



# Income Tax Assessment Act 1997

## Act No. 38 of 1997 as amended

This compilation was prepared on 24 January 2013 taking into account amendments up to Act No. 185 of 2012

**Volume 1** includes:      Table of Contents  
   Sections 1-1 to 36-55

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

**Volume 2** includes:      Table of Contents  
   Sections 40-1 to 55-10

**Volume 3** includes:      Table of Contents  
   Sections 58-1 to 122-205

**Volume 4** includes:      Table of Contents  
   Sections 124-1 to 152-430

**Volume 5** includes:      Table of Contents  
   Sections 164-1 to 220-800

**Volume 6** includes:      Table of Contents  
   Sections 230-1 to 420-70

- Volume 7** includes: Table of Contents  
Sections 620-5 to 727-910
- Volume 8** includes: Table of Contents  
Sections 768-100 to 995-1
- Volume 9** includes: Note 1  
Table of Acts  
Act Notes
- Volume 10** includes: Table of Amendments
- Volume 11** includes: Notes 2 – 23  
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Canberra

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**An Act about income tax and related matters**

**Chapter 1—Introduction and core provisions**

**Part 1-1—Preliminary**

**Division 1—Preliminary**

**Table of sections**

1-1      Short title

- -      -

- 1-2 Commencement
- 1-3 Differences in style not to affect meaning
- 1-7 Administration of this Act

## 1-1 Short title [see Note 1]

This Act may be cited as the *Income Tax Assessment Act 1997*.

## 1-2 Commencement

This Act commences on 1 July 1997.

## 1-3 Differences in style not to affect meaning

(1) This Act contains provisions of the *Income Tax Assessment Act 1936* in a rewritten form.

(2) If:

- (a) that Act expressed an idea in a particular form of words; and
- (b) this Act appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style;

the ideas are not to be taken to be different just because different forms of words were used.

**Note:** A public or private ruling about a provision of the *Income Tax Assessment Act 1936* is taken also to be a ruling about the corresponding provision of this Act, so far as the 2 provisions express the same ideas: see section 357-85 in Schedule 1 to the *Taxation Administration Act 1953*.

**1 - / Administration of this Act**

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**Part 1-2—A Guide to this Act****Division 2—How to use this Act****Table of Subdivisions**

2-A	How to find your way around
2-B	How the Act is arranged
2-C	How to identify defined terms and find the definitions
2-D	The numbering system
2-E	Status of Guides and other non-operative material

**Subdivision 2-A—How to find your way around****2-1 The design**

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.

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

You can start at Division 3 (What this Act is about) 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. Each one should be followed.

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.

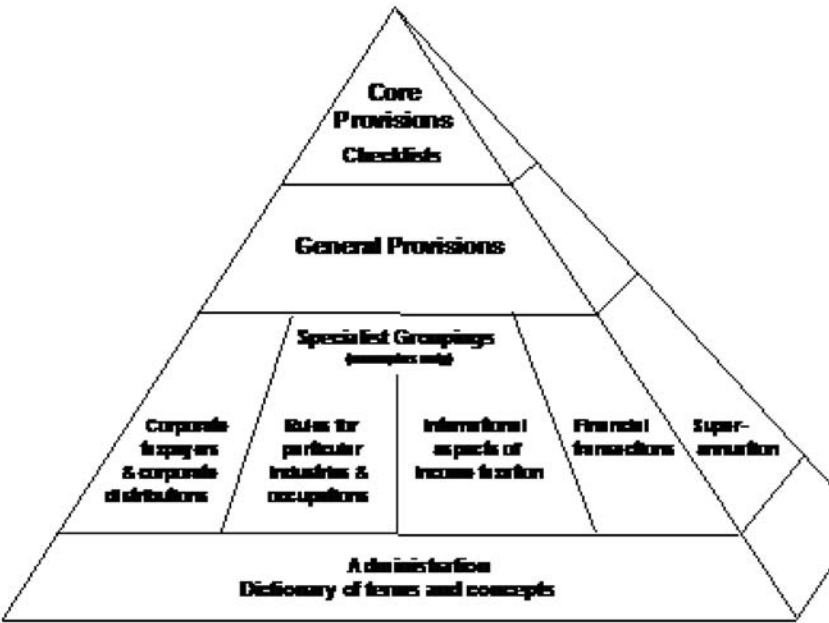
## **Subdivision 2-B—How the Act is arranged**

### **2-5 The pyramid**

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

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

core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.



Note: The *Taxation Administration Act 1953* contains the provisions on collection and recovery of tax and provisions on administration.

**Subdivision 2-C—How to identify defined terms and find the definitions**

**Table of sections**

2-10	When defined terms are identified
2-15	When terms are <i>not</i> identified
2-20	Identifying the defined term in a definition

**2-10 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.

## 2-15 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 2-E.

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

### *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
4.	entity	section 960-100
4A.	foreign resident	section 995-1
5.	individual	section 995-1

6.	partnership	section 995-1
7.	person	section 995-1
8.	trustee	section 995-1
9.	you	section 4-5

### *Core concepts*

Item	This term:	is defined in:
1.	amount	section 995-1
2.	assessable income	Division 6
3.	assessment	section 995-1
4.	deduct, deduction	Division 8
5.	income tax	section 995-1
6.	income year	section 995-1
7.	taxable income	section 4-15
8.	this Act	section 995-1

## **2-20 Identifying the defined term in a definition**

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

## **Subdivision 2-D—The numbering system**

### **Table of sections**

2-25	Purposes
2-30	Gaps in the numbering

## **2-25 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.

## **2-30 Gaps in the numbering**

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

## **Subdivision 2-E—Status of Guides and other non-operative material**

### **Table of sections**

2-35	Non-operative material
2-40	Guides
2-45	Other material

## **2-35 Non-operative material**

In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

## 2-40 Guides

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.

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.

## 2-45 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.

## Division 3—What this Act is about

### Table of sections

3-5	Annual income tax
3-10	Your other obligations as a taxpayer

### 3-5 Annual income tax

- (1) Income tax is payable for each year by each individual and company, and by some other entities.

Note 1: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See the *Medicare Levy Act 1986* and Part VIIB of the *Income Tax Assessment Act 1936*.

Note 2: 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) Most entities have to pay *instalments* of income tax before the income tax they *actually* have to pay can be worked out.

- (3) This Act answers these questions:

1. What instalments of income tax do you have to pay? When and how do you pay them?

See Schedule 1 to the *Taxation Administration Act 1953*.

2. How do you work out how much income tax you must pay?

See Division 4, starting at section 4-1.

3. What happens if your income tax is *more* than the instalments you have paid? When and how must you pay the rest?

See Division 5 of this Act and Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

4. What happens if your income tax is *less*

than the instalments you have paid? How do you get a refund?

See Division 3A of Part IIB of the *Taxation Administration Act 1953*.

5. What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?

See section 3-10.

6. Do you have any other obligations under the income tax law?

See section 3-15.

7. 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*.

### 3-10 Your other obligations as a taxpayer

- (1) Besides paying instalments 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
- Division 900 (which sets out

substantiation rules) of this Act; and  
(b) to lodge income tax returns as required by:

- the *Income Tax Assessment Act 1936*.

#### *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;
- the amount of certain of your instalments of income tax may be increased.

### **3-15 Your obligations *other than* as a taxpayer**

Your main obligations under the income tax law, other than as a taxpayer are:

- in certain situations, to deduct from money you owe to another person, and to remit to

the Commissioner, instalments  
of income tax payable by that  
person.

See Part 4-5 (Collection of income tax instalments),  
starting at section 750-1.

**Part 1-3—Core provisions**

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

**Table of sections**

4-1	Who must pay income tax
4-5	Meaning of <i>you</i>
4-10	How to work out how much income tax you must pay
4-15	How to work out your taxable income
4-25	Special provisions for working out your basic income tax liability

**4-1 Who must pay income tax**

Income tax is payable by each individual and  
company, and by some other entities.

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

For a list of the entities that must pay income tax,  
see Division 9, starting at section 9-1.

**4-5 Meaning of *you***



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

Note 1: The expression ***you*** is not used in provisions that apply only to entities that are not individuals.

Note 2: For circumstances in which the identity of an entity that is a managed investment scheme for the purposes of the *Corporations Act 2001* is not affected by changes to the scheme, see Subdivision 960-E of the *Income Tax (Transitional Provisions) Act 1997*.

#### **4-10 How to work out how much income tax you must pay**

- (1) You must pay income tax for each \*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 have an accounting period that is not the same as the financial year, each such accounting period or, for a company, each previous accounting period is an income year.

Note 1: 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*.

Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMF. See section 18A of the *Income Tax Assessment Act 1936*.

- (3) Work out your income tax for the \*financial year as follows:

$$\text{Income tax} = \left( \text{Taxable income} \times \text{Rate} \right) - \text{Tax offsets}$$

*Method statement*

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

To do this, see section 4-15.

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

See the *Income Tax Rates Act 1986* and section 4-25.

- 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 section 13-1.

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

Note 1: Division 63 explains what happens if your tax offsets exceed your basic income tax liability. How the excess is treated depends on the type of tax offset.

Note 2: In addition to the income tax worked out under this section, you may also have to pay additional income tax (known as temporary flood and cyclone reconstruction levy) for the 2011-12 financial year. See section 4-10 of the *Income Tax (Transitional Provisions) Act 1997*.

#### *Income tax worked out on another basis*

- (4) For some entities, some or all of their income tax for the \*financial year is worked out by reference to something other than taxable income for the income year.

See section 9-5.

## **4-15 How to work out your taxable income**

- (1) Work out your **taxable income** for the income year like this:

**Taxable income = Assessable income – Deductions**

#### *Method statement*

Step 1. Add up all your assessable income for the income year.

To find out about your assessable income, see  
Division 6.

**Step 2.** Add up your deductions for the  
income year.

To find out what you can deduct, see Division 8.

**Step 3.** Subtract your deductions from your  
assessable income (unless they  
exceed it). The result is your  
taxable income. (If the deductions  
equal or exceed the assessable  
income, you don't have a taxable  
income.)

**Note:** If the deductions exceed the assessable income,  
you may have a tax loss which you may be able  
to deduct in a later income year: see  
Division 36.

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

<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1.	A company does not maintain continuity of ownership and control during the income year and does not satisfy the same business test	Subdivision 165
1B.	An entity is a *member of a *consolidated group at any time in the income year	Part 3-90
2.	A company becomes a PDF (pooled development fund) during the income year, and the PDF component for the income year is a nil amount	section 124ZTA the <i>Income Tax Assessment Act 1936</i>

3.	A shipowner or charterer: has its principal place of business outside Australia; and carries passengers, freight or mail shipped in Australia	section 129 of the <i>Income Tax Assessment Act 1936</i>
4.	An insurer who is a foreign resident enters into insurance contracts connected with Australia	sections 142 and 143 of the <i>Incom Tax Assessment A 1936</i>
5.	The Commissioner makes a default or special assessment of taxable income	sections 167 and 168 of the <i>Incom Tax Assessment A 1936</i>
6.	The Commissioner makes a determination of the amount of taxable income to prevent double taxation in certain treaty cases	section 24 of the <i>International Ta Agreements Act 1953</i>

Note: A life insurance company can have a taxable income of the complying superannuation/FHSA class and/or a taxable income of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.

## 4-25 Special provisions for working out your basic income tax liability

The following provisions may increase your basic income tax liability beyond the liability worked out simply by applying the income tax rates to your taxable income:

- (a) Subdivision 355-G;
- (b) subsection 392-35(3).

Note 1: Subdivision 355-G increases some entities' tax liability by requiring them to pay extra income tax on government recoupments relating to R&D activities for which entitlements to tax offsets arise under Division 355.

Note 2: Subsection 392-35(3) increases some primary producers' tax liability by requiring them to pay

producers can avoid paying extra income tax on their averaging components worked out under Subdivision 392-C.

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

**Table of Subdivisions**

Guide to Division 5

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

**Guide to Division 5**

**5-1 What this Division is about**

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

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

- (a) *when* you must pay the additional tax; and
- (b) *when* any associated interest

charges must be paid.

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

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

### Table of sections

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

### 5-5 When income tax is payable

#### *Scope*

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

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

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

- (3) However, if the Commissioner does make an

"assessment of your income tax for the year,  
the tax may be taken to have been due and  
payable at a time before your assessment was  
made.

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

*Original assessments—self-assessment entities*

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

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

*Original assessments—other entities*

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

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

- (6) However, if you lodge your return *on or before* the return day and the Commissioner gives you a notice of \*assessment (other than an amended assessment) *after* the return day, the income tax



is due and payable 21 days after the Commissioner gives you the notice.

### *Amended assessments*

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

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

- (a) starts at the time income tax was due and payable on your original assessment; and
- (b) ends the day before the day on which the Commissioner gives you notice of the amended assessment.

## **5-10 When shortfall interest charge is payable**

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

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

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

If an amount of income tax or \*shortfall interest

charge that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the amount was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the income tax or shortfall interest charge;
  - (ii) general interest charge on any of the income tax or shortfall interest charge.

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

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

## **Division 6—Assessable income and exempt income**

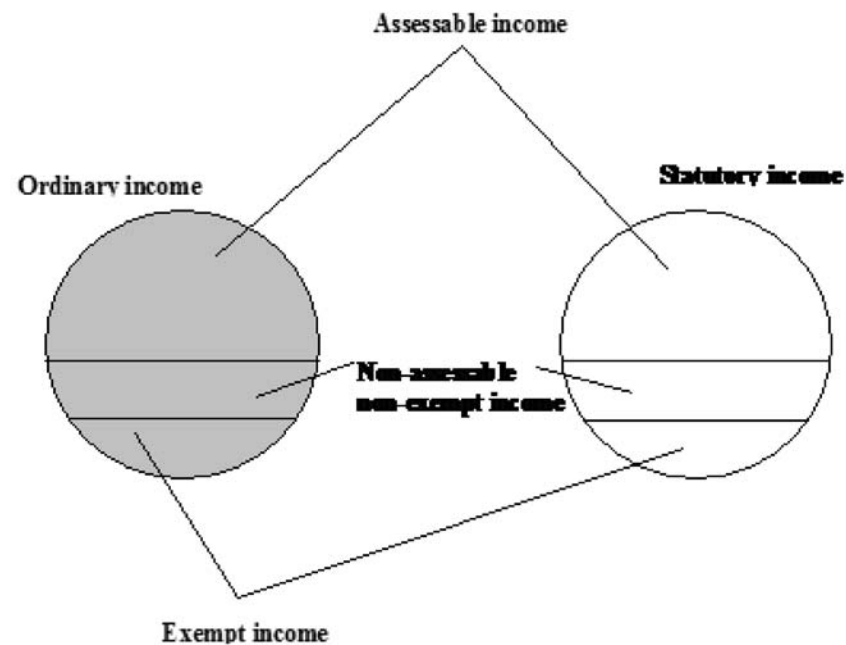
### **Guide to Division 6**

#### **Table of sections**

6-1 Diagram showing relationships among concepts in

**Operative provisions**

- 6-5 Income according to ordinary concepts (*ordinary income*)
- 6-10 Other assessable income (*statutory income*)
- 6-15 What is *not* assessable income
- 6-20 Exempt income
- 6-23 Non-assessable non-exempt income
- 6-25 Relationships among various rules about ordinary income

**6-1 Diagram showing relationships among concepts in this Division**

(1) Assessable income consists of ordinary income

and statutory income.

- (2) Some ordinary income, and some statutory income, is exempt income.
- (3) Exempt income is not assessable income.
- (4) Some ordinary income, and some statutory income, is neither assessable income nor exempt income.

For the effect of the GST in working out assessable income, see Division 17.

- (5) An amount of ordinary income or statutory income can have only one status (that is, assessable income, exempt income or non-assessable non-exempt income) in the hands of a particular entity.

## Operative provisions

### 6-5 Income according to ordinary concepts (*ordinary income*)

- (1) Your *assessable income* includes income according to ordinary concepts, which is called *ordinary income*.

Note: Some of the provisions about assessable income listed in section 10-5 may affect the treatment of ordinary income.

- (2) If you are an Australian resident, your assessable income includes the \*ordinary income you \*derived directly or indirectly from

all sources, whether in or out of Australia,  
during the income year.

- (3) If you are a foreign resident, your assessable income includes:
- (a) the \*ordinary income you \*derived directly or indirectly from all \*Australian sources during the income year; and
  - (b) other \*ordinary income that a provision includes in your assessable income for the income year on some basis other than having an \*Australian source.
- (4) In working out whether you have ***derived*** an amount of \*ordinary income, and (if so) when you ***derived*** it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

## 6-10 Other assessable income (*statutory income*)

- (1) Your ***assessable income*** also includes some amounts that are *not* \*ordinary income.

Note: These are included by provisions about assessable income.  
For a summary list of these provisions, see section 10-5.

- (2) Amounts that are *not* \*ordinary income, but are included in your assessable income by provisions about assessable income, are called ***statutory income***.

Note 1: Although an amount is statutory income because it has been included in assessable income under a provision of this Act, it may be made exempt income or non-assessable non-exempt income under another provision: see sections 6-20 and 6-23.

Note 2: Many provisions in the summary list in section 10-5 contain rules about ordinary income. These rules do not change its character as ordinary income.

- (3) If an amount would be \*statutory income apart from the fact that you have not received it, it becomes statutory income as soon as it is applied or dealt with in any way on your behalf or as you direct.
- (4) If you are an Australian resident, your assessable income includes your \*statutory income from all sources, whether in or out of Australia.
- (5) If you are a foreign resident, your assessable income includes:
  - (a) your \*statutory income from all \*Australian sources; and
  - (b) other \*statutory income that a provision includes in your assessable income on some basis other than having an \*Australian source.

## 6-15 What is *not* assessable income

- (1) If an amount is *not* \*ordinary income, and is *not*

\*statutory income, it is not *assessable income* (so you do not have to pay income tax on it).

(2) If an amount is \*exempt income, it is not *assessable income*.

Note: If an amount is exempt income, there are other consequences besides it being exempt from income tax. For example:

- the amount may be taken into account in working out the amount of a tax loss (see section 36-10);
- you cannot deduct as a general deduction a loss or outgoing incurred in deriving the amount (see Division 8);
- capital gains and losses on assets used solely to produce exempt income are disregarded (see section 118-12).

(3) If an amount is \*non-assessable non-exempt income, it is not *assessable income*.

Note 1: You cannot deduct as a general deduction a loss or outgoing incurred in deriving an amount of non-assessable non-exempt income (see Division 8).

Note 2: Capital gains and losses on assets used to produce *some* types of non-assessable non-exempt income are disregarded (see section 118-12).

## 6-20 Exempt income

(1) An amount of \*ordinary income or \*statutory income is *exempt income* if it is made exempt from income tax by a provision of this Act or another \*Commonwealth law.

For summary lists of provisions about exempt income

For a summary list of provisions about exempt income, see sections 11-5 and 11-15.

- (2) \*Ordinary income is also ***exempt income*** to the extent that this Act excludes it (expressly or by implication) from being assessable income.
- (3) By contrast, an amount of \*statutory income is ***exempt income*** only if it is made exempt from income tax by a provision of this Act outside this Division or another \*Commonwealth law.
- (4) If an amount of \*ordinary income or \*statutory income is \*non-assessable non-exempt income, it is not ***exempt income***.

Note: An amount of non-assessable non-exempt income is not taken into account in working out the amount of a tax loss.

## 6-23 Non-assessable non-exempt income

An amount of \*ordinary income or \*statutory income is ***non-assessable non-exempt income*** if a provision of this Act or of another \*Commonwealth law states that it is not assessable income and is not \*exempt income.

Note: Capital gains and losses on assets used to produce *some* types of non-assessable non-exempt income are disregarded (see section 118-12).

For a summary list of provisions about non-assessable non-exempt income, see Subdivision 11-B.

## 6-25 Relationships among various rules about ordinary income



(1) Sometimes more than one rule includes an amount in your assessable income:

- the same amount may be \*ordinary income and may also be included in your assessable income by one or more provisions about assessable income; or
- the same amount may be included in your assessable income by more than one provision about assessable income.

For a summary list of the provisions about assessable income,  
see section 10-5.

However, the amount is included only once in your assessable income for an income year, and is then not included in your assessable income for any other income year.

(2) Unless the contrary intention appears, the provisions of this Act (outside this Part) prevail over the rules about \*ordinary income.

Note: This Act contains some specific provisions about how far the rules about ordinary income prevail over the other provisions of this Act.

## Division 8—Deductions

### Table of sections

8-1 General deductions

## 8-1 General deductions

(1) You can ***deduct*** from your assessable income any loss or outgoing to the extent that:

- (a) it is incurred in gaining or producing your assessable income; or
- (b) it is necessarily incurred in carrying on a \*business for the purpose of gaining or producing your assessable income.

Note: Division 35 prevents losses from non-commercial business activities that may contribute to a tax loss being offset against other assessable income.

(2) However, you cannot deduct a loss or outgoing under this section to the extent that:

- (a) it is a loss or outgoing of capital, or of a capital nature; or
- (b) it is a loss or outgoing of a private or domestic nature; or
- (c) it is incurred in relation to gaining or producing your \*exempt income or your \*non-assessable non-exempt income; or
- (d) a provision of this Act prevents you from deducting it.

For a summary list of provisions about deductions, see section 12-5.

- (3) A loss or outgoing that you can deduct under this section is called a *general deduction*.

For the effect of the GST in working out deductions, see Division 27.

Note If you receive an amount as insurance, indemnity or other recoupment of a loss or outgoing that you can deduct under this section, the amount may be included in your assessable income: see Subdivision 20-A.

## 8-5 Specific deductions

- (1) You can also *deduct* from your assessable income an amount that a provision of this Act (outside this Division) allows you to deduct.
- (2) Some provisions of this Act prevent you from deducting an amount that you could otherwise deduct, or limit the amount you can deduct.
- (3) An amount that you can deduct under a provision of this Act (outside this Division) is called a *specific deduction*.

Note: If you receive an amount as insurance, indemnity or other recoupment of a deductible expense, the amount may be included in your assessable income: see Subdivision 20-A.

For a summary list of provisions about deductions, see section 12-5.

## 8-10 No double deductions

If 2 or more provisions of this Act allow you deductions in respect of the same amount (whether for the same income year or different income years), you can deduct only under the

provision that is most appropriate.

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

**Division 9—Entities that must pay income  
tax**

**Table of sections**

9-1A	Effect of this Division
9-1	List of entities
9-5	Entities that work out their income tax by reference to something other than taxable income

**9-1A Effect of this Division**

This Division is a \*Guide.

**9-1 List of entities**

Income tax is payable by the entities listed in the table.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Item	Income tax is payable by this kind of entity:	Because of this provision:
1	An individual	section 4-1
2	A company, that is: a body corporate; or an unincorporated body (except a partnership)	section 4-1
3	A company that was a member of a wholly-owned group if a former subsidiary in the group is treated as having disposed of leased plant and does not pay all of the income tax resulting from that treatment	section 45-2
4	A superannuation provider in relation to a complying superannuation fund	sections 295 and 295-60
5	A superannuation provider in relation to a non-complying superannuation fund	sections 295 and 295-60
6	A superannuation provider in relation to a complying approved deposit fund	section 295
7	A superannuation provider in relation to a non-complying approved deposit fund	section 295
8	The trustee of a pooled superannuation trust	section 295
8A	An FHSA provider in relation to an FHSA trust	section 345
9	A corporate limited partnership	<b>section 94J</b>
10	A mutual insurance association (as described in section 121)	<b>section 121</b>
11	A trustee (except one covered by another item in this table), but only in respect of some kinds of income of the trust	<b>sections 98, 99, 99A and 102</b>
12	The trustee of a corporate unit trust	<b>section 102</b>
13	The trustee of a public trading trust	<b>section 102</b>

### 9-5 Entities that work out their income tax by reference to something other than taxable income

(1) For some entities, some or all of their income

from the \*Financial year is worked out as

tax for the financial year is worked out as

described in the table.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Item	This kind of entity is liable to pay income tax worked out by reference to:	See:
1	A company that was a member of a wholly-owned group is jointly and severally liable to pay an amount of income tax if a former subsidiary in the group is treated as having disposed of leased plant and does not pay all of the income tax resulting from that treatment.	section 45-2
2	A superannuation provider in relation to a complying superannuation fund is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295 and 295-605
3	A superannuation provider in relation to a non-complying superannuation fund is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295 and 295-605
4	An RSA provider is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295 295-605 and 320-155
4A	An entity is liable to pay extra income tax on government recoupments relating to R&D activities for which entitlements to tax offsets arise under Division 355.	Subdivision 355-G
5	An Australian resident individual with: eligible foreign remuneration under section 23AF; or foreign earnings under section 23AG;	<b>section 23A or 23AG</b>

(from working in a foreign country) is liable to pay income tax worked out by reference to his or her assessable income less some of his or her deductions.

6	A trustee covered by item 11 in the table in section 9-1 is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>sections 98, and 99A</b>
7	The trustee of a corporate unit trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>section 1021</b>
8	The trustee of a public trading trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>section 1025</b>
9	An entity that is liable to pay income tax (worked out by reference to taxable income or otherwise) is also liable to pay income tax worked out by reference to diverted income or diverted trust income for the income year.	<b>section 1211</b>
10	An Australian insurer that re-insures overseas can elect to pay, as agent for the re-insurer, income tax worked out by reference to the amount of the re-insurance premiums.	<b>section 148</b>

- (2) For entities covered by an item in the table in subsection (1), the ***income year*** is the same as the <sup>\*</sup>financial year, except in these cases:
- (a) for a company, or an entity covered by item 2 or 3 in the table, the income year is the *previous* financial year;
  - (b) if an entity has an accounting period that is not the same as the financial year, each such accounting period or, for a company,

each previous accounting period is an income year.

- Note 1: The Commissioner can allow an entity to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.
- Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

## **Division 10—Particular kinds of assessable income**

### **10-1 Effect of this Division**

This Division is a \*Guide.

### **10-5 List of provisions about assessable income**

The provisions set out in the table:

- include in your assessable income amounts that are *not* \*ordinary income; and
- vary or replace the rules that would otherwise apply for certain kinds of \*ordinary income.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other



provisions, **in bold**, are provisions of the  
*Income Tax Assessment Act 1936*.

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## Division 11—Particular kinds of non-assessable income

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## **Subdivision 11-A—Lists of classes of exempt income**

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- 11-5 Entities that are exempt, no matter what kind of  
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- 11-15 Ordinary or statutory income which is exempt

### **11-1A Effect of this Subdivision**

This Subdivision is a \*Guide.

### **11-1 Overview**

Ordinary income or statutory income which is exempt from income tax can be divided into 2 main classes:

- (a) ordinary or statutory income of entities that are exempt, no matter what kind of ordinary or statutory income they have (see table in section 11-5);
- (b) ordinary or statutory income of a kind that is exempt (see table in section 11-15).

## 11-5 Entities that are exempt, no matter what kind of ordinary or statutory income they have

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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The provisions are: paragraphs 384(1)(b) and 385(1)(b), subsection 402(2) and sections 403 and 404.

**Subdivision 11-B—Particular kinds of non-assessable non-exempt income**

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**11-50 Effect of this Subdivision**

This Subdivision is a \*Guide.

## 11-55 List of non-assessable non-exempt income provisions

The provisions set out in the list make amounts non-assessable non-exempt income.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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**Division 12—Particular kinds of deductions**

**12-1 Effect of this Division**

This Division is a \*Guide.

**12-5 List of provisions about deductions**

The provisions set out in the table contain rules about specific types of deduction.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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**Division 13—Tax offsets**

**13-1A Effect of this Division**

This Division is a \*Guide

13-1 List of tax offsets

The provisions set out in the list allow you a tax offset.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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## Chapter 2—Liability rules of general application

**Part 2-1—Assessable income**

**Division 15—Some items of assessable income**

**Guide to Division 15**

**15-1 What this Division is about**

This Division sets out some items that are included in your assessable income. Remember that the general rules about assessable income in Division 6 apply to these items.

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- 15-2 Allowances and other things provided in respect of employment or services
- 15-3 Return to work payments
- 15-5 Accrued leave transfer payments
- 15-10 Bounties and subsidies
- 15-15 Profit-making undertaking or plan
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- 15-22 Payments made to members of a copyright collecting society
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15-25	Amount received for lease obligation to repair
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## Operative provisions

### 15-2 Allowances and other things provided in respect of employment or services

- (1) Your assessable income includes the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums \*provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you (including any service as a member of the Defence Force).



- (2) This is so whether the things were \*provided in money or in any other form.
- (3) However, the value of the following are not included in your assessable income under this section:
  - (a) a \*superannuation lump sum or an \*employment termination payment;
  - (b) an \*unused annual leave payment or an \*unused long service leave payment;
  - (c) a \*dividend or \*non-share dividend;
  - (d) an amount that is assessable as \*ordinary income under section 6-5;
  - (e) \*ESS interests to which Subdivision 83A-B or 83A-C (about employee share schemes) applies.

Note: Section 23L of the *Income Tax Assessment Act 1936* provides that fringe benefits are non-assessable non-exempt income.

### **15-3 Return to work payments**

Your assessable income includes an amount you receive under an \*arrangement that an entity enters into for a purpose of inducing you to resume working for, or providing services to, any entity.

### **15-5 Accrued leave transfer payments**

Your assessable income includes an \*accrued leave transfer payment that you receive.

To find out if the payment is deductible to the payer, see section 26-10.

## **15-10 Bounties and subsidies**

Your assessable income includes a bounty or subsidy that:

- (a) you receive in relation to carrying on a \*business; and
- (b) is not assessable as \*ordinary income under section 6-5.

## **15-15 Profit-making undertaking or plan**

- (1) Your assessable income includes profit arising from the carrying on or carrying out of a profit-making undertaking or plan.
- (2) This section does not apply to a profit that:
  - (a) is assessable as \*ordinary income under section 6-5; or
  - (b) arises in respect of the sale of property acquired on or after 20 September 1985.

Note: If you sell property you acquired *before* 20 September 1985 for profit-making by sale, your assessable income includes the profit: see section 25A of the *Income Tax Assessment Act 1936*.

## **15-20 Royalties**

- (1) Your assessable income includes an amount that you receive as or by way of royalty within the ordinary meaning of “royalty” (disregarding the definition of *royalty* in subsection 995-1(1)) if the amount is not assessable as \*ordinary income under section 6-5.
- (2) Subsection (1) does not apply to an amount of a payment to which section 15-22 or 15-23 applies.

### **15-22 Payments made to members of a copyright collecting society**

- (1) This section, instead of Division 6 of Part III of the *Income Tax Assessment Act 1936*, applies to a payment that a \*copyright collecting society, to which section 51-43 applies, makes to you as a \*member of the society.
- (2) Your assessable income includes the amount of the payment, except to the extent that the payment represents an amount on which the directors of the society are or have been assessed, and are liable to pay \*tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*.

Note: Section 410-5 of this Act requires a copyright collecting society to give you a notice at the time of payment.

### **15-23 Payments of resale royalties by resale royalty**

### collecting society

- (1) This section, instead of Division 6 of Part III of the *Income Tax Assessment Act 1936*, applies to a payment that the \*resale royalty collecting society makes to you under section 26 of the *Resale Royalty Right for Visual Artists Act 2009*.
- (2) Your assessable income includes the amount of the payment, except to the extent that the payment represents an amount on which the directors of the society are or have been assessed, and are liable to pay \*tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*.

Note: Section 410-50 of this Act requires the resale royalty collecting society to give you a notice at the time of payment.

### 15-25 Amount received for lease obligation to repair

Your assessable income includes an amount you receive from an entity if:

- (a) you receive it as a lessor or former lessor of premises; and
- (b) the entity pays you the amount for failing to comply with a lease obligation to make repairs to the premises; and
- (c) the entity uses or has used the premises for the \*purpose of producing assessable

income; and

- (d) the amount is not assessable as \*ordinary income under section 6-5.

Note: The entity can deduct the amount: see section 25-15.

### **15-30 Insurance or indemnity for loss of assessable income**

Your assessable income includes an amount you receive by way of insurance or indemnity for the loss of an amount (the *lost amount*) if:

- (a) the lost amount would have been included in your assessable income; and
- (b) the amount you receive is not assessable as \*ordinary income under section 6-5.

### **15-35 Interest on overpayments and early payments of tax**

Your assessable income includes interest payable to you under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*. The interest becomes assessable when it is paid to you or applied to discharge a liability you have to the Commonwealth.

### **15-40 Providing mining, quarrying or prospecting information**

Your assessable income includes an amount

you receive for providing \*mining, quarrying or prospecting information to another entity if:

- (a) you continue to \*hold the information; and
- (b) the amount you receive is not assessable as \*ordinary income under section 6-5.

### **15-45 Amounts paid under forestry agreements**

- (1) Your assessable income includes an amount you receive under an agreement for the planting and tending of trees for felling if:

- (a) you are the manager of the agreement as mentioned in section 82KZMG of the *Income Tax Assessment Act 1936*; and
- (b) the amount satisfies, for the entity that paid it, the requirements of that section.

The amount is included for the income year in which the entity can claim a deduction for the amount.

- (2) No part of an amount included under subsection (1) is included in your assessable income for a later income year.

### **15-46 Amounts paid under forestry managed investment schemes**

- (1) Your assessable income includes an amount you receive under a \*forestry managed investment scheme if:

- (a) you are the \*forestry manager of the scheme, or an \*associate of the forestry manager; and
- (b) the entity that paid the amount can deduct or has deducted the amount under section 394-10 in relation to the scheme (disregarding subsection 394-10(5)).

The amount is included for the income year for which the entity that paid the amount can or has claimed a deduction for it (disregarding subsection 394-10(5)).

- (2) No part of an amount included under subsection (1) is included in your assessable income for a later income year.

### **15-50 Work in progress amounts**

Your assessable income includes a \*work in progress amount that you receive.

Note: To find out whether the amount is deductible to the payer, see section 25-95.

### **15-55 Certain amounts paid under funeral policy**

- (1) Your assessable income includes the amount of a benefit provided to you by a \*life insurance company under a \*funeral policy issued after 31 December 2002 to pay for the funeral of the insured person, reduced by:

- (a) the amount of the premium or premiums of the policy that is reasonably related to the benefit; and
  - (b) the amount of the fees and charges included in the company's assessable income for any income year under paragraph 320-15(1)(k) that is reasonably related to the benefit.
- (2) This section does not apply if the benefit is included in your assessable income as:
  - (a) \*ordinary income under section 6-5; or
  - (b) \*statutory income under a section of this Act other than this section.

### **15-60 Certain amounts paid under scholarship plan**

- (1) Your assessable income includes the amount of a benefit provided to you, or on your behalf, by a \*life insurance company under a \*scholarship plan covered by subsection (2) or (3), reduced by the amount worked out under subsection (4), if:
  - (a) the benefit is provided on or after 1 January 2003; and
  - (b) you are nominated in the plan as a beneficiary whose education is to be helped by the benefit.
- (2) This subsection covers a \*scholarship plan



issued by the \*life insurance company after  
31 December 2002.

- (3) This subsection covers a \*scholarship plan if:
  - (a) the plan was issued by the \*life insurance company before 1 January 2003; and
  - (b) no amount received by the company on or after 1 January 2003 and attributable to the plan is \*non-assessable non-exempt income of the company under paragraph 320-37(1)(d).
- (4) The amount of the reduction is the sum of:
  - (a) the amount of the premium or premiums of the plan that is reasonably related to the benefit; and
  - (b) the amount of the fees and charges included in the company's assessable income for any income year under paragraph 320-15(1)(k) that is reasonably related to the benefit.

### **15-65 Sugar industry exit grants**

- (1) Your assessable income includes the amount of a sugar industry exit grant that you receive under the program known as the Sugar Industry Reform Program if, as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of a sugar

industry \*enterprise within 5 years after receiving the grant.

- (2) Your assessable income also includes the amount of a sugar industry exit grant that you receive under that program if:
- (a) as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural \*enterprise within 5 years after receiving the grant; and
  - (b) you become the owner or operator of an agricultural enterprise (except a sugar industry enterprise) within that period.
- (3) The amount is included for the income year in which you receive it.

Note: You will be required to repay the grant if you re-enter the sugar industry within the 5 year period. If you repay the grant in an income year after the year in which you receive it, section 59-30 will exclude the grant from your assessable income.

## 15-70 Reimbursed car expenses

Your assessable income includes a reimbursement mentioned in section 22 of the *Fringe Benefits Tax Assessment Act 1986* (about exempt car expense payment benefits) that, but for that section, would be a \*fringe benefit \*provided to you.

## 15-75 Bonuses

Your assessable income includes any amount you receive as or by way of bonus on a \*life insurance policy, other than a reversionary bonus.

Note: Reversionary bonuses are covered by section 6-5 of this Act if they are ordinary income and, if not, by section 26AH of the *Income Tax Assessment Act 1936*.

## 15-80 Employer FHSA contributions etc.

Your assessable income includes a contribution or expense payment benefit of a kind mentioned in paragraph (hd) of the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* that, but for that paragraph, would be a \*fringe benefit \*provided to you.

