR(1) Taxpayers who may make election. Subject to this section, a taxpayer referred to in any of the following paragraphs may elect to have Subdivision BA of Division 7 apply to the taxpayer, in respect of a year of income specified in the election (the *specified year of income*) and all later years of income, in relation to shares, or an interest in shares, managed by or on behalf of the taxpayer as or in a discrete fund (the *managed fund*):

- (a) the trustee of a unit trust that, at the time when the election is made, is a listed widely held trust (as defined in section 272-115 in Schedule 2F to the *Income Tax Assessment Act 1936*;
- (b) the trustee of a unit trust that, at the time when the election is made, is an unlisted very widely held trust (as defined in section 272-120 in Schedule 2F to the *Income Tax Assessment Act 1936*;
- (c) a life assurance company within the meaning of section 110;
- (d) a general insurance company (as defined in subsection 121AB(4));
- (e) a friendly society;
- (f) an organisation referred to in subparagraph 23(eb)(i) that only carries on business as a registered health benefits organisation within the meaning of the *National Health Act 1953*;
- (g) the trustee of a fund (other than an excluded fund) that is a complying superannuation fund for the purposes of Part IX in relation to the specified year of income;
- (h) the trustee of a fund (other than an excluded fund) that is a complying ADF for the purposes of Part IX in relation to the specified year of income;
- (i) the trustee of a unit trust that is a pooled superannuation trust for the purposes of Part IX in relation to the specified year of income;
- (j) a taxpayer who is declared by the regulations to be a taxpayer, or is included in a class of taxpayers who are declared by the regulations to be taxpayers, to whom this section applies in relation to the specified year of income;
- (k) the trustee of a unit trust if, at the time when the election is made:

- (i) at least 75% of the units are held by a person who is, or persons each of whom is, a person referred to

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in a preceding paragraph or a prescribed person in relation to the trust; and

- (ii) all of the units carry the same rights; and
- (iii) if the units are redeemable, they are redeemable for a price determined on the basis of the trust's net asset value, according to Australian accounting principles; and
- (iv) the trust engages only in qualifying activities.

[CCH Note: Yields for the ASX All Ordinaries Index are set out on the ATO assist web site at www.ato.gov.au under "Business", search for "franking".]

160APHR(2) Regulations may preclude election. A taxpayer referred to in any of paragraphs (1)(a) to (k) and (k) cannot make an election under subsection (1) if, under the regulations, the taxpayer is precluded from making such an election.

160APHR(3) Election ineffective if related payments made. An election under subsection (1) does not have any effect in respect of a particular dividend or distribution if:

- (a) the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend or distribution; and
- (b) the payment was or will be a payment of a prescribed kind.

160APHR(4) Prescribed kinds of payments. For the purposes of subsection (3), a payment is taken to have been, or will be, a *payment of a prescribed kind* if:

(a) unless the regulations otherwise provide, the payment occurred or will occur pursuant to:

- (i) an obligation under a securities lending arrangement (other than such an obligation to which section 160AQUA applies); or
- (ii) an obligation under an arrangement of a kind known as an equity swap; or

(b) the payment is included in a class of payments declared by the regulations to be payments to which subsection (3) applies.

160APHR(5) Consequences of ineffective elections. If an election under subsection (1) does not have any effect in respect of a particular dividend or distribution because of subsection (3), neither the share nor the interest in respect of which the dividend or distribution was made, nor the positions that the taxpayer has in relation to the share or interest, are to be taken into account in calculating the net equity exposure that the managed fund has in shares, or interests in shares, included in the fund for the purposes of section 160AQZH.

160APHR(6) Commissioner's consent required for revocation of election. An election under subsection (1) is irrevocable without the consent of the Commissioner.

160APHR(7) Breach of condition of consent. If:

- (a) the Commissioner consents to the revocation of an election subject to specified conditions; and
 - (b) the election is revoked but any of the conditions is breached;
- the revocation of the election is taken not to have been made.

160APHR(8) Taxpayer making election is a qualified person. A taxpayer who makes an election under subsection (1) is a *qualified person* in relation to every

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dividend paid during a year of income to which the election applies on shares to which the election applies which are held by the taxpayer or in which the taxpayer has an interest.

[S 160APHR(8) amended by No 58 of 2000, s 3 and Sch 3 item 4, by inserting "to which the election applies which are" after "shares", effective 16 July 1999.]

160APHR(9) Effect of determination by Commissioner. If the Commissioner has made a determination under subsection 177EA(5) in respect of:

(a) a dividend paid in respect of shares held by a taxpayer; or

(b) a distribution that:

- (i) was derived from a dividend paid in respect of shares; and
- (ii) is made in respect of an interest held by a taxpayer in the shares;

the following paragraphs have effect:

(c) if the shares or interest is included in a discrete fund to which an election under subsection (1) relates — the Commissioner may determine that the election ceases or ceased to have effect from the beginning of the year of income in which the determination was made or from the beginning of a later year of income specified in the determination;

(d) if the shares or interest is not included in such a fund — the taxpayer is not entitled, without the consent of the Commissioner, to make an election under subsection (1).