## 15-85 Refunded excess rehabilitation tax offset

Your assessable income includes an amount the Commissioner pays you under paragraph 225-25(2)(b) of the *Minerals Resource Rent Tax Act 2012*.

Note: You can get a refund of excess rehabilitation tax offsets under section 225-25 of the *Minerals Resource Rent Tax Act 2012*.

## **Division 17—Effect of GST etc. on assessable income**

### **Guide to Division 17**

#### **17-1 What this Division is about**

This Division sets out the effect of the GST in working out assessable income. Generally speaking, GST, input tax credits and adjustments under the GST Act are disregarded.

#### **Table of sections**

17-5	GST and increasing adjustments
17-10	Certain decreasing adjustments
17-15	Elements in calculation of amounts
17-20	GST groups and GST joint ventures
17-30	Special credits because of indirect tax transition
17-35	Certain sections not to apply to certain assets or expenditure

#### **17-5 GST and increasing adjustments**

An amount is not assessable income, and is not \*exempt income, to the extent that it includes an amount relating to:

- (a) \*GST payable on a \*taxable supply; or
- (b) an \*increasing adjustment that relates to a

\*supply; or

- (c) an \*increasing adjustment that:
  - (i) relates to an \*acquisition; and
  - (ii) arises in circumstances that also give rise to a \*recoupment that is included in assessable income.

### 17-10 Certain decreasing adjustments

- (1) An amount of a \*decreasing adjustment that arises under Division 129 or 132 of the \*GST Act is ***assessable income***, unless the entity that has the adjustment is an \*exempt entity.
- (2) However, the amount is not ***assessable income*** to the extent that, because it becomes a component of a \*net input tax credit, a reduction is made under section 103-30 (reduction of cost base etc. by net input tax credits).

### 17-15 Elements in calculation of amounts

In calculating an amount that may be included in assessable income:

- (a) 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; and

- (b) 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.

## **17-20 GST groups and GST joint ventures**

- (1) A \*member of a \*GST group is to be treated, for the purposes of this Division, as if Subdivision 48-B of the \*GST Act (other than paragraph 48-40(2)(a) and subsection 48-40(3)) did not apply to that member.
- (2) A \*participant in a \*GST joint venture is to be treated, for the purposes of this Division, as if Subdivision 51-B of the \*GST Act (other than subsections 51-30(2) and (3)) did not apply to that participant.

## **17-30 Special credits because of indirect tax transition**

A special credit under section 19A of the *A New Tax System (Goods and Services Tax Transition) Act 1999* is assessable income at the time it is attributed to a \*tax period (for a credit

**17-35 Certain sections not to apply to certain assets  
or expenditure**

Sections 17-5, 17-10 and 17-15 do not apply to  
assets, or to expenditure, for which you can  
deduct amounts under Division 40 or  
Division 328.

Note: See instead Subdivision 27-B.

**Division 20—Amounts included to reverse  
the effect of past deductions**

**Table of Subdivisions**

	Guide to Division 20
20-A	Insurance, indemnity or other recoupment for deductible expenses
20-B	Disposal of a car for which lease payments have been deducted

**Guide to Division 20**

**20-1 What this Division is about**

This Division includes amounts in your  
assessable income to reverse the effect of  
certain kinds of deductions.

## Table of sections

20-5 Other provisions that reverse the effect of deductions

### 20-5 Other provisions that reverse the effect of deductions

The table lists other provisions that reverse the effect of certain kinds of deductions.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Provisions that adjust your tax position in respect of deductions		
Item	In this situation:	See:
1	A balancing adjustment for a depreciating asset is included in your assessable income.	40-285(1) and 40-445(2)
2	An amount you receive by way of insurance or indemnity for a loss of trading stock is included in your assessable income.	70-115
2A	Limited recourse debt that was used to finance expenditure deductible under a capital allowance (or on property for which you have deducted or can deduct amounts under a	243-40



	capital allowance) terminates: an amount is included in your assessable income	
3	Because of: <ul style="list-style-type: none"> <li>petroleum resource rent tax; or</li> <li>an instalment of petroleum resource rent tax;</li> </ul> that you have deducted or can deduct, an amount is refunded, credited, paid or applied: the amount is included in your assessable income.	40-750(3)
4	You receive a fringe benefit by way of reimbursement or payment of a loss or outgoing you incurred: your deduction for the loss or outgoing is reduced.	<b>51AH</b>
7	You receive an amount as recoupment for your local governing body election expenses: an amount is included in your assessable income.	<b>74A(4)</b>
8	You receive superannuation benefits as a result of someone's deductible contributions: the benefits are included in your assessable income.	290-100
9	An R&D entity receives or becomes entitled to receive an amount: <ul style="list-style-type: none"> <li>for, or relating to, the</li> </ul>	355-410

results of R&D activities; or

- attributable to it incurring expenditure on R&D activities or to its use of a depreciating asset for the purpose of conducting R&D activities;

and the entity is entitled under Division 355 to a tax offset relating to those R&D activities.

The amount is included in its assessable income.

10	You receive a recoupment from government relating to R&D activities for which entitlements to tax offsets under Division 355 arise.  Extra income tax is payable on the recoupment.	Subdivision 355-G
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**Subdivision 20-A—Insurance, indemnity or other recoupment for deductible expenses**

**Guide to Subdivision 20-A**

**20-10 What this Subdivision is about**

*Recoupment of expenses you incurred and can deduct*

Your assessable income may include an amount that you receive by way of insurance, indemnity or other recoupment if:

it is for a deductible expense; and

it is *not* otherwise assessable income.

*Recoupment of expenses you did not incur but can deduct*

Your assessable income may include an amount that another entity receives by way of insurance, indemnity or other recoupment if:

it is for an expense that you can deduct;  
and

it is *not* otherwise your assessable income.

## Table of sections

20-15 How to use this Subdivision

### What is an *assessable recoupment*?

20-20 Assessable recoupments

20-25 What is *recoupment*?

20-30 Tables of deductions for which recoupments are assessable

### How much is included in your assessable income?

- 20-35 If the expense is deductible in a single income year
- 20-40 If the expense is deductible over 2 or more income years
- 20-45 Effect of balancing charge
- 20-50 If the expense is only partially deductible
- 20-55 Meaning of *previous recoupment law*

**What if you can deduct a loss or outgoing incurred by another entity?**

- 20-60 If you are the only entity that can deduct an amount for the loss or outgoing
- 20-65 If 2 or more entities can deduct amounts for the loss or outgoing

**20-15 How to use this Subdivision**

*If you incurred the deductible loss or outgoing*

- (1) First, read sections 20-20 to 20-30 to work out whether you have received an assessable recoupment. If not, you do not need to read the rest of the Subdivision.
- (2) If you *have* received one or more assessable recoupments, sections 20-35 to 20-55 tell you how much is included in your assessable income for an income year.

*If another entity incurred a loss or outgoing you can deduct*

- (3) Sections 20-60 and 20-65 tell you how to apply this Subdivision.

## What is an *assessable recoupment*?

### 20-20 Assessable recoupments

#### *Exclusion*

- (1) An amount is *not* an *assessable recoupment* to the extent that it is \*ordinary income, or it is \*statutory income because of a provision outside this Subdivision.

#### *Insurance or indemnity*

- (2) An amount you have received as \*recoupment of a loss or outgoing is an *assessable recoupment* if:
- (a) you received the amount by way of insurance or indemnity; and
  - (b) you can deduct an amount for the loss or outgoing for the \*current year, or you have deducted or can deduct an amount for it for an earlier income year, under any provision of this Act.

#### *Other recoupment*

- (3) An amount you have received as \*recoupment of a loss or outgoing (*except* by way of

insurance or indemnity) is an ***assessable recoupment*** if:

- (a) you can deduct an amount for the loss or outgoing for the \*current year; or
- (b) you have deducted or can deduct an amount for the loss or outgoing for an earlier income year;

under a provision listed in section 20-30.

## 20-25 What is *recoupment*?

### *General*

- (1) ***Recoupment*** of a loss or outgoing includes:
  - (a) any kind of recoupment, reimbursement, refund, insurance, indemnity or recovery, however described; and
  - (b) a grant in respect of the loss or outgoing.

### *Amount paid for you*

- (2) If some other entity pays an amount for you in respect of a loss or outgoing that you incur, you are taken to receive the amount as ***recoupment*** of the loss or outgoing.

### *Remission of general interest charge or shortfall interest charge*

(2A) If:

- (a) you have incurred expenditure that

consists of \*general interest charge or  
\*shortfall interest charge; and

- (b) the Commissioner remits any of that  
charge;

then you are taken to receive the remitted  
amount as **recoupment** of that expenditure.

*Amount for disposing of right to recoupment*

- (3) If you dispose of your right to receive an  
amount as \*recoupment of a loss or outgoing  
you are taken to receive as **recoupment** of the  
loss or outgoing any amount you receive for  
disposing of that right. (The disposal need not  
be to another entity.)

*Amount received that is recoupment to an  
unspecified extent*

- (4) If you receive an amount that is, to an  
unspecified extent, \*recoupment of a loss or  
outgoing, the amount is taken to be **recoupment**  
of the loss or outgoing to whatever extent is  
reasonable.

*Balancing adjustments not covered*

- (5) If a balancing adjustment is required for  
property on which you incurred a loss or  
outgoing, no part of the \*termination value of

the property is an amount you receive as

***recoupment*** of the loss or outgoing.

Note: The termination value is usually the amount you receive because of disposal, loss or destruction of the property.

## 20-30 Tables of deductions for which recoupments are assessable

(1) This table shows the deductions under the *Income Tax Assessment Act 1997* for which recoupments are assessable.

Note: References are to section numbers except where otherwise indicated.

<b>Provisions of the <i>Income Tax Assessment Act 1997</i></b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
1.1	8-1 (so far as it allows you to deduct a bad debt, or part of a debt that is bad)	bad debts
1.2	8-1 (so far as it allows you to deduct rates or taxes)	rates or taxes
1.3	25-5	tax-related expenses
1.4	25-35	bad debts
1.5	25-45	embezzlement or larceny by an employee
1.5A	25-47	misappropriation by an employee or agent
1.6	25-60	election expenses, Commonwealth and State elections
1.6A	25-65	election expenses, local governing body
1.7	25-75	rates and land taxes on



		premises used to produce mutual receipts
1.8	The former 25-80	upgrading assets to meet GST obligations etc.
1.8A	25-95	work in progress amount
1.8B	item 7 of the table in section 30-15	contributions relating to fund-raising events
1.8C	item 8 of the table in section 30-15	contributions relating to fund-raising auctions
1.9	Division 40	capital allowances
1.10	The former Division 42 (as it applied to *software because of the former Subdivision 46-B)	expenditure on software
1.11	The former Subdivision 46-C	expenditure on software
1.12	The former Subdivision 46-D	expenditure on software, pooled
1.13	The former Division 42 (as it applied to *IRUs because of Division 44)	expenditure on IRUs
1.14	The former 330-15	exploration or prospecting expenditure
1.15	The former 330-80	allowable capital expenditure relating to mining or quarrying
1.16	The former 330-350	petroleum resource rent tax
1.17	The former 330-370	transport capital expenditure relating to mining or quarrying
1.18	The former 330-435	rehabilitation expenditure relating to mining or quarrying
1.19	The former 330-485	balancing adjustment deduction for expenditure relating to mining or

		relating to mining or quarrying
1.19A	Division 355	R&D
1.20	The former Subdivisions 380-A and 380-C	capital expenditure incurred in obtaining a spectrum licence
1.21	The former Subdivision 387-A	landcare operations expenditure
1.22	The former Subdivision 387-B	expenditure on facilities to conserve or convey water
1.23	The former Subdivision 387-D	grapevine establishment expenditure
1.24	The former Subdivision 387-C	horticultural plant establishment expenditure
1.25	The former Subdivision 387-E	mains electricity connection expenditure
1.26	The former Subdivision 400-A	expenditure on environmental impact assessment
1.27	The former Subdivision 400-B	expenditure on environmental protection activities
1.27A	420-15	registered emissions unit
1.28	775-30	forex realisation loss

(2) This table shows the deductions under the *Income Tax Assessment Act 1936* for which recoupments are assessable.

Note: References are to section numbers except where otherwise indicated.

#### Provisions of the Income Tax Assessment Act 1936

Item	Provision	Description of expense
2.1	Former <b>51(1)</b> (so far as it allowed you to deduct a	bad debts

		bad debt, or part of a debt that is bad)
2.2	Former <b>51(1)</b> (so far as it allowed you to deduct rates or taxes)	rates or taxes
2.3	<b>63</b>	bad debts
2.4	Former <b>69</b>	tax-related expenses
2.5	Former <b>70A(3)</b>	mains electricity connection expenditure
2.6	Former <b>71</b>	embezzlement or larceny by an employee
2.7	Former <b>72</b>	rates and land tax
2.7A	Former <b>72A</b>	a payment of petroleum resource rent tax, or an instalment of petroleum resource rent tax, or a credit under paragraph 99(d) of the <i>Petroleum Resource Rent Tax Assessment Act 1987</i> in respect of a payment of such an instalment
2.8	Former <b>73B, 73BA or 73BH</b>	research and development activity expenditure
2.9	Former <b>74</b>	election expenses, Commonwealth and State elections
2.9A	Former <b>74A</b>	election expenses, local governing body
2.10	Former <b>75AA(1) or (6)</b>	grape vine establishment

		establishment expenditure
2.11	Former <b>75B(2) or (3A)</b>	water conservation or conveyance expenditure
2.12	Former <b>75D(2)</b>	land degradation prevention expenditure
2.13	Former <b>82AB</b>	development allowance expenditure
2.14	Former <b>82BB</b>	environmental impact study expenditure
2.15	Former <b>82BK</b>	environmental protection expenditure
2.17	Former <b>Division 10 of Part III</b>	mining and quarrying expenditure
2.18	Former <b>Division 10AAA of Part III</b>	expenditure on transport of minerals and quarry materials
2.19	Former <b>Division 10AA of Part III</b>	expenditure on prospecting and mining for petroleum
2.20	Former <b>124BA</b>	expenditure on rehabilitating mining, quarrying and petroleum sites
2.21	Former <b>124ZZF</b>	horticultural plant establishment expenditure (effective life of the plant less than 3 years)
2.22	Former <b>124ZZG</b>	horticultural plant establishment expenditure

		(effective life of the plant more than 3 years)
2.23	Former <b>628</b>	drought mitigation property expenditure by a primary producer
2.24	Former <b>636</b>	drought mitigation property expenditure by a leasing company

## How much is included in your assessable income?

### 20-35 If the expense is deductible in a single income year

- (1) Your assessable income includes an  
\*assessable recoupment of a loss or outgoing if:
- (a) you can deduct the whole of the loss or outgoing for the \*current year; or
  - (b) you have deducted or can deduct the whole of the loss or outgoing for an earlier income year.

Note 1: The operation of this section may be affected if a balancing charge has been included in your assessable income because of a deduction for the loss or outgoing: see section 20-45.

Note 2: Recoupment of a loss or outgoing for which you can deduct amounts over more than one income year is covered by section 20-40.

Note 3: Recoupment of a loss or outgoing that is only partially deductible is covered by section 20-50.

*Total assessed not to exceed the loss or*

- (2) The total of all amounts that subsection (1) includes in your assessable income for one or more income years in respect of a loss or outgoing cannot exceed the amount of the loss or outgoing.

*Recoupment received before income year of the deduction*

- (3) If:
- (a) you can deduct the whole of a loss or outgoing for the \*current year; and
  - (b) before the current year you received an \*assessable recoupment of the loss or outgoing;
- your assessable income for the current year includes so much of the recoupment as subsection (1) would have included if you had instead received the recoupment at the start of the current year.

#### **20-40 If the expense is deductible over 2 or more income years**

- (1) This section includes an amount in your assessable income if:
- (a) you receive in the \*current year an \*assessable recoupment of a loss or outgoing for which you can deduct

- amounts over 2 or more income years; or
- (b) you received in an *earlier* income year an  
 \*assessable recoupment of a loss or  
 outgoing of that kind (unless all of the  
 recoupment has already been included in  
 your assessable income for one or more  
 earlier income years by this section or a  
 \*previous recoupment law).

(This section applies even if the recoupment  
 was received before the first of those income  
 years.)

Note: Recoupment of a loss or outgoing that is only  
 partially deductible is covered by section 20-50.

- (2) Work out as follows how much is included in  
 your assessable income for the \*current year  
 because of one or more \*assessable  
 recoupments of the loss or outgoing.

Note: The method statement ensures that assessable  
 recoupments are included:

- only so far as they have not already been  
 included for an earlier income year;  
 and
- only to the extent of your total  
 deductions to date for the loss or  
 outgoing.

#### *Method statement*

Step 1. Add up all the \*assessable  
 recoupments of the loss or outgoing  
 that you have received (in the  
 \*current year or earlier). The result

is the ***total assessable recoupment***.

Step 2. Add up the amounts (if any) included in your assessable income for earlier income years, in respect of the loss or outgoing, by this section or a \*previous recoupment law. The result is the ***recoupment already assessed***. (If no amount was included, the ***recoupment already assessed*** is nil.)

Step 3. Subtract the recoupment already assessed from the total assessable recoupment. The result is the ***unassessed recoupment***.

Step 4. Add up each amount that you can deduct for the loss or outgoing for the \*current year, or you have deducted or can deduct for the loss or outgoing for an earlier income year. The result is the ***total deductions for the loss or outgoing***.

Note: The total deductions may be reduced if an amount has been included in your assessable income because of a balancing adjustment: see section 20-45.

Step 5. Subtract the recoupment already assessed from the total deductions



for the loss or outgoing. The result is the *outstanding deductions*.

Step 6. The unassessed recoupment is included in your assessable income, unless it is greater than the outstanding deductions. In that case, the amount of the outstanding deductions is included instead.

Example: At the start of the 2002-03 income year, a company incurs \$100,000 to start to hold a depreciating asset. The company uses the prime cost method, and the effective life is 10 years. \$10,000 is deductible for the 2002-03 income year and for each of the following 9 income years under section 40-25.

In the 2002-03 income year, the company receives \$20,000 as recoupment. How much is assessable for the 2002-03 income year?

Applying the method statement:

After step 1: the total assessable recoupment is \$20,000.

After step 2: the recoupment already assessed is nil.

After step 3: the unassessed recoupment is: total assessable recoupment minus recoupment already assessed, i.e. \$20,000 minus 0 = \$20,000.

After step 4: the total deductions for the loss or outgoing are \$10,000.

After step 5: the outstanding deductions are: total deductions for the loss or outgoing minus recoupment already assessed, i.e. \$10,000 minus 0 = \$10,000.

After step 6: the unassessed recoupment (step 3) is greater than outstanding deductions (step 5), so the amount of the outstanding deductions is included in assessable income, i.e. \$10,000.

Applying the method statement to the 2003-04 income year: a further \$10,000 is included in the

## 20-45 Effect of balancing charge

- (1) This section may affect the operation of section 20-35 or 20-40 (as appropriate) if:
- (a) a balancing adjustment is required for the \*current year (or for an earlier income year) because you have deducted or can deduct an amount for an income year for the loss or outgoing; and
  - (b) an amount (the ***balancing charge***) is included in your assessable income for the \*current year (or for the earlier income year) because of the balancing adjustment.

To find out about balancing adjustments, see Subdivision 40-D.

### *Effect on section 20-35*

- (2) In applying section 20-35, treat each of the following as reduced by the balancing charge:
- (a) the amount of the loss or outgoing;
  - (b) the total of what you can deduct for the loss or outgoing for the \*current year, or have deducted or can deduct for an earlier income year.

### *Effect on section 20-40*

- (3) In applying the method statement in subsection

20-40(2), reduce the *total deductions for the loss or outgoing* by the balancing charge.

Example: Continuing the example in subsection 20-40(2): at the start of the 2005-06 income year, the company:

- receives a further \$10,000 as recoupment; and
- sells the depreciating asset for \$75,000.

As a result of the sale, a balancing adjustment of \$5,000 is included under section 40-285 in the company's assessable income for that income year.

How much of the recoupment amount received in the 2005-06 income year is assessable for that income year?

Applying the method statement in subsection 20-40(2):

After step 1: the total assessable recoupment is \$30,000 (received during 2002-03 and 2005-06).

After step 2: the recoupment already assessed is \$20,000 (for 2002-03 and 2003-04).

After step 3: the unassessed recoupment is: total assessable recoupment minus recoupment already assessed, i.e. \$30,000 minus \$20,000 = \$10,000.

After step 4: the total deductions for the loss or outgoing are \$30,000 (\$10,000 for each of 2002-03, 2004-04 and 2004-05), reduced by \$5,000 (the amount included in assessable income for the balancing adjustment), i.e. \$25,000.

After step 5: the outstanding deductions are: total deductions for the loss or outgoing minus recoupment already assessed, i.e. \$25,000 minus \$20,000 = \$5,000.

After step 6: the unassessed recoupment (step 3) is greater than outstanding deductions (step 5), so the amount of the outstanding deductions is included in assessable income, i.e. \$5,000.

## 20-50 If the expense is only partially deductible

- (1) This section extends the operation of section 20-35 or 20-40 (as appropriate) to a case where the total of what you can deduct under a provision (the ***deduction provision***) for a loss or outgoing is limited to a proportion of the loss or outgoing.
- (2) If you receive an \*assessable recoupment of the loss or outgoing, section 20-35 or 20-40 applies as if:
  - (a) you had incurred *only* that proportion of the loss or outgoing, but could deduct the *whole* of that proportion under the deduction provision; and
  - (b) you had received only that proportion of the recoupment.

Example: You incur expenditure of \$500. A provision listed in section 20-30 entitles you to deduct 10% of the expenditure (\$50) over 5 years. This means you can deduct \$10 in each of the 5 years.

You recoup \$300 of the expenditure. This section treats you as receiving only 10% of the recoupment. Therefore, \$30 is dealt with by section 20-40.

## 20-55 Meaning of *previous recoupment law*

- (1) ***Previous recoupment law*** means a provision of the *Income Tax Assessment Act 1936* listed in this table.

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**Previous recoupment law**

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<b>Item</b>	<b>Provision</b>	<b>what kind of expense the provision relates to:</b>
1	former <b>26(j)</b> (so far as it relates to an amount received for or in respect of a loss or outgoing that is a deduction)	a loss or outgoing that is a deduction
2	former <b>26(k)</b>	embezzlement or larceny by an employee
3	former <b>63(3)</b>	bad debts
4	former <b>69(8)</b>	tax-related expenses
5	former <b>70A(5)</b>	mains electricity connection expenditure
6	former <b>72(2)</b> (so far as it relates to a refund of an amount you have deducted or can deduct)	rates or taxes
6A	former <b>72A(4)(a) and (aa)</b>	petroleum resource rent tax
7	former <b>74(2)</b>	election expenses, Commonwealth and State elections

(2) Former section 330-350 of this Act is also a  
*previous recoupment law.*

**What if you can deduct a loss or outgoing  
incurred by another entity?**

**20-60 If you are the only entity that can deduct an amount for the loss or outgoing**

This Subdivision applies in a different way if:

- (a) an entity (other than you) incurs a loss or outgoing; and
- (b) you can deduct the whole of the loss or outgoing for an income year, or you can deduct amounts for the loss or outgoing over 2 or more income years; and
- (c) no other entity can deduct an amount for the loss or outgoing; and
- (d) the entity that incurred the loss or outgoing receives one or more amounts as \*recoupment of the loss or outgoing.

This Subdivision (except this section and section 20-65) applies as if you had incurred the loss or outgoing and had also received the \*recoupment.

**20-65 If 2 or more entities can deduct amounts for the loss or outgoing**

- (1) Special rules apply if:
  - (a) an entity (the *first entity*) incurs a loss or outgoing; and
  - (b) 2 or more entities (the *deducting entities*, which may include the first entity) have deducted or can deduct amounts for the

loss or outgoing (whether for the same income year or for different income years); and

- (c) the first entity receives one or more amounts as \*recoupment of the loss or outgoing.

- (2) This Subdivision (except this section and section 20-60) applies as if the first entity and the deducting entities together constituted a single entity (the *notional entity*) that had:

- (a) incurred the loss or outgoing; and
- (b) received the amount or amounts as \*recoupment; and
- (c) included in its assessable income any amount included in the assessable income of any of the deducting entities under a \*previous recoupment law or this Subdivision (except this section).

- (3) If because of subsection (2) the notional entity's assessable income for an income year (the *assessment year*) would include an amount under this Subdivision (the *assessable amount*), the amount reverses in the assessment year the deductions for the loss or outgoing, in accordance with the rules in subsection (5).

- (4) The assessable income of each deducting entity

for the assessment year includes the total amounts (if any) by which that entity's actual deductions for the loss or outgoing are reversed in that income year.

- (5) Deductions for the loss or outgoing are reversed in the assessment year as follows:
- (a) the amounts by which deductions are reversed total the assessable amount (unless all the deductions have been reversed);
  - (b) a deduction for an income year is not reversed until all deductions for earlier income years have been reversed;
  - (c) a deduction is not reversed in the assessment year to the extent that it has already been reversed in an earlier year;
  - (d) if each of 2 or more entities can deduct an amount for the loss or outgoing for the same income year, those deductions are reversed in the assessment year by amounts proportionate to the amounts of the deductions.

## **Subdivision 20-B—Disposal of a car for which lease payments have been deducted**

### **Guide to Subdivision 20-B**

#### **20-100 What this Subdivision is about**



This Subdivision reverses the effect of deductions for lease payments for a car leased to you (or to your associate), but only if you make a profit by disposing of the car after acquiring it from the lessor. The *smallest* of these amounts is included in your assessable income:

- your profit on the disposal;
- the total deductible lease payments for the period of the lease;
- the total amounts you could have deducted for the car's decline in value if, instead of leasing it, you had owned it and used it solely for the purpose of producing assessable income.

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20-130 Successive leases

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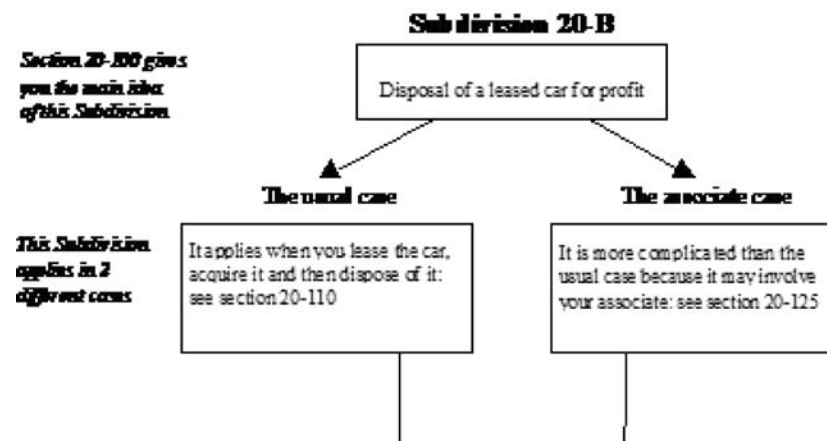
### Miscellaneous rules

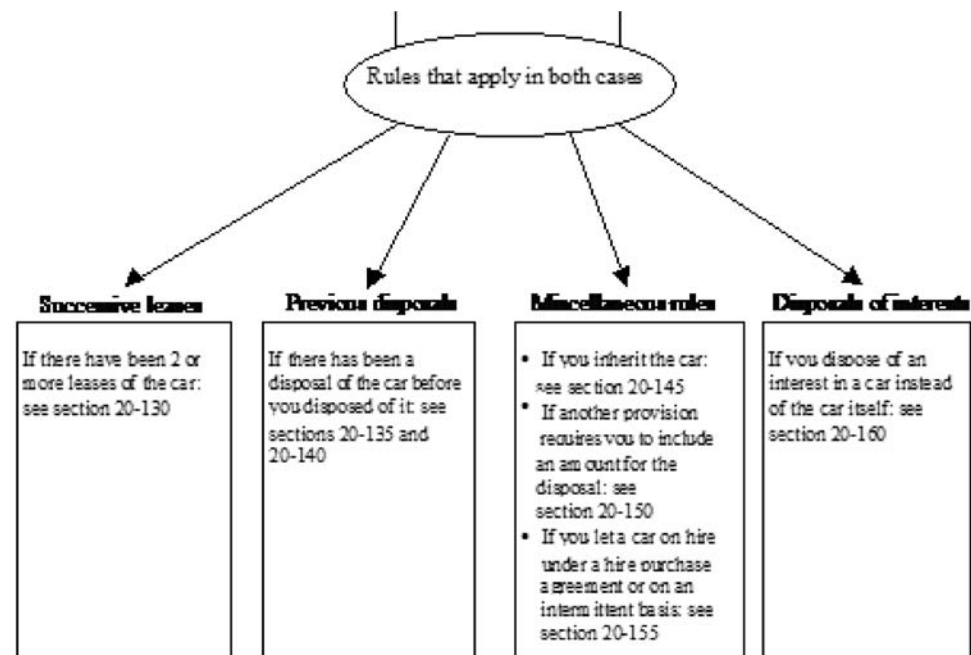
- 20-145 No amount included if you inherited the car
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### Disposals of interests in a car: special rules apply

- 20-160 Disposal of an interest in a car

## 20-105 Map of this Subdivision





## The usual case

### 20-110 Disposal of a leased car for profit

- (1) Your assessable income includes the \*profit you make on disposing of a \*car if:
- the car was designed mainly for carrying passengers; and
  - the car was leased to you and has been leased to no-one else; and
  - you or another entity can deduct for the income year any of the lease payments paid or payable by you, or have deducted or can deduct any of them for an earlier income year, under this Act; and
  - you acquired the car from the lessor.

Note 1: Even if subsection (1) does not apply, an amount may still be included in your assessable income:

- under section 20-125 (which deals with more complicated cases that may involve your associate); or
- if you disposed of an interest in a car (rather than the car itself): see section 20-160.

Note 2: In some cases you do not include an amount in your assessable income:

- if there has been an earlier disposal of the car for market value: see section 20-135; or
- if you inherited the car: see section 20-145; or
- if the car was let on hire in the circumstances set out in section 20-155.

(2) However, the amount included cannot exceed the smaller of these limits:

- (a) the total lease payments for the lease that you or another entity have deducted or can deduct under this Act for an income year;
- (b) the amount of \*notional depreciation for the lease period.

Note 1: If, because of more than one lease of the car, there is more than one way to work out the amount to be included, you only include the largest amount: see section 20-130.

Note 2: In some cases you reduce the amount to be included:

- if there has been an earlier disposal of the car, or of an interest in it: see section 20-140; or
- if another provision requires you to include an amount because of the disposal: see section 20-150.

- (3) You increase those limits if you have previously leased the \*car from the same lessor, or from an \*associate of that lessor.

You increase the first limit by the total lease payments for each previous lease of that kind that you or another entity have deducted or can deduct under this Act for an income year.

You increase the second limit by the amount of \*notional depreciation for the period of each previous lease of that kind.

## 20-115 Working out the profit on the disposal

- (1) The *profit* on the disposal is the amount by which the \*consideration receivable for the disposal exceeds:

- the amount it cost you to acquire the \*car;

plus:

- any capital expenditure you incurred on the car after acquiring it.

- (2) The *consideration receivable* is worked out using this table:

Consideration receivable for the disposal of the car		
Item	In this situation:	the consideration

<b>receivable is:</b>		
1	you sell the *car for an amount specific to it	the proceeds of the sale, less the expenses of the sale
2	you sell the *car with other property without a specific amount being allocated to it	the part of the total proceeds of the sale that is reasonably attributable to the car less the part of the reasonably attributable expenses of the sale
3	you trade the *car in and buy another car	the value of the trade-in, plus any other consideration you receive
4	you sell the *car and another entity buys another car	the amount by which the cost of the other car is reduced by the sale, plus any other consideration you receive
5	you dispose of the *car to an insurer because it is lost or destroyed	the amount or value received or receivable under the insurance policy

- (3) However, if the disposal of the \*car is a \*taxable supply, the *consideration receivable* does not include an amount equal to the \*GST payable on the supply.

## 20-120 Meaning of *notional depreciation*

This is how to work out the *notional depreciation* for a lease period:

### *Method statement*

Step 1. Compare:

- the \*car's \*cost to the lessor for the purposes of

for the purposes of

Subdivision 40-C (which is about working out the cost of \*depreciating assets);

with:

- the car's \*termination value for the purposes of section 40-300 when the lessor disposed of it.

Step 2. If the car's cost exceeds the car's termination value, multiply the excess by:

- the number of days in the lease period;

divided by:

- the number of days the lessor owned the car.

Step 3. The result is the ***notional depreciation*** for the lease period.

Step 4. If the car's cost does *not* exceed the car's termination value, the ***notional depreciation*** for the lease period is zero.

Note 1: The notional depreciation for the lease period represents:

- the amount you could have deducted for the car's decline in value if, instead of

leasing it, you had owned it and used it solely for the purpose of producing assessable income for that period;

adjusted by:

- the balancing adjustment you would have made if you had disposed of the car at the end of that period.

Note 2: The car's cost to the lessor is worked out differently if the lessor acquired it in the 1996-97 income year or an earlier income year: see section 20-105 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: The car's termination value is worked out differently if the lessor disposed of it in the 1996-97 income year or an earlier income year: see section 20-110 of the *Income Tax (Transitional Provisions) Act 1997*.

## The associate case

### 20-125 Disposal of a leased car for profit

- (1) Your assessable income includes the \*profit you make on disposing of a \*car if:
  - (a) section 20-110 does *not* include an amount in your assessable income because of the disposal; and
  - (b) the car was designed mainly for carrying passengers; and
  - (c) the car was leased to you or your \*associate; and
  - (d) you, your associate or another entity can deduct for the income year any of the lease payments paid or payable by the lessee, or have deducted or can deduct any of them for an earlier income year,



under this Act; and

(e) either:

- (i) you, your associate, or entities including you or your associate, acquired the car from the lessor; or
- (ii) another entity acquired the car from the lessor under an \*arrangement that enabled you or your associate to acquire the car.

Note 1: Even if subsection (1) does not apply, an amount may be included in your assessable income if you disposed of an interest in a car (rather than the car itself): see section 20-160.

Note 2: In some cases you do *not* include an amount in your assessable income:

- if there has been an earlier disposal of the car for market value: see section 20-135; or
- if you inherited the car: see section 20-145; or
- if the car was let on hire in the circumstances set out in section 20-155.

(2) However, the amount included cannot exceed the smallest of these limits:

- (a) the total lease payments for the lease that you, your \*associate or another entity have deducted or can deduct under this Act for an income year;
- (b) the amount of \*notional depreciation for the lease period;
- (c) if an entity other than you, or if entities including you, acquired the \*car from the

including you, acquired the car from the lessor—the amount by which the \*consideration receivable for the disposal of the car by you exceeds the total of:

- (i) the car's cost to that entity, or those entities; and
- (ii) any capital expenditure that entity, or any of those entities, incurred on the car after that acquisition and before you acquired it.

Note 1: If, because of more than one lease of the car, there is more than one way to work out the amount to be included, you only include the largest amount: see section 20-130.

Note 2: In some cases you reduce the amount to be included:

- if there has been an earlier disposal of the car, or of an interest in it: see section 20-140; or
- if another provision requires you to include an amount because of the disposal: see section 20-150.

Example: Your associate leases a car for 5 years and then acquires it from the lessor for \$4,000. Your associate sells it to you for \$3,000. You sell it for \$10,000.

Your profit is \$10,000 (the consideration receivable) less \$3,000 (the car's cost to you) = \$7,000.

The first 2 limits on the amount to be included in your assessable income are \$9,000 (total deductible lease payments for the lease) and \$8,000 (notional depreciation for the lease period).

Since your associate acquired the car from the lessor, the third limit is \$10,000 (the consideration receivable by you) less \$4,000 (the car's cost to the associate) = \$6,000.

The amount you include in your assessable income *cannot* exceed the smallest of the limits.

So, you do not include your profit of \$7,000.  
Instead, you include \$6,000 (the smallest of the limits).

- (3) You increase the first 2 limits if you, or your associate, have previously leased the \*car from the same lessor, or from an associate of that lessor.

You increase the first limit by the total lease payments for each previous lease of that kind that you, your \*associate or another entity have deducted or can deduct under this Act for an income year.

You increase the second limit by the amount of \*notional depreciation for the period of each previous lease of that kind.

## **Successive leases**

### **20-130 Successive leases**

If, because of 2 or more leases of the \*car, there are different amounts that could be included in your assessable income because of the disposal, only the largest of those amounts is included.

## **Previous disposals of the car**

### **20-135 No amount included if earlier disposal for market value**

You do *not* include an amount in your assessable income because of the disposal if, after the lessor disposed of the \*car and before you disposed of it, an entity other than you disposed of the car and:

- (a) the \*consideration receivable for that disposal was at least the \*market value of the car at the time of that disposal; or
- (b) because of that disposal, that market value was included, or an amount worked out using that market value was included, in the entity’s assessable income under this Act.