A determination under this subsection has effect according to its terms.

160APHR(10) Effect of entering into certain positions. If:

- (a) an election made by a taxpayer under subsection (1) is in force in respect of the shares or interests in shares included in a discrete fund managed by or on behalf of the taxpayer; and

(b) the Commissioner informs the taxpayer that the Commissioner is of the opinion that:

- (i) the taxpayer has entered into, or caused another person (for example, the asset overlay manager of the fund) on behalf of the taxpayer, to enter into; or
- (ii) under an arrangement to which the taxpayer and an associate are parties, the associate has entered into;

a position or positions that, apart from this subsection, would not be taken into account under subsection 160AQZH(2) for a purpose of materially diminishing risks of loss and opportunities for gain in respect of the shares or interests;

the following provisions have effect:

(c) the short position or positions are to be taken into account under subsection 160AQZH(2);

(d) the Commissioner may determine that the election ceases or ceased to have effect from a time specified in the determination;

(e) if such a determination is made:

(i) the determination has effect according to its terms; and

(ii) the taxpayer is not entitled to make another election under subsection (1) without the consent of the Commissioner; and

(iii) if the Commissioner consents to the making of such an election subject to specified conditions and the election is made but any of the conditions is

breached — the election is taken not to have been made.

160APHR(11) Definitions. In this section:

excluded fund has the meaning given by subsection 10(1) of the *Superannuation Industry Supervision Act 1993*.

qualifying activity means an activity that:

- (a) is an investment or business activity; and
- (b) is conducted in accordance with the trust instrument or deed, and any prospectus, of the relevant trust; and
- (c) is conducted at arm's length.

[S 160APHR inserted by No 93 of 1999.]

SECTION 160APHS PRESCRIBED PERSONS IN RELATION TO A UNIT TRUST

160APHS(1) This section has effect for the purposes of subparagraph (c)(i) of the definition of *widely held trust* in section 160APHD and subparagraph 160APHR(1)(k)(i).

160APHS(2) A company is a *prescribed person* in relation to a unit trust if:

- (a) the company is a non-resident; or
- (b) were the company to receive a distribution from the trust, the distribution would be exempt income of the company for the purposes of this Part.

160APHS(3) A trustee is a *prescribed person* in relation to a unit trust if:

- (a) all the beneficiaries in the trust are prescribed persons under other provisions of this section; or
- (b) were the trustee to receive a distribution from the trust, the distribution would be exempt income of the trust estate for the purposes of this Part.

160APHS(4) A partnership is a *prescribed person* in relation to a unit trust if:

- (a) all the partners are prescribed persons under other provisions of this section; or
- (b) were the partnership to receive a distribution from the trust, the distribution would be exempt income of the partnership for the purposes of this Part.

160APHS(5) An individual (other than a trustee) is a *prescribed person* in relation to a unit trust if:

- (a) he or she is a non-resident; or
- (b) were he or she to receive a distribution from the trust, the distribution would be exempt income of the individual for the purposes of this Part.

160APHS(6) The Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island are *prescribed persons* in relation to a unit trust.

[S 160APHS inserted by No 93 of 1999.]

SECTION 160APHT INDIVIDUAL TAXPAYERS QUALIFIED AS SMALL SHAREHOLDERS

160APHT(1) A taxpayer is a *qualified person* in relation to all dividends paid during a year of income on shares that the taxpayer held or held an interest in if:

- (a) the taxpayer is an individual; and
- (b) the total of the amounts of the rebates to which the taxpayer would be entitled under sections 160AQU, 160AQX and 160AQZ in respect of the year of income if the taxpayer were a qualified person in relation to each of those dividends does not exceed \$5000.

160APHT(2) A taxpayer is *not a qualified person* under subsection (1) in relation to a dividend if the taxpayer or an associate of the taxpayer:

- (b) interest, or an amount in the nature of interest, is not payable by you in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount could have been deducted by you; or
- (c) interest or an amount mentioned in paragraph (a) or (b) could have been deducted by you apart from the operation of a provision of this Act (other than paragraph 8-1(2)(a), (b) and (c)) that has the effect of preventing a deduction.

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

SECTION 245-15 Non-equity shares

245-15 This Division applies to a *non-equity share issued by a company as if it were a debt to which section 245-10 applies that is owed by the company to the relevant shareholder.

SECTION 245-20 Parts of debts

245-20 This Division applies to part of a debt in the same way as it applies to a whole debt.

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

Subdivision 245-B — What constitutes forgiveness of a debt

Guide to Subdivision 245-B

SECTION 245-30 What this Subdivision is about

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

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

Operative provisions

SECTION 245-35 What constitutes forgiveness of a debt

245-35 A debt is *forgiven* if and when:

- (a) the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or
- (b) the period within which the creditor is entitled to sue for the recovery of the debt ends, because of the operation of a statute of limitations, without the debt having been paid.