**20-140 Reducing the amount to be included if there has been an earlier disposal**

Each limit on the amount to be included in your assessable income because of your disposal of the \*car is reduced if, after the lease period began and before your disposal, the car, or an interest in it, was disposed of in one of these situations:

Reducing each limit on the amount to be included		
Item	In this situation:	reduce each limit by:
1	Section 20-110 or 20-125 included an amount in your assessable income in respect of	that amount

	such an earlier disposal by you	
2	Section 20-110 or 20-125 included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity	that amount
3	Section 20-110 or 20-125 would have included an amount in your assessable income in respect of such an earlier disposal by you but for the operation of section 20-145	that amount
4	Section 20-110 or 20-125 would have included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity but for the operation of section 20-145	that amount
5	Section 20-150 reduced the amount to be included in your assessable income in respect of such an earlier disposal by you	the amount of the reduction
6	Section 20-150 reduced the amount to be included in another entity's assessable income in respect of such an earlier disposal by the other entity	the amount of the reduction

Examples: Your associate leases a car for 5 years and then acquires it. Your associate disposes of it to you and section 20-110 includes \$500 in your associate's assessable income.

You later dispose of the car.

In working out the amount to include in your assessable income for your disposal, you *can* reduce each limit in subsection 20-125(2) by \$500 because the disposal by your associate occurred *after* the lease period began.

Contrast this case:

You lease a car for 5 years and then acquire it. You dispose of it to another entity and

section 20-110 includes \$1,000 in your assessable income.

You lease the car from that entity for 2 years and then acquire it. You later dispose of it.

In working out the amount to include in your assessable income in respect of the second lease, you *cannot* reduce each limit in subsection 20-110(2) by \$1,000 because the first disposal did *not* occur after the start of that lease.

Note: If the earlier disposal occurred in the 1996-97 income year or an earlier income year, each limit may be able to be reduced by a further amount: see section 20-115 of the *Income Tax (Transitional Provisions) Act 1997*.

## Miscellaneous rules

### 20-145 No amount included if you inherited the car

You do *not* include an amount in your assessable income because of the disposal if you inherited the \*car.

### 20-150 Reducing the amount to be included if another provision requires you to include an amount for the disposal

The amount to be included in your assessable income because of the disposal is reduced by any amount that another provision of this Act (except sections 40-285 and 40-370) requires you to include in your assessable income because of the disposal.

Note: sections 40-285 and 40-370 are about including an amount after making a balancing adjustment on the disposal of a car.

**20-155 Exception for particular cars taken on hire**

This Subdivision does not apply to these kinds of leases:

- (a) letting a \*car on hire under a \*hire purchase agreement; or
- (b) letting a \*car on hire under an agreement of a kind ordinarily entered into by people who take cars on hire intermittently on an hourly, daily, weekly or monthly basis.

**20-157 Exception for small business entities**

This Subdivision does not apply to you if, at any time in the income year in which you disposed of the \*car, it was allocated to a pool of yours under Division 328.

**Disposals of interests in a car: special rules apply****20-160 Disposal of an interest in a car**

- (1) This Subdivision applies to the disposal of an interest in a \*car in almost the same way as it does to the disposal of the car itself. The differences are set out below.
- (2) Your assessable income includes so much of your \*profit on the disposal as is reasonable. The limits in subsections 20-110(2) and

20-125(2) do *not* apply.

- (3) The cost of the interest to you is taken to be a reasonable amount.
- (4) Sections 20-135 and 20-140 do *not* apply to the disposal.
- Note 1: Section 20-135 says that you do not include an amount if there has been an earlier disposal of the car for market value.
- Note 2: Section 20-140 allows you to reduce the amount to be included if there has been an earlier disposal of the car.
- (5) Section 20-145 applies to the disposal if you inherited either the interest or the \*car itself.

Note: Section 20-145 says that you do not include an amount if you inherited the car.

## **Part 2-5—Rules about deductibility of particular kinds of amounts**

### **Division 25—Some amounts you can deduct**

#### **Guide to Division 25**

##### **25-1 What this Division is about**

This Division sets out some amounts you can deduct. Remember that the general rules about deductions in Division 8 (which is about general deductions) apply to this



Division.
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## Operative provisions

### 25-5 Tax-related expenses

- (1) You can deduct expenditure you incur to the extent that it is for:
  - (a) managing your \*tax affairs; or
  - (b) complying with an obligation imposed on you by a \*Commonwealth law, insofar as that obligation relates to the \*tax affairs of an entity; or
  - (c) the \*general interest charge or the \*shortfall interest charge; or
  - (ca) a penalty under Subdivision 162-D of the \*GST Act; or
  - (d) obtaining a valuation in accordance with section 30-212 or 31-15.

Note 1: To find out whether a trustee of a deceased estate can deduct expenditure under this section, see subsection 69(7) of the *Income Tax Assessment Act 1936*.

Note 2: If you receive an amount as recoupment of the expenditure, the amount may be included in your assessable income: see Subdivision 20-A.

*No deduction for certain expenditure*

- (2) You cannot deduct under subsection (1):
- (a) \*tax; or
  - (b) an amount withheld or payable under Part 2-5 or Part 2-10 in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (c) expenditure for \*borrowing money (including payments of interest) to pay an amount covered by paragraph (a) or (b); or
  - (d) expenditure for a matter relating to the commission (or possible commission) of an offence against an \*Australian law or a \*foreign law; or
  - (e) a fee or commission for advice about the operation of a \*Commonwealth law relating to taxation, unless that advice is provided by a \*recognised tax adviser.

*No deduction for expenditure excluded from general deductions*

- (3) You cannot deduct expenditure under subsection (1) to the extent that a provision of this Act (except section 8-1) expressly prevents or limits your deducting it under section 8-1 (about general deductions). It does not matter whether the provision specifically refers to

section 8-1.

*No deduction for capital expenditure*

- (4) You cannot deduct capital expenditure under subsection (1). However, for this purpose, expenditure is not capital expenditure merely because the \*tax affairs concerned relate to matters of a capital nature.

Example: Under this section, you can deduct expenditure you incur in applying for a private ruling on whether you can depreciate an item of property.

*Use of property taken to be for income producing purpose*

- (5) Under some provisions of this Act it is important to decide whether you used property for the \*purpose of producing assessable income. For provisions of that kind, your use of property is taken to be for that purpose insofar as you use the property for:
- (a) managing your \*tax affairs; or
  - (b) complying with an obligation imposed on you by a \*Commonwealth law, insofar as that obligation relates to the \*tax affairs of another entity.

Example: You buy a computer to prepare your tax returns. The expenditure you incur in buying the computer is capital expenditure and cannot be deducted under this section.

However, to the extent that you use the

computer in preparing your income tax return, you will be able to deduct the decline in value of your computer under Division 40. That is because, under this subsection, the computer is property that you are taken to use for the purpose of producing assessable income.

- (6) If another provision of this Act expressly provides that a particular use of property is not taken to be for the \*purpose of producing assessable income, that provision overrides subsection (5).

*No double deduction for general interest charge on a running balance account*

- (7) If you deduct \*general interest charge that applies to an RBA deficit debt, you can't also deduct the corresponding general interest charge on \*tax debts that have been allocated to the RBA.

Note: RBAs (running balance accounts) are dealt with in Part IIB of the *Taxation Administration Act 1953*.

*Expenditure by trustee of deceased estate*

- (8) If:
- (a) after you die, the trustee of your deceased estate incurs expenditure; and
  - (b) had you incurred the expenditure before you died, you could have deducted it under subsection (1);

for the purposes of assessing the trustee for the

income year in which you died, the expenditure is a deduction under that subsection.

## 25-10 Repairs

- (1) You can deduct expenditure you incur for repairs to premises (or part of premises) or a \*depreciating asset that you held or used *solely* for the \*purpose of producing assessable income.

*Property held or used partly for that purpose*

- (2) If you held or used the property only *partly* for that purpose, you can deduct so much of the expenditure as is reasonable in the circumstances.

*No deduction for capital expenditure*

- (3) You cannot deduct capital expenditure under this section.

## 25-15 Amount paid for lease obligation to repair

You can deduct an amount that you pay for failing to comply with a lease obligation to make repairs to premises if you use or have used the premises for the \*purpose of producing assessable income.

Note: The amount is assessable income of the entity to which you pay it: either as ordinary income under section 6-5 or because it is included by

## 25-20 Lease document expenses

- (1) You can deduct expenditure you incur for preparing, registering or stamping:
- (a) a lease of property; or
  - (b) an assignment or surrender of a lease of property;
- if you have used or will use the property *solely* for the \*purpose of producing assessable income.

*Property used partly for that purpose*

- (2) If you have used, or will use, the leased property only *partly* for that purpose, you can deduct the expenditure to the extent that you have used, or will use, the leased property for that purpose.

## 25-25 Borrowing expenses

- (1) You can deduct expenditure you incur for \*borrowing money, to the extent that you use the money for the \*purpose of producing assessable income. In most cases the deduction is spread over the \*period of the loan.

For the cases where the deduction is *not* spread, see subsection (6).

Note: Your deductions under this section may be reduced if any of your commercial debts have

*Income year when money used solely for the purpose of producing assessable income*

- (2) You can deduct for an income year the maximum amount worked out under subsection (4) if you use the \*borrowed money during that income year *solely* for the \*purpose of producing assessable income.

Example: In 1997-98 you borrow \$100,000 and incur expenditure of \$1,500 for the borrowing. You use the money to buy a house. Throughout 1998-99 you rent the house to a tenant. You can deduct for the expenditure for 1998-99 the maximum amount worked out under subsection (4).

*Income year when borrowed money used partly for that purpose*

- (3) If you use the money only *partly* for that purpose during that income year, you can deduct the proportion of that maximum amount that is appropriate having regard to the extent that you used the \*borrowed money for that purpose.

Note: You cannot deduct anything for that income year if you do not use the money for that purpose at all during that income year.

*Maximum deduction for an income year*

- (4) You work out as follows the maximum amount that you can deduct for the expenditure for an



income year:

*Method statement*

Step 1. Work out the ***remaining expenditure*** as follows:

- For the income year in which the \*period of the loan begins, it is the amount of the expenditure.
- For a later income year, it is the amount of the expenditure reduced by the maximum amount that you can deduct for the expenditure for each earlier income year.

Step 2. Work out the ***remaining loan period*** as follows:

- For the income year in which the \*period of the loan begins, it is the period of the loan (as determined at the end of the income year).
- For a later income year, it is the period from the start of the income year until the end of the period of the loan (as

determined at the end of the income year).

Step 3. Divide the remaining expenditure by the number of days in the remaining loan period.

Step 4. Multiply the result from Step 3 by the number of days in the remaining loan period that are in the income year.

Example: To continue the example in subsection (2): suppose the original period of the loan is 4 years starting on 1 September 1997. What is the maximum amount you can deduct for the expenditure for 1997-98?

Applying the method statement:

After Step 1: the remaining expenditure is \$1,500 (the amount of the expenditure).

After Step 2: the remaining loan period is 4 years from 1 September 1997 (1,461 days).

After Step 3: the result is \$1,500 divided by 1,461 = \$1.03.

After Step 4: the result is \$1.03 multiplied by 302 days = \$310.06.

Suppose you repay the loan early, on 31 December 1998. What is the maximum amount you can deduct for the expenditure for 1998-99?

Applying the method statement:

After Step 1: the remaining expenditure is \$1,500 (the amount of the expenditure) reduced by \$310.06 (the maximum amount you can deduct for 1997-98) = \$1,189.94.

After Step 2: the remaining loan period is the period from 1 July 1998 to 31 December 1998 (183 days).

After Step 3: the result is \$1,189.94 divided by

183 days = 30.50.

After Step 4: the result is \$6.50 multiplied by  
183 days = \$1,189.94.

### *Meaning of period of the loan*

- (5) The *period of the loan* is the shortest of these periods:
- (a) the period of the loan as specified in the original loan contract;
  - (b) the period starting on the first day on which the money was borrowed and ending on the day the loan is repaid;
  - (c) 5 years starting on the first day on which the money was borrowed.

### *When deduction not spread*

- (6) If the total of the following is \$100 or less:
- (a) each amount of expenditure you incur in an income year for <sup>\*</sup>borrowing money you use during that income year *solely* for the <sup>\*</sup>purpose of producing assessable income;
  - (b) for each amount of expenditure you incur in that income year for borrowing money you use during that income year only *partly* for that purpose—the proportion of that amount that is appropriate having regard to the extent that you use the money during that income year for that purpose;

you can deduct for the income year:

- (c) each amount covered by paragraph (a);
- and
- (d) each proportion covered by paragraph (b).

## **25-30 Expenses of discharging a mortgage**

### *Mortgage for borrowed money*

- (1) You can deduct expenditure you incur to discharge a mortgage that you gave as security for the repayment of money that you <sup>\*</sup>borrowed if you used the money *solely* for the <sup>\*</sup>purpose of producing assessable income.

### *Mortgage for property bought*

- (2) You can deduct expenditure you incur to discharge a mortgage that you gave as security for the payment of the whole or part of the purchase price of property that you bought if you used the property *solely* for the <sup>\*</sup>purpose of producing assessable income.

### *Money or property used partly for that purpose*

- (3) If you used the money you <sup>\*</sup>borrowed, or the property you bought, only *partly* for the <sup>\*</sup>purpose of producing assessable income, you can deduct the expenditure to the extent that you used the money or property for that

purpose.

*No deduction for payments of principal or interest*

- (4) You cannot deduct payments of principal or interest under this section.

## **25-35 Bad debts**

- (1) You can deduct a debt (or part of a debt) that you write off as bad in the income year if:
- (a) it was included in your assessable income for the income year or for an earlier income year; or
  - (b) it is in respect of money that you lent in the ordinary course of your \*business of lending money.

Note: If a bad debt is in respect of a payment that is required to be made under a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*); see subsection 63(1A) of that Act.

*Writing off a debt you have bought*

- (2) You can deduct a debt that you write off as bad in the income year if you bought the debt in the ordinary course of your \*business of lending money. However, you cannot deduct more than the expenditure you incurred in buying the debt.

*Writing off part of a debt you have bought*

- (3) You can deduct a part of a debt if:
- (a) you write off that part as bad in the income year; and
  - (b) you bought the debt in the ordinary course of your \*business of lending money.
- (4) However, the maximum that you can deduct under subsection (3) for one or more income years is the amount (if any) by which:
- the expenditure you incurred in buying the debt;
- exceeds:
- so much of the debt as has not yet been written off as bad.

*Limit on deductions for bad debts under leases of luxury cars*

- (4A) There is a limit to how much you can deduct under this section for debts you write off that relate to \*luxury car lease payments that have become or will become liable to be made under a lease of a \*car to which Division 242 (about luxury car leases) applies.
- (4B) The most you can deduct for an income year is:
- the interest for the notional loan you are taken to have made to the lessee;
- reduced by:

- each amount that you have deducted, or can deduct, for an earlier income year under this section (or section 63 of the *Income Tax Assessment Act 1936*) for debts relating to \*luxury car lease payments that have become or will become liable to be made under the lease.

*Special rules affecting deductions under this section*

- (5) The rules described in the table may affect your entitlement to deductions under this section, or may result in a deduction being reversed.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Rules affecting deductions for bad debts</b>		
<b>Item</b>	<b>For the rules about this situation:</b>	<b>See:</b>
1	A company cannot deduct a bad debt if there has been a change in ownership or control of the company and the company has not satisfied the same business test.	Subdivisions 165-C and 166-C
2	A company cannot	Subdivision

	deduct a bad debt in various other cases that may involve trafficking in bad debts.	175-C and <b>section 63D</b>
3	A deduction under this section is reduced if the debt is forgiven and the debtor and creditor are companies under common ownership and agree for the creditor to forgo the deduction to a specified extent.	section 245-90
4	If you receive an amount as recoupment of a bad debt that you can deduct under this section, the amount may be included in your assessable income.	Subdivision 20-A
5	Certain trusts cannot deduct a bad debt if there has been a change in ownership or control or an abnormal trading in their units	<b>Divisions 266 and 267 in Schedule 2F</b>
6	An entity that used to be a member of a consolidated group or MEC group can deduct a bad debt that used to be owed to a member of the group only if certain conditions are met	Subdivisions 709-D and 719-I

Note: Subsections 230-180(3), (5) and (6) and 230-195(3), (5) and (6) provide that in certain



to a financial arrangement is to be treated, for the purposes of this Act, as a deduction of a bad debt. The rules referred to in this subsection apply to that deduction.

## 25-40 Loss from profit-making undertaking or plan

- (1) You can deduct a loss arising from the carrying on or carrying out of a profit-making undertaking or plan if any profit from that plan would have been included in your assessable income by section 15-15 (which is about profit-making undertakings and plans).

*When section does not apply*

- (2) You cannot deduct a loss under subsection (1) if the loss arises in respect of the sale of property acquired on or after 20 September 1985.

Note: If you sell property you acquired *before* 20 September 1985 for profit-making by sale, you may be able to deduct a loss on the sale: see section 52 of the *Income Tax Assessment Act 1936*.

*Notice to Commissioner*

- (3) You can deduct a loss under subsection (1), insofar as it arises in respect of property, only if:
  - (a) you notified the Commissioner that you acquired the property for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making

undertaking or plan (however described);

or

- (b) the Commissioner is satisfied that you acquired the property for either of those purposes.

*When notice must have been given*

- (4) The notice must have been given at or before the time you lodged your \*income tax return:
  - (a) for the income year in which you acquired the property; or
  - (b) if you were not required to lodge an income tax return for that income year—for the first income year after that income year for which you *were* required to lodge one.

## **25-45 Loss by theft etc.**

You can deduct a loss in respect of money if:

- (a) you discover the loss in the income year;  
and
- (b) the loss was caused by theft, stealing, embezzlement, larceny, defalcation or misappropriation by your employee or \*agent (other than an individual you employ solely for private purposes); and
- (c) the money was included in your

assessable income for the income year, or  
for an earlier income year.

Note: If you receive an amount as recoupment of the  
loss, the amount may be included in your  
assessable income: see Subdivision 20-A.

## **25-47 Misappropriation where a balancing adjustment event occurs**

- (1) You can deduct an amount if:
- (a) a \*balancing adjustment event occurs for  
a \*depreciating asset you \*held; and
  - (b) your employee or \*agent misappropriates  
(whether by theft, embezzlement, larceny  
or otherwise) all or part of the amount  
applicable to you under:
    - (i) item 8 of the table in subsection  
40-300(2); or
    - (ii) item 1, 3, 4 or 6 of the table in  
subsection 40-305(1);in relation to the balancing adjustment  
event.

Note 1: The amount applicable to you under subsection  
40-300(2) or 40-305(1) may be the market  
value of an asset or of a non-cash benefit.

Note 2: If you receive an amount as recoupment of the  
amount misappropriated, the amount may be  
included in your assessable income: see  
Subdivision 20-A.

- (2) The amount you can deduct is so much of the  
amount misappropriated as represents an  
amount applicable to you under item 8 of the

table in subsection 40-300(2) or item 1, 3, 4 or 6 of the table in subsection 40-305(1) in relation to the \*balancing adjustment event.

- (3) You can deduct the amount for the income year in which the misappropriation happens.
- (4) You must reduce the amount you can deduct under this section if your deductions for the asset have been reduced under section 40-25 because of use for a purpose other than a \*taxable purpose. The reduction is by the same proportion you reduce the balancing adjustment amount for the asset under section 40-290.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
  - (a) you discover the misappropriation after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation.

## **25-50 Payments of pensions, gratuities or retiring allowances**

- (1) You can deduct a payment of a pension, gratuity or retiring allowance that you make to:

- (a) an employee; or
  - (b) a former employee; or
  - (c) a dependant of an employee or a former employee.
- (2) However, you can deduct it only to the extent that it is made in good faith in consideration of the past services of the employee, or former employee, in any \*business that you carried on for the purpose of gaining or producing assessable income.
- (3) You cannot deduct a payment under this section if you can deduct it under any other provision of this Act.

## **25-55 Payments to associations**

- (1) You can deduct a payment you make for membership of a trade, business or professional association.

Note: Alternatively, you can deduct the expense under section 8-1 (which is about general deductions) if you satisfy the requirements of that section.

*Maximum amount—\$42*

- (2) However, \$42 is the maximum amount you can deduct under this section for the payments that you make in the income year to any one association.

*If you deduct under section 8-1*

- (3) If you deduct a payment under section 8-1 (which is about general deductions) instead of this section:
- (a) the payment does *not* count towards the \$42 limit; and
  - (b) the amount that you can deduct for the payment is *not* limited to \$42.

## **25-60 Parliament election expenses**

- (1) You can deduct expenditure you incur in contesting an election for membership of:
- (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) the Legislative Assembly for the Australian Capital Territory; or
  - (d) the Legislative Assembly of the Northern Territory of Australia.

Note 1: Entertainment expenses are excluded: see section 25-70.

Note 2: If you receive an amount as recoupment of the expenditure, the amount may be included in your assessable income: see Subdivision 20-A.

## **25-65 Local government election expenses**

- (1) You can deduct expenditure you incur in contesting an election for membership of a \*local governing body, but you cannot deduct more than \$1,000 per election. You deduct the

expenditure for the income year in which you incur it.

(2) However, you can deduct more than the \$1,000 limit if:

- (a) you have received an amount as  
\*recoupment of the expenditure; and
- (b) some or all of that amount is included in your assessable income for an income year; and
- (c) the total of your deductions for the election would be less than the \$1,000 limit if you disregarded so much (the ***assessed recoupment***) of the expenditure as equals the amount so included in your assessable income.

In that case:

- (d) the assessed recoupment is disregarded in applying the \$1,000 limit; and
- (e) the further amount that you can deduct because of paragraph (d) is deducted for the income year referred to in paragraph (b).

Example: Chris is elected to the Bunyip Shire Council. In the 2007-08 income year he incurs expenditure of \$1,200 in contesting the election, of which he deducts \$1,000 (the limit under subsection (1)).

In 2008-09, Chris receives \$360 as an assessable recoupment of the expenditure. \$300 of that is included in his assessable income by section 20-35 (as extended by section 20-50).

because of the assessable recoupment, \$500 of the expenditure is disregarded under paragraph (2)(d) in applying the \$1,000 limit. As a result, Chris's deductions are treated as being only \$700, which is less than the limit. This does not affect his original deduction for 2007-2008, but it means he can deduct the previously undeducted \$200, for 2008-09 (see paragraph (2)(e)).

This triggers a further application of section 20-35 (as extended by section 20-50) to include the remaining \$60 of the assessable recoupment in Chris's assessable income for 2008-09. His total deductions (net of recoupment included in assessable income) come to \$840, which is the same as his original expenditure (net of recoupment).

Note: An amount you receive as recoupment of expenditure may be included in your assessable income as an assessable recoupment under Subdivision 20-A, as ordinary income under section 6-5 or as statutory income under some other provision.

## **25-70 Deduction for election expenses does not extend to entertainment**

- (1) To the extent that you incur expenditure in respect of providing \*entertainment, you cannot deduct it under section 25-60 or 25-65.
- (2) However, subsection (1) does not stop you deducting expenditure to the extent that you incur it in respect of:
  - (a) providing \*entertainment that is available to the public generally; or
  - (b) providing food or drink to yourself, unless it would be concluded that you have a purpose of enabling or facilitating \*entertainment to be provided to someone



else.

## **25-75 Rates and land taxes on premises used to produce mutual receipts**

(1) An entity can deduct these amounts it pays for premises:

- (a) rates which are annually assessed;
- (b) land tax imposed under a \*State law or \*Territory law.

But only if it uses the premises:

- (c) for the purpose of producing mutual receipts; or
- (d) in carrying on a \*business for the purpose of producing mutual receipts; or
- (e) for the purpose of producing amounts to which section 59-35 applies (amounts that would be mutual receipts but for prohibition on distributions to members); or
- (f) in carrying on a \*business for the purpose of producing amounts to which section 59-35 applies.

Note: If the entity receives an amount as recoupment of the rates or land tax, the amount may be included in its assessable income: see Subdivision 20-A

*When premises used only for deductible purposes*

- (2) The entity can deduct the *whole* of the rates or land tax if it uses the premises *only* in one or more of these ways:
- (a) for the purpose of producing mutual receipts;
  - (b) in carrying on a \*business for the purpose of producing mutual receipts;
  - (c) for the \*purpose of producing assessable income.

*When premises used partly for deductible purposes*

- (3) If the entity uses the premises *partly* in one or more of the ways referred to in subsection (2) and partly in some other way, it can deduct the rates or land tax to the extent that it uses the premises in one or more of the ways referred to in that subsection.

*No deduction under section 8-1*

- (4) The entity cannot deduct the rates or land tax under section 8-1 (which is about general deductions).

## **25-85 Certain returns in respect of debt interests**

- (1) This section deals with a \*return that an entity pays or provides on a \*debt interest.

- (2) The \*return is not prevented from being a \*general deduction for an income year under section 8-1 merely because:
- (a) the return is \*contingent on the economic performance (whether past, current or future) of:
    - (i) the entity or a part of the entity's activities; or
    - (ii) a \*connected entity of the entity or a part of the activities of a connected entity of the entity; or
  - (b) the return secures a permanent or enduring benefit for the entity or a connected entity of the entity.
- (3) If the \*return is a \*dividend, the entity can deduct the return to the extent to which it would have been a \*general deduction under section 8-1 if:
- (a) the payment of the return were the incurring by the entity of a liability to pay the same amount as interest; and
  - (b) that interest were incurred in respect of the finance raised by the entity and in respect of which the return was paid or provided; and
  - (c) the \*debt interest retained its character as a debt interest for the purposes of

subsection (2).

- (4) Subsections (2) and (3) do not apply to a \*return to the extent to which it would be a \*general deduction under section 8-1 apart from this section.
- (4A) Subsections (2) and (3) do not apply to a \*return on a \*debt interest that is a \*Division 230 financial arrangement.
- (5) Subject to regulations made for the purposes of subsection (6), subsections (2) and (3) do not apply to the return to the extent to which the annually compounded internal rate of return exceeds the \*benchmark rate of return for the interest increased by 150 basis points.
- (6) The regulations may provide that subsection (5) applies in the circumstances specified in the regulations as if the reference to 150 basis points were a reference to a greater or lesser number of basis points.

## **25-90 Deduction relating to foreign non-assessable non-exempt income**

An \*Australian entity can deduct an amount of loss or outgoing from its assessable income for an income year if:

- (a) the amount is incurred by the entity in

deriving income from a foreign source;  
and

- (b) the income is \*non-assessable non-exempt income under section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*; and
- (c) the amount is a cost in relation to a \*debt interest issued by the entity that is covered by paragraph (1)(a) of the definition of ***debt deduction***.

Note: This section does not apply to a Division 230 financial arrangement.

## **25-95 Deduction for work in progress amounts**

- (1) You can deduct a \*work in progress amount that you pay for the income year in which you pay it to the extent that, as at the end of that income year:
  - (a) a recoverable debt has arisen in respect of the completion or partial completion of the work to which the amount related; or
  - (b) you reasonably expect a recoverable debt to arise in respect of the completion or partial completion of that work within the period of 12 months after the amount was paid.
- (2) You can deduct the remainder (if any) of the  
\*work in progress amount for the following

income year.

- (3) An amount is a *work in progress amount* to the extent that:
  - (a) an entity agrees to pay the amount to another entity (the *recipient*); and
  - (b) the amount can be identified as being in respect of work (but not goods) that has been partially performed by the recipient for a third entity but not yet completed to the stage where a recoverable debt has arisen in respect of the completion or partial completion of the work.
- (4) An amount does not stop being a *work in progress amount* merely because it is paid after a recoverable debt has arisen in respect of the completion or partial completion of the work to which the amount related.

## 25-105 Deductions for United Medical Protection

### Limited support payments

- (1) You can deduct an amount that you pay for the income year in which you pay it to the extent that it consists of a \*United Medical Protection Limited support payment.
- (2) A *United Medical Protection Limited support payment* is an amount payable under Division 1

of Part 3 of the *Medical Indemnity Act 2002*.

- (3) You cannot deduct an amount under this section if you can deduct it under any other provision of this Act.

## **25-100 Travel between workplaces**

*When a deduction is allowed*

- (1) If you are an individual, you can deduct a \*transport expense to the extent that it is incurred in your \*travel between workplaces.

*Travel between workplaces*

- (2) Your ***travel between workplaces*** is travel directly between 2 places, to the extent that:
- (a) while you were at the first place, you were:
    - (i) engaged in activities to gain or produce your assessable income; or
    - (ii) engaged in activities in the course of carrying on a \*business for the purpose of gaining or producing your assessable income; and
  - (b) the purpose of your travel to the second place was to:
    - (i) engage in activities to gain or produce your assessable income; or
    - (ii) engage in activities in the course of

carrying on a business for the purpose of gaining or producing your assessable income;

and you engaged in those activities while you were at the second place.

- (3) Travel between 2 places is not *travel between workplaces* if one of the places you are travelling between is a place at which you reside.
- (4) Travel between 2 places is not *travel between workplaces* if, at the time of your travel to the second place:
  - (a) the arrangement under which you gained or produced assessable income at the first place has ceased; or
  - (b) the \*business in respect of which you engaged in activities at the first place has ceased.

*No deduction for capital expenditure*

- (5) You cannot deduct expenditure under subsection (1) to the extent that the expenditure is capital, or of a capital nature.

## **25-110 Capital expenditure to terminate lease etc.**

- (1) You can deduct an amount for capital expenditure you incur to terminate a lease or



licence (including an authority, permit or quota) that results in the termination of the lease or licence if the expenditure is incurred:

- (a) in the course of \*carrying on a \*business;
- or
- (b) in connection with ceasing to carry on a business.

(2) The amount you can deduct is 20% of the expenditure:

- (a) for the income year in which the lease or licence is terminated; and
- (b) for each of the next 4 income years.

### *Exceptions*

(3) You cannot deduct any amount for expenditure you incur to terminate a lease that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is classified as a finance lease.

(4) If you incurred the expenditure under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at \*arm's length; and
- (b) apart from this subsection, the amount of

the expenditure would be more than the  
\*market value of what it was for  
(assuming the termination did not occur  
and was never proposed to occur);

the amount of expenditure you take into account  
is that market value.

- (5) You cannot deduct any amount for expenditure  
you incur to terminate a lease or licence if:
- (a) after the termination, you or an \*associate  
of yours enters into another lease or  
licence with the same party or an  
associate of that party; and
  - (b) the other lease or licence is of the same  
kind as the original one.
- (6) You cannot deduct any amount for expenditure  
you incur to terminate a lease or licence to the  
extent that the expenditure is for the granting or  
receipt of another lease or licence in relation to  
the asset that was the subject of the original  
lease or licence.

## **Division 26—Some amounts you cannot deduct, or cannot deduct in full**

### **Guide to Division 26**

#### **26-1 What this Division is about**

This Division sets out some amounts that you *cannot* deduct, or that you cannot deduct in full.

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## Operative provisions

### 26-5 Penalties

- (1) You cannot deduct under this Act:
  - (a) an amount (however described) payable, by way of penalty, under an \*Australian law or a \*foreign law; or
  - (b) an amount ordered by a court to be paid on the conviction of an entity for an offence against an \*Australian law or a \*foreign law.
- (2) This section does not apply to an amount payable, by way of penalty, under

## Subdivision 162-D of the \*GST Act.

Note: See paragraph 25-5(1)(ca) for the deductibility of penalties that arise under Subdivision 162-D of the GST Act.

**26-10 Leave payments**

- (1) You cannot deduct under this Act a loss or outgoing for long service leave, annual leave, sick leave or other leave except:
  - (a) an amount paid in the income year to the individual to whom the leave relates (or, if that individual has died, to that individual's dependant or \*legal personal representative); or
  - (b) an \*accrued leave transfer payment that is made in the income year.
- (2) An *accrued leave transfer payment* is a payment that an entity makes:
  - (a) in respect of an individual's leave (some or all of which accrued while the entity was required to make payments in respect of the individual's leave, or leave the individual might take); and
  - (b) when the entity is no longer required (or is about to stop being required) to make payments in respect of such leave; and
  - (c) to another entity when the other entity has begun (or is about to begin) to be required to make payments in respect of such leave; and
  - (d) under (or for the purposes of facilitating the provisions of) an \*Australian law, or an award, order, determination or industrial agreement under an \*Australian law.

It does not matter whether the leave accrues to the individual as an employee or for some other reason.

Example: Your employee goes to a new employer. You pay the new employer \$2,000 for the employee's unused long service leave because an industrial agreement requires you to make that payment.

Note: An accrued leave transfer payment is included in the assessable income of the entity to which it is made: see section 15-5.

## **26-15 Franchise fees windfall tax**

You cannot deduct under this Act any tax that is imposed by the *Franchise Fees Windfall Tax (Imposition) Act 1997*.

## **26-17 Commonwealth places windfall tax**

You cannot deduct under this Act any tax that is imposed by the *Commonwealth Places Windfall Tax (Imposition) Act 1998*.

## **26-18 Unit shortfall charge—clean energy**

You cannot deduct under this Act unit shortfall charge (within the meaning of the *Clean Energy Act 2011*).

## **26-19 Rebatable benefits**

- (1) You cannot deduct under this Act a loss or outgoing to the extent that the loss or outgoing is incurred in gaining or producing a rebatable benefit (within the meaning of section 160A A A

within the meaning of section 193-1 of the *Income Tax Assessment Act 1936*).

- (2) To the extent that you use property in gaining or producing a rebatable benefit, your use of the property is taken *not* to be for the \*purpose of producing assessable income if subsection (1) would stop you deducting a loss or outgoing if you incurred it in the income year in gaining or producing the rebatable benefit.

Note: Under some provisions of this Act, in order to deduct an amount for your property, you must have used the property for the purpose of producing assessable income.

## 26-20 Assistance to students

- (1) You cannot deduct under this Act:
- (ca) a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act); or
  - (cb) a payment made to reduce a debt to the Commonwealth under Chapter 4 of that Act; or
  - (d) a payment made to reduce a debt to the Commonwealth, or to a participating corporation, under Chapter 2B of the *Social Security Act 1991* or Part 4A of the *Student Assistance Act 1973*.

*Exception when you provide a fringe benefit*

- (2) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

## **26-22 Political contributions and gifts**

*You cannot deduct political contributions or gifts*

- (1) You cannot deduct under this Act (other than Subdivision 30-DA):
- (a) a contribution (including a membership fee) or gift to a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation; or
  - (b) a contribution or gift to an individual when the individual is a candidate in an election for members of:
    - (i) an \*Australian legislature; or
    - (ii) a \*local governing body; or
  - (c) a contribution or gift to an individual who is a member of:
    - (i) an Australian legislature; or
    - (ii) a local governing body.

*Exception for employees and office holders*



- (2) However, subsection (1) does not apply to a loss or outgoing incurred in gaining or producing assessable income from which an amount is required to be withheld under section 12-35 or 12-45 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: These provisions of the *Taxation Administration Act 1953* require amounts to be withheld from income of employees and office holders.

*Starting and stopping being a candidate*

- (3) For the purposes of this section, an individual:
- (a) starts being a candidate when the individual's intention to be or to attempt to be a candidate for the election is publicly available; and
  - (b) stops being a candidate at the earlier of:
    - (i) the time when the result of the election is declared or otherwise publicly announced by an entity (an ***electoral official***) authorised under the relevant electoral legislation; and
    - (ii) the time (if any) when the individual's intention to no longer be a candidate for the election is publicly available.

*Starting being a member*

(7) An individual who becomes a member as a result of an election (including an election that is later declared void) is taken to start being a member when the individual's election as a member is declared or otherwise publicly announced by an electoral official.

## 26-25 Interest or royalty

- (1) You cannot deduct under this Act interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or a \*royalty if:
  - (a) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* requires you to withhold an amount from the interest or royalty; and
  - (b) either:
    - (i) you fail to withhold the amount; or
    - (ii) after withholding the amount, you fail to comply with section 16-70 in that Schedule in relation to that amount.
- (2) You cannot deduct under this Act interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*), or a \*royalty, that is in the form of a \*non-cash benefit if:
  - (a) section 14-5 or 14-10 in Schedule 1 to the

*Taxation Administration Act 1953* requires you to pay an amount to the Commissioner before providing the benefit, because of Subdivision 12-F in that Schedule; and

(b) you fail to pay the amount as required by that section.

(3) If:

(a) apart from subsection (1) or (2), you can deduct interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or a \*royalty for an income year; and

(b) the \*withholding tax payable for the interest or the royalty is paid;

you can deduct the interest or royalty for that income year.

## **26-25A Seasonal Labour Mobility Program**

*No deduction to extent amount not withheld*

(1) You cannot deduct under this Act salary, wages, commission, bonuses or allowances from which Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953* (about the Seasonal Labour Mobility Program) requires you to withhold an amount, to the extent that:

- (b) after withholding the amount, you fail to comply with section 16-70 in that Schedule in relation to that amount.

Note: Section 16-70 in that Schedule requires you to pay the amount to the Commissioner.

*Deduction to extent amount not withheld but withholding tax paid*

- (2) You can deduct, for an income year, salary, wages, commission, bonuses or allowances to the extent that:
- (a) you cannot deduct the salary, wages, commission, bonuses or allowances for that income year only because of subsection (1) of this section; and
  - (b) the \*Seasonal Labour Mobility Program withholding tax payable for the salary, wages, commission, bonuses or allowance is paid.