* * *

SECTION 245-40 Forgivenesses to which operative rules do not apply

245-40 Subdivisions 245-C to 245-G do not apply to a *forgiveness of a debt if:

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

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

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

Div 245 — Forgiveness of commercial debts

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

- (c) the forgiveness is effected under an Act relating to bankruptcy; or
- (d) the forgiveness is effected by will; or
- (e) the forgiveness is for reasons of natural love and affection; or
- (f) the debt is a *tax-related liability or a civil penalty under Division 290 in Schedule 1 to the *Taxation Administration Act 1953* (about penalties for promoters and implementers of tax avoidance schemes).

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

* * *

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

Guide to Subdivision 245-C

SECTION 245-48 What this Subdivision is about

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

- (a) the value of the debt when it was forgiven is worked out on the basis that you were solvent both then and when you incurred the debt; and
- (b) the value of the debt is then offset by any consideration given for the forgiveness of the debt.

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

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

Working out the value of a debt

SECTION 245-50 Extent of forgiveness if consideration is given

245-50 If any consideration is paid or given in respect of the *forgiveness of a debt, the debt that is forgiven is:

- (a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and
- (b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

Example:

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

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

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

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

Rate of R&D tax offset		
Item	In this case:	The percentage is:
1	the *R&D entity's *aggregated turnover for the income year is less than \$20 million (and item 2 of this table does not apply)	45%
2	at any time during the income year an *exempt entity, or combination of exempt entities, would control the *R&D entity in a way described in section 328-125 (connected entities) if: (a) references in section 328-125 to 40% were references to 50%; and (b) subsection 328-125(6) were ignored	40%
3	any other case	40%

Note: The tax offset will be a refundable tax offset if the percentage applicable to the entity is 45% (see section 67-30).

If notional deductions are less than \$20,000

355-100(2) However, if the total of those amount is less than \$20,000, the *R&D entity is instead entitled to a *tax offset for the income year equal to that percentage of the total of the following kinds of expenditure (if any):

Expenditure not subject to \$20,000 threshold	
Item	Kind of expenditure
1	Expenditure: (a) that the *R&D entity can deduct under section 355-205 (R&D expenditure) for the income year; and (b) that was incurred to a research service provider (within the meaning of the <i>Industry Research and Development Act 1986</i>) that is not an *associate of the R&D entity or of the relevant *R&D partnership (as appropriate); and (c) that was for the provider to provide services, within a research field for which the provider is registered under Division 4 of Part III of that Act, applicable to one or more of the *R&D activities to which the deduction relates
2	Expenditure that the *R&D entity can deduct under section 355-580 (CRC contributions) for the income year

SECTION 355-105 Deductions under this Division are notional only

355-105 An amount (the *notional amount*) that an *R&D entity can deduct under this Division is disregarded except for the purposes of:

- working out whether the R&D entity is entitled under section 355-100 to a *tax offset; and
- a provision (of this Act or any other Act) that refers to an entitlement of the R&D entity under section 355-100 to a tax offset; and
- a provision (of this Act or any other Act) that:
 - prevents some or all of the notional amount from being deducted; or
 - changes the income year for which some or all of the notional amount can be deducted; and

Note: Examples are Divisions 26 and 27 of this Act, Subdivision H of Division 3 of Part III of the *Income Tax Assessment Act 1936* and Part IVA of that Act.

- a provision (of this Act or any other Act) that includes an amount in assessable income wholly or partly because of the notional amount; and

Note: An example is Subdivision 20-A, which may include in assessable income a recoupment of a loss or outgoing if the entity can deduct an amount for the loss or outgoing.

- a provision (of this Act or any other Act) that excludes expenditure from:
 - the *cost base or *reduced cost base of a *CGT asset; or
 - an element of that cost base or reduced cost base.

Note: An example is section 110-45, which may exclude deductible expenditure from elements of the cost base of an asset.

* * *

Subdivision 355-D — Notional deductions for R&D expenditure

SECTION 355-200 What this Subdivision is about

An R&D entity can notionally deduct its expenditure on registered R&D activities for which certain conditions are met.

There are special conditions for R&D activities conducted for foreign residents.

SECTION 355-205 When notional deductions for R&D expenditure arise

355-205(1) An *R&D entity can deduct for an income year (the *present year*) expenditure it incurs during that year to the extent that the expenditure:

- is incurred on one or more *R&D activities:
 - for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year; and
 - that are activities to which section 355-210 (conditions for R&D activities) applies; and
- if the expenditure is incurred to the R&D entity's *associate — is paid to that associate during the present year.

Note 1: If the matters in subparagraphs (a)(i) and (ii) are not satisfied until a later income year, the R&D entity will need to wait until then before it can deduct the expenditure for the present year.