## **26-26 Non-share distributions and dividends**

- (1) A company cannot deduct under this Act:
- (a) a \*non-share distribution; or
  - (b) a return that has accrued on a \*non-share equity interest.
- (2) A company cannot deduct a \*dividend paid on an \*equity interest in the company as a \*general

deduction under this Act.

## **26-30 Relative's travel expenses**

- (1) You cannot deduct under this Act a loss or outgoing you incur, insofar as it is attributable to your \*relative's travel, if:
  - (a) you travelled in the course of performing your duties as an employee, or in the course of carrying on a \*business for the purpose of gaining or producing your assessable income; and
  - (b) your relative accompanied you while you travelled.

### *Exception to subsection (1)*

- (2) Subsection (1) does not stop you deducting a loss or outgoing if:
  - (a) your \*relative, while accompanying you, performed substantial duties as your employer's employee, or as your employee; and
  - (b) it is reasonable to conclude that your relative would still have accompanied you even if he or she had not had a personal relationship with you.

### *Exception when you provide a fringe benefit*

- (3) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

*This section also applies to individuals who are not employees*

- (4) If an individual is *not* an employee, but receives, or is entitled to receive, \*withholding payments covered by subsection (6), this section applies to the individual as if:
- (a) he or she were an employee; and
  - (b) the entity, who pays (or is liable to pay) \*withholding payments covered by subsection (6) that result in the individual being in receipt of, or entitled to receive, such payments, were the individual's employer; and
  - (c) any other individual who receives (or is entitled to receive) \*withholding payments covered by subsection (6):
    - (i) that result in that other individual being in receipt of, or entitled to receive, such payments; and
    - (ii) that the entity pays (or is liable to pay) to that other individual; were an employee of the entity.

*This section also applies to entities who are not*

*employers*

(5) If an entity is *not* an employer, but pays (or is liable to pay) \*withholding payments covered by subsection (6), this section applies to the entity as if:

- (a) it were an employer; and
- (b) an individual to whom the entity pays (or is liable to pay) such withholding payments were the entity's employee.

*Withholding payments covered*

(6) This subsection covers:

- (a) a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table; and
- (b) a withholding payment covered by section 12-47 in Schedule 1 to the *Taxation Administration Act 1953* where:
  - (i) the payment is made to a religious practitioner by a religious institution; and
  - (ii) the activity, or series of activities, for which the payment is made is done by the religious practitioner as a member of the religious institution.

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**Withholding payments covered**

Item	Provision	Subject matter
1	Section 12-40	Payment to company director
2	Section 12-45	Payment to office holder
3	Section 12-50	Return to work payment
4	Subdivision 12-D	Benefit, training and compensation payments

## 26-35 Reducing deductions for amounts paid to related entities

*You can only deduct reasonable amounts paid to related entities*

- (1) If, under another provision of this Act, you can deduct an amount for a payment you make, or for a liability you incur, to a \*related entity, then you can only deduct so much of the amount as the Commissioner considers reasonable.

Note: This section has a special operation if the payment is made, or the liability is incurred, by a partnership in which a private company is a partner: see section 65 (Payments to associated persons and relatives) of the *Income Tax Assessment Act 1936*.

### *Meaning of related entity*

- (2) A **related entity** is any of the following:
- (a) your \*relative; or
  - (b) a partnership in which your relative is a



partner.

- (3) In the case of a partnership, a ***related entity*** is any of the following:
- (a) a \*relative of a partner in the partnership;
  - (b) an individual who is or has been a director of a company that is a partner in the partnership and is a \*private company for the income year;
  - (c) an entity that is or has been a shareholder in a company of that kind;
  - (d) a \*relative of an individual who is or has been a director or shareholder of a company of that kind;
  - (e) a beneficiary of a trust if the trustee is a partner in the partnership;
  - (f) a \*relative of a beneficiary of a trust if the trustee is a partner in the partnership;
  - (g) another partnership, if a partner in the other partnership is a \*relative of a partner in the first partnership.

However, a partner in a partnership is *not* a ***related entity*** of the partnership.

*If you can't deduct, then related entity doesn't include amount as income*

- (4) To the extent that subsection (1) stops you deducting an amount, the amount is neither

assessable income, nor exempt income, of the  
\*related entity.

## 26-40 Maintaining your family

You cannot deduct under this Act expenditure  
you incur for maintaining:

- (a) your \*spouse (except a spouse  
permanently living separately and apart  
from you); or
- (b) your \*child who is under 16 years.

Example: A farmer cannot deduct an amount for food or  
lodgings that the farmer provides to his or her  
child who is under 16 years for the work the  
child performs on the farm.

## 26-45 Recreational club expenses

- (1) You cannot deduct under this Act a loss or  
outgoing to the extent you incur it to obtain or  
maintain:
  - (a) membership of a \*recreational club; or
  - (b) rights to enjoy (otherwise than as a  
\*member) facilities provided by a  
\*recreational club for the use or benefit of  
its \*members;whether for yourself or someone else.

*Meaning of **recreational club***

- (2) A **recreational club** is a company that was

...or is entitled or aiming to provide facilities, for the use or benefit of its \*members, for drinking, dining, \*recreation or entertainment.

*Exception when you provide a fringe benefit*

- (3) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

## **26-47 Non-business boating activities**

*Object*

- (1) The object of this section is to improve the integrity of the taxation system by preventing deductions from boating activities that are not carried on as a \*business being offset against other assessable income.

*Rule*

- (2) This Act applies to you as if so much of the amounts relating to using or \*holding boats that you could otherwise deduct for an income year as exceeds your assessable income from using or holding boats for that year:
- (a) were not deductible for that income year; and
  - (b) were an amount (a *quarantined amount*)

relating to using or holding boats that you  
can deduct for the next income year.

**Note:** A quarantined amount may be reduced under subsection (5) (for boat capital gains), reduced under subsection (7) (where you deduct part of a quarantined amount under subsection (6) for boat business profits), reduced under subsection (8) (about exempt income) or affected by subsection (10) (about bankruptcy).

**Example:** Ian does not use his boat in a business. In Year 1, Ian would be able to claim \$100,000 in deductions for the boat (but for this subsection), including interest, depreciation and running costs. He earns only \$40,000 of income from the boat. He can only deduct \$40,000. He carries the remaining \$60,000 forward to Year 2 (the quarantined amount).

In Year 2, Ian has \$95,000 of expenses and \$30,000 of income for the boat. He can deduct \$30,000. The quarantined amount is now \$125,000: the quarantined amount from Year 1 plus the excess of expenses over income from Year 2.

In Year 3, Ian has \$60,000 of expenses and \$150,000 of income from the boat. The expenses from Year 3 plus the quarantined amount is \$185,000. Therefore, Ian claims a deduction of \$150,000 and carries forward \$35,000 to Year 4.

### *Exception: business use*

(3) The rule in subsection (2) does not apply to amounts that are attributable to one or more of the following:

- (a) \*holding a boat as your \*trading stock;
- (b) using a boat (or holding it) mainly for letting it on hire in the ordinary course of a \*business that you \*carry on;
- (c) using a boat (or holding it) mainly for transporting the public or goods for

payment in the ordinary course of a business that you carry on;

- (d) using a boat for a purpose that is essential to the efficient conduct of a business that you carry on.

Note: Even if this exception applies to you, you may still have to quarantine losses under Division 35 (deferral of losses from non-commercial business activities).

*Exception: fringe benefits*

- (4) The rule in subsection (2) does not apply to so much of an amount you incur in \*providing a \*fringe benefit.

*Modification if you have boat capital gains*

- (5) You reduce a quarantined amount you have for an income year by so much of that amount as is applied under section 118-80 to reduce a \*capital gain you have for the year in relation to a boat. You make this reduction before you deduct an amount under subsection (6).

*Deduction if you have boat business profits*

- (6) You can deduct all or part of your remaining quarantined amount for an income year if your assessable income for the year from activities of a kind referred to in subsection (3) exceeds your deductions for the year relating to those

activities. The amount you can deduct is the lesser of that excess and that remaining quarantined amount.

- (7) You reduce your quarantined amount for the year by the amount you deduct. You make this reduction before a reduction under subsection (8).

*Modification if you have exempt income*

- (8) You reduce any remaining quarantined amount you have for an income year by so much of your \*net exempt income as is not applied for that income year under section 35-15 (about non-commercial business activities) or section 36-10 or 36-15 (about tax losses).

*Modification if you become bankrupt*

- (9) The modification in subsection (10) has effect if:
- (a) in an income year (the **current year**) you become bankrupt or are released from a debt by the operation of an Act relating to bankruptcy; or
  - (b) you became bankrupt before the current year and:
    - (i) the bankruptcy is annulled in the current year under section 74 of the *Bankruptcy Act 1966* because your

creditors have accepted a proposal for a composition or scheme of arrangement; and

- (ii) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy.

(10) This Act applies to you as if any amount that:

- (a) is a quarantined amount for you for the current year or was a quarantined amount for you for an earlier year; and
- (b) has not been applied under section 118-80 and that you have not yet deducted;

were not an amount relating to using or holding boats that you can deduct for the current year or a later year.

## **26-50 Expenses for a leisure facility**

(1) You cannot deduct under this Act a loss or outgoing to the extent you incur it:

- (a) to acquire ownership of a \*leisure facility;
- or
- (b) to retain ownership of a leisure facility; or
- (c) to acquire rights to use a leisure facility;

or

- (d) to retain rights to use a leisure facility; or
- (e) to use, operate, maintain or repair a leisure facility; or
- (f) in relation to any obligation associated with your ownership of a leisure facility; or
- (g) in relation to any obligation associated with your rights to use a leisure facility.

However, there are exceptions (see subsections (3), (4) and (8)).

*What is a **leisure facility**?*

- (2) A **leisure facility** is land, a building, or part of a building or other structure, that is used (or held for use) for holidays or \*recreation.

*Exception—leisure facilities*

- (3) Subsection (1) does not stop you deducting a loss or outgoing for a \*leisure facility if at all times in the income year:
  - (a) you hold the leisure facility for sale in the ordinary course of your business of selling leisure facilities; or
  - (b) you use the leisure facility (or hold it for use) mainly to provide it:
    - (i) in the ordinary course of your

\*



facilities for payment; or

- (ii) to produce your assessable income in the nature of rents, lease premiums, licence fees or similar charges; or
- (iii) for your employees to use; or
- (iv) for the care of your employees' \*children.

In the case of a company, subparagraphs (b)(iii) and (iv) do not apply to employees who are \*members or directors of the company.

*Exception—part year use of leisure facilities*

- (4) If you use a \*leisure facility (or hold it) as described in subsection (3) at all times during *part* of the income year, then subsection (1) does not stop you deducting so much of the loss or outgoing as is reasonable in the circumstances.

*Anti-avoidance—when exceptions do not apply*

- (7) A \*leisure facility is taken not to be used (or held) as described in subsection (3) if:
  - (a) apart from this subsection, the leisure facility would be used (or held) in that way because of a \*scheme; and
  - (b) in the Commissioner's opinion, the

scheme would not have been entered into or carried out if this section had not been enacted.

*Exception when you provide a fringe benefit*

- (8) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

## **26-52 Bribes to foreign public officials**

- (1) You cannot deduct under this Act a loss or outgoing you incur that is a \*bribe to a foreign public official.
- (2) An amount is a ***bribe to a foreign public official*** to the extent that:
- (a) you incur the amount in, or in connection with:
    - (i) providing a benefit to another person; or
    - (ii) causing a benefit to be provided to another person; or
    - (iii) offering to provide, or promising to provide, a benefit to another person; or
    - (iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another

person; and

- (b) the benefit is not legitimately due to the other person (see subsection (6)); and
- (c) you incur the amount with the intention of influencing a \*foreign public official (who may or may not be the other person) in the exercise of the official's duties as a foreign public official in order to:
  - (i) obtain or retain business; or
  - (ii) obtain or retain an advantage in the conduct of business that is not legitimately due to you, or another person, as the recipient, or intended recipient, of the advantage in the conduct of business (see subsection (7)).

The benefit may be any advantage and is not limited to property.

- (2A) For the purposes of subsection (2), disregard whether business, or a business advantage, was actually obtained or retained.

*Payments that written law of foreign public official's country requires or permits*

- (3) An amount is not a ***bribe to a foreign public official*** if, assuming the benefit had been provided, and all related acts had been done, in the \*foreign public official's country, a written

law of that country would have required or permitted the provision of the benefit.

*Facilitation payments*

- (4) An amount is not a ***bribe to a foreign public official*** if:
- (a) the value of the benefit is of a minor nature; and
  - (b) the amount is incurred for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature.
- (5) For the purposes of this section, a ***routine government action*** is an action of a \*foreign public official that:
- (a) is ordinarily and commonly performed by the official; and
  - (b) is covered by any of the following subparagraphs:
    - (i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
    - (ii) processing government papers such as a visa or work permit;
    - (iii) providing police protection or mail

- collection or delivery;
- (iv) scheduling inspections associated with contract performance or related to the transit of goods;
- (v) providing telecommunications services, power or water;
- (vi) loading and unloading cargo;
- (vii) protecting perishable products, or commodities, from deterioration;
- (viii) any other action of a similar nature; and
- (c) does not involve a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business; and
- (d) does not involve encouraging a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business.

*Benefit not legitimately due*

- (6) In working out if a benefit is not legitimately

due to another person in a particular situation,  
disregard the following:

- (a) the fact that the benefit may be, or be  
perceived to be, customary, necessary or  
required in the situation;
- (b) the value of the benefit;
- (c) any official tolerance of the benefit.

*Advantage in the conduct of business that is not  
legitimately due*

- (7) In working out if an advantage in the conduct  
of business is not legitimately due in a  
particular situation, disregard the following:
- (a) the fact that the advantage may be  
customary, or perceived to be customary,  
in the situation;
  - (b) the value of the advantage;
  - (c) any official tolerance of the advantage.

*Duties of foreign public official*

- (8) The duties of a \*foreign public official are any  
authorities, duties, functions or powers that:
- (a) are conferred on the official; or
  - (b) the official holds himself or herself out as  
having.

## **26-53 Bribes to public officials**

outgoing you incur that is a \*bribe to a public official.

- (2) An amount is a ***bribe to a public official*** to the extent that:
- (a) you incur the amount in, or in connection with:
    - (i) providing a benefit to another person; or
    - (ii) causing a benefit to be provided to another person; or
    - (iii) offering to provide, or promising to provide, a benefit to another person; or
    - (iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the benefit is not legitimately due to the other person (see subsection (3)); and
  - (c) you incur the amount with the intention of influencing a \*public official (who may or may not be the other person) in the exercise of the official's duties as a public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain an advantage in the conduct of business that is not

legitimately due to you, or another person, as the recipient, or intended recipient, of the advantage in the conduct of business (see subsection (4)).

The benefit may be any advantage and is not limited to property.

*Benefit not legitimately due*

- (3) In working out if a benefit is not legitimately due to another person in a particular situation, disregard the following:
- (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Advantage in the conduct of business that is not legitimately due*

- (4) In working out if an advantage in the conduct of business is not legitimately due in a particular situation, disregard the following:
- (a) the fact that the advantage may be customary, or perceived to be customary, in the situation;
  - (b) the value of the advantage;



*Duties of public official*

- (5) The duties of a \*public official are any authorities, duties, functions or powers that:
- (a) are conferred on the official; or
  - (b) the official holds himself or herself out as having.

**26-54 Expenditure relating to illegal activities**

- (1) You cannot deduct under this Act a loss or outgoing to the extent that it was incurred in the furtherance of, or directly in relation to, a physical element of an offence against an \*Australian law of which you have been convicted if the offence was, or could have been, prosecuted on indictment.
- (2) Despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend your assessment at any time within 4 years after you are convicted of the relevant offence for the purpose of giving effect to subsection (1) of this section.

**26-55 Limit on deductions**

- (1) There is a limit on the total of the amounts you can deduct for the income year under these provisions:

- (a) section 25-50 (which is about payments of pensions, gratuities or retiring allowances) of this Act;
- (ba) Division 30 (which is about deductions for gifts or contributions) of this Act;
- (bb) Division 31 (which is about deductions for conservation covenants) of this Act;
- (d) section 290-150 (which is about deductions for personal superannuation contributions).

Do not include in the total an amount that you could also deduct under another provision of this Act, apart from section 8-10 (which prevents double deductions).

- (2) The limit is worked out by subtracting from your assessable income all your deductions except:

- (a) \*tax losses; and

See Division 36 (which is about tax losses of earlier income years).

- (c) the amount you can deduct for the income year under section 393-5 (which provides for deductions for making \*farm management deposits).

## **26-60 Superannuation contributions surcharge**

You cannot deduct under this Act:

- (a) a superannuation contributions surcharge within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
- (b) a superannuation contributions surcharge within the meaning of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

## **26-65 Termination payments surcharge**

You cannot deduct under this Act a termination payments surcharge within the meaning of the *Termination Payments Tax (Assessment and Collection) Act 1997*.

## **26-68 Loss from disposal of eligible venture capital investments**

*Partners in VCLPs and ESVCLPs*

- (1) You cannot deduct under this Act your share of a loss made from the disposal or other realisation of an \*eligible venture capital investment if:
  - (a) it is made by a \*VCLP, or an \*ESVCLP, that is \*unconditionally registered; and
  - (b) were that disposal or other realisation to

be a \*disposal of a \*CGT asset, your share of any \*capital gain or \*capital loss would be disregarded under section 118-405 or 118-407.

*Partners in AFOFs*

(2) You cannot deduct under this Act your share of a loss made from the disposal or other realisation of an \*eligible venture capital investment if:

(a) it is made by:

(i) an \*AFOF that is \*unconditionally registered; or

(ii) a \*VCLP, or an \*ESVCLP, that is unconditionally registered and in which an AFOF that is \*unconditionally registered is a partner; and

(b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, your share of any \*capital gain or \*capital loss would be disregarded under section 118-410.

*Eligible venture capital investors*

(3) You cannot deduct under this Act a loss made from the disposal or other realisation of an \*eligible venture capital investment if:

- (a) you are an \*eligible venture capital investor; and
- (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, any \*capital gain or \*capital loss would be disregarded under section 118-415.

### **26-70 Loss from disposal of venture capital equity**

You cannot deduct under this Act a loss made from the disposal or other realisation of \*venture capital equity in a \*resident investment vehicle if:

- (a) it is made by a \*venture capital entity or a \*limited partnership referred to in subsection 118-515(2); and
- (b) if that disposal or other realisation were a \*disposal of a \*CGT asset, any \*capital gain or \*capital loss would be disregarded under Subdivision 118-G.

### **26-75 Excess contributions tax cannot be deducted**

You cannot deduct under this Act an amount of \*excess contributions tax that you pay.

### **26-80 Financing costs on loans to pay superannuation contribution**

- (1) You can only deduct under this Act a financing cost connected with a contribution you make to a \*superannuation plan if you can deduct the contribution under Subdivision 290-B.
- (2) A *financing cost* connected with a contribution is expenditure incurred to the extent that it relates to obtaining finance to make the contribution, including:
  - (a) interest, and payments in the nature of interest; and
  - (b) expenses of borrowing.

## **26-85 Borrowing costs on loans to pay life insurance premiums**

- (1) You can only deduct under this Act interest on, or other expenses associated with, money you borrow to pay a premium for a \*life insurance policy if:
  - (a) the \*risk component of the premium received by the insurer is the entire amount of the premium; and
  - (b) each amount the insurer is liable to pay under the policy would be included in your assessable income if it were paid.
- (2) The *risk component* of a premium for a \*life insurance policy means the amount of the premium worked out on the basis specified in

the regulations.

## **26-90 Superannuation supervisory levy**

You cannot deduct under this Act so much of a levy imposed by the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* as represents the late lodgment amount (within the meaning of section 6 of that Act).

## **26-95 Superannuation guarantee charge**

You cannot deduct under this Act a charge imposed by the *Superannuation Guarantee Charge Act 1992*.

## **Division 27—Effect of input tax credits etc. on deductions**

### **Table of Subdivisions**

Guide to Division 27

27-A General

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

## **Guide to Division 27**

### **27-1 What this Division is about**

This Division sets out the effect of the GST in working out deductions. Generally speaking, input tax credits, GST and adjustments under the GST Act are disregarded.

## **Subdivision 27-A—General**

### **Table of sections**

27-5	Input tax credits and decreasing adjustments
27-10	Certain increasing adjustments
27-15	GST payments
27-20	Elements in calculation of amounts
27-25	GST groups and GST joint ventures
27-35	Certain sections not to apply to certain assets or expenditure

### **27-5 Input tax credits and decreasing adjustments**

You cannot deduct under this Act a loss or outgoing you incur, to the extent that the loss or outgoing includes an amount relating to an  
\*input tax credit to which you are entitled or a  
\*decreasing adjustment that you have.

### **27-10 Certain increasing adjustments**

(1) You can deduct an amount of an \*increasing



\*GST Act.

- (2) However, you cannot deduct the amount to the extent (if any) that the adjustment arises from an increase in the extent to which the activity giving rise to the adjustment is of a private or domestic nature.
- (3) If:
  - (a) you have an \*increasing adjustment under Division 138 of the \*GST Act in respect of an asset as a result of the cancellation of your registration under Part 2-5 of the GST Act; and
  - (b) immediately after the cancellation, you held the asset for the purpose of gaining or producing assessable income;you can deduct the amount of the increasing adjustment.
- (4) However, you cannot deduct an amount under subsection (1) or (3) to the extent that, because it becomes a component of a \*net input tax credit, a reduction is made under section 103-30 (reduction of cost base etc. by net input tax credits).

## 27-15 GST payments

- (1) You cannot deduct under this Act a loss or

outgoing consisting of a payment under Division 33 of the \*GST Act.

- (2) This section does not apply to the payment:
- (a) to the extent (if any) that the \*net amount to which the payment relates was increased under section 21-5 of the \*Wine Tax Act (which allows for such increases to take account of wine equalisation tax); and
  - (b) to the extent (if any) that the \*net amount was increased under section 13-5 of the \*Luxury Car Tax Act (which allows for such increases to take account of luxury car tax); and
  - (c) to the extent (if any) that the \*net amount was increased under paragraph 13-10(1) (a) of the Luxury Car Tax Act (which allows for such alterations to take account of increasing luxury car tax adjustments under that Act).
- (3) This section does not apply to the payment of \*assessed GST (under section 33-15 of the \*GST Act) on a \*taxable importation that:
- (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.

## **27-20 Elements in calculation of amounts**

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.

## **27-25 GST groups and GST joint ventures**

- (1) A \*member of a \*GST group is to be treated, for the purposes of this Division, as if Subdivision 48-B of the \*GST Act (other than subsections 48-45(3) and (4)) did not apply to that member.

- (2) A \*participant in a \*GST joint venture is to be treated, for the purposes of this Division, as if Subdivision 51-B of the \*GST Act did not apply to that participant.

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

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**

#### **Table of sections**

27-80	Cost or opening adjustable value of depreciating assets reduced for input tax credits
27-85	Cost or opening adjustable value of depreciating assets reduced: decreasing adjustments
27-87	Certain decreasing adjustments included in assessable income
27-90	Cost or opening adjustable value of depreciating assets increased: increasing adjustments
27-92	Certain increasing adjustments can be deducted
27-95	Balancing adjustment events
27-100	Pooling

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

- (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.

- (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.

- (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.

- (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.

- (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.

- (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*

- (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.

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

- (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.

- (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.



- (2) The asset's <sup>~</sup>cost is reduced by an amount equal to the <sup>\*</sup>decreasing adjustment if the adjustment arises in the income year in which the asset's <sup>\*</sup>start time occurs.
- (3) The asset's <sup>\*</sup>opening adjustable value for an income year and its <sup>\*</sup>cost is reduced by an amount equal to the <sup>\*</sup>decreasing adjustment if the adjustment arises in that year and that year is after the one in which the asset's <sup>\*</sup>start time occurs.
- (4) If the reduction under subsection (2) or (3) is more than:
  - (a) for a subsection (2) case—the <sup>\*</sup>depreciating asset's <sup>\*</sup>cost; or
  - (b) for a subsection (3) case—the depreciating asset's <sup>\*</sup>opening adjustable value;the excess is included in the entity's assessable income unless the entity is an <sup>\*</sup>exempt entity.

*Exception: pooling*

- (5) 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 <sup>\*</sup>current year; or
  - (b) <sup>\*</sup>in-house software if expenditure on the

- software is allocated to a software development pool for the current year; or
- (c) a project pool.

## **27-87 Certain decreasing adjustments included in assessable income**

- (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 that arises under Division 129 or 132 of the \*GST Act in an income year that relates directly or indirectly to the asset; and
  - (c) section 27-95 does not apply to the entity in relation to the asset.
- (2) The amount of the \*decreasing adjustment is included in the entity's assessable income for the income year unless the entity is an \*exempt entity.

## **27-90 Cost or opening adjustable value of depreciating assets increased: increasing adjustments**

- (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 an \*increasing adjustment in an income year that relates directly or indirectly to the asset.

(1A) However, this section does not apply to an \*increasing adjustment that arises under Division 129 or 132 of the \*GST Act.

Note: See instead section 27-92.

(2) The asset's \*cost is increased by an amount equal to the \*increasing adjustment if the adjustment arises in the income year in which the asset's \*start time occurs.

(3) The asset's \*opening adjustable value for an income year and its \*cost is increased by an amount equal to the \*increasing adjustment if the adjustment arises in that year and that year is after the one in which the asset's \*start time occurs.

*Exception: pooling*

- (4) 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.

## **27-92 Certain increasing adjustments can be deducted**

- (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 an \*increasing adjustment that arises under Division 129 or 132 of the \*GST Act in an income year that relates directly or indirectly to the asset.
- (2) The entity can deduct the amount of the \*increasing adjustment for the income year.
- (3) However, the entity cannot deduct the amount to the extent (if any) that the adjustment arises from an increase in the extent to which the activity giving rise to the adjustment is of a private or domestic nature.

## **27-95 Balancing adjustment events**

- (1) The \*termination value of a \*depreciating asset is reduced if the relevant \*balancing adjustment event is a \*taxable supply. The reduction is an

\*

supply.

- (2) However, subsection (1) does not apply if the \*termination value of the \*depreciating asset is modified under Division 40 to be its \*market value.
- (3) The \*termination value of a \*depreciating asset is increased if the entity that \*held the asset has a \*decreasing adjustment that relates directly or indirectly to that \*taxable supply in the income year in which the \*balancing adjustment event occurred. The increase is the amount of the decreasing adjustment.
- (4) The \*termination value of a \*depreciating asset is decreased if the entity that \*held the asset has an \*increasing adjustment that relates directly or indirectly to that \*taxable supply in the income year in which the \*balancing adjustment event occurred. The decrease is the amount of the increasing adjustment.
- (5) An amount is included in the assessable income of the entity that \*held the asset if the entity has a \*decreasing adjustment that relates directly or indirectly to that \*taxable supply in a later income year. The amount included is the amount of the decreasing adjustment.

- (6) The entity that \*held the asset can deduct an amount if the entity has an \*increasing adjustment that relates directly or indirectly to that \*taxable supply in a later income year. The amount it can deduct is the amount of the increasing adjustment.

## 27-100 Pooling

- (1) This section contains special rules for expenditure (the *pooled expenditure*) incurred by an entity:
  - (a) on a \*depreciating asset allocated to a low-value pool; or
  - (b) on a depreciating asset allocated to a pool under Division 328 for or in an income year; or
  - (c) on \*in-house software if the expenditure on the software is allocated to a software development pool; and
  - (d) on \*project amounts if the amounts are allocated to a project pool.

*Reduction to pools etc.*

- (2) There is a reduction under subsection (3) or (5) if:
  - (a) the pooled expenditure relates directly or indirectly to 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.

(2A) There is a reduction under subsection (4) if:

- (a) the pooled expenditure relates directly or indirectly to 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.

*Reduced cost of assets allocated to a pool*

(2B) 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 the income year in which the acquisition or importation occurred is the same as the one in which the input tax credit arose; and

- (c) the asset is allocated to a low-value pool or a pool under Division 328 for or in that year.

The reduction is the amount of the input tax credit.

*Low-value pools*

- (3) For a low-value pool, the \*closing pool balance of the pool for:

- (a) if the credit year is later than the first income year for which \*depreciating assets were allocated to the pool—the income year before the credit year; or
- (b) if the credit year is the first income year for which \*depreciating assets were allocated to the pool—the credit year;

is reduced by an amount equal to the input tax credit.

*Software development pools and project pools*

- (4) For a software development pool or a project pool, the expenditure in the pool for the credit year, or the \*pool value for the credit year, is reduced by an amount equal to the \*input tax credit.

*Small business pools*



- (5) For a pool under Division 328, the opening pool balance of the pool for the credit year is reduced by an amount equal to the input tax credit.

*No reduction if market value*

- (5A) However, there is no reduction to the \*cost of a \*depreciating asset if its cost is modified under Division 40 to be its \*market value.

*Second element of cost*

- (6) There is a reduction under subsection (7) if:
- (a) the entity incurs expenditure in an income year (also the *credit year*) that is included in the second element of the \*cost of a \*depreciating asset allocated to a low-value pool or a pool under Division 328 for or in the credit year; and
  - (b) the entity is or becomes entitled, after the credit year, to an \*input tax credit for the expenditure.
- (7) An amount equal to the amount of the \*input tax credit is applied in reduction of:
- (a) for a low-value pool:
    - (i) if the credit year is later than the first income year for which \*depreciating assets were allocated

to the pool—the \*closing pool

balance of the pool for the income  
year before the credit year; or

- (ii) if the credit year is the first income  
year for which \*depreciating assets  
were allocated to the pool—the  
\*closing pool balance of the pool for  
the credit year; or

- (b) for a pool under Division 328—the  
\*opening pool balance of the pool for the  
credit year.

(7A) There is a reduction to an amount of  
expenditure included in the second element of  
the \*cost of a \*depreciating asset if:

- (a) the asset is allocated to a low-value pool  
or a pool under Division 328 for or in the  
income year in which the expenditure was  
incurred; and
- (b) the entity that incurred the expenditure is  
or becomes entitled to an \*input tax credit  
for the expenditure; and
- (c) the entitlement arises in the income year  
in which the expenditure was incurred.

The reduction is the amount of the input tax  
credit.

*Increasing adjustments*

- (8) There is an increase under subsection (9) if the entity has an \*increasing adjustment (except one that arises under Division 129 or 132 of the \*GST Act) in an income year (the *adjustment year*) that relates directly or indirectly to a \*creditable acquisition or \*creditable importation to which the pooled expenditure relates.

Note: For an increasing adjustment that arises under Division 129 or 132 of the GST Act, see section 27-92.

- (9) An amount equal to the amount of that \*increasing adjustment is added to:
- (a) for a low-value pool:
    - (i) if the adjustment year is later than the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the income year before the adjustment year; or
    - (ii) if the adjustment year is the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the adjustment year; or
  - (b) for a pool under Division 328—the \*opening pool balance of the pool for the adjustment year; or

- (c) for in-house software—the amount of expenditure allocated to the software development pool for the adjustment year; or
- (d) for a project pool—the \*pool value for the adjustment year.

*Decreasing adjustments*

- (10) There is a decrease under subsection (11) if the entity has a \*decreasing adjustment (except one that arises under Division 129 or 132 of the \*GST Act) in an income year (also the ***adjustment year***) that relates directly or indirectly to a \*creditable acquisition or \*creditable importation to which the pooled expenditure relates.

Note: For a decreasing adjustment that arises under Division 129 or 132 of the GST Act, see section 27-87.

- (11) An amount equal to the amount of the \*decreasing adjustment is applied in reduction of:
  - (a) for a low-value pool:
    - (i) if the adjustment year is later than the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the income

- year before the adjustment year, or
- (ii) if the adjustment year is the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the adjustment year; or
  - (b) for a pool under Division 328—the \*opening pool balance of the pool for the adjustment year; or
  - (c) for \*in-house software—the amount of expenditure allocated to the software development pool for the adjustment year; or
  - (d) for a project pool—the \*pool value for the adjustment year.
- (12) If the amount available for reduction under subsection (11) is more than the amount referred to in paragraph (11)(a), (b), (c) or (d) (whichever is applicable), the excess is included in the entity's assessable income unless the entity is an \*exempt entity.

### **27-105 Other Division 40 expenditure**

- (1) This section applies to expenditure for which an entity can deduct amounts under Division 40 (but not under Subdivision 40-B or 40-E, or Subdivision 40-I to the extent that that

expenditure related to project pools).

- (2) The amount of the expenditure is reduced if the entity is or becomes entitled to an \*input tax credit for a \*creditable acquisition or \*creditable importation to which the expenditure directly or indirectly relates. The reduction is the amount of the input tax credit that relates to that expenditure.
- (3) If the entity has a \*decreasing adjustment in an income year that relates directly or indirectly to the expenditure, an amount equal to the decreasing adjustment is included in the entity's assessable income for that income year.
- (4) If the entity has an \*increasing adjustment in an income year that relates directly or indirectly to the expenditure, the entity can deduct an amount equal to the increasing adjustment for that income year.
- (5) If the entity is a partnership and partners in that partnership can deduct amounts under Division 40 because section 40-570 or 40-665 applies, an amount equal to the \*input tax credit, the \*decreasing adjustment or the \*increasing adjustment is apportioned to each of the partners as set out in subsection 40-570(2) or 40-665(2).

(6) However, this section does not apply to an  
\*exempt entity.

**27-110 Input tax credit etc. relating to 2 or more things**

This Subdivision applies to an \*input tax credit, or an \*increasing adjustment or \*decreasing adjustment, that relates directly or indirectly to 2 or more things of which at least one is a \*depreciating asset as if a reasonable proportion of the input tax credit or adjustment related directly or indirectly to each of those depreciating assets and each of those other things.

**Division 28—Car expenses**

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## Guide to Division 28

### 28-1 What this Division is about

This Division sets out the rules for working out deductions for car expenses if you own or lease a car or hire a car under a hire purchase agreement.

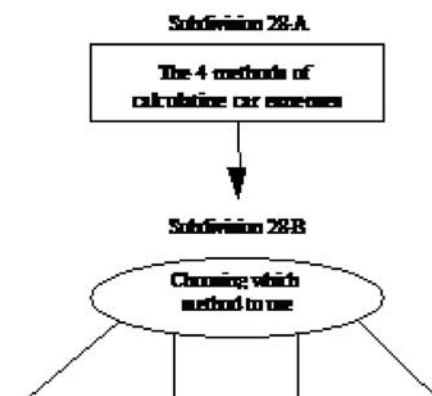
### Table of sections

- 28-5    Map of this Division

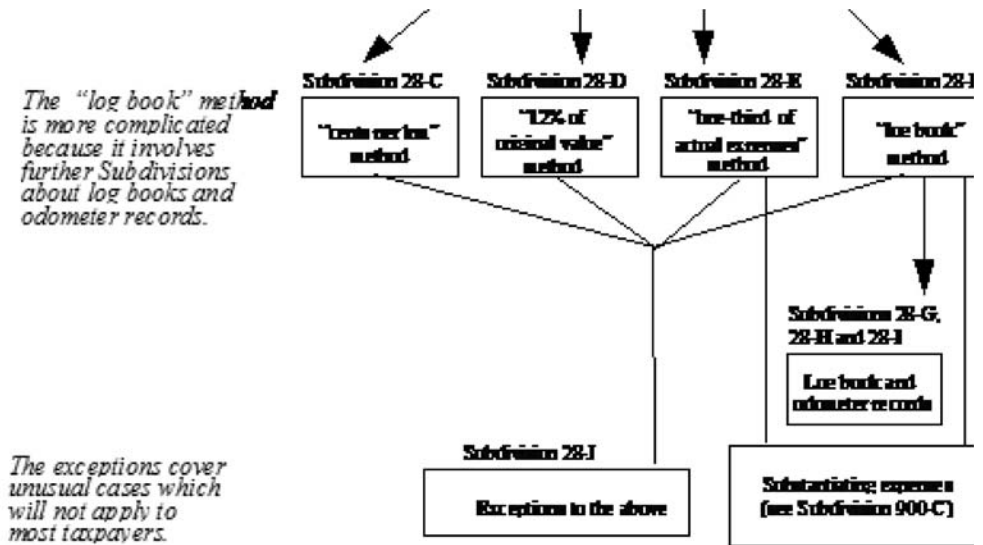
### 28-5 Map of this Division

*Section 28-12 contains the basic operative provision.*

*Choosing the best **method** is up to you. Hence it **is** important to understand the methods and how they differ.*







## Subdivision 28-A—Deductions for car expenses

### Table of sections

28-10	Application of Division 28
28-12	Car expenses
28-13	Meaning of <i>car expense</i>

### 28-10 Application of Division 28

- (1) This Division applies to an individual.
- (2) It also applies to a partnership that includes at least one individual, as if the partnership were an individual.
- (3) It does not apply to any other entity.

### 28-12 Car expenses

- (1) If you owned or leased a \*car, you can deduct

for the car's expenses an amount or amounts worked out using one of 4 methods.

- Note 1: For particular types of cars taken on hire you cannot use one of the 4 methods: see section 28-165.
- Note 2: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 242-15(2)).
- Note 3: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

- (2) You must use one of the 4 methods unless an exception applies. If you can't use any of the methods, you can't deduct anything for the \*car expenses.

### 28-13 Meaning of *car expense*

- (1) A *car expense* is a loss or outgoing to do with a \*car.
- (2) In addition, any of the following is a car expense:
- (a) a loss or outgoing to do with operating a \*car;
  - (b) the decline in value of a car.
- (3) None of the following is a car expense:
- (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia;
  - (b) a taxi fare or similar loss or outgoing.

## **Subdivision 28-B—Choosing which method to use**

### **Guide to Subdivision 28-B**

#### **28-14 What this Subdivision is about**

This Subdivision sets out the rules about choosing a method of calculating car expense deductions.

#### **Table of sections**

28-15 Choosing among the 4 methods

#### **Operative provision**

28-20 Rules governing choice of method

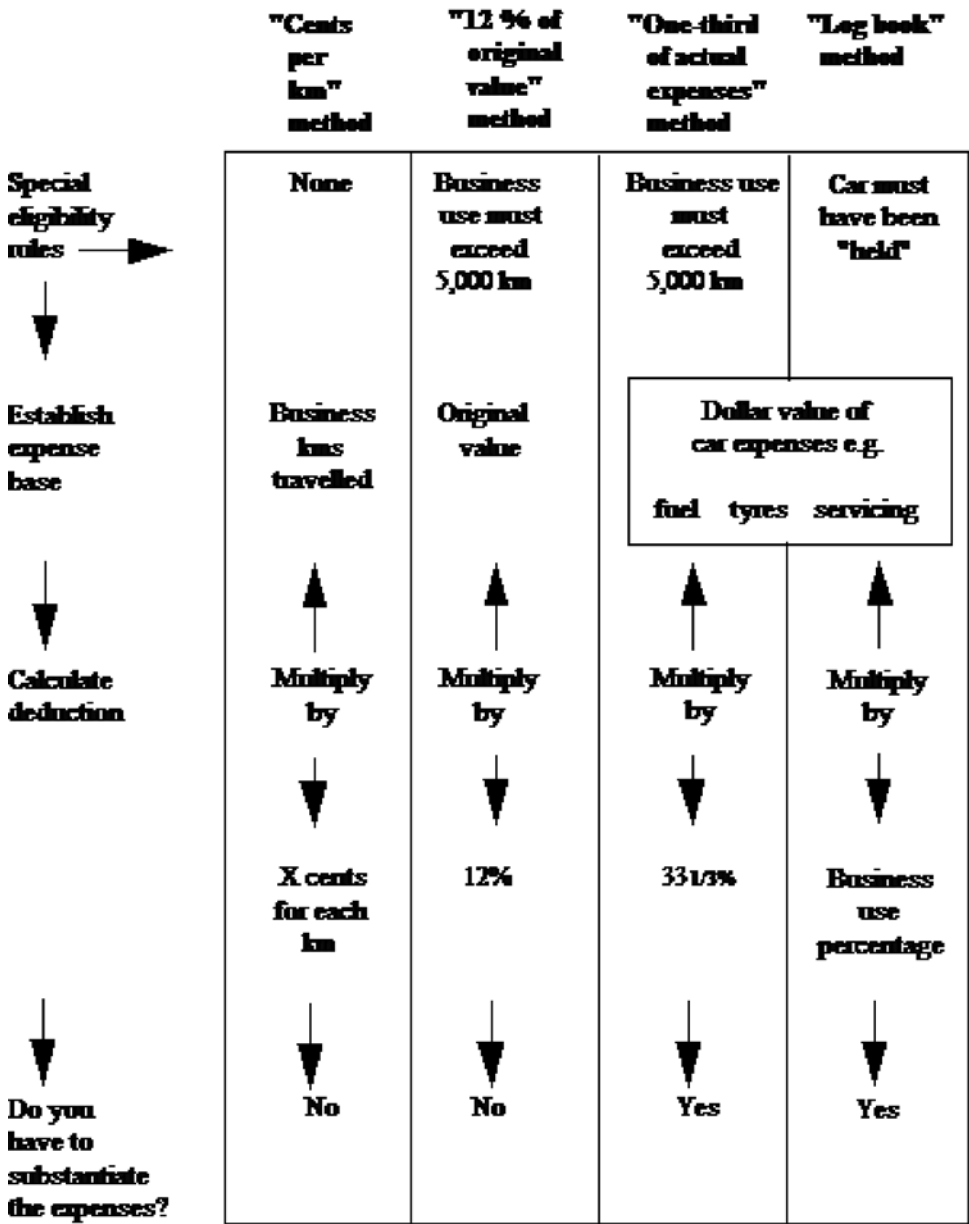
#### **28-15 Choosing among the 4 methods**

Below is a graphic that gives information about the 4 methods of calculating car expense deductions.

The 4 methods give you the choice of which method best suits your situation and needs.

For instance, some methods will involve more paperwork than others, but could give you bigger deductions. There are also eligibility requirements for some methods, so you need to check that you are eligible to use a particular

method.



Operative provision

28-20 Rules governing choice of method

(1) You can choose only one method for all the \*car expenses for the \*car for the income year. Choosing one method precludes any other method.

(2) However, you can change your choice for the income year.

Example: You choose the “log book” method and deduct \$1,000. On audit, the Commissioner finds that your claim is too high and should be reduced to \$500. You would have been able to deduct \$700 if you had chosen the “cents per kilometre” method. This rule lets you change your choice and deduct the \$700.

(3) You can also choose different methods for the same \*car for different income years and different methods for different cars for the same year.

## **Subdivision 28-C—The “cents per kilometre” method**

### **Table of sections**

28-25	How to calculate your deduction
28-30	Capital allowances
28-35	Substantiation

### **28-25 How to calculate your deduction**

(1) To calculate your deduction using the “cents per kilometre” method, you multiply:

the number of \*business kilometres the  
\*car travelled in the income year;

by:

a number of cents based on the car's  
engine capacity.

The number of cents can be found in the  
regulations.

- (2) But you can use this formula for the first 5,000  
\*business kilometres only. If the \*car travelled  
more than 5,000 business kilometres, you must  
discard the kilometres in excess of 5,000.

Example: If the car travelled 5,085 business kilometres,  
you could claim for 5,000, and would lose the  
extra 85.

- (3) ***Business kilometres*** are kilometres the \*car  
travelled in the course of:

- (a) producing your assessable income; or
- (b) your \*travel between workplaces.

You calculate the number of business  
kilometres by making a reasonable estimate.

## 28-30 Capital allowances

If a \*balancing adjustment event occurs for the  
\*car, you will need to refer to the capital  
allowances rules in Division 40 to find out how  
using this method affects the operation of those  
rules. See section 40-370 (about balancing

adjustments for some cars).

## 28-35 Substantiation

To use this method, you do *not* need to substantiate the \*car expenses for the \*car.

## Subdivision 28-D—The “12% of original value” method

### Table of sections

28-45	How to calculate your deduction
28-50	Eligibility
28-55	Capital allowances
28-60	Substantiation

## 28-45 How to calculate your deduction

- (1) Using the “12% of original value” method, you deduct 12% of the cost of the \*car when you acquired it, or 12% of its \*market value when you first began to lease it.

Note 1: The cost to a lessee of a luxury car to which Division 242 applies is to be worked out under section 242-20.

Note 2: The cost of a car to which Division 240 applies is to be worked out under section 240-25.

- (2) But the most you can deduct using this method is 12% of the \*car limit for the income year when you first used the \*car for any purpose (if you own it) or when you first began to lease it.

Note: Section 40-230 deals with the car limit.

- (3) Your deduction is reduced if you did not own or lease the \*car for the whole income year. You can only deduct the amount worked out using the formula:

$$\text{Full year car deduction} \times \frac{(365 - \text{Number of car-less days})}{365}$$

The *full year car deduction* is the amount you could deduct if you had owned or leased the \*car for the whole income year.

A *car-less day* is a day when you did not own or lease the \*car.

## 28-50 Eligibility

- (1) You can use this method only if the number of \*business kilometres travelled by the \*car in the income year was more than 5,000, or would have been if you had used the car throughout the income year.
- (2) *Business kilometres* are kilometres the \*car travelled in the course of:
- (a) producing your assessable income; or
  - (b) your \*travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.



## 28-55 Capital allowances

If a \*balancing adjustment event occurs for the \*car, you will need to refer to the capital allowances rules in Division 40 to find out how using this method affects the operation of those rules. See section 40-370 (about balancing adjustments for some cars).

## 28-60 Substantiation

To use this method, you do *not* need to substantiate the \*car expenses for the \*car.

## Subdivision 28-E—The “one-third of actual expenses” method

### Table of sections

28-70	How to calculate your deduction
28-75	Eligibility
28-80	Substantiation

## 28-70 How to calculate your deduction

- (1) Using the “one-third of actual expenses” method, you deduct one-third of each \*car expense.
- (2) The expense must qualify as a deduction under some provision of this Act outside this Division (or would qualify if, throughout the income

year, you had used the \*car only in producing your assessable income). If only part of the expense would qualify, you deduct one-third of that part.

Example: You borrow money to buy a car. You make repayments of principal and payments of interest.

You cannot deduct the repayments of principal because they are capital expenses.

The interest payments would be deductible in full if, throughout the income year, you had used the car only in producing your assessable income. Using the “one third of actual expenses” method, you can deduct one-third of the interest payments.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

## 28-75 Eligibility

- (1) You can use this method only if the number of \*business kilometres travelled by the \*car in the income year was more than 5,000, or would have been if you had used the car throughout the income year.
- (2) ***Business kilometres*** are kilometres the \*car travelled in the course of:
  - (a) producing your assessable income; or
  - (b) your \*travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

## 28-80 Substantiation

To use this method, you must substantiate the expenses under Subdivision 900-C.

## Subdivision 28-F—The “log book” method

### Table of sections

28-90	How to calculate your deduction
28-95	Eligibility
28-100	Substantiation

### 28-90 How to calculate your deduction

- (1) To use the “log book” method, you multiply the amount of each \*car expense by the \*business use percentage.

#### *The expense*

- (2) The expense must qualify as a deduction under some provision of this Act outside this Division (or would qualify if, while you \*held the \*car, you had used it only in producing your assessable income). If only part of the expense would qualify, you multiply that part by the \*business use percentage.

Example: You borrow money to buy a car. You make repayments of principal and payments of interest.

You cannot deduct the repayments of principal because they are capital expenses.

The interest payments would be deductible in full if, throughout the income year, you had

used the car only in producing your assessable income.

Using the “log book” method:

- if you held the car for the whole income year—multiply the interest payments by the business use percentage;
- if you held the car for only 6 months of the income year—multiply the interest payments for those 6 months by the business use percentage.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

### *The percentage*

- (3) The ***business use percentage*** is calculated by dividing:

the number of \*business kilometres that  
the \*car travelled in the period when  
you \*held it during the income year;

by

the total number of kilometres that the  
car travelled in that period;

and expressing the result as a percentage.

- (4) ***Business kilometres*** are kilometres the \*car travelled in the course of:

- (a) producing your assessable income; or
- (b) your \*travel between workplaces.

- (5) You calculate the number of business kilometres by making a reasonable estimate. The estimate must take into account all relevant

matters, including:

- (a) any log books, odometer records or other records you have; and
- (b) any variations in the pattern of use of the \*car; and
- (c) any changes in the number of cars you used in the course of producing your assessable income.

- (6) You **hold** a \*car while you own it, or it is leased to you, for use in the course of producing your assessable income, even if it is also used for some other purpose.

Note 1: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 242-15(2)).

Note 2: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

## 28-95 Eligibility

You can use this method only if you \*held the \*car for some or all of the income year.

## 28-100 Substantiation

- (1) To use this method, you must substantiate the \*car expenses under Subdivision 900-C.
- (2) You must also keep a log book.  
Subdivision 28-G explains:

how often you need to keep a log book;

how to keep a log book.

The log book is relevant to estimating the number of business kilometres the \*car travelled in the period when you \*held it during the income year.

- (3) You must keep odometer records for the period when you \*held the \*car during the income year. Subdivision 28-H tells you about odometer records, which document the total number of kilometres the car travelled in that period.
- (4) You must record the following information, in writing, before you lodge your \*income tax return:
  - (a) your estimate of the number of \*business kilometres; and
  - (b) the \*business use percentage.

However, the Commissioner may allow you to record the information later.

- (5) You must retain the log book and the odometer records. Subdivision 28-I has the rules about this.

### **Subdivision 28-G—Keeping a log book**

**28-105 What this Subdivision is about**

This Subdivision tells you how to keep a log book. A log book is relevant to estimating the number of business kilometres the car travelled in the period when you held it during the income year.

**Table of sections**

28-110 Steps for keeping a log book

**Operative provisions**

28-115 Income years for which you need to keep a log book

28-120 Choosing the 12 week period for a log book

28-125 How to keep a log book

28-130 Replacing one car with another

**28-110 Steps for keeping a log book**

There are 3 steps you need to follow in keeping a log book:

identify an income year for which to keep a log book;

choose a period of at least 12 weeks for the log book to cover;

record journeys made in the car during

the log book period in the course of producing your assessable income.

## **Operative provisions**

### **28-115 Income years for which you need to keep a log book**

- (1) You need to keep a log book for the first income year for which you use this method for the \*car.
- (2) Having kept a log book for one income year, you don't need to keep a new one for the next 4 or more income years unless subsection (3) or (4) requires it. If you haven't kept a new log book for 4 income years in a row, you must keep one for the next income year.

Example: If you keep a log book in 1997-98, you would need to keep the next one in 2002-2003, unless subsection (3) or (4) requires one sooner.

- (3) You must keep a log book for an income year if the Commissioner sends you a notice before the year directing you to keep a log book for the \*car for that year.
- (4) You must keep a log book for an income year if, during that year, you get one or more additional \*cars for which you want to use the "log book" method for that year.

\*



might have a period when you \*hold both the new car and the old car, or a period when you no longer \*hold the old car but do not yet hold the new car. In both these cases, you are treated for the purposes of subsection (4) as if you held the one car continuously.

- (6) You may choose to keep a log book for an income year even if you don't need to; for example, because you want to establish a higher \*business use percentage.

### **28-120 Choosing the 12 week period for a log book**

- (1) The log book must cover a continuous period of at least 12 weeks throughout which you \*held the \*car. If you hold the car for less than 12 weeks, the period must be the entire period for which you held the car.
- (2) The period may overlap the start or end of the income year, so long as it includes part of the year.
- (3) If you want to use the "log book" method for 2 or more \*cars for the same income year, the log books for those cars must cover periods that are concurrent.

### **28-125 How to keep a log book**

- (1) It is in your interests to record in the log book any journey made in the \*car during the log book period in the course of producing your assessable income. If a journey is not recorded, the log book will indicate a lower \*business use percentage than is actually the case.
- (2) A journey is recorded by making in the log book an entry specifying:
  - (a) the day the journey began and the day it ended;
  - (b) the \*car's odometer readings at the start and end of the journey;
  - (c) how many kilometres the car travelled on the journey;
  - (d) why the journey was made.

The record must be made at the end of the journey or as soon as possible afterwards.

- (3) If 2 or more journeys in a row are made in the \*car on the same day in the course of producing your assessable income, they can be recorded as a single journey.
- (4) The following must be entered in the log book:
  - (a) when the log book period begins and ends;
  - (b) the \*car's odometer readings at the start and the end of the period;
  - (c) the total number of kilometres that the car

- travelled during the period;
- (d) the number of kilometres that the car travelled, in the course of producing your assessable income, on journeys recorded in the log book;
- (e) the number of kilometres referred to in paragraph (d), expressed as a percentage of the total number referred to in paragraph (c).

Each of the entries must be made at or as soon as possible after the start or end of the period, as appropriate.

- (5) Each entry in the log book must be in English.

### **28-130 Replacing one car with another**

- (1) For the purposes of using the “log book” method, you may nominate one \*car as having replaced another car with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement \*car is treated as the original car, and the original car is treated as a different car. This means that you do not need to repeat for the replacement car the steps you have already taken for the original car under this Subdivision.
- (3) You must record the nomination in writing

\*

income year in which the nomination takes effect. However, the Commissioner may allow you to do it later.

- (4) You must retain the nomination document until the end of the period for which you must retain the last log book that you began to keep for the original \*car before the day of effect of the nomination.
- (5) Section 28-150 (which is about retaining log books) applies to the nomination document in the same way as it applies to that last log book.

## **Subdivision 28-H—Odometer records for a period**

### **Guide to Subdivision 28-H**

#### **28-135 What this Subdivision is about**

This Subdivision tells you how to keep odometer records for a car during a particular period. Odometer records document the total number of kilometres the car travelled during a particular period.

#### **Table of sections**

##### **Operative provision**

## Operative provision

### 28-140 How to keep odometer records for a car for a period

- (1) Odometer records for a period are kept in the form of a document in which the following are entered:
  - (a) the \*car's odometer readings at the start and the end of the period;
  - (b) if there is a nomination under section 28-130 to replace the car with another \*car with effect from a day in that period—the odometer readings, at the end of that day, of both cars affected by the nomination.
- (2) Each entry under subsection (1) must be in English and must be made at or as soon as possible after the start or end of the period, or the end of the specified day, as appropriate.
- (3) The following must also be entered in the document:
  - (a) the \*car's make, model and registration number (if any);
  - (b) if the car has an internal combustion engine—its engine capacity expressed in cubic centimetres;

- (c) if there is a nomination under section 28-130 to replace the car with another \*car—the corresponding details for the other car affected by the nomination.
- (4) Each entry under subsection (3) must be made in English and must be made before you lodge your \*income tax return.
- (5) The Commissioner may allow you to make an entry under this section after you lodge your \*income tax return.

### **Subdivision 28-I—Retaining the log book and odometer records**

#### **Table of sections**

28-150	Retaining the log book for the retention period
28-155	Retaining odometer records

### **28-150 Retaining the log book for the retention period**

- (1) You must retain the log book:
  - (a) first, until the end of the latest income year for which you rely on the log book to support your calculation of the \*business use percentage for the \*car; and
  - (b) then for another 5 years.

The period for which you must retain the log book is called the *retention period*.

- (2) The 5 years start on the due day for lodging your \*income tax return for that latest income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to a deduction worked out using a \*business use percentage that you are relying on the log book to support. See section 900-170.
- (4) If you do not retain the log book for the \*retention period, you cannot deduct any amount worked out using a \*business use percentage that you are relying on the log book to support. If you have already deducted such an amount, your assessment may be amended to disallow the deduction.
- (5) For the purposes of the rules about retaining and producing records of expenses (see Subdivision 900-G), the log book is treated as a record of the \*car expenses for each year for which you use a \*business use percentage that you are relying on the log book to support.
- (6) If you lose the log book, there are rules that

might help you in section 900-205. For the purposes of the rules about relief from the effects of failing to substantiate (see Subdivision 900-H), not doing something required by this Division is treated in the same way as not doing something necessary to follow the rules in Division 900.

### **28-155 Retaining odometer records**

- (1) You must retain your odometer records relating to the period when you \*held the \*car in the income year.
- (2) If you keep a log book for the income year, you must retain the odometer records for the same period as the log book, and section 28-150 applies to them in the same way as it applies to the log book.
- (3) If you don't keep a log book for the income year, you must retain the odometer records for the same period as written evidence of a \*car expense for the \*car for the income year, and section 900-75 applies to them in the same way as it applies to written evidence of an expense.

Note: Section 900-75 is about retaining written evidence of a car expense.

### **Subdivision 28-J—Situations where you cannot use, or don't need to use, one of the 4**



**methods****Guide to Subdivision 28-J****28-160 What this Subdivision is about**

This Subdivision sets out the situations where you cannot use, or don't need to use, any of the 4 methods. These situations involve either the nature of your car or the way you use it.

**Table of sections****Operative provisions**

- 28-165 Exception for particular cars taken on hire
- 28-170 Exception for particular cars used in particular ways
- 28-175 Further miscellaneous exceptions
- 28-180 Car expenses related to award transport payments
- 28-185 Application of Subdivision 28-J to PAYE to recipients and payers of certain withholding payments

**Operative provisions****28-165 Exception for particular cars taken on hire**

- (1) For particular types of \*cars taken on hire you cannot use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) Instead, you must calculate the deductions

under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.

- (3) This section applies to a taxi taken on hire.
- (4) It also applies to a \*motor vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take motor vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or short term basis, except if the motor vehicle:
  - (a) has been taken on hire under successive agreements of a kind that result in substantial continuity of the motor vehicle being taken on hire; or
  - (b) it is reasonable to expect that the motor vehicle will be taken on hire under successive agreements of a kind that will so result.

### **28-170 Exception for particular cars used in particular ways**

- (1) For particular types of \*cars used in particular ways you don't need to use one of the 4 methods to calculate your deductions for \*car expenses.

instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.

(3) This section applies if, whenever you used the \*car in the income year:

- (a) the car was covered by the description in column 2 of an item in the table below; and
- (b) you used the car as described in column 3 of that item.

Item	Column 2 Particular car	Column 3 Exempt use
1.	<p>The *car was:</p> <p>(a) a panel van or utility truck; or</p> <p>(b) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed principally to carry passengers); or</p> <p>(c) a taxi.</p>	<p>You used the car only in one or more of the following ways:</p> <p>(a) in the course of producing your assessable income;</p> <p>(b) to go between your residence and a place where you use the car in the course of producing your assessable income;</p> <p>(c) by providing the car to</p>

someone else to drive  
between his or her  
residence and a place  
where the car is used in  
the course of producing  
your assessable  
income;

(d) for the purpose of travel  
that is incidental to  
using the car in the  
course of producing  
your assessable  
income;

(e) for your own or  
someone else’s private  
use that was minor,  
infrequent and  
irregular.

2.	The *car was part of the *trading stock of a *business of selling cars that you carried on.	You used the car in the course of the business.
3.	The *car was any type of car.	You let the car on lease or hire in the course of a *business of letting cars on lease or hire that you carry on.
4.	The *car was any type of car.	As an employer, you provided the car for the exclusive use of one or more of the following:  (a) your employees;

(b) their \*relatives;

in circumstances where one or more of them was entitled to use the car for private purposes.

Note: This Subdivision also applies to entities that are not employers, but pay (or are liable to pay) withholding payments covered by subsection 28-185(3).

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## 28-175 Further miscellaneous exceptions

- (1) This section lists some miscellaneous cases where you don't need to use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) You *may* use one of the 4 methods, or you may instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.
- (3) The cases are as follows:
  - (a) the \*car was unregistered throughout the period when you \*held it during the income year, and during that period you

- producing your assessable income; or
- (b) at some time during the income year the  
\*car was part of the \*trading stock of a  
\*business of selling cars that you carried  
on, and you didn't use the car at any time  
during that year; or
- (c) the expense is to do with repairs to or  
other work on the \*car, and you incurred it  
in the course of a \*business that you  
carried on of doing repairs or other work  
on cars.

In applying paragraph (a), the car is taken to be  
registered in a particular place while it is  
lawful to drive the car on a public road there.

## **28-180 Car expenses related to award transport payments**

- (1) Subdivision 900-I (Award transport payments)  
allows certain losses or outgoings to be  
deducted without getting written evidence. The  
losses or outgoings are \*transport expenses  
related to an allowance or reimbursement paid  
or payable to you by your employer under an  
\*industrial instrument that was in force on  
29 October 1986.

Note: This Subdivision also applies to entities that are  
*not* employers, but pay (or are liable to pay)  
withholding payments covered by subsection

- (2) If that Subdivision lets you deduct \*car expenses, or parts of \*car expenses, without getting written evidence, you don't need to use any of the 4 methods to calculate your deductions for those expenses or parts of expenses.
- (3) However, your use of the 4 methods for *other* \*car expenses you incur for the \*car for the income year is affected, unless you elect not to rely on Subdivision 900-I. Section 900-250 deals with this matter.

### **28-185 Application of Subdivision 28-J to recipients and payers of certain withholding payments**

#### *Application to recipients*

- (1) If an individual receives, or is entitled to receive, \*withholding payments covered by subsection (3), this Subdivision applies to him or her:
  - (a) in the same way as it applies to an employee; and
  - (b) as if an entity (a *notional employer*) that makes (or is liable to make) such payments to him or her were his or her employer; and

- (c) as if any other individual who receives, or is entitled to receive, such payments from a notional employer were also an employee of the notional employer.

*Application to payers*

- (2) This Division applies to an entity that makes, or is liable to make, \*withholding payments covered by subsection (3):
- (a) in the same way as it applies to an employer; and
  - (b) as if an individual to whom the entity makes (or is liable to make) such payments were the entity's employee.

*Withholding payments covered*

- (3) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

<b>Withholding payments covered</b>		
<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
3A	Section 12-47	Payment to *religious practitioner
4	Section 12-50	Return to work payment



		because of termination of employment
6	Subdivision 12-D	Benefit and compensation payments

## Division 30—Gifts or contributions

### Table of Subdivisions

#### Guide to Division 30

- 30-A Deductions for gifts or contributions
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### Guide to Division 30

## 30-1 What this Division is about

This Division sets out the rules for working out deductions for certain gifts or contributions that you make.

### Table of sections

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## 30-5 How to find your way around this Division

- (1) You should start at Subdivision 30-A unless you are making a contribution or gift to a political party, independent candidate or member.

Note: Subdivision 30-DA deals with the deductibility of contributions and gifts to political parties, independent candidates and members.

- (2) Subdivision 30-A contains a table of all the gifts and contributions that you can deduct. You need to look at the table to see whether the type of gift or contribution you are making is covered by it.
- (3) In some cases, the table sends you off to Subdivision 30-B. It has a number of tables that list particular funds, authorities or institutions that deductible gifts can be made to.
- (4) In other cases, the table sends you off to

Subdivision 30-C. It contains rules that apply to particular gifts of property.

(4AA) Subdivision 30-BA provides for the Commissioner to endorse as a deductible gift recipient an entity that is, or operates, a fund, authority or institution. The relevance of the Subdivision to you is that generally you can deduct only a gift you make to a recipient that is endorsed or named in:

- (a) this Division; or
- (b) regulations made for the purposes of this Division.

Note: The fact that gifts to a recipient registered in the Australian Business Register are deductible will be shown in the Register.

(4AB) Subdivision 30-CA sets out administrative rules which do not directly affect whether you can deduct a gift you make. The rules require:

- (a) a receipt issued by an entity for a gift to the entity or to a fund, authority or institution operated by the entity to show the entity's ABN; and
- (b) the Australian Business Registrar to enter in the Australian Business Register a statement in relation to an entity entered in the Register if:
  - (i) gifts to the entity are deductible; or
  - (ii) gifts to a fund, authority or

institution operated by the entity are deductible.

(4B) Subdivision 30-DB allows you to spread deductions for certain gifts and covenants over up to 5 income years.

(5) Subdivision 30-E requires the establishment of a register of \*environmental organisations. Subdivision 30-EA requires the establishment of a register of \*harm prevention charities. Subdivision 30-F requires the establishment of a register of \*cultural organisations. Their only relevance to you is that you can deduct a gift that you make to a fund listed on one of those registers.

## **30-10 Index**

There is an index to this Division in Subdivision 30-G.

## **Subdivision 30-A—Deductions for gifts or contributions**

### **Table of sections**

30-15	Table of gifts or contributions that you can deduct
30-17	Requirements for certain recipients

## **30-15 Table of gifts or contributions that you can deduct**

- (1) You can deduct a gift or contribution that you make in the situations set out in the following table. It tells you:

who the recipient of the gift or contribution can be; and

the type of gift or contribution that you can make; and

how much you can deduct for the gift or contribution; and

any special conditions that apply.

- (2) A testamentary gift or contribution is not deductible under this section.

Note: Subdivision 30-DA deals with the deductibility of contributions and gifts to political parties, independent candidates and members.

<b>Deductible gifts or contributions</b>		
<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you</b>
1 A fund, authority or institution covered by an item in any of the tables in Subdivision 30-B.	A gift of:	(a) if the gift is n
	(a) money; or	amount you :
	(b) property (including *trading stock) that you purchased during the 12 months before making the gift; or	(b) if the gift is p (except tradi covered by p property cov paragraph (d
	(c) an item of your trading	covered by p

STOCK 11: —the lesser of

- the gift is a disposal of the item outside the ordinary course of your \*business; and
- no election has been made, or is made, in relation to the item under Subdivision 385-E (about electing to spread or defer profit from the forced disposal or death of \*live stock); or

(d) property valued by the Commissioner at more than \$5,000; or

(c) if the gift is a disposal of your trading stock:

- that you have not elected to spread or defer profit from the forced disposal or death of \*live stock; or
- for which an election has been made, in relation to the item under Subdivision 385-E, to spread or defer profit from the forced disposal or death of \*live stock; or

(d) if the gift is property valued by the Commissioner at more than \$5,000; or

(e) \*shares that you have acquired in a \*listed public company if:

- the shares are listed for quotation in the official list of a stock exchange that is listed under the heading “Australia” in

(d) if the gift is property valued by the Commissioner at more than \$5,000; or

(e) if the gift is property valued by the Commissioner at more than \$5,000; or

		<ul style="list-style-type: none"> <li>regulations made for the purposes of the definition of *approved stock exchange; and</li> <li>the *market value of the shares on the day you made the gift is \$5,000 or less; and</li> <li>you acquire the shares at least 12 months before making the gift.</li> </ul>	<p>Commissioner</p> <p>(e) if the gift is described in the previous market value shares on the made the gift</p>
2	<p>An *ancillary fund established and maintained under a will or instrument of trust solely for:</p> <p>(a) the purpose of providing money, property or benefits:</p> <ul style="list-style-type: none"> <li>to a fund, authority or institution gifts to which are deductible under item 1 of this table; and</li> <li>for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or</li> </ul>	<p>A gift of:</p> <p>(a) money; or</p> <p>(b) property (including *trading stock) that you purchased during the 12 months before making the gift; or</p> <p>(c) an item of your trading stock if:</p> <ul style="list-style-type: none"> <li>the gift is a disposal of the item outside the ordinary course of your *business; and</li> <li>no election has been made, or is made, in relation to the item under Subdivision 385-E (about electing to spread or defer profit from the forced disposal or</li> </ul>	<p>(a) if the gift is n amount you :</p> <p>(b) if the gift is p (except tradi covered by p property cov paragraph (d covered by p —the lesser c value of the j the day you r and the amou for the prope</p> <p>(c) if the gift is : your trading</p> <ul style="list-style-type: none"> <li>that y of out ordina your b</li> <li>for wh</li> </ul>

		death of *live stock); or	made, in rela item u Subdi
		(d) property valued by the Commissioner at more than \$5,000; or	the market va item on the d the gift; or
	(b) the establishment of such a fund, authority or institution.	(e) *shares that you have acquired in a *listed public company if: <ul style="list-style-type: none"> <li>the shares are listed for quotation in the official list of a stock exchange that is listed under the heading “Australia” in regulations made for the purposes of the definition of *approved stock exchange; and</li> <li>the *market value of the shares on the day you made the gift is \$5,000 or less; and</li> <li>you acquire the shares at least 12 months before making the gift.</li> </ul>	(d) if the gift is p valued by th Commission than \$5,000 ; not purchase during the 12 before makin the value of t as determine Commission (e) if the gift is s described in of the previo the market va shares on the made the gift
4	(a) the Australian Fund; or (b) a public library in Australia; or (c) a public museum in	A gift of property (except an estate or interest in land or in a building or part of a building).	The general rule can deduct the a *GST inclusive (as reduced unde subsection (3) if subsection appli



Australia; or  
(d) a public art gallery in  
Australia; or  
(e) an institution in  
Australia consisting of a  
public library, a public  
museum and a public art  
gallery or any 2 of them.

in the written va  
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Subdivision 30-  
(a) how a person  
approved val  
(b) the exception  
general rule;  
(c) the situation  
amount you c  
reduced.

If the property is  
owned, see secti  
work out how m  
of the gift you c

5	The Commonwealth (for the purposes of Artbank).	A gift of property (except an estate or interest in land or in a building or part of a building).	The general rule can deduct the a *GST inclusive (as reduced unde subsection (3) if subsection appli in the written va get from approv Subdivision 30-
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(a) how a person approved val  
(b) the exception general rule;  
(c) the situation amount you reduced.  
If the property is owned, see secti work out how m gift you can ded

6	(a) the National Trust of Australia (New South Wales); or (b) the National Trust of Australia (Victoria); or (c) The National Trust of Queensland; or (d) The National Trust of South Australia; or (e) The National Trust of Australia (W.A.); or (f) the National Trust of Australia (Tasmania); or (g) The National Trust of Australia (Northern Territory); or(h)the	A gift of a place included in: (a) the National Heritage List, or the Commonwealth Heritage List, under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> ; or (b) the Register of the National Estate under the <i>Australian Heritage Council Act 2003</i> .	The general rule can deduct the a *GST inclusive (as reduced unde subsection (3) if subsection appli in the written va get from approv Subdivision 30- (a) how a person approved val (b) the exception general rule; (c) the situation amount you reduced. If the place is joi see section 30-225 t how much of the
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National Trust of  
Australia (A.C.T.); or

(i) the Australian Council  
of National Trusts.

7	A *deductible gift recipient that is a fund, authority or institution covered by item 1 or 2 of this table.	A contribution of:	(a) if the contrib
		(a) money, if the amount is more than \$150; or	money—the the contribut
		(b) property that you purchased during the 12 months before making the contribution, if the lesser of:	by the *GST market value you made the contribution to attend, or]
		<ul style="list-style-type: none"> <li>the *market value of the property on the day you made the contribution; and</li> </ul>	(b) if the contrib property that
		<ul style="list-style-type: none"> <li>the amount you paid for the property;</li> </ul>	purchased du months befor contribution-
		is more than \$150; or	of:
		(c) property valued by the Commissioner at more than \$5,000, if you did not purchase the property during the 12 months before making the contribution; or	<ul style="list-style-type: none"> <li>the ma the pr day ye contri</li> <li>the an paid fi proper</li> </ul>
			reduced by tl inclusive ma the day you 1 contribution

to attend, or ]

the fund-rai

- (ca) \*shares that you have acquired in a \*listed public company if:
- the shares are listed for quotation in the official list of a stock exchange that is listed under the heading "Australia" in regulations made for the purposes of the definition of \*approved stock exchange; and
  - the market value of the shares on the day you made the contribution is more than \$150 and less than or equal to \$5,000; and
  - you acquire the shares at least 12 months before making the contribution;
- (c) if the contribu property value Commissioner \$5,000 and yo purchase the p the 12 months making the co the value of th determined by Commissioner the GST inclu value, on the c the contributio to attend, or p; the fund-raisir
- (ca) if the contribu described in p of the previou market value c the day you m contribution, 1 GST inclusive on the day you contribution, c attend, or part fund-raising e

where:

(d) the contribution is not a gift; and

(e) either:

- the contribution is made in return for a right permitting you to attend, or participate in, a particular<sup>\*</sup> fund-raising event in Australia; or
- the contribution is made in return for a right permitting an individual (other than you) to attend, or participate in, a particular fund-raising event in Australia.



8	A *deductible gift recipient that is a fund, authority or institution covered by item 1 or 2 of this table.	<div>A contribution of money, if:<div>(a) the amount is more than \$150; and</div><div>(b) the contribution is not a gift; and</div><div>(c) you made the contribution by way of consideration for the supply of goods or services; and</div><div>(d) you made the contribution because you were the successful bidder at an auction that:<div><div>• was a particular *fund-raising event in Australia; or</div></div></div></div>	The amount of the contribution, reduced by the GST inclusive of the contribution, of services.
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- was held at a particular fund-raising event in Australia; and

(e) the amount of the contribution exceeds the \*GST inclusive market value, on the day you made the contribution, of the goods or services.

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(3) For the purposes of items 4, 5 and 6 of the table in subsection (2), the \*GST inclusive market values of the property or place in question are reduced by  $\frac{1}{11}$  if you would have been entitled to an \*input tax credit if:

- (a) you had \*acquired the property or place at the time you made the gift; and
- (b) your acquisition had been for a \*creditable purpose.

(4) For the purposes of item 7 of the table in



subsection (2), in working out the \*GST inclusive market value of the right in question, disregard anything that would prevent or restrict conversion of the right to money.

- (5) For the purposes of item 8 of the table in subsection (2), in working out the \*GST inclusive market value of the goods or services in question, disregard anything that would prevent or restrict conversion of the goods or services to money.

### **30-17 Requirements for certain recipients**

- (1) This section sets out requirements to be met for you to be able to deduct a gift you make to a fund, authority or institution described in the column headed “Recipient” of item 1, 2 or 4 of the table in section 30-15. However, this section does not apply to:
- (a) a fund, authority or institution that is mentioned by name in an item of a table in Subdivision 30-B; or
  - (c) the Australian Fund.
- (2) The fund, authority or institution must:
- (a) be an entity or \*government entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient; or
  - (b) in the case of a fund—either:

- (i) be owned legally by an entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient for the operation of the fund; or
- (ii) be under the control of one or more persons who constitute a \*government entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient for the operation of the fund; or
- (c) in the case of an authority or institution—be part of an entity or \*government entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient for the operation of the authority or institution.