Note 2: The R&D activities will need to be conducted during the income year the R&D entity is registered for those activities (see sections 27A and 27J of the *Industry Research and Development Act 1986*).

Note 3: The entity may also be able to deduct expenditure incurred to an associate in an earlier income year (see section 355-480).

Note 4: Expenditure incurred in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

355-205(2) This section has effect subject to section 355-225 (excluded expenditure), Subdivision 355-F (integrity rules) and subsection 355-580(3) (CRC contributions).

Note 2: The worldwide gearing debt amount for an entity that is also an inward investment vehicle (general) or an inward investment vehicle (financial) differs depending on whether the entity is an outward investor (general) or an outward investor (financial), see section 820-111.

Inward investment vehicles that are not eligible for the worldwide gearing debt amount

820-90(3) This subsection applies to an entity, if:

- the entity has *statement worldwide equity, or *statement worldwide assets, of nil or a negative amount; or
- *audited consolidated financial statements for the entity for the income year do not exist; or
- the result of applying the following formula is greater than 0.5:

$$\frac{\text{Average Australian assets of the entity}}{\text{*Statement worldwide assets of the entity for the income year}}$$

where:

average Australian assets of an entity is the average value, for the statement period mentioned in subsection (4), of all the assets of the entity, other than:

- any assets attributable to the entity's *overseas permanent establishments; or
- any *debt interests held by the entity, to the extent to which any value of the interests is all or a part of the *controlled foreign entity debt of the entity; or
- any *equity interests or debt interests held by the entity, to the extent to which any value of the interests is all or a part of the *controlled foreign entity equity of the entity.

820-90(4) For the purposes of the definition of *average Australian assets* in subsection (3) the statement period is the period for which the *audited consolidated financial statements for the entity for the income year have been prepared.

820-90(5) For the purposes of the formula in paragraph (3)(c), if:

- an amount is included in *statement worldwide assets in respect of an asset; and
- the asset was acquired, held or otherwise dealt with by an entity for a purpose (other than an incidental purpose) that included ensuring that subsection (3) does not apply to an entity; and
- as a result of the acquisition, holding or dealing with of the asset, the amount included in statement worldwide assets exceeds the amount (including nil) that would otherwise be so included;

apply the amount of the excess to reduce statement worldwide assets (or statement worldwide assets as reduced by a previous application of this subsection).

SECTION 820-95 Safe harbour debt amount — outward investor (general)

820-95 If the entity is an *outward investor (general) for the income year, the *safe harbour debt amount* is the result of applying the method statement in this section. In applying the method statement, disregard any amount that is attributable to the entity's *overseas permanent establishments.

Sec 820-90(3)

Div 820 — Thin capitalisation rules Subdiv 820-B — Outward investing entities (non-ADI)

Method statement

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the *associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the *associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the *controlled foreign entity debt of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the *controlled foreign entity equity of the entity.
- Step 6. Reduce the result of step 5 by the average value, for that year, of all the *non-debt liabilities of the entity. If the result of this step is a negative amount, it is taken to be nil.
- Step 7. Multiply the result of step 6 by $\frac{3}{5}$.
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the *safe harbour debt amount*.

Example:

AK Pty Ltd, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$100 million.

The average values of its excluded equity interests, associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity and non-debt liabilities are \$5 million, \$10 million, \$8 million, \$5 million, \$2 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 6) leaves \$65 million. Multiplying \$65 million by $\frac{3}{5}$ results in \$39 million. As the average value of the company's associate entity excess amount is \$4.5 million, the safe harbour debt amount is therefore \$43.5 million.

SECTION 820-100 Safe harbour debt amount — outward investor (financial)

820-100(1) If the entity is an *outward investor (financial) for the income year, the *safe harbour debt amount* is the lesser of the following amounts:

- the *total debt amount (worked out under subsection (2));
- the *adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

Total debt amount

820-100(2) The *total debt amount* is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's *overseas permanent establishments.

Method statement

- Step 1. Work out the average value, for the income year, of all the assets of the entity.

purchase price means:

- (a) in relation to a pension — the sum of:
 - (i) contributions made by any person to a foreign superannuation fund to obtain the pension; and
 - (ii) so much as the Commissioner considers reasonable of contributions made by any person to a foreign superannuation fund to obtain superannuation benefits including the pension; and
- (b) in relation to an annuity other than a pension — the sum of:
 - (i) payments made solely to purchase the annuity; and
 - (ii) so much as the Commissioner considers reasonable of payments made to purchase the annuity and to obtain other benefits.

relevant number, in relation to an annuity in relation to a year of income, means:

- (a) where the annuity is payable for a term of years certain — the number of years in the term;
- (b) where the annuity is payable during the lifetime of a person and not thereafter — the life expectation factor of the person; and
- (c) in any other case — the number that the Commissioner considers appropriate having regard to the number of years in the total period during which the annuity will be, or may reasonably be expected to be, payable.