Example: A public fund that is established and maintained for constructing a building to be used by a State school and is controlled by the principal of the school would be an example of a fund under the control of one or more persons who constitute a government entity that is endorsed as a deductible gift recipient for the operation of the fund, if the school were so endorsed.

**Subdivision 30-B—Tables of recipients for deductible gifts**

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**Health****30-20 Health**

(1) This table sets out general categories of health recipients.

**Health—General**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions—fund, authority or institution</b>	<b>Special conditions—</b>
1.1.1	a public hospital	the public hospital must be: (a) an *Australian government agency; or (b) a *registered charity	none
1.1.2	a hospital carried on by a society or association	the society or association must be a *registered charity	none
1.1.3	a public fund maintained for: (a) the purpose of providing money for hospitals covered by item 1.1.1 or 1.1.2; or (b) the establishment of such hospitals	(a) the public fund must have been established before 23 October 1963; and (b) the public fund must: (i) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; or (ii) not be an *ACNC type of entity; and (c) the hospitals must satisfy the special conditions set out in item 1.1.1 or 1.1.2 (as applicable)	none
1.1.4	a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants	the public authority must be: (a) an *Australian government agency; or (b) a *registered charity	the gift must be made for such research
1.1.5	a public institution engaged solely in	the public institution must be: (a) an *Australian government	none

	causes, prevention or cure of disease in human beings, animals or plants	agency; or (b) a *registered charity	
1.1.6	a *registered health promotion charity	none	none
1.1.7	a public ambulance service	the public ambulance service must be: (a) an *Australian government agency; or (b) a *registered charity	none
1.1.8	a public fund established and maintained for the purpose of providing money for public ambulance services covered by item 1.1.7	(a) the public fund must: (i) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; or (ii) not be an *ACNC type of entity; and (b) the public ambulance services must satisfy the special conditions set out in item 1.1.7	none

(2) This table sets out specific health recipients.

<b>Health—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.2.1	The Royal Australian and New Zealand College of Obstetricians and Gynaecologists	none
1.2.4	The Royal Australian and New Zealand College of	the gift must be made for education

	Radiologists	or research in medical knowledge or science
1.2.5	the New South Wales College of Nursing	none
1.2.6	the Royal Australian and New Zealand College of Psychiatrists	none
1.2.7	the Royal Australian College of General Practitioners	the gift must be made for education or research in medical knowledge or science
1.2.8	the Royal Australasian College of Physicians	none
1.2.9	the Royal Australasian College of Surgeons	none
1.2.10	the Royal College of Pathologists of Australasia	the gift must be made for education or research in medical knowledge or science
1.2.12	the Royal College of Nursing, Australia	none
1.2.13	the Australian and New Zealand College of Anaesthetists	none
1.2.14	SouthCare Helicopter Fund	the gift must be made after 11 September 2000
1.2.16	National Breast Cancer Centre Gift Fund	the gift must be made after 24 September 2001 and before 2 August 2011
1.2.17	The Bionic Ear Institute	the gift must be made after 4 October 2001 and before 10 November

1.2.18	The Australasian College for Emergency Medicine	the gift must be made after 2 February 2009
1.2.19	Cancer Australia	the gift must be made:  (a) after 8 June 2011; and  (b) for improving outcomes for Australians affected by breast cancer

## Education

### 30-25 Education

(1) This table sets out general categories of education recipients.

Education—General			
Item	Fund, authority or institution	Special conditions—fund, authority or institution	Special conditions—
2.1.1	a public university	the public university must be: (a) an *Australian government agency; or (b) a *registered charity	none
2.1.2	a public fund for the establishment of a public university	(a) the public fund must be: (i) an *Australian government agency; or (ii) a *registered charity;	none



and

(b) the public university must satisfy the special conditions set out in item 2.1.1

2.1.3	an institution that is a higher education provider within the meaning of the <i>Higher Education Support Act 2003</i>	the institution must be: (a) an *Australian government agency; or (b) a *registered charity	none
2.1.4	a residential educational institution affiliated under statutory provisions with a public university	(a) the residential educational institution must be a *registered charity; and (b) the public university must satisfy the special conditions set out in item 2.1.1	none
2.1.5	a residential educational institution established by the Commonwealth	none	none
2.1.6	a residential educational institution that is affiliated with an institution that is a higher education provider within the meaning of the <i>Higher Education Support Act 2003</i>	(a) the residential educational institution must be: (i) an *Australian government agency; or (ii) a *registered charity; and (b) the higher education provider must satisfy the special conditions set out in	none

item 2.1.3			
2.1.7	an institution that the *Education Minister has determined to be a technical and further education institution under the <i>Student Assistance Act 1973</i>	the institution must be: (a) an *Australian government agency; or (b) a *registered charity	see section 30-30
2.1.8	a public fund established and maintained solely for the purpose of providing religious instruction in government schools in Australia	the public fund must: (a) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; or (b) not be an *ACNC type of entity	none
2.1.9	a public fund established and maintained by a Roman Catholic archdiocesan or diocesan authority solely for the purpose of providing religious instruction in government schools in Australia	the public fund must: (a) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; or (b) not be an *ACNC type of entity	none
2.1.10	a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college by:	the public fund must: (a) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; or (b) not be an *ACNC type of entity	none

- (b) a public authority; or
- (c) a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association

2.1.11	a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a rural school hostel building to which section 30-35 applies	the public fund must: (a) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; or (b) not be an *ACNC type of entity	none
2.1.12	a government school that:  (a) provides special education for students each of whom has a disability that is permanent or is likely to be permanent; and  (b) does not provide education for other students	none	none

2.1.13	a public fund that is established and maintained solely for providing money for scholarships, bursaries or prizes to which section 30-37 applies	the public fund must be: (a) a *registered charity; or (b) operated by a registered charity	none
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(2) This table sets out specific education recipients.

<b>Education—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.2.1	The Academy of the Social Sciences in Australia Incorporated	none
2.2.2	the Australian Academy of Science	none
2.2.3	the Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	none
2.2.4	the Australian Academy of Technological Sciences and Engineering Limited	none
2.2.6	the Australian and New Zealand Association for the Advancement of Science	none
2.2.7	the Australian Ireland Fund	none
2.2.8	the Life Education Centre	none
2.2.9	a company that conducts life education programs under the auspices of the Life Education Centre if the company:	the gift must be for the conduct of such programs

(a) is not carried on for the

purposes of profit or gain to

its individual members;

and

(b) is prohibited by its

\*constitution from making

any distribution of money

or property to its members

2.2.10	the Council for Christian Education in Schools	none
2.2.11	the Council for Jewish Education in Schools	none
2.2.13	the Lionel Murphy Foundation	none
2.2.14	the Marcus Oldham Farm Management College	see section 30-30
2.2.16	the Polly Farmer Foundation (Inc)	none
2.2.17	The Australian Council of Christians and Jews	the gift must be made after 6 December 1998
2.2.18	the Sir William Tyree Foundation of The Australian Industry Group	the gift must be made after 28 February 1999
2.2.20	Australian Nuffield Farming Scholars Association	the gift must be made after 16 April 2001
2.2.21	Dymocks Children's Charities Limited	the gift must be made after 4 January 2001
2.2.22	Australian Primary Principals Association Education Foundation	the gift must be made after 1 October 2001
2.2.23	Commonwealth Study Conferences (Australia) Incorporated	the gift must be made after 19 February 2001

	Business and Government Limited	made after 4 April 2000
2.2.25	Australian Human Rights Education Fund	the gift must be made after 24 September 2001
2.2.26	Aboriginal Education Council (N.S.W.) Incorporated	the gift must be made after 6 May 2002
2.2.27	General Sir John Monash Foundation	the gift must be made after 16 June 2002
2.2.28	Australian-American Educational Foundation	the gift must be made after 30 April 2003
2.2.29	The Australian Literacy and Numeracy Foundation Limited	the gift must be made after 11 October 2002
2.2.30	The Constitution Education Fund	the gift must be made after 20 June 2003
2.2.31	Country Education Foundation of Australia Limited	the gift must be made on or after 20 August 2003
2.2.32	Clontarf Foundation	the gift must be made after 30 August 2004
2.2.33	International Specialised Skills Institute Incorporated	the gift must be made after 11 August 2005
2.2.34	Yachad Accelerated Learning Project Limited	the gift must be made after 29 June 2005 and before 1 July 2012
2.2.36	The Spirit of Australia Foundation	the gift must be made after 10 September 2007

	2.2.37 The Royal Institution of Australia Incorporated	the gift must be made after 16 April 2009
2.2.38	One Laptop per Child Australia Ltd	the gift must be made after 26 May 2010 and before 1 July 2012
2.2.39	The Charlie Perkins Scholarship Trust	the gift must be made after 1 August 2010 and before 2 August 2013
2.2.40	Roberta Sykes Indigenous Education Foundation	the gift must be made after 1 August 2010 and before 2 August 2013

### 30-30 Gifts that must be for certain purposes

(1) You can deduct a gift that you make to:

- (a) a technical and further education institution covered by item 2.1.7 of the table in subsection 30-25(1); or
- (b) the Marcus Oldham Farm Management College;

only if the gift is for:

- (c) purposes of the institution, or of the College, that have been declared by the \*Education Minister to relate solely to tertiary education; or
- (d) the provision of facilities for the institution, or the College, if the

or she is satisfied the facilities are to be used principally for such purposes.

- (2) A declaration under subsection (1) must be in writing, signed by the Minister.

### **30-35 Rural schools hostel buildings**

- (1) For the purposes of item 2.1.11 of the table in subsection 30-25(1), a rural school hostel building is one to which this section applies if it meets the conditions in subsections (2), (3) and (4).
- (2) The rural school hostel building must be used, or going to be used, principally as residential accommodation for students:
- (a) whose usual place of residence is in a rural area; and
  - (b) who are undertaking primary or secondary education, or special education programs for children with disabilities, at a school in the same area as the building.
- (3) The costs of the school must be solely or partly funded by the Commonwealth, a State or a Territory.
- (4) The residential accommodation must be provided by:
- (a) the Commonwealth, a State or a Territory;



or

- (b) a public authority; or
- (c) a company that:
  - (i) is not carried on for the purposes of profit or gain to its individual members; and
  - (ii) is prohibited by its \*constitution from making any distribution of money or property to its members.

### **30-37 Scholarship etc. funds**

For the purposes of item 2.1.13 of the table in subsection 30-25(1), a scholarship, bursary or prize is one to which this section applies if:

- (a) it may only be awarded to Australian citizens, or permanent residents of Australia, within the meaning of the *Australian Citizenship Act 2007*; and
- (b) it is open to individuals or groups of individuals throughout a region of at least 200,000 people, or throughout at least an entire State or Territory; and
- (c) it promotes recipients' education in either or both of the following:
  - (i) \*pre-school courses, \*primary courses, \*secondary courses or \*tertiary courses;

- (ii) educational institutions overseas, by way of study of a component of a course covered by subparagraph (i); and
- (d) it is awarded on merit or for reasons of equity.

## Research

### 30-40 Research

- (1) This table sets out general categories of research recipients.

Research—General			
Item	Fund, authority or institution	Special conditions—fund, authority or institution	Special conditions—
3.1.1	a university, college, institute, association or organisation which is an approved research institute for the purposes of section 73A (Expenditure on scientific research) of the <i>Income Tax Assessment Act 1936</i>	the approved research institute must: <ul style="list-style-type: none"> <li>(a) be registered under the <i>Australian Charities and Not-for-profits Commission Act 2012</i>; or</li> <li>(b) not be an *ACNC type of entity</li> </ul>	the gift must be made for purposes of scientific research in the field of natural or applied science

- (2) This table sets out specific research recipients.

Research—Specific		
Item	Fund, authority or institution	Special conditions
3.2.1	the Centre for Independent	none

3.2.2	the Ian Clunies Ross Memorial Foundation	none
3.2.4	The Menzies Research Centre Public Fund	the gift must be made after 2 April 1998
3.2.5	The Sir Earl Page Memorial Trust	the gift must be made after 6 May 2001
3.2.6	Research Australia Limited	the gift must be made after 26 June 2001
3.2.7	The Page Research Centre Limited	the gift must be made after 12 January 2005
3.2.8	The Chifley Research Centre Limited	the gift must be made after 19 May 2005
3.2.9	Don Chipp Foundation Ltd	the gift must be made after 26 June 2006
3.2.10	Lingiari Policy Centre	the gift must be made after 25 July 2006
3.2.11	Grattan Institute	the gift must be made after 4 March 2009 and before 5 March 2011
3.2.12	The Green Institute Limited	the gift must be made after 23 June 2009
3.2.13	United States Studies Centre	the gift must be made after 26 July 2009

## Welfare and rights

### 30-45 Welfare and rights

welfare and rights recipients.

<b>Welfare and rights—General</b>			
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions—fund, authority or institution</b>	<b>Special conditions—</b>
4.1.1	a *registered public benevolent institution	none	none
4.1.2	a public fund maintained for the purpose of providing money for:  (a) *registered public benevolent institutions; or  (b) the establishment of registered public benevolent institutions	the public fund must:  (a) have been established before 23 October 1963; and  (b) be:  (i) a *registered charity; or  (ii) operated by a registered charity	none
4.1.3	a public fund established and maintained for the relief of persons in Australia who are in necessitous circumstances	the public fund must:  (a) be an *Australian government agency; or  (b) be a *registered charity; or  (c) not be an *ACNC type of entity	none
4.1.4	a public fund that, when the gift is made, is on the register of *harm prevention charities kept under Subdivision 30-EA	the public fund must be a *registered charity	the gift must be made after 30 June 2003

4.1.5	a public fund (including a public fund established and maintained by a public benevolent institution) that is established and maintained solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in Australia in distress as a result of a disaster to which subsection 30-45A(1) or 30-46(1) applies	the public fund must: (a) be: (i) an *Australian government agency; or (ii) a *registered charity; or (b) be operated by: (i) an Australian government agency; or (ii) a registered charity	see subsection 30-45A(4) or 30-46(2)
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4.1.6	an institution whose principal activity is one or both of the following: (a) providing short-term direct care to animals (but not only native wildlife) that have been lost or mistreated or are without owners; (b) rehabilitating orphaned, sick or injured animals (but not only	the institution must be a *registered charity	none
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native wildlife)  
that have been  
lost or mistreated  
or are without  
owners

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4.1.7	an institution that would be a public benevolent institution, but for one or both of the following:  (a) it also promotes the prevention or the control of diseases in human beings (but not as a principal activity);  (b) it also promotes the prevention or the control of *behaviour that is harmful or abusive to human beings (but not as a principal activity)	the institution must be a *registered charity	none
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(2) This table sets out specific welfare and rights recipients.

<b>Welfare and rights—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.2.1	Amnesty International Australia	none
4.2.2	the Child Accident Prevention Foundation of Australia	none
4.2.3	the National Foundation for Australian Women Limited	none
4.2.4	the National Safety Council of Australia Limited	none
4.2.6	the Royal Society for the Prevention of Cruelty to Animals New South Wales	none
4.2.7	the Royal Society for the Prevention of Cruelty to Animals (Victoria) Inc.	none
4.2.9	the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated	none
4.2.10	the Royal Society for the Prevention of Cruelty to Animals Western Australia (Incorporated)	none
4.2.11	the R.S.P.C.A. (Tasmania) Incorporated	none
4.2.12	the Society for the Prevention of Cruelty to Animals (Northern Territory)	none
4.2.13	the Royal Society for the Prevention of Cruelty to Animals (A.C.T.) Incorporated	none
4.2.14	the R.S.P.C.A. Australia Incorporated	none

4.2.19	Reconciliation Australia Limited	the gift must be made after 6 December 2000
4.2.20	Royal Society for the Prevention of Cruelty to Animals, Queensland Incorporated	the gift must be made after 22 December 1999
4.2.21	Crime Stoppers Western Australia Limited	the gift must be made after 31 October 2002
4.2.22	New South Wales Crime Stoppers Limited	the gift must be made after 31 October 2002
4.2.23	Crime Stoppers Tasmania	the gift must be made after 28 November 2002
4.2.24	Crime Stoppers Queensland Limited	the gift must be made after 23 January 2003
4.2.25	Crime Stoppers Australia Ltd	the gift must be made after 4 June 2003
4.2.26	Alcohol Education and Rehabilitation Foundation Limited	the gift must be made after 5 June 2003
4.2.27	Crime Stoppers South Australia Limited	the gift must be made on or after 19 September 2003
4.2.28	International Social Service - Australian Branch	the gift must be made after 17 March 2004
4.2.29	the Victorian Crime Stoppers Program	the gift must be made after 22 April 2004
4.2.31	Crime Stoppers Northern Territory Program	the gift must be made after 13 March 2005
4.2.31A	ACT Region Crime	the gift must be



		12 February 2009
4.2.32	Kidsafe ACT (Inc.)	the gift must be made after 2 August 2007
4.2.33	Kidsafe New South Wales (Inc.)	the gift must be made after 2 August 2007
4.2.34	Kidsafe NT (Inc.)	the gift must be made after 2 August 2007
4.2.35	Kidsafe Qld (Inc.)	the gift must be made after 2 August 2007
4.2.36	Kidsafe SA Incorporated	the gift must be made after 2 August 2007
4.2.37	Kidsafe Tasmania (Inc)	the gift must be made after 2 August 2007
4.2.38	Kidsafe Vic (Inc.)	the gift must be made after 2 August 2007
4.2.39	Kidsafe Western Australia (Inc)	the gift must be made after 2 August 2007
4.2.40	Ian Thorpe's Fountain for youth Limited	the gift must be made after 28 February 2008
4.2.41	2009 Victorian Bushfire Appeal Trust Account (established under section 19 of the <i>Financial Management Act 1994</i> of Victoria)	the gift must be made: (a) after 7 February 2009; and (b) before 6 February 2014

**declarations by Minister**

- (1) For the purposes of item 4.1.5 of the table in subsection 30-45(1), an event is a disaster to which this subsection applies if the Minister has declared it to be a disaster. The Minister may do so if satisfied that:
  - (a) it developed rapidly; and
  - (b) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.
- (2) The Minister's declaration of an event as a disaster:
  - (a) must be in writing; and
  - (b) must specify the day (or the first day) of the event; and
  - (c) must be published on the internet or by another method determined by the Minister.
- (3) The Minister's declaration of an event as a disaster is not a legislative instrument.
- (4) You can deduct a gift that you make to a public fund covered by item 4.1.5 of the table in subsection 30-45(1), in relation to a disaster to which subsection (1) of this section applies,

specified in the declaration as the day (or the first day) of the event for which the fund is to provide relief.

Note: Public funds under item 4.1.5 of the table in subsection 30-45(1) are for disaster relief of people in Australia. Public funds may also be established for disaster relief of people in other countries. See items 9.1.1 (which is not limited to disaster relief) and 9.1.2 of the table in section 30-80.

### **30-46 Australian disaster relief funds—declarations under State and Territory law**

- (1) For the purposes of item 4.1.5 of the table in subsection 30-45(1), a disaster is one to which this subsection applies if:
  - (a) it is declared to be a disaster, or it gives rise to a declaration of a state of emergency, by or with the approval of a Minister of a State or Territory under the law of the State or Territory; and
  - (b) it developed rapidly; and
  - (c) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment; and
  - (d) subsection 30-45A(1) does not apply to it.
- (2) You can deduct a gift that you make to a public fund covered by item 4.1.5 of the table in subsection 30-45(1), in relation to a disaster to

which subsection (1) of this section applies,

only within the 2 years beginning:

- (a) if the day (or the first day) on which the event occurred is specified in the declaration mentioned in paragraph (1)(a)—on that day; or
- (b) otherwise—on the day of the declaration.

**Note:** Public funds under item 4.1.5 of the table in subsection 30-45(1) are for disaster relief of people in Australia. Public funds may also be established for disaster relief of people in other countries. See items 9.1.1 (which is not limited to disaster relief) and 9.1.2 of the table in section 30-80.

## Defence

### 30-50 Defence

- (1) This table sets out general categories of defence recipients.

<b>Defence—General</b>			
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions—fund, authority or institution</b>	<b>Special conditions—gift</b>
5.1.1	the Commonwealth or a State	none	the gift must be made for purposes of defence
5.1.2	a public institution or public fund established and maintained for the comfort, recreation or welfare of members of:	the public institution or public fund must be: <ul style="list-style-type: none"> <li>(a) an *Australian government agency; or</li> <li>(b) a *registered charity</li> </ul>	none
	(a) the armed forces		

of any part of Her  
Majesty's  
dominions; or

(b) any allied or other  
foreign force  
serving in  
association with  
Her Majesty's  
armed forces

5.1.3	a public fund established and maintained solely for providing money to reconstruct, or make critical repairs to, a particular war memorial that:  (a) is located in  Australia; and  (b) commemorates  events in a  conflict in which  Australia was  involved, or  people who are  mainly  Australians and  who participated  on Australia's  behalf in a  conflict; and	the public fund must be:  (a) an *Australian government agency; or  (b) a *registered charity	the gift must be made within the years beginning the day on which  (a) the fund; or  (b) if the fund is  legally owned  by an entity  that is endorsed  for the  operation of  fund—the  entity;  is endorsed as a *deductible gift recipient under Subdivision 30-
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(c) is a focus for  
 public  
 commemoration  
 of the events or  
 people mentioned  
 in paragraph (b);  
 and

(d) is solely or  
 mainly used for  
 that public  
 commemoration

(2) This table sets out specific defence recipients.

<b>Defence—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.2.11	The RSL Foundation	the gift must be made after 20 September 2000
5.2.26	C E W Bean Foundation	the gift must be made after 14 November 2005 and before 15 November 2007
5.2.28	The Bathurst War Memorial Carillon Public Fund Trust	the gift must be made after 2 August 2007 and before 3 August 2009
5.2.29	AE 2 Commemorative Foundation Ltd	the gift must be made after 28 February 2008 and before 1 March 2010

Committee Ltd

made after  
4 September 2007  
and before 1 July  
2010

## Environment

### 30-55 The environment

- (1) This table sets out general categories of environment recipients.

The environment—General		
Item	Fund, authority or institution	Special conditions
6.1.1	a public fund that, when the gift is made, is on the register of *environmental organisations kept under Subdivision 30-E	none

- (2) This table sets out specific environment recipients.

The environment—Specific		
Item	Fund, authority or institution	Special conditions
6.2.1	the Australian Conservation Foundation Incorporated	see section 30-60
6.2.2	Greening Australia Limited	see section 30-60
6.2.3	Landcare Australia Limited	see section 30-60
6.2.4	the National Parks Association of New South Wales	see section 30-60
6.2.5	the Victorian National Parks Association Incorporated	see section 30-60
6.2.6	Trust for Nature (Victoria)	see section 30-60

	Association of Queensland	
6.2.8	The Nature Conservation Society of South Australia Incorporated	see section 30-60
6.2.9	the Nature Foundation SA Incorporated	see section 30-60
6.2.10	the Western Australian National Parks and Reserves Association Incorporated	see section 30-60
6.2.11	the Tasmanian Conservation Trust Incorporated	see section 30-60
6.2.12	the National Parks Association of the Australian Capital Territory Incorporated	see section 30-60
6.2.13	the National Trust of Australia (New South Wales)	none
6.2.14	the National Trust of Australia (Victoria)	none
6.2.15	The National Trust of Queensland	none
6.2.16	The National Trust of South Australia	none
6.2.17	The National Trust of Australia (W.A.)	none
6.2.18	the National Trust of Australia (Tasmania)	none
6.2.19	The National Trust of Australia (Northern Territory)	none
6.2.20	the National Trust of Australia (A.C.T.)	none
6.2.21	the Australian Council of National Trusts	none
6.2.22	the World Wide Fund for Nature	see section 30-60
6.2.23	Mawson's Huts Foundation Limited	the gift must be made after 17 March 1997



### **30-60 Gifts to a National Parks body or conservation body must satisfy certain requirements**

You can deduct a gift that you make to:

- (a) an environmental institution covered by any of the items 6.2.1 to 6.2.12 of the table in subsection 30-55(2); or
- (b) the World Wide Fund for Nature;

only if, at the time of making the gift:

- (c) the institution or Fund has agreed to give the \*Environment Secretary, within a reasonable period after the end of the income year in which you made the gift, statistical information about gifts made to the institution or Fund during that income year; and
- (d) the institution or Fund has a policy of not acting as a mere conduit for the donation of money or property to other institutions, bodies or persons.

## **Industry, trade and design**

### **30-65 Industry, trade and design**

This table sets out specific industry, trade and design recipients.

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Item	Fund, authority or institution	Special conditions
7.2.3	WorldSkills Australia	none
7.2.5	Australian Business Week Limited	the gift must be made after 8 December 2003

## The family

### 30-70 The family

- (1) This table sets out general categories of family recipients.

The family—General			
Item	Fund, authority or institution	Special conditions—fund, authority or institution	Special conditions—
8.1.1	<p>a public fund established and maintained:</p> <p>(a) by a *non-profit company to which section 30-75 applies; and</p> <p>(b) solely for the purpose of providing money to be used in giving or providing marriage education under</p>	the public fund must be a *registered charity	none

the *Marriage Act*  
1961 to  
individuals in  
Australia

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8.1.2	a public fund that is established and maintained:	the public fund must be a *registered charity	none
	(a) by a * non-profit company which receives funding from the Commonwealth to provide family counselling or family dispute resolution within the meaning of the <i>Family Law Act 1975</i> ; and		
	(b) solely for the purpose of providing money to be used in providing family counselling or family dispute resolution within the meaning of the <i>Family Law</i>		

*Act 1975 to*  
individuals in  
Australia

(2) This table sets out specific family recipients.

<b>The family—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
8.2.3	Australian Breastfeeding Association	the gift must be made after 31 July 2001
8.2.4	Playgroup NSW (Inc).	the gift must be made after 14 April 2005
8.2.5	Playgroup WA (Inc)	the gift must be made after 13 March 2005
8.2.6	Playgroup Queensland Incorporated	the gift must be made after 14 April 2005
8.2.7	Playgroup Tasmania Inc.	the gift must be made after 14 April 2005
8.2.8	Playgroup Association Northern Territory Incorporated	the gift must be made after 24 May 2005
8.2.9	ACT Playgroups Association Incorporated	the gift must be made after 14 April 2005
8.2.10	Playgroup Victoria Inc.	the gift must be made after 23 February 2006
8.2.11	Playgroup SA Inc	the gift must be made after 5 August 2006
8.2.12	Playgroup Australia Limited	the gift must be made after

### 30-75 Marriage education organisations must be approved

For the purposes of item 8.1.1 of the table in subsection 30-70(1), this section applies to a company if the company has been approved by the \*Families Minister under section 9C of the *Marriage Act 1961*.

## International affairs

### 30-80 International affairs

- (1) This table sets out general categories of international affairs recipients.

International affairs—General			
Item	Fund, authority or institution	Special conditions—fund, authority or institution	Special conditions—
9.1.1	a public fund declared by the Treasurer to be a developing country relief fund under section 30-85	the public fund must be: (a) a *registered charity; or (b) operated by a registered charity	see section 30-84
9.1.2	a public fund established and maintained by a *registered public benevolent institution solely for providing money for the relief (including relief by way of	none	see subsection 30-86(4)

re-establish a  
community) of  
people in a country  
other than:

(a) Australia; and

(b) a country declared

by the \*Foreign

Affairs Minister

to be a

developing

country;

who are in distress as  
a result of a disaster  
to which subsection  
30-86(1) applies

(2) This table sets out specific international affairs  
recipients.

International affairs—Specific		
Item	Fund, authority or institution	Special conditions
9.2.1	the Australian Institute of International Affairs	none
9.2.2	The Diamond Jubilee Trust Australia	the gift must be made after 31 October 2012 and before 1 July 2015
9.2.3	The Foundation for Development Cooperation Ltd	none
9.2.4	Australian American Education Leadership Foundation Limited	the gift must be made after 26 January 1998

9.2.5	Sydney Talmudical College Association Refugees Overseas Aid Fund	the gift must be made after 29 January 1998
9.2.6	United Israel Appeal Refugee Relief Fund Limited	the gift must be made after 29 January 1998
9.2.7	the Asia Society AustralAsia Centre	the gift must be made after 6 December 1998
9.2.8	The Global Foundation	the gift must be made after 2 November 1999
9.2.10	Australia for UNHCR	the gift must be made after 27 June 2007 and before 28 June 2012
9.2.12	Lowy Institute for International Policy	the gift must be made after 13 August 2003
9.2.13	The Rotary Leadership Victoria Australian Embassy for Timor-Leste Fund Limited	the gift must be made after 7 November 2004 and before 1 January 2010
9.2.17	Xanana Vocational Education Trust	the gift must be made after 20 July 2005 and before 1 January 2011
9.2.18	American Australian Association Limited	the gift must be made after 13 November 2006
9.2.19	WHEELCHAIRS FOR KIDS Incorporated	the gift must be made after 28 February 2008 and before 1 March 2010
9.2.21	Diplomacy Training Program Limited	the gift must be made after 16 April 2009
9.2.22	Sichuan Earthquake	the gift must be

	Surviving Children's Education Fund	made after 11 May 2008 and before 13 May 2010
9.2.23	Bali Peace Park Association Inc	the gift must be: (a) made after 15 December 2009 and before 17 December 2011; and (b) used for the purpose of establishing the Bali Peace Park
9.2.24	the Christchurch Earthquake Appeal Trust of New Zealand	the gift must be made after 21 March 2011 and before 22 March 2013
9.2.24	Rhodes Trust in Australia	the gift must be made after 21 October 2011

### 30-85 Developing country relief funds

- (1) You can deduct a gift that you make to a public fund covered by item 9.1.1 of the table in subsection 30-80(1) only if the declaration is in force at the time you make the gift.
- (2) The Treasurer may, by notice in the *Gazette*, declare a public fund to be a developing country relief fund if he or she is satisfied that the fund:
  - (a) has been established by an organisation



- to be an approved organisation; and
  - (b) is solely for the relief of people in a country declared by the Foreign Affairs Minister to be a developing country.
- (3) The notice must specify the day on which it has effect. It cannot have effect earlier than the day on which it is published in the *Gazette*.
- (4) The Treasurer may, by notice in the *Gazette*, revoke a declaration that a public fund is a developing country relief fund. The notice must specify the day on which it has effect. It cannot have effect earlier than the day on which it is published in the *Gazette*.
- (5) A declaration by the \*Foreign Affairs Minister under this section must be in writing, signed by the Minister.

### **30-86 Developed country disaster relief funds**

- (1) For the purposes of item 9.1.2 of the table in subsection 30-80(1), a disaster is one to which this subsection applies if the Minister has recognised it as a disaster. The Minister may do so if satisfied that:
- (a) it developed rapidly; and
  - (b) it resulted in the death, serious injury or other physical suffering of a large number

of people, or in widespread damage to property or the natural environment.

- (2) The Minister's recognition of an event as a disaster:
- (a) must be in writing; and
  - (b) must specify the day (or the first day) of the event; and
  - (c) must be published on the internet or by another method determined by the Minister.

- (3) The Minister's recognition of an event as a disaster is not a legislative instrument.

- (4) You can deduct a gift that you make to a public fund covered by item 9.1.2 of the table in subsection 30-80(1) only within the 2 years beginning on the day specified in the recognition as the day (or the first day) of the event for which the fund is to provide relief.

Note: A public fund may also be established for disaster relief of people in Australia (see item 4.1.5 of the table in section 30-45).

## **Sports and recreation**

### **30-90 Sports and recreation**

This table sets out specific sports and recreation recipients.

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
10.2.1	the Australian Sports Foundation	none
10.2.2	Girl Guides Australia	none
10.2.3	an institution that is known as a State or Territory branch of Girl Guides Australia	none
10.2.4	the Scout Association of Australia	none
10.2.5	an institution that is known as a State or Territory branch of the Scout Association of Australia	none
10.2.7	The Bradman Memorial Fund	the gift must be made after 24 February 2001
10.2.8	Amy Gillett Foundation	the gift must be made after 13 September 2007

## Philanthropic trusts

### 30-95 Philanthropic trusts

This table sets out specific philanthropic trusts.

<b>Philanthropic trusts—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
11.2.1	the Connellan Airways Trust	none
11.2.2	The Friends of the Duke of Edinburgh's Award in Australia Incorporated	none
11.2.4	the Playford Memorial Trust	none
11.2.5	The Sir Robert Menzies Memorial Foundation Limited	none

11.2.7	the Winston Churchill Memorial Trust	none
11.2.8	The Foundation for Young Australians	the gift must be made after 6 May 2001
11.2.9	Visy Cares	the gift must be made after 19 June 2001

## Cultural organisations

### 30-100 Cultural organisations

- (1) This table sets out general categories of cultural recipients.

Cultural organisations—General			
Item	Fund, authority or institution	Special conditions—fund, authority or institution	Special conditions—
12.1.1	a public fund that, when the gift is made, is on the register of *cultural organisations kept under Subdivision 30-F	none	none
12.1.2	a public library	the public library must: (a) be: (i) an *Australian government agency; or (ii) a *registered charity; or (b) be operated by: (i) an Australian government agency; or	none

12.1.3	a public museum	the public museum must:	none
		(a) be:	
		(i) an *Australian government agency;	
		or	
		(ii) a *registered charity;	
		or	
		(b) be operated by:	
		(i) an Australian government agency;	
		or	
		(ii) a registered charity	
12.1.4	a public art gallery	the public art gallery must:	none
		(a) be:	
		(i) an *Australian government agency;	
		or	
		(ii) a *registered charity;	
		or	
		(b) be operated by:	
		(i) an Australian government agency;	
		or	
		(ii) a registered charity	
12.1.5	an institution consisting of a public library, public museum and public art gallery or of any 2 of them	the institution must:	none
		(a) be:	
		(i) an *Australian government agency;	
		or	
		(ii) a *registered charity;	
		or	
		(b) be operated by:	
		(i) an Australian government agency;	
		or	
		(ii) a registered charity	

(2) This table sets out specific cultural recipients.

<b>Cultural organisations—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12.2.1	The Australiana Fund	none
12.2.2	Australian Business Arts Foundation Ltd.	the gift must be made after 8 November 1996
12.2.3	The Ranfurly Library Service Incorporated	the gift must be made after 2 May 2006

## Fire and emergency services

### 30-102 Fire and emergency services

This table sets out general categories of fire and emergency services recipients.

<b>Fire and emergency services—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12A.1.1	an *Australian government agency that has statutory responsibility for the coordination of volunteer fire brigades or State Emergency Services	the gift or contribution must be made for the purposes of supporting the coordination of volunteer fire brigades or State Emergency Services
12A.1.2	a public fund which satisfies all of the following requirements:  (a) the fund is established and	none

maintained by an  
\*Australian  
government  
agency covered by  
item 12A.1.1;

(b) the fund is  
established and  
maintained solely  
for the purpose of  
supporting the  
volunteer based  
emergency service  
activities of  
non-profit entities  
or of Australian  
government  
agencies;

(c) the principal  
activity of the  
entities mentioned  
in paragraph (b) is  
the provision of  
volunteer based  
emergency  
services that are  
regulated by a  
\*State law or a  
\*Territory law

satisfies all of the  
following  
requirements:

(a) the fund is

established and  
maintained by a  
non-profit entity  
or \*Australian  
government  
agency;

(b) the principal

activity of the  
entity is the  
provision of  
volunteer based  
emergency  
services that are  
regulated by a  
\*State law or a  
\*Territory law;

(c) the fund is

established and  
maintained solely  
for the purpose of  
supporting the  
volunteer based  
emergency service  
activities of the  
entity



## Other recipients

### 30-105 Other recipients

This table sets out specific other recipients.

<b>Other recipients—specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
13.2.1	the Council for Jewish Community Security	the gift must be made after 9 August 2007
13.2.2	the Foundation for Rural and Regional Renewal Public Fund	the gift must be made after 28 March 2000
13.2.3	Young Endeavour Youth Scheme Public Fund	the gift must be made after 24 September 2001
13.2.3A	Leeuwin Ocean Adventure Foundation Limited	the gift must be made after 16 April 2009
13.2.7	Lord Somers Camp and Power House	the gift must be made after 4 March 2004
13.2.8	St George's Cathedral Restoration Fund	the gift must be made after 27 September 2004 and before 1 January 2011
13.2.14A	Bunbury Diocese Cathedral	the gift must be made after

		2006 and before 19 December 2010
13.2.15	Australian Peacekeeping Memorial Project Incorporated	the gift must be made after 29 April 2007 and before 1 January 2009
13.2.16	Social Ventures Australia Limited	the gift must be made after 3 May 2007
13.2.17	PWR Melbourne 2009 Limited	the gift must be made after 2 February 2009 and before 1 January 2010
13.2.18	Mary MacKillop Canonisation Gift Fund	the gift must be made after 4 August 2010 and before 1 July 2011

## **Subdivision 30-BA—Endorsement of deductible gift recipients**

### **Guide to Subdivision 30-BA**

#### **30-115 What this Subdivision is about**

This Subdivision sets out rules about endorsement of entities and government entities as deductible gift recipients. Endorsement of an entity described (except by name) in Subdivision 30-A or 30-B lets

you deduct a gift you make to a fund, authority or institution that is, or is operated by, the entity.

## Table of sections

### Endorsement as a deductible gift recipient

30-120 Endorsement by Commissioner

30-125 Entitlement to endorsement

30-130 Maintaining a gift fund

### Government entities treated like entities

30-180 How this Subdivision applies to government entities

## Endorsement as a deductible gift recipient

### 30-120 Endorsement by Commissioner

If an entity applies for endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner must endorse the entity:

- (a) as a \*deductible gift recipient, if the entity is entitled to be endorsed as a deductible gift recipient; or
- (b) as a \*deductible gift recipient for the operation of a fund, authority or institution, if the entity is entitled to be endorsed as a deductible gift recipient for

institution.

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

### **30-125 Entitlement to endorsement**

*Endorsement of an entity that is a fund,  
authority or institution*

- (1) An entity is entitled to be endorsed as a \*deductible gift recipient if:
  - (a) the entity has an \*ABN; and
  - (b) the entity is a fund, authority or institution that:
    - (i) is described (but not by name) in item 1, 2 or 4 of the table in section 30-15; and
    - (ii) is not described by name in Subdivision 30-B if it is described in item 1 of that table; and
    - (iii) meets the relevant conditions (if any) identified in the column headed “Special conditions” of the item of that table in which it is described; and
  - (c) the entity meets the requirements of subsection (6), unless:
    - (i) the entity is established by an Act;

- (ii) the Act (or another Act) does not provide for the winding up or termination of the entity; and
- (d) in the case of an \*ancillary fund:
  - (i) the fund complies with the rules in the \*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable); and
  - (ii) all of the trustees of the fund comply with those rules.

*Endorsement of an entity for operating a fund, authority etc.*

- (2) An entity is entitled to be endorsed as a \*deductible gift recipient for the operation of a fund, authority or institution that is described (but not by name) in item 1, 2 or 4 of the table in section 30-15 and is not described by name in Subdivision 30-B if:
  - (a) the entity has an \*ABN; and
  - (b) the entity:
    - (i) legally owns the fund; or
    - (ii) includes the authority or institution; and
  - (c) the fund, authority or institution meets the relevant conditions (if any) identified in

- the column headed “Special conditions” of that item; and
- (d) the entity meets the requirements of subsection (6), unless:
- (i) the entity is established by an Act; and
  - (ii) the Act (or another Act) does not provide for the winding up or termination of the entity; and
- (e) the entity meets the requirements of section 30-130, unless the entity is endorsed as a deductible gift recipient under paragraph 30-120(a).

*Relevant special conditions in table in section 30-15*

- (3) To avoid doubt:
- (a) a condition requiring the fund, authority or institution to meet the requirements of section 30-17 is not a relevant condition for the purposes of subparagraph (1)(b) (iii) or paragraph (2)(c) of this section; and
- Note: Section 30-17 requires the entity to be endorsed under this Subdivision as a deductible gift recipient.
- (b) in the case of a fund, authority or institution that is described in item 1 of the table in section 30-15—a condition set

out in the relevant table item in Subdivision 30-B, including a condition identified in the column headed “Special conditions—fund, authority or institution” of that item (if any), is a relevant condition for the purposes of subparagraph (1)(b)(iii) or paragraph (2)(c) of this section.

Note: Paragraph (c) of the column headed “Special conditions” of item 1 of the table in section 30-15 requires any conditions set out in the relevant table item in Subdivision 30-B to be satisfied.

*Transfer of assets from fund, authority or institution*

- (6) A law (outside this Subdivision), a document constituting the entity or rules governing the entity’s activities must require the entity, at the first occurrence of an event described in subsection (7), to transfer to a fund, authority or institution gifts to which can be deducted under this Division:
- (a) any surplus assets of the gift fund (see section 30-130); or
  - (b) if the entity is not required by this section to meet the requirements of section 30-130—any surplus:
    - (i) gifts of money or property for the principal purpose of the fund,

authority or institution, and

- (ii) contributions described in item 7 or 8 of the table in section 30-15 in relation to a \*fund-raising event held for that purpose; and
- (iii) money received by the entity because of such gifts or contributions.

#### *Events requiring transfer*

- (7) The events are:
- (a) the winding up of the fund, authority or institution; and
  - (b) if the entity is endorsed because of a fund, authority or institution—the revocation of the entity’s endorsement under this Subdivision relating to the fund, authority or institution.

Note 1: There are 2 ways an entity can be endorsed because of a fund, authority or institution. An entity can be endorsed either *because it is* a fund, authority or institution or *because it operates* a fund, authority or institution.

Note 2: Section 426-55 in Schedule 1 to the *Taxation Administration Act 1953* deals with revocation of endorsement.

Note 3: The entity is also required to keep appropriate records: see section 382-15 of the *Taxation Administration Act 1953*.

### **30-130 Maintaining a gift fund**

- (1) The entity must maintain for the principal



purpose of the fund, authority or institution a fund (the *gift fund*):

- (a) to which gifts of money or property for that purpose are to be made; and
- (b) to which contributions described in item 7 or 8 of the table in section 30-15 in relation to a \*fund-raising event held for that purpose are to be made; and
- (c) to which any money received by the entity because of such gifts or contributions is to be credited; and
- (d) that does not receive any other money or property.

- (2) The entity must use the gift fund only for the principal purpose of the fund, authority or institution.

*Exception—only one gift fund required per entity*

- (3) An entity that operates 2 or more funds, authorities or institutions also meets the requirements of this section for 2 or more of those funds, authorities or institutions by maintaining a single gift fund if:

- (a) the gift fund meets the requirements in paragraphs (1)(a), (b) and (c) in respect of each of the funds, authorities or institutions for which the gift fund is

maintained; and

(b) the gift fund does not receive any other money or property.

(4) The entity must use a gift or contribution made to the fund and any money credited to the fund only for the principal purpose of the fund, authority or institution to which the gift, contribution or money relates.

Note: The entity is also required to keep appropriate records for each of the funds, authorities or institutions: see section 382-15 of the *Taxation Administration Act 1953*.

## **Government entities treated like entities**

### **30-180 How this Subdivision applies to government entities**

- (1) The other sections of this Subdivision apply in relation to a \*government entity in the same way as they apply in relation to an entity.
- (2) Subparagraph 30-125(2)(b)(i) (as applied by this section) operates as if it referred to the \*government entity consisting of persons, one or more of whom controlled the fund (instead of referring to the entity legally owning the fund).

## **Subdivision 30-C—Rules applying to particular gifts of property**

### **Table of sections**

**Valuation requirements**

- 30-200    Getting written valuations
- 30-205    Proceeds of the sale would have been assessable
- 30-210    Approved valuers
- 30-212    Valuations by the Commissioner

**Working out the amount you can deduct for a gift of property**

- 30-215    How much you can deduct
- 30-220    Reducing the amount you can deduct

**Joint ownership of property**

- 30-225    Gift of property by joint owners

**Valuation requirements****30-200    Getting written valuations**

- (1) You satisfy the valuation requirements if you get 2 or more written valuations of the gift you made.
  - Note 1:    In most cases, you need to get these written valuations to be able to deduct a gift of property that you make to a recipient covered by item 4, 5 or 6 of the table in section 30-15.
  - Note 2:    You do *not* need to get written valuations in the circumstances set out in section 30-205.
- (2) The valuations must be by different individuals, each of whom is an approved valuer of the kind of property you are giving away.

Note: Section 30-210 deals with how an individual becomes an approved valuer.

- (3) Each valuation must state the amount that, in the opinion of the valuer, was:
  - (a) the \*GST inclusive market value of the property on the day you made the gift; or
  - (b) the \*GST inclusive market value of the property on the day the valuation was made.
- (4) If a valuation states the \*GST inclusive market value of the property on the day the valuation was made, it must have been made within 90 days before or after the gift was made.  
However, the Commissioner may allow a longer period than this.

### **30-205 Proceeds of the sale would have been assessable**

- (1) You do *not* need to get written valuations of the gift you made if:
  - (a) no amount is included in your assessable income in respect of the gift you made; but
  - (b) an amount *would* have been included in your assessable income if you had sold the property instead of making the gift.
- (2) However, this section does not apply if, apart

from the operation of subsection 118-60(2), an amount would have been included in your assessable income in respect of the gift you made.

### **30-210 Approved valuers**

- (1) The \*Arts Secretary may approve an individual as a valuer of a particular kind of property. The approval must be in writing, signed by the Secretary.
- (2) The Secretary must, in deciding whether to approve an individual, have regard to:
  - (a) the individual's qualifications, experience and knowledge in valuing that kind of property; and
  - (b) the individual's knowledge of the current \*GST inclusive market value of that kind of property; and
  - (c) the individual's standing in the professional community.

### **30-212 Valuations by the Commissioner**

- (1) If you make a gift or contribution that is covered by a provision of this Division that refers to the value of property as determined by the Commissioner, you must seek the valuation from the Commissioner.

- (2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

## **Working out the amount you can deduct for a gift of property**

### **30-215 How much you can deduct**

- (1) This section contains the rules for working out how much you can deduct for a gift of property that you make to a recipient covered by item 4, 5 or 6 of the table in section 30-15.
- (2) The general rule is that the amount you can deduct for a gift of this kind is the average of the \*GST inclusive market values (as reduced under subsection 30-15(3) if that subsection applies) specified in the written valuations you got from the approved valuers.

Note: In some situations you must reduce the amount you can deduct: see section 30-220.

- (3) The exceptions to the general rule are set out in this table:

<b>Amount you can deduct for a gift of property</b>		
<b>Item</b>	<b>In this case:</b>	<b>The amount you can deduct is:</b>
1	Section 30-205 (which is about the proceeds of the sale being assessable) applies, and you bought	the amount you paid for the property, reduced by the amount of any *input tax credit to which you are

	the property	or were entitled for your *acquisition of the property
2	Section 30-205 (which is about the proceeds of the sale being assessable) applies, and you created or produced the property	so much of the cost of creation or production as you would have been able to deduct if you had sold the property, reduced by the amount of any *input tax credit to which you are or were entitled for your *acquisitions to the extent that they were made for the purpose of creating or producing the property
3	Neither of cases 1 and 2 applies, and you acquired the property:	the lesser of the amount you paid for the property and:
	(a) less than one year before making the gift (otherwise than by inheriting it); or	(a) if the average of the written valuations you got fairly represents the *GST inclusive market value (as reduced under subsection (4) if that subsection applies) of the property on the day you made the gift—that average; or
	(b) for the purpose of giving it away; or	(b) if it does not—the *GST inclusive market value (as reduced under subsection (4) if that subsection
	(c) subject to an *arrangement that the property would be given away	

applies) of the property  
on the day you made  
the gift

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4	None of cases 1 to 3 applies, and the average of the written valuations you got does <i>not</i> fairly represent the *market value of the property on the day you made the gift	the *GST inclusive market value (as reduced under subsection (4) if that subsection applies) of the property on the day you made the gift
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(4) For the purposes of items 3 and 4 of the table in subsection (3), the \*GST inclusive market values of the property in question are reduced by  $\frac{1}{11}$  if you would have been entitled to an \*input tax credit if:

- (a) you had \*acquired the property at the time you made the gift; and
- (b) your acquisition had been for a \*creditable purpose.

### 30-220 Reducing the amount you can deduct

- (1) The amount you can deduct is reduced by a reasonable amount if:
- (a) the terms and conditions on which the gift is made are such that the recipient:
    - (i) does not receive immediate custody and control of the property; or
    - (ii) does not have the unconditional right to retain custody and control of the



- property in perpetuity; or
  - (iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property; or
  - (b) the custody, control or use of the property by the recipient is affected by an \*arrangement entered into in respect of the making of the gift.
- (2) In deciding what is a reasonable amount, have regard to the effect of those terms and conditions, or that \*arrangement, on the \*GST inclusive market value of the gift.

## **Joint ownership of property**

### **30-225 Gift of property by joint owners**

If:

- (a) you own property jointly with one or more other entities; and
  - (b) you and the other entities make a gift of the property; and
  - (c) you would have been able to deduct the gift under section 30-15 because of item 4, 5 or 6 of the table in that section if you had made a gift of the property as sole owner of it;
- you can deduct so much of the gift as is

property.

**Subdivision 30-CA—Administrative  
requirements relating to ABNs**

**Guide to Subdivision 30-CA**

**30-226 What this Subdivision is about**

An entity must ensure certain details must appear on a receipt it issues for a gift that:

- (a) is made to the entity or a fund, authority or institution it operates; and
- (b) is of a kind that the giver can deduct under Subdivision 30-A.

If the entity has an ABN, the Australian Business Registrar must state in the Australian Business Register that the entity is a deductible gift recipient.

**Table of sections**

**Requirements**

- 30-227 Entities to which this Subdivision applies
- 30-228 Content of receipt for gift

of gifts to deductible gift recipient

## Requirements

### 30-227 Entities to which this Subdivision applies

- (1) This Subdivision sets out requirements relating to a \*deductible gift recipient.
- (2) A ***deductible gift recipient*** is an entity or \*government entity that:
  - (a) is a fund, authority or institution described in item 1, 2, 4, 5 or 6 of the table in section 30-15 and is:
    - (i) endorsed under Subdivision 30-BA as a deductible gift recipient; or
    - (ii) mentioned by name in that table or in Subdivision 30-B; or
  - (b) is endorsed as a deductible gift recipient for the operation of a fund, authority or institution described in item 1, 2 or 4 of the table in section 30-15.

### 30-228 Content of receipt for gift or contribution

- (1) If a \*deductible gift recipient issues a receipt for a gift described in the relevant item of the table in section 30-15 to the fund, authority or institution, the deductible gift recipient must ensure that the receipt states:

- (a) the name of the fund, authority or institution; and
- (b) the \*ABN (if any) of the deductible gift recipient; and
- (c) the fact that the receipt is for a gift.

Note: If the deductible gift recipient is endorsed as a deductible gift recipient and it contravenes this section, the Commissioner may revoke its endorsement: see section 426-55 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) If a \*deductible gift recipient issues a receipt for a contribution described in item 7 of the table in section 30-15, the deductible gift recipient must ensure that the receipt states:
- (a) the name of the deductible gift recipient; and
  - (b) the \*ABN (if any) of the deductible gift recipient; and
  - (c) the fact that the receipt is for a contribution made in return for a right to attend, or participate in, a specified \*fund-raising event; and
  - (d) if the contribution is money—the amount of the contribution; and
  - (e) the amount of the \*GST inclusive market value, on the day the contribution was made, of the right to attend, or participate in, the fund-raising event.

working out the \*GST inclusive market value of the right in question, disregard anything that would prevent or restrict conversion of the right to money.

- (4) If a \*deductible gift recipient issues a receipt for a contribution described in item 8 of the table in section 30-15, the deductible gift recipient must ensure that the receipt states:
- (a) the name of the deductible gift recipient; and
  - (b) the \*ABN (if any) of the deductible gift recipient; and
  - (c) the fact that the receipt is for a contribution made by way of consideration for the supply of goods or services; and
  - (d) the fact that the contribution was made because the contributor was the successful bidder at an auction that:
    - (i) was a specified \*fund-raising event; or
    - (ii) was held at a specified fund-raising event; and
  - (e) if the contribution is money—the amount of the contribution; and
  - (f) the \*GST inclusive market value, on the

goods or services.

- (5) For the purposes of paragraph (4)(f), in working out the \*GST inclusive market value of the goods or services in question, disregard anything that would prevent or restrict conversion of the goods or services to money.

**30-229 Australian Business Register must show deductibility of gifts to deductible gift recipient**

- (1) If a \*deductible gift recipient has an \*ABN, the \*Australian Business Registrar must enter in the \*Australian Business Register in relation to the deductible gift recipient a statement that it is a deductible gift recipient for a specified period.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether you can deduct a gift to the fund, authority or institution.

Note 2: This section will apply to all entities and government entities that are endorsed as deductible gift recipients under Subdivision 30-BA, because they must have ABNs to be endorsed. It will also apply to other entities described or named in Subdivision 30-A if they have ABNs.

- (2) If the \*deductible gift recipient is a deductible gift recipient only because it is endorsed under Subdivision 30-BA as a deductible gift recipient for the operation of a fund, authority or

institution, the statement must name the fund, authority or institution.

(2A) If:

- (a) the \*deductible gift recipient is:
  - (i) a fund, authority or institution; or
  - (ii) a deductible gift recipient only because it is endorsed under Subdivision 30-BA as a deductible gift recipient for the operation of a fund, authority or institution; and
- (b) the fund, authority or institution is covered by item 1, 2 or 4 of the table in section 30-15;

the statement must specify that the fund, authority or institution is covered by that item.

- (3) The \*Australian Business Registrar may remove the statement from the \*Australian Business Register after the end of the period.
- (4) The \*Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the \*Australian Business Register under this section is true. For this purpose, the Registrar may:
  - (a) change the statement; or
  - (b) remove the statement from the Register if the statement is not true; or

- (c) remove the statement from the Register  
and enter another statement in the  
Register under this section.

## **Subdivision 30-DA—Donations to political parties and independent candidates and members**

### **Guide to Subdivision 30-DA**

#### **30-241 What this Subdivision is about**

Generally, you can deduct certain contributions and gifts to political parties, independent candidates and members.

Contributions and gifts must be at least \$2 and there is a limit on the total amount that you can deduct.

#### **Table of sections**

##### **Operative provisions**

- |        |   |
|--------|---|
| 30-242 | Deduction for political contributions and gifts |
| 30-243 | Amount of the deduction                         |
| 30-244 | When an individual is an independent candidate  |
| 30-245 | When an individual is an independent member     |

#### **Operative provisions**



**gifts**

- (1) You can deduct any of the following for the income year in which they are made:
  - (a) a contribution or gift to a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation;
  - (b) a contribution or gift to an individual when the individual is an \*independent candidate for a Commonwealth, State, Northern Territory or Australian Capital Territory election;
  - (c) a contribution or gift to an individual who is, or was, an \*independent member of the Commonwealth Parliament, a State Parliament, the Legislative Assembly of the Northern Territory or the Legislative Assembly for the Australian Capital Territory.
- (2) The contribution or gift must be of:
  - (a) money; or
  - (b) property that you purchased during the 12 months before making the contribution or gift.
- (3) The value of the contribution or gift must be at

- (3A) You can deduct the contribution or gift only if:
- (a) you are an individual; and
  - (b) you do *not* make the gift or contribution in the course of \*carrying on a \*business.
- (4) You cannot deduct a testamentary contribution or gift under this Subdivision.
- (5) A contribution or gift to an individual who is, or was, an \*independent member must be made:
- (a) when the individual is an independent member; or
  - (b) if the individual ceases to be an independent member because:
    - (i) a Parliament, a House of a Parliament or a Legislative Assembly is dissolved or has reached its maximum duration; or
    - (ii) the individual comes up for election; after the individual ceases to be a member but before candidates for the resulting election are declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.

### 30-243 Amount of the deduction

of the deduction is the amount of money.

- (2) If the contribution or gift is property, the amount of the deduction is the lesser of:
  - (a) the market value of the property on the day that you made the contribution or gift; and
  - (b) the amount that you paid for the property.

*\$1,500 limit on deductions*

- (3) You cannot deduct more than \$1,500 under this Subdivision for an income year for contributions and gifts to political parties.
- (4) You cannot deduct more than \$1,500 under this Subdivision for an income year for contributions and gifts to \*independent candidates or \*independent members.

### **30-244 When an individual is an independent candidate**

- (1) An individual is an *independent candidate* if:
  - (a) the individual is a candidate in an election (including an election that is later declared void) for members of the Commonwealth Parliament, a State Parliament, the Legislative Assembly of the Northern Territory or the Legislative

Assembly for the Australian Capital

Territory; and

- (b) the individual's candidature is not endorsed by a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation.

- (2) However, an individual does not start being an \*independent candidate until the candidates for the election are declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.
- (3) An individual stops being an \*independent candidate when the result of the election is declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.
- (4) If:
  - (a) the election is taken to have wholly failed under the relevant electoral legislation; and
  - (b) the result of the election has not been declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation;the individual stops being an \*independent

candidate in that election when candidates for the replacement election are declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.

### **30-245 When an individual is an independent member**

- (1) An individual is an *independent member* of the Commonwealth Parliament, a State Parliament, the Legislative Assembly of the Northern Territory or the Legislative Assembly for the Australian Capital Territory if the individual:
  - (a) is a member of that Parliament or Legislative Assembly; and
  - (b) the individual is not a member of a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation.
- (2) An individual who becomes a member as a result of an election (including an election that is later declared void) is taken to start being a member of the Parliament or Legislative Assembly when the individual's election as a member is declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.

## **Subdivision 30-DB—Spreading certain gift and covenant deductions over up to 5 income years**

### **Guide to Subdivision 30-DB**

#### **30-246 What this Subdivision is about**

This Subdivision allows you to elect to spread deductions for certain gifts and covenants over up to 5 income years. There are some different requirements for environmental, heritage and cultural property gifts and conservation covenants.

#### **Table of sections**

##### **Operative provisions**

- 30-247 Gifts and covenants for which elections can be made
- 30-248 Making an election
- 30-249 Effect of election
- 30-249A Requirements—environmental property gifts
- 30-249B Requirements—heritage property gifts
- 30-249C Requirements—certain cultural property gifts
- 30-249D Requirements—conservation covenants

### **Operative provisions**

#### **30-247 Gifts and covenants for which elections can**

**be made**

- (1) An election under this Subdivision may be made for a gift, made on or after 1 July 2003, that is:
  - (a) a gift of:
    - (i) money; or
    - (ii) property valued by the Commissioner at more than \$5,000; made to a fund, authority or institution covered by item 1 or 2 of the table in section 30-15; or
  - (b) a gift that is covered by item 4, 5 or 6 of the table in section 30-15.
- (2) An election under this Subdivision may also be made for entering into a \*conservation covenant, under Division 31, on or after 1 July 2003.

**30-248 Making an election**

- (1) If you can deduct an amount:
  - (a) under this Division for a gift covered by subsection 30-247(1); or
  - (b) under Division 31 for entering into a \*conservation covenant covered by subsection 30-247(2);you may make a written election to spread that

deduction over the current income year and up to 4 of the immediately following income years.

- (2) In the election, you must specify the percentage (if any) of the deduction that you will deduct in each of the income years.
- (3) You must make the election before you lodge your \*income tax return for the income year in which you made the gift or entered into the covenant.
- (4) You may vary an election at any time. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an \*income tax return.
- (5) Unless section 30-249A, 30-249B or 30-249C applies, the election and any variation must be in the \*approved form.

Note: Sections 30-249A, 30-249B and 30-249C provide for the form of elections and variations for gifts covered by those sections.

### **30-249 Effect of election**

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year.
- (2) You cannot deduct the amount that you



OTHERWISE WOULD HAVE BEEN ABLE TO DEDUCT FOR  
the gift in the income year in which you made  
the gift or entered into the covenant.

### **30-249A Requirements—environmental property gifts**

- (1) This section applies if you make an election for a gift of property made to a fund, authority or institution covered by section 30-55.
- (2) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Environment Secretary.

### **30-249B Requirements—heritage property gifts**

- (1) This section applies if you make an election for a gift of property made to a fund, authority or institution covered by item 6 of the table in section 30-15.

- (2) You must give a copy of the election to the \*Heritage Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Heritage Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Heritage Secretary.

### **30-249C Requirements—certain cultural property gifts**

- (1) This section applies if you make an election for a gift covered by item 4 or 5 of the table in section 30-15.
- (2) You must give a copy of the election to the \*Arts Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Arts Secretary before you lodge your \*income tax return for the first income year to which the variation applies.

form approved in writing by the \*Arts  
Secretary.

### **30-249D Requirements—conservation covenants**

- (1) This section applies if you make an election for a \*conservation covenant.
- (2) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you entered the covenant.
- (3) If you vary the election, you must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.

### **Subdivision 30-E—Register of environmental organisations**

#### **Guide to Subdivision 30-E**

#### **30-250 What this Subdivision is about**

This Subdivision requires the establishment of a register of environmental organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

#### **Table of sections**

**Operative provisions**

- 30-255 Establishing the register
- 30-260 Meaning of *environmental organisation*
- 30-265 Its principal purpose must be protecting the environment
- 30-270 Other requirements it must satisfy
- 30-275 Further requirement for a body corporate or a co-operative society
- 30-280 What must be on the register
- 30-285 Removal from the register

**Operative provisions****30-255 Establishing the register**

The \*Environment Secretary must keep a register of \*environmental organisations.

Note: Section 30-280 sets out what details must be entered on the register.

**30-260 Meaning of *environmental organisation***

An *environmental organisation* is:

- (a) a body corporate; or
- (b) a co-operative society; or
- (c) a trust; or
- (d) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;

that satisfies each requirement in sections 30-265 and 30-270.

Note: A body corporate or a co-operative society must satisfy a further requirement: see section 30-275.

### **30-265 Its principal purpose must be protecting the environment**

- (1) Its principal purpose must be:
  - (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
  - (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.
- (2) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the \*environmental organisation were a fund, authority or institution.
- (4) It must have agreed to comply with any rules that the Treasurer and the \*Environment Minister make to ensure that gifts made to the fund are used only for its principal purpose.

### **30-270 Other requirements it must satisfy**

- (1) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).

*No acting as a conduit*

- (2) It must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

*Surplus assets to be transferred on winding up*

- (3) It must have rules providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the register.

*Statistical information to be provided*

- (4) It must have agreed to give the \*Environment Secretary, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.

### **30-275 Further requirement for a body corporate or a co-operative society**

A body corporate (except a statutory authority) or a co-operative society is an *environmental*

**organisation only 11.**

- (a) its membership consists principally of bodies corporate; or
- (b) it has at least 50 members who are individuals that are:
  - (i) regarded as financial members; and
  - (ii) entitled to vote at a general meeting of it; or
- (c) the \*Environment Minister has determined that, because of special circumstances, it does not have to meet either of the requirements in paragraph (a) or (b).

**30-280 What must be on the register**

- (1) The \*Environment Secretary must enter on the register each \*environmental organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the \*Environment Minister.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an organisation is an \*environmental organisation. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register.

The day must be the day on which the direction is given or a later day.

- (4) The Treasurer and the \*Environment Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

### **30-285 Removal from the register**

- (1) The Treasurer and the \*Environment Minister may direct the \*Environment Secretary to remove an \*environmental organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

### **Subdivision 30-EA—Register of harm prevention charities**

#### **Guide to Subdivision 30-EA**

#### **30-286 What this Subdivision is about**

This Subdivision requires the establishment of a register of harm prevention charities. Section 30-15 allows you to deduct a gift that



## Table of sections

### Operative provisions

- 30-287 Establishing the register
- 30-288 Meaning of *harm prevention charity*
- 30-289 Principal activity—promoting the prevention or control of harm or abuse
- 30-289A Other requirements
- 30-289B What must be on the register
- 30-289C Removal from the register

## Operative provisions

### 30-287 Establishing the register

The \*Families Secretary must keep a register of \*harm prevention charities.

Note: Section 30-289B sets out what details must be entered on the register.

### 30-288 Meaning of *harm prevention charity*

A *harm prevention charity* is an institution that:

- (a) satisfies each requirement in sections 30-289 and 30-289A; and
- (aa) is a \*registered charity; and
- (b) is endorsed as exempt from income tax

### **30-289 Principal activity—promoting the prevention or control of harm or abuse**

- (1) The principal activity of the institution must be the promotion of the prevention or the control of \*behaviour that is harmful or abusive to human beings.
- (2) It must maintain a public fund that meets the requirements of section 30-130.
- (4) It must have agreed to comply with any rules that the Treasurer and the \*Families Minister make to ensure that gifts made to the fund are used only for its principal activity.

#### **30-289A Other requirements**

##### *No acting as a conduit*

- (1) The institution must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

##### *Surplus assets to be transferred on winding up*

- (2) It must have rules providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the register.

*Statistical information to be provided*

- (3) It must have agreed to give the \*Families Secretary, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.

**30-289B What must be on the register**

- (1) The \*Families Secretary must enter on the register each \*harm prevention charity, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the \*Families Minister.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an institution is a \*harm prevention charity. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the charity and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the \*Families Minister must have regard to the policies and budgetary

deciding whether to give a direction.

### **30-289C Removal from the register**

- (1) The Treasurer and the \*Families Minister may direct the \*Families Secretary to remove a \*harm prevention charity, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the charity and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

## **Subdivision 30-F—Register of cultural organisations**

### **Guide to Subdivision 30-F**

#### **30-290 What this Subdivision is about**

This Subdivision requires the establishment of a register of cultural organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

### **Table of sections**

#### **Operative provisions**

- 30-300 Meaning of *cultural organisation*
- 30-305 What must be on the register
- 30-310 Removal from the register

## Operative provisions

### 30-295 Establishing the register

The \*Arts Secretary must keep a register of  
\*cultural organisations.

Note: Section 30-305 sets out what details must be entered on the register.

### 30-300 Meaning of *cultural organisation*

- (1) A *cultural organisation* is:
  - (a) a body corporate; or
  - (b) a trust; or
  - (c) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;that satisfies each requirement in this section.
- (2) Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, Aboriginal arts or movable cultural heritage.
- (3) It must maintain a public fund that meets the requirements of section 30-130, or would meet

those requirements if the \*cultural organisation were a fund, authority or institution.

- (5) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).
- (6) It must have agreed to comply with any rules that the Treasurer and the \*Arts Minister make to ensure that gifts made to the fund are used only for its principal purpose.
- (7) It must have agreed to give the \*Arts Secretary, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

### **30-305 What must be on the register**

- (1) The \*Arts Secretary must enter on the register each \*cultural organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the \*Arts Minister.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an organisation is a \*cultural organisation. The notification must be in writing.

specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.

- (4) The Treasurer and the \*Arts Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

### **30-310 Removal from the register**

- (1) The Treasurer and the \*Arts Minister may direct the \*Arts Secretary to remove a \*cultural organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

## **Subdivision 30-G—Index to this Division**

### **Table of sections**

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30-320	Effect of this Subdivision

### **30-315 Index**

(1) The table in this section gives you an index to this Division.

(2) It tells you:

- each topic covered by this Division; and
- where in this Division you can find the detail about each topic.

Note: In the last column there are many references in this form: item 2.2.1. These refer to items in the tables in Subdivision 30-B.

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2AD	American Australian Association Limited	item 9.2.18
3	Amnesty International Australia	item 4.2.1
3A	Amy Gillett Foundation	item 10.2.8
4	Ancillary funds	item 2 of the table in section 30-15
4A	Animal welfare	item 4.1.6
6	Approved research institutes	item 3.1.1
7	Armed forces, auxiliaries	item 5.1.2
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9	Art galleries	items 12.1.4 and 12.1.5; item 4 of the table in section 30-15
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10	Australian Academy of Science	item 2.2.2
11	Australian Academy of Technological Sciences and Engineering Limited	item 2.2.4
12	Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	item 2.2.3
13A	Australian American Education Leadership Foundation Limited	item 9.2.4
14	Australiana Fund	item 12.2.1; item 4 of table in section 30-15
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17	Australian Antarctic Territory, payment to Commonwealth for research	item 3.2.3
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### 30-320 Effect of this Subdivision

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

## Division 31—Conservation covenants

### Guide to Division 31

#### 31-1 What this Division is about



You can deduct an amount if you enter into a conservation covenant over land that you own and you satisfy certain conditions.

The amount you can deduct is the difference between the market value of the land just before and after you enter into the covenant.

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### Operative provisions

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31-15	Valuations by the Commissioner

## Operative provisions

### 31-5 Deduction for entering into conservation covenant

- (1) You can deduct an amount if:
  - (a) you enter into a \*conservation covenant over land you own; and
  - (b) the conditions set out in subsection (2) are met.
- (2) These conditions must be satisfied:
  - (a) the covenant must be perpetual;
  - (b) you must not receive any money, property

or other material benefit for entering into the covenant;

- (c) the \*market value of the land must decrease as a result of your entering into the covenant;
- (d) one or both of these must apply:
  - (i) the change in the market value of the land as a result of entering into the covenant must be more than \$5,000;
  - (ii) you must have entered into a contract to acquire the land not more than 12 months before you entered into the covenant;
- (e) the covenant must have been entered into with:
  - (i) a fund, authority or institution that meets the requirements of section 31-10; or
  - (ii) the Commonwealth, a State, a Territory or a \*local governing body; or
  - (iii) an authority of the Commonwealth, a State or a Territory.

Note: You must seek a valuation of the change in market value from the Commissioner: see section 31-15.

(3) The amount you can deduct is the difference

before you entered the covenant and its decreased market value just after that time, but only to the extent that the decrease is attributable to your entering into the covenant.

Note: You can spread the deduction over a 5 year period: see Subdivision 30-DB.

- (4) For the purposes of paragraph (2)(a), a covenant is treated as being perpetual even if a Minister of a State or Territory has a power to rescind it.
- (5) A *conservation covenant* over land is a covenant that:
  - (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land; and
  - (b) is permanent and registered on the title to the land (if registration is possible); and
  - (c) is approved in writing by, or is entered into under a program approved in writing by, the \*Environment Minister.

### **31-10 Requirements for fund, authority or institution**

- (1) The fund, authority or institution:
  - (a) must be covered by an item in any of the tables in Subdivision 30-B and must meet any conditions set out in the relevant table

item; or

(b) must be an \*ancillary fund established under a will or instrument of trust solely for:

- (i) the purpose of providing money, property or benefits to a fund, authority or institution mentioned in paragraph (a) and for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or
- (ii) the establishment of such a fund, authority or institution.

(2) If the fund, authority or institution is not listed specifically in Subdivision 30-B, it must also:

- (a) be in Australia; and
- (b) meet the requirements of section 30-17 (about the endorsement of deductible gift recipients).

### **31-15 Valuations by the Commissioner**

- (1) You must seek a valuation of the change in the \*market value of the land from the Commissioner for the purposes of this Division.
- (2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

## **Division 32—Entertainment expenses**

### **Table of Subdivisions**

#### Guide to Division 32

32-A	No deduction for entertainment expenses
32-B	Exceptions
32-C	Definitions relevant to the exceptions
32-D	In-house dining facilities (employer expenses table item 1.2)
32-E	Anti-avoidance
32-F	Special rules for companies and partnerships

### **Guide to Division 32**

#### **32-1 What this Division is about**

You cannot deduct costs of providing entertainment. Nor can you deduct amounts for property that you use for providing entertainment. But there are exceptions.

### **Subdivision 32-A—No deduction for entertainment expenses**

#### **Table of sections**

- 32-5 No deduction for entertainment expenses
- 32-10 Meaning of *entertainment*
- 32-15 No deduction for property used for providing entertainment

### 32-5 No deduction for entertainment expenses

To the extent that you incur a loss or outgoing in respect of providing \*entertainment, you cannot deduct it under section 8-1. However, there are exceptions, which are set out in Subdivision 32-B.

- Note 1: Under section 8-1 you can deduct a loss or outgoing that you incur for the purpose of producing assessable income.
- Note 2: If you have used your property in providing entertainment, you may not be able to deduct an amount for the property: see section 32-15.
- Note 3: Section 32-75 deals with arrangements to avoid the operation of this section.

### 32-10 Meaning of *entertainment*

- (1) ***Entertainment*** means:
  - (a) entertainment by way of food, drink or \*recreation; or
  - (b) accommodation or travel to do with providing entertainment by way of food, drink or \*recreation.
- (2) You are taken to provide ***entertainment*** even if business discussions or transactions occur.

entertainment:

- business lunches
- social functions.

These are some examples of what is *not* entertainment:

- meals on business travel overnight
- theatre attendance by a critic
- a restaurant meal of a food writer.

**32-15 No deduction for property used for providing entertainment**

To the extent that you use property in providing \*entertainment, your use of the property is taken *not* to be for the \*purpose of producing assessable income if section 32-5 would stop you deducting a loss or outgoing if you incurred it in the income year in providing the entertainment.

Note: Under some provisions of this Act, in order to deduct an amount for your property, you must have used the property for the purpose of producing assessable income.

**Subdivision 32-B—Exceptions**

**Table of sections**

32-20	The main exception—fringe benefits
32-25	The tables set out the other exceptions
32-30	Employer expenses
32-35	Seminar expenses
32-40	Entertainment industry expenses

### 32-20 The main exception—fringe benefits

Section 32-5 does not stop you deducting a loss or outgoing to the extent that you incur it in respect of providing \*entertainment by way of \*providing a \*fringe benefit.

But this exception does not apply to the extent that the taxable value of the \*fringe benefit is reduced under section 63A of the *Fringe Benefits Tax Assessment Act 1986*.

Note 1: You may be able to deduct losses or outgoings that are fringe benefits under section 51AEA, 51AEB or 51AEC of the *Income Tax Assessment Act 1936*. If you do, then you cannot deduct them under section 8-1 (about general deductions) and so this section is not relevant.

Note 2: There are other exceptions for a loss or outgoing you incur in providing a benefit that would be a fringe benefit if it were not an exempt benefit: see items 1.6 and 1.7 of the table in section 32-30.