relevant share, in relation to an annuity derived by a taxpayer during a year of income, means:

- (a) in a case where the annuity derived by the taxpayer is a share of an annuity (which annuity is in this paragraph referred to as the **total annuity**) payable to the taxpayer and another person or other persons — the fraction ascertained by dividing the number of whole dollars in the amount of the annuity derived by the taxpayer during the year of income by the number of whole dollars in the amount of the total annuity derived during the year of income by the taxpayer and the other person or persons; or
- (b) in any other case — the number 1.

residual capital value, in relation to an annuity, means the capital amount payable on the termination of the annuity.

undeducted purchase price, in relation to an annuity, has the meaning given by section 27A immediately before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*.

27H(5) ["purchase price"] In the definition of **purchase price** in subsection (4):

- (a) a reference to contributions made by any person to a foreign superannuation fund to obtain a pension does not include a reference to contributions made to a foreign superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer; and
- (b) a reference to payments made to purchase, or solely to purchase, an annuity (other than a pension) does not include a reference to payments made by an employer, or by another person under an agreement to which the employer is a party, to purchase, or solely to purchase, the annuity for, or for dependants of, an employee of the employer.

27H(6) [Meaning of employer of another person] For the purposes of subsection (5), in determining whether a person is an employer of another person, treat the holding of an office by the other person as employment of that person.

Subdivision D — Dividends

* * *

SECTION 43B APPLICATION OF SUBDIVISION TO NON-SHARE DIVIDENDS

43B(1) [Applications] This Subdivision:

- (a) applies to a non-share equity interest in the same way as it applies to a share; and
- (b) applies to an equity holder in the same way as it applies to a shareholder; and
- (c) applies to a non-share dividend in the same way as it applies to a dividend.

43B(2) [Section 47A not covered] Subsection (1) does not apply to section 47A.

43B(3) [Section 44(1) not covered] Paragraph (1)(c) does not apply to subsection 44(1).

43B(4) [Effect of s 44(1)] Subsection (1) has effect subject to the special provision that is made for non-share dividends in subsection 44(1).

SECTION 44 DIVIDENDS

44(1) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) includes:

- (a) if the shareholder is a resident:
 - (i) dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source; and
 - (ii) all non-share dividends paid to the shareholder by the company; and
- (b) if the shareholder is a non-resident:
 - (i) dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia; and
 - (ii) non-share dividends paid to the shareholder by the company to the extent to which they are derived from sources in Australia; and
- (c) if the shareholder is a non-resident carrying on business in Australia at or through a permanent establishment of the shareholder in Australia, and the company is a resident:
 - (i) dividends (other than non-share dividends) that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are paid out of profits derived by the company from sources outside Australia; and
 - (ii) non-share dividends that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are derived from sources outside Australia.

This subsection does not apply to a dividend (or non-share dividend) to the extent to which another provision of this Act that expressly deals with dividends includes some or all of the dividend (or non-share dividend) in, or excludes some or all of the dividend (or non-share dividend) from, the shareholder's assessable income.

- (d) the length of the period:
- starting when the old loan was made; and
 - ending when the old loan was refinanced;
- exceeds 18 years.

109N(3D) [Amount of reduction] The amount of the reduction is the excess mentioned in paragraph (3C)(d).

109N(4) Regulations may adopt rate as published from time to time. Regulations made for the purposes of subsection (2) may apply, adopt or incorporate a rate published in an instrument after they are made or take effect, or a rate contained in an instrument from time to time, despite any other Act.

* * *

SECTION 109P AMALGAMATED LOANS NOT TREATED AS DIVIDENDS IN THE YEAR THEY ARE MADE

109P A private company is not taken under section 109D to pay a dividend because of an amalgamated loan it makes.

Note: A shortfall in a minimum yearly repayment of an amalgamated loan may be treated as a dividend under section 109E.

SECTION 109Q COMMISSIONER MAY ALLOW AMALGAMATED LOAN NOT TO BE TREATED AS DIVIDEND

109Q(1) [When private company not deemed to pay dividend] A private company is not taken under section 109E to pay a dividend at the end of one of its years of income (the *current year*) because of an amalgamated loan to an entity if:

- the amount paid to the private company by the entity in the current year in relation to the loan is less than the minimum yearly repayment of the loan for the current year worked out under subsection 109E(5); and
- the entity satisfies the Commissioner that:
 - that amount was less than the minimum yearly repayment because of circumstances beyond the entity's control; and
 - the entity would suffer undue hardship if the private company were taken under section 109E to pay a dividend to the entity at the end of the current year because of the loan.

109Q(2) [Matters considered] In deciding whether he or she is satisfied, the Commissioner must consider:

- the entity's capacity, at the end of the year of income in which the amalgamated loan was made, to repay the loan; and
- any circumstances that have reduced the entity's capacity to repay the loan; and
- whether the entity took all reasonable steps to make payments relating to the amalgamated loan during the current year equal to the minimum yearly repayment of the loan for the current year; and
- whether the entity has made payments relating to the loan as soon as possible after the current year equalling the difference between:
 - the minimum yearly repayment for the current year; and
 - the amount of payments made during the current year relating to the loan.

SECTION 109R SOME PAYMENTS RELATING TO LOANS NOT TAKEN INTO ACCOUNT

109R(1) [Some payments not considered] This section provides for some payments to a private company in relation to a loan the private company made to an entity not to be taken into account for the purpose of working out:

- how much of the loan has been repaid for the purposes of sections 109D and 109E (which treat amounts of loans that have not been repaid as dividends); or
- the minimum yearly repayment for the loan under subsection 109E(5).

109R(2) [Intention to obtain loan] A payment must not be taken into account if:

- a reasonable person would conclude (having regard to all the circumstances) that, when the payment was made, the entity intended to obtain a loan or loans from the private company of a total amount similar to, or larger than, the payment; or
- both of the following subparagraphs apply:
 - the entity obtained, before the payment was made, a loan or loans from the private company of a total amount similar to, or larger than, the amount of the payment;
 - a reasonable person would conclude (having regard to all the circumstances) that the entity obtained the loan or loans in order to make the payment.

109R(3) [Set offs] Subsection (2) does not apply to a payment made by setting off an amount payable in relation to the loan:

- a dividend payable by the private company to the entity; or
- work and income support related withholding payments and benefits payable by the private company to the entity; or
- payments covered by section 12-55 in Schedule 1 to the *Taxation Administration Act 1953*; or
- if the entity has transferred property to the private company — an amount equalling the difference between:
 - the amount that a party at arm's length from the entity would have paid for the transfer of the property to the party; and
 - the amount that the private company has already paid the entity (by way of set-off or otherwise) for the transfer.

109R(4) [Payments made on behalf of borrower] Nor does subsection (2) apply to a payment made on behalf of the entity (the *borrower*) by another entity paying to the private company an amount that:

- is payable by the other entity to the borrower; and
- is assessable income of the borrower for the year of income in which the payment was made or an earlier year of income.

109R(5) [Subordination of loan] Subsection (2) does not apply to a payment if:

- the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
- the entity to which the old loan was made has another loan (the *primary loan*) from another entity; and
- the old loan becomes subordinated to the primary loan; and
- the refinancing of the old loan mentioned in paragraph (a) took place in connection with that subordination; and

- (B) the purchaser of the goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia;
- (iii) if the goods were altered by the company — the income does not pass the substantial alteration test set out in subsection (4);
- (c) income from the sale of goods (in this paragraph called the *manufactured goods*) by the company where all of the following conditions are satisfied:
 - (i) the manufactured goods were manufactured by the company;
 - (ii) any of the raw materials or goods from which the manufactured goods were manufactured were sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the sale to the company of the raw materials or goods from which the manufactured goods were manufactured:
 - (A) the entity who sold to the company the raw materials or goods from which the manufactured goods were manufactured was an associate of the company and a Part X Australian resident;
 - (B) the raw materials or goods from which the manufactured goods were manufactured were sold to the company by an associate of the company who was not a Part X Australian resident, in the course of a business carried on by the associate at or through a permanent establishment of the associate in Australia;
 - (iv) the income does not pass the substantial manufacture test set out in subsection (4A);
- (d) income from the sale of goods (in this paragraph called the *manufactured goods*) by the company where all of the following conditions are satisfied:
 - (i) the manufactured goods were manufactured by the company;
 - (ii) any of the raw materials or goods from which the manufactured goods were manufactured were sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the purchase of the manufactured goods from the company:
 - (A) the purchaser of the manufactured goods from the company was an associate of the company and a Part X Australian resident;
 - (B) the purchaser of the manufactured goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia;
 - (iv) the income does not pass the substantial manufacture test set out in subsection (4A);
- (e) income from the sale of goods (in this paragraph called the *primary production goods*) by the company where all of the following conditions are satisfied:
 - (i) the primary production goods were:
 - (A) primary products produced, raised or grown by the company; or
 - (B) goods manufactured by the company, in whole or in part, from primary products produced, raised or grown by the company;