### 32-25 The tables set out the other exceptions

Section 32-5 does not stop you deducting a loss or outgoing to the extent that you incur it in respect of providing \*entertainment as described in column 2 of an item of a table in this Subdivision.

However, if column 3 of that item applies, the



## 32-30 Employer expenses

Employer expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
1.1	providing food or drink to your employees in an *in-house dining facility.	the food or drink is provided at a party, reception or other social function.
1.2	providing food or drink to individuals (other than your employees) in an *in-house dining facility.	(a) you choose (under section 32-70) <i>not</i> to include in your assessable income \$30 for each meal you provide in the *in-house dining facility in the income year to an individual (other than your employee); <i>or</i> (b) the food or drink is provided at a party, reception or other social function.
1.3	providing food or drink in a *dining facility to your employees who perform most of their duties in connection with: (a) the dining facility; or (b) a facility (of which the dining facility forms a part) for providing accommodation, *	the food or drink is provided at a party, reception or other social function.

	travel.	
1.4	providing food or drink to your employee under an *industrial instrument relating to overtime.	
1.5	providing a facility for *recreation on property you occupy, if the facility is mainly operated for your employees to use.	the facility is for: (a) accommodation; or (b) dining or drinking (unless it is a food or drink vending machine).
1.6	providing food or drink which would be a *fringe benefit apart from sections 54, 58, 58N, 58S and 58T of the <i>Fringe Benefits Tax Assessment Act 1986</i> (disregarding section 58P of that Act).	
1.7	providing a meal which would be a *fringe benefit apart from sections 58A, 58F, 58L, 58LA and 58M of the <i>Fringe Benefits Tax Assessment Act 1986</i> (disregarding section 58P of that Act).	
1.8	giving your employee an allowance that is included in his or her assessable income.	(a) the employee is a *relative of another employee of yours; <i>and</i> (b) you give the allowance to the relative, as your employee, because: (i) he or she provides, or facilitates

		providing, *entertainment to do with the other employee's employment; <i>and</i> (ii) you expect the relative to do so.
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Note 1: In the case of a company, items 1.1, 1.2, 1.3, 1.5 and 1.8 cover directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, items 1.1, 1.2, 1.3 and 1.5 cover directors, employees and property of another company that is a member of the same wholly-owned group: see section 32-85.

Note 3: Item 1.8 has a special operation for partnerships: see section 32-90.

### 32-35 Seminar expenses

Seminar expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
2.1	providing food, drink, accommodation or travel to an individual (including yourself) that is reasonably incidental to the individual attending a *seminar that *goes for at least 4 hours.	(a) the seminar is a *business meeting; <i>or</i> (b) the *seminar's main purpose is to promote or advertise a *business (or prospective *business) or its goods or services; <i>or</i> (c) the *seminar's main purpose is to provide *entertainment at, or in connection with, the seminar.

### 32-40 Entertainment industry expenses

Entertainment industry expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
3.1	providing *entertainment for payment in the ordinary course of a *business that you carry on.	
3.2	providing *entertainment in performing your duties to your employer who carries on a *business that includes providing that entertainment for payment.	

### 32-45 Promotion and advertising expenses

Promotion and advertising expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
4.1	providing *entertainment if: (a) you provide it to an individual under a contract to supply him or her with goods or services in the ordinary course of your *business; <i>and</i> (b) you incur the loss or outgoing to promote or advertise to the public your business or its goods or services.	

4.2	providing or exhibiting your *business's goods or services if you incur the loss or outgoing to promote or advertise those goods or services to the public.	
4.3	providing *entertainment to promote or advertise to the public a *business or its goods or services.	some people have a greater opportunity to get the benefits of the entertainment than ordinary members of the public have.

### 32-50 Other expenses

Other expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
5.1	buying food or drink to do with overtime that you work, if you receive an allowance under an *industrial instrument to buy the food or drink.	
5.2	providing *entertainment free to members of the public who are sick, disabled, poor or otherwise disadvantaged.	

### Subdivision 32-C—Definitions relevant to the exceptions

#### Table of sections

32-55 In-house dining facility (employer expenses table

32-60 Dining facility (employer expenses table item 1.3)

32-65 Seminars (seminar expenses table item 2.1)

### **32-55 In-house dining facility (employer expenses table items 1.1 and 1.2)**

An *in-house dining facility* is a canteen, dining room or similar facility that:

- (a) is on property you occupy; and
- (b) is operated mainly for providing food and drink to your employees; and
- (c) is not open to the public.

Note 1: In the case of a company, this definition also covers directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, this definition also covers directors, employees and property of another company that is a member of the same wholly-owned group: see section 32-85.

### **32-60 Dining facility (employer expenses table item 1.3)**

A *dining facility* is:

- (a) a canteen, dining room or similar facility;
- or

- (b) a cafe, restaurant or similar facility;

that is on property you occupy.

Note: In the case of a company, this definition also covers property of another company that is a member of the same wholly-owned group: see section 32-85.

**34-05 Seminars (seminar expenses table item 2.1)**

- (1) ***Seminar*** includes a conference, convention, lecture, meeting (including a meeting for the presentation of awards), speech, “question and answer session”, training session or educational course.
- (2) In working out whether a \*seminar ***goes for at least 4 hours*** the following are taken not to affect the seminar’s continuity, nor to form part of it:
  - (a) any part of the seminar that occurs during a meal;
  - (b) any break during the seminar for the purpose of a meal, rest or \*recreation.
- (3) A \*seminar is a ***business meeting*** if its main purpose is for individuals who are (or will be) associated with the carrying on of a particular \*business to give or receive information, or discuss matters, relating to the business.

However, the \*seminar is ***not a business meeting*** if it:

- (a) is organised by (or on behalf of) an employer solely for either or both of these purposes:
  - (i) training the employer and the employer’s employees (or just those

employees) in matters relevant to the employer's \*business (or prospective \*business);

(ii) enabling the employer and the employer's employees (or just those employees) to discuss general policy issues relevant to the internal management of the employer's \*business; and

(b) is conducted on property that is occupied by a person (other than the employer) whose \*business includes organising seminars or making property available for conducting seminars.

- Note 1: In the case of a company, subsection (3) covers directors of the company as if they were employees: see section 32-80.
- Note 2: In the case of a company, paragraph (3)(b) also covers property of another company that is a member of the same wholly-owned group: see section 32-85.
- Note 3: Subsection (3) has a special operation for partnerships: see section 32-90.

**Subdivision 32-D—In-house dining facilities  
(employer expenses table item 1.2)**

**Table of sections**

32-70      \$30 is assessable for each meal provided to non-employee in an in-house dining facility

**32-70 \$30 is assessable for each meal provided to**



**non-employee in an in-house dining  
facility**

- (1) Your assessable income includes \$30 for a meal you provide in an \*in-house dining facility in the income year to an individual other than your employee, but only if:
  - (a) you incur a loss or outgoing in respect of providing the meal; and
  - (b) because of item 1.2 of the table in section 32-30, section 32-5 does not stop you deducting the loss or outgoing under section 8-1 (which deals with general deductions); and
  - (c) the loss or outgoing is one that you can deduct under section 8-1 for the income year or some other income year.
- (2) However, you can choose *not* to include in your assessable income \$30 for each meal you provide in the \*in-house dining facility in the income year to an individual other than your employee.

Note: If you do choose, you cannot rely on item 1.2 of the table in section 32-30 as a basis for deducting a loss or outgoing you incur in respect of providing a meal.

- (3) You must choose by the day you lodge your

income tax return for the income year, or  
within a further time allowed by the  
Commissioner.

## **Subdivision 32-E—Anti-avoidance**

### **Table of sections**

32-75      Commissioner may treat you as having incurred  
entertainment expense

### **32-75 Commissioner may treat you as having incurred entertainment expense**

If:

- (a) you incur a loss or outgoing under an  
\*arrangement; and
- (b) someone provides \*entertainment under  
the arrangement to you or someone else;  
and
- (c) section 32-5 would have stopped you  
deducting the loss or outgoing under  
section 8-1 (which deals with general  
deductions) if you had incurred it in  
respect of providing that entertainment;

this Division applies to you as if you had  
incurred the loss or outgoing in providing that  
entertainment, to the extent (if any) that the  
Commissioner thinks reasonable.

Note:      This means that section 32-5 will prevent you

section 32-1 unless an exception applies.

Example: A company pays \$1,000 to sponsor a football game. Under the same arrangement, the company is given a viewing box at the game. To the extent the Commissioner thinks reasonable, he or she can treat the company as having incurred the \$1,000 in providing entertainment.

**Subdivision 32-F—Special rules for companies and partnerships**

**Table of sections**

32-80	Company directors
32-85	Directors, employees and property of wholly-owned group company
32-90	Partnerships

**32-80 Company directors**

In the case of a company, these provisions cover directors of the company as if they were the company’s employees:

- item 1.1 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.2 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.3 (exception for \*dining facilities) of the table in section 32-30;

- item 1.5 (exception for recreational facilities) of the table in section 32-30;
- item 1.8 (exception for providing your employee with an allowance) of the table in section 32-30;
- section 32-55 (which defines *in-house dining facility*);
- subsection 32-65(3) (which defines *business meeting*).

### **32-85 Directors, employees and property of wholly-owned group company**

#### *Employees and directors of group company*

(1) In the case of a company, these provisions cover directors and employees of another company that is a member of the same \*wholly-owned group as if they were the company's own directors and employees:

- item 1.1 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.2 (exception for \*in-house dining facilities) of the table in

- item 1.3 (exception for \*dining facilities) of the table in section 32-30;
- item 1.5 (exception for recreational facilities) of the table in section 32-30;
- section 32-55 (which defines *in-house dining facility*);
- subsection 32-60(1) (which defines *dining facility*);
- paragraph 32-65(3)(b).

*Property occupied by group company*

- (2) Those provisions also cover property occupied by that other company as if the company occupied that property.

## 32-90 Partnerships

In the case of a partnership:

- item 1.8 (exception for providing employee with an allowance) of the table in section 32-30; and
- subsection 32-65(3) (which defines *business meeting*);

apply to a partner in the same way as they

apply to an employee of the partnership, but only for the purposes of calculating, in accordance with section 90 of the *Income Tax Assessment Act 1936*, the partnership’s net income or partnership loss.

**Division 34—Non-compulsory uniforms**

**Table of Subdivisions**

	Guide to Division 34
34-A	Application of Division 34
34-B	Deduction for your non-compulsory uniform
34-C	Registering the design of a non-compulsory uniform
34-D	Appeals from Industry Secretary’s decision
34-E	The Register of Approved Occupational Clothing
34-F	Approved occupational clothing guidelines
34-G	The Industry Secretary

**Guide to Division 34**

**34-1 What this Division is about**

This Division is about deductions for the

## Table of sections

34-3      What you need to read

### 34-3 What you need to read

#### *Employees*

- (1) If you incur expenditure for your non-compulsory uniform, you need to read Subdivision 34-B (which is about deductions for your non-compulsory uniform), starting at section 34-10.

#### *Employers*

- (2) If you have people working for you who want to deduct expenditure of that kind, you need to read:
  - Subdivision 34-C (which is about registering the design of a non-compulsory uniform), starting at section 34-25; and
  - Subdivision 34-D (which is about appeals from Industry Secretary's decision), starting at section 34-40.

### Subdivision 34-A—Application of Division 34

34-5 This Division applies to employees and others

34-7 This Division applies to employers and others

### **34-5 This Division applies to employees and others**

- (1) This Division applies not only to an individual who is an employee. It also applies to an individual who is *not* an employee, but who receives, or is entitled to receive, \*withholding payments covered by subsection (3).
- (2) If an individual is *not* an employee, but is covered by subsection (1), this Division applies to the individual as if:
  - (a) he or she were an employee; and
  - (b) the entity, who pays (or is liable to pay) \*withholding payments covered by subsection (3) that result in the individual being in receipt of, or entitled to receive, such payments, were the individual's employer; and
  - (c) any other individual who receives (or is entitled to receive) \*withholding payments covered by subsection (3):
    - (i) that result in that other individual being in receipt of, or entitled to receive, such payments; and
    - (ii) that the entity pays (or is liable to



pay) to that other individual,  
were an employee of the entity.

- (3) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

Withholding payments covered		
Item	Provision	Subject matter
1	Section 12-40	Payment to company director
2	Section 12-45	Payment to office holder
3	Section 12-50	Return to work payment
4	Subdivision 12-D	Benefit, training and compensation payments

### 34-7 This Division applies to employers and others

If an entity is *not* an employer, but pays (or is liable to pay) \*withholding payments covered by subsection 34-5(3), this Division applies to the entity as if:

- (a) it were an employer; and
- (b) an individual to whom the entity pays (or is liable to pay) such withholding payments were the entity's employee.

### Subdivision 34-B—Deduction for your non-compulsory uniform

#### Table of sections

34-10 What you can deduct

34-15 What is a *non-compulsory* uniform?

34-20 What are *occupation specific clothing* and *protective clothing*?

### 34-10 What you can deduct

(1) If you are an employee, you can deduct expenditure you incur in respect of your \*non-compulsory \*uniform if:

- (a) you can deduct the expenditure under another provision of this Act; and
- (b) the \*design of the uniform is registered under this Division when you incur the expenditure.

Note 1: This Division also applies to individuals who are not employees: see Subdivision 34-A.

Note 2: Employers apply to register designs of uniforms: see Subdivision 34-C.

(2) You *cannot* deduct the expenditure under this Act if the \*design is *not* registered at the time you incur the expenditure.

(3) However, this Division does not stop you deducting expenditure you incur in respect of your \*occupation specific clothing or \*protective clothing.

### 34-15 What is a *non-compulsory* uniform?

*What is a uniform?*

- (1) A **uniform** is one or more items of clothing (including accessories) which, when considered as a set, distinctively identify you as a person associated (directly or indirectly) with:
- (a) your employer; or
  - (b) a group consisting of your employer and one or more of your employer's \*associates.

*When is a uniform **non-compulsory**?*

- (2) Your uniform is **non-compulsory** unless your employer consistently enforces a policy that requires you and the other employees (except temporary or relief employees) who do the same type of work as you:
- (a) to wear the uniform when working for your employer; and
  - (b) not to substitute an item of clothing *not* included in the uniform for an item of clothing included in the uniform when working for your employer;
- except in special circumstances.

### **34-20 What are *occupation specific clothing* and *protective clothing*?**

- (1) **Occupation specific clothing** is clothing that

particular profession, trade, vocation, occupation or calling. To determine this, disregard any feature of the clothing that distinctively identifies you as a person associated (directly or indirectly) with:

- (a) your employer; or
- (b) a group consisting of your employer and one or more of your employer's \*associates.

Example: Occupation specific clothing includes a nurse's uniform, a chef's checked pants and a religious cleric's ceremonial robes.

(2) ***Protective clothing*** is clothing of a kind that you mainly use to protect yourself, or someone else, from risk of:

- (a) death; or
- (b) \*disease (including the contraction, aggravation, acceleration or recurrence of a disease); or
- (c) injury (including the aggravation, acceleration or recurrence of an injury); or
- (d) damage to clothing; or
- (e) damage to an artificial limb or other artificial substitute, or to a medical, surgical or other similar aid or appliance.

Example: Protective clothing includes overalls, aprons, goggles, hard hats and safety boots, when worn to protect the wearer.

*Meaning of **disease***

- (3) **Disease** includes any mental or physical ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin.

## Subdivision 34-C—Registering the design of a non-compulsory uniform

### Table of sections

34-25	Application to register the design
34-30	Industry Secretary's decision on application
34-33	Written notice of decision
34-35	When uniform becomes registered

### 34-25 Application to register the design

- (1) The employer of an employee who has, or will have, a \*non-compulsory \*uniform can apply to the \*Industry Secretary for the \*design of the uniform to be registered.

Note: This Division also applies to entities that are not employers: see Subdivision 34-A.

*Meaning of **design** of a uniform*

- (2) The **design** of a \*uniform includes features such as its colouring, construction, durability, ornamentation, pattern and shape.

*Form of application*

- (3) The application must be:
- (a) in writing; and
  - (b) in a form approved in writing by the \*Industry Secretary; and
  - (c) accompanied by such information as the Industry Secretary requires.

**34-30 Industry Secretary's decision on application***Industry Secretary must decide to grant or refuse application*

- (1) After considering the application, the \*Industry Secretary must decide to either grant or refuse the application.

*Criteria for grant of application*

- (2) The \*Industry Secretary must not decide to grant an application unless he or she is satisfied that the design meets the criteria set out in the \*approved occupational clothing guidelines.

Note: The approved occupational clothing guidelines are created under section 34-55.

*When Industry Secretary taken to have refused application*

- (3) The \*Industry Secretary is taken to have refused an application if he or she does not make a decision by the later of the following times (the *deadline*):

- (a) the end of 90 days (the *90-day period*) after the day the Industry Secretary receives the application;
- (b) if the Industry Secretary, by written notice given to the applicant within the 90-day period, requests the applicant to give further information about the application—the end of 90 days after the Industry Secretary receives the further information.

### 34-33 Written notice of decision

- (1) If the \*Industry Secretary makes a decision to grant or refuse an application under subsection 34-30(1) before the \*deadline, the Industry Secretary must give the applicant written notice of the decision.

#### *Reasons for refusal*

- (2) If the notice is a notice of a decision to refuse the application, it must also set out the reasons for the refusal.

#### *Statements to accompany notice of decision*

- (3) The notice of the decision is to include the statements set out in subsections (4) and (5).
- (4) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the \*AAT, by (or on behalf of) any entity whose interests are affected by the decision, for

review of the decision.

- (5) There must also be a statement to the effect that a request may be made under section 28 of that Act by (or on behalf of) such an entity for a statement:
- (a) setting out the findings on material questions of fact; and
  - (b) referring to the evidence or other material on which those findings were based; and
  - (c) giving the reasons for the decision;
- except where subsection 28(4) of that Act applies.

*Failure does not affect validity*

- (6) If the \*Industry Secretary fails to comply with subsection (4) or (5), that failure does not affect the validity of his or her decision.

### **34-35 When uniform becomes registered**

If the \*Industry Secretary decides to grant the application, the \*design of the \*uniform becomes registered on:

- (a) the day the decision is made; or
- (b) if the applicant requests—such earlier day as the Industry Secretary specifies.

Note: When the design becomes registered, an entry for the design is made on the Register of Approved Occupational Clothing. Subdivision 34-E is about the Register.

### **Subdivision 34-D—Appeals from Industry Secretary's decision**



### Table of sections

34-40	Review of decisions by the Administrative Appeals Tribunal
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## **34-40 Review of decisions by the Administrative Appeals Tribunal**

Applications may be made to the \*AAT for review of a decision made by the \*Industry Secretary under subsection 34-30(1).

## **Subdivision 34-E—The Register of Approved Occupational Clothing**

### Table of sections

34-45	Keeping of the Register
34-50	Changes to the Register

## **34-45 Keeping of the Register**

- (1) The \*Industry Secretary must keep the Register of Approved Occupational Clothing, listing the designs that are required to be entered on the Register because of this Division.

*Register to be open for inspection*

- (2) The \*Industry Secretary must arrange for the Register to be available for inspection at any reasonable time by any person on request.

## 34-50 Changes to the Register

### *Removal of registration*

- (1) The \*Industry Secretary must remove an entry for a \*design from the Register of Approved Occupational Clothing if requested to do so by the employer who applied for the design to be registered.

### *Correcting errors and mistakes*

- (2) The \*Industry Secretary may correct a clerical error or an obvious mistake in an entry for a design in the Register and, if the Industry Secretary does so, the correction takes effect on the day on which the design to which the entry relates was registered.

## Subdivision 34-F—Approved occupational clothing guidelines

### Table of sections

34-55      Approved occupational clothing guidelines

## 34-55 Approved occupational clothing guidelines

- (1) The Treasurer must, by legislative instrument, formulate written guidelines (the *approved occupational clothing guidelines*) setting out criteria that \*designs of uniforms must meet if

the designs are to be registered.

*Matters to be taken into account in making guidelines*

- (2) In making \*approved occupational clothing guidelines, the matters to which the Treasurer is to have regard include:
- (a) how distinctively a \*uniform's \*design identifies the wearer as a person associated (directly or indirectly) with:
    - (i) the applicant for registering the uniform's design; or
    - (ii) a group consisting of the applicant and one or more of the applicant's \*associates; and
  - (b) the nature of the \*business or activities the applicant carries on.

## **Subdivision 34-G—The Industry Secretary**

### **Table of sections**

34-60	Industry Secretary to give Commissioner information about entries
34-65	Delegation of powers by Industry Secretary

### **34-60 Industry Secretary to give Commissioner information about entries**

Commissioner information about entries of  
\*designs on the Register of Approved  
Occupational Clothing if the Commissioner  
requests him or her to do so.

### **34-65 Delegation of powers by Industry Secretary**

The \*Industry Secretary may, by writing,  
delegate any or all of his or her functions and  
powers under this Division to a person in the  
\*Industry Department:

- (a) who holds or performs the duties of a  
\*Senior Executive Service office; or
- (b) whose classification level appears in  
Group 7 or 8 of Schedule 1 to the  
Classification Rules under the *Public  
Service Act 1999*; or
- (c) who is acting in a position usually  
occupied by a person with a classification  
level of the kind mentioned in  
paragraph (b).

## **Division 35—Deferral of losses from non-commercial business activities**

### **Guide to Division 35**

This Division prevents losses of individuals from non-commercial business activities being offset against other assessable income in the year the loss is incurred. The loss is deferred.

It sets out an income requirement and a series of tests to determine whether a business activity is treated as being non-commercial.

The deferred losses may be offset in later years against profits from the activity. They may also be offset against other income if the income requirement and one of the other tests are satisfied, or if the Commissioner exercises a discretion.

## Table of sections

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## Operative provisions

### 35-5 Object

- (1) The object of this Division is to improve the integrity of the taxation system by:
  - (a) preventing losses from non-commercial activities that are \*carried on as \*businesses by individuals (alone or in partnership) being offset against other assessable income; and
  - (b) preventing pre-business capital expenditure and post-business capital expenditure by individuals (alone or in partnership) in relation to non-commercial activities being deductible under section 40-880 (business related costs);unless certain exceptions apply.
- (2) This Division is not intended to apply to activities that do not constitute \*carrying on a \*business (for example, the receipt of income

### **35-10 Deferral of deductions from non-commercial business activities**

- (1) The rule in subsection (2) applies for an income year to each \*business activity you carried on in that year if you are an individual, either alone or in partnership (whether or not some other entity is a member of the partnership), unless:
- (a) you satisfy subsection (2E) for that year, and one of the tests set out in any of the following provisions is satisfied for the business activity for that year:
    - (i) section 35-30 (assessable income test);
    - (ii) section 35-35 (profits test);
    - (iii) section 35-40 (real property test);
    - (iv) section 35-45 (other assets test); or
  - (b) the Commissioner has exercised the discretion set out in section 35-55 for the business activity for that year; or
  - (c) the exception in subsection (4) applies for that year.

Note: This section covers individuals carrying on a business activity as partners, but not individuals merely in receipt of income jointly. Compare the definition of *partnership* in subsection 995-1(1).

- (2) If the amounts attributable to the \*business activity for that income year that you could otherwise deduct under this Act for that year exceed your assessable income (if any) from the business activity for that year, or your share of it, this Act applies to you as if the excess:
- (a) were not incurred in that income year; and
  - (b) were an amount attributable to the activity that you can deduct from assessable income from the activity for the next income year in which the activity is carried on.

Note 1: There are modifications of this rule if you have exempt income (see section 35-15) or you become bankrupt (see section 35-20).

Note 2: This rule does not apply if your excess is solely due to deductions under Division 41 (see section 35-10 of the *Income Tax (Transitional Provisions) Act 1997*).

Example: Jennifer has a salaried job, and she also carries on a business activity consisting of selling lingerie.

Jennifer starts that activity on 1 July 2002, and for the 2002-03 income year, the activity produces assessable income of \$8,000 and deductions of \$10,000. The activity does not pass any of the tests and the discretion is not exercised so the \$2,000 excess is carried over to the next income year in which the activity is carried on.

For the 2003-04 income year, the activity produces assessable income of \$9,000 and deductions of \$10,000 (excluding the \$2,000 excess from 2002-03). Again, no tests passed and no exercise of discretion.



(comprising the \$1,000 excess for the current year, plus the previous year's \$2,000 excess) when the activity is carried on.

- (2A) You cannot deduct an amount under section 40-880 (business related costs) for expenditure in relation to a \*business activity you used to \*carry on if you are an individual, either alone or in partnership (whether or not some other entity is a member of the partnership) unless:
- (a) you satisfied subsection (2E), and one of the tests set out in any of the following provisions was satisfied for the business activity:
    - (i) section 35-30 (assessable income test);
    - (ii) section 35-35 (profits test);
    - (iii) section 35-40 (real property test);
    - (iv) section 35-45 (other assets test); or
  - (b) the Commissioner has exercised the discretion set out in section 35-55 for the business activity; or
  - (c) the exception in subsection (4) applied;
- for the income year in which the business activity ceased to be carried on or an earlier income year.
- (2B) If you are an individual, either alone or in partnership (whether or not some other entity is

a member of the partnership), you cannot deduct an amount under section 40-880 (business related costs) for expenditure in relation to a \*business activity:

- (a) you propose to \*carry on; or
- (b) another entity proposes to carry on if the other entity is not an individual, either alone or in partnership;

for an income year before the one in which the business activity starts to be carried on.

(2C) This section applies to an amount that you could have deducted, apart from paragraph (2B)(a), as if it were an amount attributable to the \*business activity that you can deduct from assessable income from the activity for the income year in which the business activity starts to be \*carried on.

(2D) You can deduct expenditure covered by paragraph (2B)(b) for the income year in which the \*business activity starts to be \*carried on.

#### *Income requirement*

(2E) You satisfy this subsection for an income year if the sum of the following is less than \$250,000:

- (a) your taxable income for that year;
- (b) your \*reportable fringe benefits total for

- (c) your \*reportable superannuation contributions for that year;
- (d) your \*total net investment losses for that year.

For the purposes of paragraph (a), when working out your taxable income, disregard any excess mentioned in subsection (2) for any \*business activity for that year that you could otherwise deduct under this Act for that year.

*Grouping business activities*

- (3) In applying this Division, you may group together \*business activities of a similar kind.

*Exceptions*

- (4) The rule in subsection (2), (2A) or (2B) does not apply to a \*business activity for an income year if:
  - (a) the activity is a \*primary production business, or a \*professional arts business; and
  - (b) your assessable income for that year (except any \*net capital gain) from other sources that do not relate to that activity is less than \$40,000.

- (5) A ***professional arts business*** is a \*business you

- (a) the author of a literary, dramatic, musical or artistic work; or

Note: The expression “author” is a technical term from copyright law. In general, the “author” of a musical work is its composer and the “author” of an artistic work is the artist, sculptor or photographer who created it.

- (b) a \*performing artist; or
- (c) a \*production associate.

### **35-15 Modification if you have exempt income**

- (1) The rule in subsection 35-10(2) may be modified for an income year if you \*derived \*exempt income in that year.
- (2) Any amount to which paragraph 35-10(2)(b) would otherwise apply for an income year for you is reduced by so much of your \*net exempt income as is not applied for that income year under section 36-10 or 36-15 (about tax losses). This reduction is made before you apply the paragraph 35-10(2)(b) amount against assessable income from the \*business activity.

### **35-20 Modification if you become bankrupt**

- (1) The rule in subsection 35-10(2) or (2A) is modified as set out in subsection (3) for an income year if in that year (the *current year*)

debt by the operation of an Act relating to bankruptcy.

- (2) The rule is also modified as set out in subsection (3) if:
- (a) you became bankrupt before the current year; and
  - (b) the bankruptcy is annulled in the current year under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted a proposal for a composition or scheme of arrangement; and
  - (c) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy.
- (3) This Act applies to you as if any amount that:
- (a) paragraph 35-10(2)(b) had applied to for an income year before the current year for you; and
  - (b) you have not yet deducted;
- were not an amount attributable to the \*business activity that you can deduct for the current year or a later income year.

### **35-25 Application of Division to certain**

**partnerships**

For the purpose of applying the tests in sections 35-30, 35-40 and 35-45 where you carry on a \*business activity in an income year as a partner, ignore:

- (a) any part of the assessable income from the business activity for the year that is attributable to the interest of a partner that is not an individual in the partnership net income or partnership loss for the year; and
- (b) any part of the assessable income from the business activity for the year that is \*derived from the activity by another partner otherwise than as a member of the partnership; and
- (c) any part of the \*reduced cost bases or other values of assets of the partnership used in carrying on the activity in that year that is attributable to the interest of a partner that is not an individual in those assets; and
- (d) any part of the reduced cost bases or other values of assets owned or leased by another partner that are not partnership assets and used in carrying on the activity in that year.

**35-30 Assessable income test**

The rules in section 35-10 do not apply to a  
\*business activity for an income year if:

- (a) the amount of assessable income from the business activity for the year; or
  - (b) you started to carry on the business activity, or stopped carrying it on, during the year—a reasonable estimate of what would have been the amount of that assessable income if you had carried on that activity throughout the year;
- is at least \$20,000.

**35-35 Profits test**

- (1) The rules in section 35-10 do not apply to a  
\*business activity (except an activity carried on by one or more individuals as partners, whether or not some other entity is a member of the partnership) for an income year (the *current year*) if, for each of at least 3 of the past 5 income years (including the current year) the sum of the deductions attributable to that activity for that year (apart from the operation of subsections 35-10(2) and (2C)) is less than the assessable income from the activity for that year.
- (2) For a \*business activity you carried on with one

or more others as partners, the rules in section 35-10 do not apply to you for the current year if, for each of at least 3 of the past 5 income years (including the current year) the sum of your deductions (including your share of the partnership deductions) attributable to that activity for that year (apart from the operation of subsections 35-10(2) and (2C)) is less than your assessable income (including your share of the partnership's assessable income) from the activity for that year.

### **35-40 Real property test**

- (1) The rules in section 35-10 do not apply to a  
\*business activity for an income year if the total  
\*reduced cost bases of real property or interests  
in real property used on a continuing basis in  
carrying on the activity in that year is at least  
\$500,000.
- (2) You may use the \*market value of the real  
property or interest if that value is more than its  
\*reduced cost base.
- (3) The \*reduced cost base or \*market value is  
worked out:
  - (a) as at the end of the income year; or
  - (b) if you stopped carrying on the \*business  
activity during the year:



- (i) as at the time you stopped; or
  - (ii) if you disposed of the asset before that time in the course of stopping carrying on the activity—as at the time you disposed of it.
- (4) However, these assets are not counted for this test:
- (a) a \*dwelling, and any adjacent land used in association with the dwelling, that is used mainly for private purposes;
  - (b) fixtures owned by you as a tenant.

### 35-45 Other assets test

- (1) The rules in section 35-10 do not apply to a \*business activity for an income year if the total values of assets that are counted for this test (see subsections (2) and (4)) and that are used on a continuing basis in carrying on the activity in that year is at least \$100,000.
- (2) The assets counted for this test, and their values for this test, are set out in this table:

Assets counted for this test and their values		
Item	Asset	Value
1	An asset whose decline in value you can deduct under Division 40	The asset's *written down value

	stock	70-45(1)
3	An asset that you lease from another entity	The sum of the amounts of the future lease payments for the asset to which you are irrevocably committed, less an appropriate amount to reflect any interest component for those lease payments
4	Trademarks, patents, copyrights and similar rights	Their *reduced cost base

(3) The value of such an asset is worked out:

- (a) as at the end of the income year; or
- (b) if you stopped carrying on the \*business activity during the year:
  - (i) as at the time you stopped; or
  - (ii) if you disposed of the asset before that time in the course of stopping carrying on the activity—as at the time you disposed of it.

(4) However, these assets are not counted for this test:

- (a) assets that are real property or interests in real property that are taken into account for that year under section 35-40;
- (b) \*cars, motor cycles and similar vehicles.

### 35-50 Apportionment

If an asset that is being taken into account

income year partly in carrying on the relevant \*business activity and partly for other purposes, only that part of its \*reduced cost base, \*market value or other value that is attributable to its use in carrying on the business activity in that year is taken into account for that section.

### 35-55 Commissioner's discretion

(1) The Commissioner may, on application, decide that the rule in subsection 35-10(2) does not apply to a \*business activity for one or more income years (the *excluded years*) if the Commissioner is satisfied that it would be unreasonable to apply that rule because:

(a) the business activity was or will be affected in the excluded years by special circumstances outside the control of the operators of the business activity, including drought, flood, bushfire or some other natural disaster; or

Note: This paragraph is intended to provide for a case where a business activity would have satisfied one of the tests if it were not for the special circumstances.

(b) for an applicant who carries on the business activity who satisfies subsection 35-10(2E) (income requirement) for the most recent income year ending before the application is made—the business

activity has started to be carried on and, for the excluded years:

- (i) because of its nature, it has not satisfied, or will not satisfy, one of the tests set out in section 35-30, 35-35, 35-40 or 35-45; and
  - (ii) there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will either meet one of those tests or will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)); or
- (c) for an applicant who carries on the business activity who does not satisfy subsection 35-10(2E) (income requirement) for the most recent income year ending before the application is made—the business activity has started to be carried on and, for the excluded years:
- (i) because of its nature, it has not produced, or will not produce, assessable income greater than the

- (ii) there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

Note: Paragraphs (b) and (c) are intended to cover a business activity that has a lead time between the commencement of the activity and the production of any assessable income. For example, an activity involving the planting of hardwood trees for harvest, where many years would pass before the activity could reasonably be expected to produce income.

- (2) The Commissioner may, on application, decide that the rule in subsection 35-10(2B) does not apply to a \*business activity for an income year if the Commissioner is satisfied that it would be unreasonable to apply that rule because special circumstances of the kind referred to in paragraph (1)(a) of this section prevented the activity from starting.

Note: This subsection is intended to provide for a case where a business activity would have begun to be carried on and satisfied one of the tests if it were not for the special circumstances.

- (3) An application for a decision by the

Commissioner under this section must be made  
in the \*approved form.

## **Division 36—Tax losses of earlier income years**

### **Table of Subdivisions**

Guide to Division 36

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| 36-C | Excess franking offsets                              |

### **Guide to Division 36**

#### **36-1 What this Division is about**

If you have more deductions for an income year than you have income, the difference is a *tax loss* which you may be able to deduct in a later income year.

## **Subdivision 36-A—Deductions for tax losses of earlier income years**

### **Table of sections**

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corporate tax entities

36-17 How to deduct tax losses of corporate tax entities

36-20 Net exempt income

36-25 Special rules about tax losses

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

- (1) Add up the amounts you can deduct for an income year (except \*tax losses for earlier income years).
- (2) Subtract your total assessable income.
- (3) If you \*derived \*exempt income, also subtract your \**net* exempt income (worked out under section 36-20).
- (4) Any amount remaining is your ***tax loss*** for the income year, which is called a ***loss year***.

Note 1: Some deductions are limited so that they cannot contribute to a tax loss. See section 26-55 (Limit on certain deductions).

Note 2: The meanings of ***tax loss*** and ***loss year*** are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

- (5) For subsection (3), if you have \*exempt income under section 51-100 (about shipping), disregard 90% of so much of your \**net* exempt income as directly relates to that exempt income.

### 36-15 How to deduct tax losses of entities other than

**corporate tax entities**

- (1) Your <sup>\*</sup>tax loss for a <sup>\*</sup>loss year is deducted in a later income year as follows if you are not a <sup>\*</sup>corporate tax entity at any time during the later income year.

Note: See section 36-17 for the deduction of a tax loss of an entity that is a corporate tax entity at any time during the later income year.

*If you have no net exempt income*

- (2) If your total assessable income for the later income year exceeds your total deductions (other than <sup>\*</sup>tax losses), you deduct the tax loss from that excess.

*If you have net exempt income*

- (3) If you have <sup>\*</sup>net exempt income for the later income year and your total assessable income (if any) for the later income year exceeds your total deductions (except <sup>\*</sup>tax losses), you deduct the tax loss:
- (a) first, from your net exempt income; and
  - (b) secondly, from the part of your total assessable income that exceeds those deductions.
- (4) However, if you have <sup>\*</sup>net exempt income for the later income year and those deductions exceed your total assessable income, then:



- (a) subtract that excess from your net exempt income; and
- (b) deduct the tax loss from any net exempt income that remains.

To work out your net exempt income: see section 36-20.

### *General*

- (5) If you have 2 or more \*tax losses, you deduct them in the order in which you incurred them.
- (6) A \*tax loss can be deducted only to the extent that it has not already been deducted.
- (7) If you cannot deduct all or part of your \*tax loss in an income year, you can carry forward to the next income year the undeducted amount. You then apply this Subdivision to work out if you can deduct the tax loss in that income year.

Note: Your tax losses under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E.

## **36-17 How to deduct tax losses of corporate tax entities**

- (1) A \*tax loss of an entity for a \*loss year is deducted in a later income year as follows if the entity is a \*corporate tax entity at any time during the later income year.

*If the entity has no net exempt income*

- (2) If the entity