- (ii) any of the propagative material from which the primary products were produced, raised or grown was sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the sale to the company of the propagative material:
 - (A) the entity who sold the propagative material to the company was an associate of the company and a Part X Australian resident;
 - (B) the propagative material was sold to the company by an associate of the company who was not a Part X Australian resident, in the course of a business carried on by the associate at or through a permanent establishment of the associate in Australia;
 - (iv) the income does not pass the substantial production test set out in subsection (4B);
 - (f) income from the sale of goods (in this paragraph called the *primary production goods*) by the company where all of the following conditions are satisfied:
 - (i) the primary production goods were:
 - (A) primary products produced, raised or grown by the company; or
 - (B) goods manufactured by the company, in whole or in part, from primary products produced, raised or grown by the company;
 - (ii) any of the propagative material from which the primary products were produced, raised or grown was sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the purchase of the primary production goods from the company:
 - (A) the purchaser of the primary production goods from the company was an associate of the company and a Part X Australian resident;
 - (B) the purchaser of the primary production goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia;
 - (iv) the income does not pass the substantial production test set out in subsection (4B).
- 447(2) [Excluded sales income] Where:
- (a) a company provides any of the following services:
 - (i) drinks and meals;
 - (ii) accommodation in a hotel, motel, guest-house or similar place;
 - (iii) the provision of, or the use of facilities for, entertainment, recreation or instruction; and
 - (b) if subparagraph (a)(ii) or (iii) applies — the transaction for the provision of the services includes the sale of goods of a kind that are commonly supplied in connection with the services concerned;

Section

- Part 3 — Paying the luxury car tax
 Division 13 — Paying the luxury car tax
Subdivision 13-A — Net amounts and adjustments
 13-5 Net amounts increased by amounts of luxury car tax
 13-10 Adjustments
 13-15 Attribution rules for taxable supplies of luxury cars and luxury car tax adjustments
 Part 5 — Rules for interpreting this Act
 Division 25 — Luxury cars
 25-1 Meaning of *luxury car*

A NEW TAX SYSTEM (LUXURY CAR TAX IMPOSITION — GENERAL) ACT 1999

Section

- 3 Imposition
 4 Rate
 5 Act does not impose a tax on property of a State

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999

To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

An Act about a goods and services tax to implement A New Tax System, and for related purposes

The Parliament of Australia enacts:

Chapter 1 — Introduction

Part 1-1 — Preliminary

Division 1 — Preliminary

1-1 Short title

This Act may be cited as the *A New Tax System (Goods and Services Tax) Act 1999*.

1-2 Commencement

This Act commences on 1 July 2000.

1-3 Commonwealth-State financial relations

The Parliament acknowledges that the Commonwealth:

- will introduce legislation to provide that the revenue from the GST will be granted to the States, the Australian Capital Territory and the Northern Territory; and
- will maintain the rate and base of the GST in accordance with the Agreement on Principles for the Reform of Commonwealth-State Financial Relations endorsed at the Special Premiers' Conference in Canberra on 13 November 1998.

* * *

Part 1-2 — Using this Act

Division 2 — Overview of the GST legislation

2-1 What this Act is about

This Act is about the GST.

It begins (in Chapter 2) with the basic rules about the GST, and then sets out in Chapter 3 the exemptions from the GST and in Chapter 4 the special rules that can apply in particular cases.

It concludes with definitions and other interpretative material.

Note: The GST is imposed by 6 Acts, the most important of which are:

- the *A New Tax System (Goods and Services Tax Imposition — General) Act 1999*; and
- the *A New Tax System (Goods and Services Tax Imposition — Customs) Act 1999*; and
- the *A New Tax System (Goods and Services Tax Imposition — Excise) Act 1999*.

the *employee's share* of the taxable value of the fringe benefit is so much of the total taxable value as is reasonably attributable to the provision of the fringe benefit in respect of the employee's employment by the employer, taking account of any relevant matters.

5F(5) Shares of different employees must total 100% of taxable value. If:

- (a) the fringe benefit was provided in respect of the employment of 2 or more employees; and
- (b) each of those employees has an employee's share of the taxable value of the fringe benefit;

the sum of those shares must equal the taxable value of the fringe benefit.

5F(6) Single employee's shares must equal total taxable value. If all the fringe benefits in a class described in subsection (4) are provided in respect of the employment of the same employee (and none of them is provided in respect of the employment of anyone else), the sum of the employee's shares of the taxable value of the fringe benefits must equal the total taxable value of the fringe benefits.

PART III — FRINGE BENEFITS

Division 2 — Car fringe benefits

Subdivision A — Car benefits

SECTION 7 CAR BENEFITS

7(1) [Car applied to, available for employee's private use] Where:

- (a) at any time on a day, in respect of the employment of an employee, a car held by a person (in this subsection referred to as the *provider*):
 - (i) is applied to a private use by the employee or an associate of the employee; or
 - (ii) is taken to be available for the private use of the employee or an associate of the employee; and
- (b) either of the following conditions is satisfied:
 - (i) the provider is the employer, or an associate of the employer, of the employee;
 - (ii) the car is so applied or available, as the case may be, under an arrangement between:
 - (A) the provider or another person; and
 - (B) the employer, or an associate of the employer, of the employee;

that application or availability of the car shall be taken to constitute a benefit provided on that day by the provider to the employee or associate in respect of the employment of the employee.

7(2) [Car garaged at employee's residence] Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

- (a) a car is held by a person, being:
 - (i) the employer;
 - (ii) an associate of the employer; or

Subdivision A — Car benefits

- (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee;

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

[Ambulance, firefighting, police] Subsection (2) does not apply to a car that:

- (i) is used by an ambulance service, a firefighting service or a police service; and
- (ii) is visibly marked on its exterior for that use; and
- (iii) is fitted with:
 - (i) a flashing warning light; and
 - (ii) a horn, bell or alarm that can give audible warning of the approach or position of the car by making sounds with different amplitude, tones or frequencies on a regular time cycle.

[Car not at employer's business premises] Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

- (a) a car is held by a person, being:
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- (b) the car is not at business premises of:
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- (c) any of the following conditions is satisfied:
 - (i) the employee is entitled to apply the car to a private use;
 - (ii) the employee is not performing the duties of his or her employment and has custody or control of the car;
 - (iii) an associate of the employee is entitled to use, or has custody or control of, the car;

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

[Prohibition on private use not consistently enforced] For the purposes of subsection (3), where a prohibition on the application of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person shall be deemed to be entitled to use the car, or to apply the car to a private use, notwithstanding the prohibition.

Reviewable GST decisions under GST Act

Item	Decision	Provision of GST Act under which decision is made
49B	deciding to direct a *representative of an *incapacitated entity to give to the Commissioner a *GST return	paragraph 58-50(1)(b)
50	cancelling the registration of a *non-profit sub-entity	subsection 63-35(1)
51	refusing to allow, or allowing, a further period within which to make an agreement that the margin scheme is to apply	paragraph 75-5(1A)(b)
52	refusing a request to allow an annual apportionment election to take effect from the start of another *tax period	paragraph 131-10(2)(b)
53	disallowing an annual apportionment election	subsection 131-20(3)
53A	refusing to make requested decision about excess GST	subsection 142-15(1)
55	refusing a request to allow an annual *tax period election to take effect from the start of another tax period	paragraph 151-10(2)(b)
56	refusing a request to be allowed to make an annual *tax period election on a specified day	subsection 151-20(3)
57	disallowing an annual *tax period election	subsection 151-25(3)
58	refusing a request to allow an election to pay *GST by instalments to take effect from the start of another *tax period	paragraph 162-15(2)(b)
59	refusing a request to be allowed to make an election on a specified day	subsection 162-25(3)
60	disallowing an election to pay *GST by instalments	subsection 162-30(3)
61	making a declaration that states: (a) the amount that is (and has been at all times) a *net amount for a *tax period that ended before 1 July 2012; or (b) the amount that is (and has been at all times) the amount of *GST on a *taxable importation, if the GST was payable before 1 July 2012	subsection 165-40(1)
62	making a declaration to negate or reduce a GST disadvantage	subsection 165-45(3)
63	deciding whether to grant a request for a declaration to negate or reduce a GST disadvantage	subsection 165-45(5)

110-50(3) A decision under section 24B of the *A New Tax System (Goods and Services Tax Transition) Act 1999* refusing an application for a determination under that section, or making a determination under that section, is a **reviewable GST transitional decision**.

* * *

PART 3-20 — SUSTAINING THE SUPERANNUATION CONTRIBUTION CONCESSION

Division 133 — Deferred payment

Guide to Division 133

SECTION 133-1 WHAT THIS DIVISION IS ABOUT

Payment of Division 293 tax is deferred to the extent to which the tax is attributable to defined benefit interests from which no superannuation benefit has yet become payable. This reflects the fact that money generally cannot be released from defined benefit interests until a superannuation benefit is paid, usually upon retirement.

Subdivision 133-A — Deferral determination

Guide to Subdivision 133-A

SECTION 133-5 WHAT THIS SUBDIVISION IS ABOUT

The Commissioner determines the amount of your tax that is deferred to a debt account by working out the extent to which your assessed tax is attributable to defined benefit interests.

Operative provisions

SECTION 133-10 DETERMINATION OF TAX THAT IS DEFERRED TO A DEBT ACCOUNT

133-10(1) The Commissioner must make a determination specifying the amount the Commissioner has ascertained as being the extent to which your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.

133-10(1) For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

133-10(2) For general provisions, including review, see section 133-30.

133-10(2) The amount of *assessed Division 293 tax specified in the determination is *deferred to debt account* for the *superannuation interest.

133-10(3) However, the Commissioner must not make a determination under this section in relation to a *superannuation interest if, at the time the determination is to be made:

(a) the *end benefit for the superannuation interest has become payable; or

(b) a notice under section 133-125 has been made in relation to the superannuation interest.

133-10(4) For the meaning of *end benefit*, see section 133-130.

133-10(4) Subsection (1) does not apply if the Commissioner ascertains that no part of your assessed Division 293 tax for an income year is *defined benefit tax attributable to a superannuation interest.

SECTION 133-15 DEFINED BENEFIT TAX

133-15(1) Your *defined benefit tax* for an income year is the amount worked out using the formula: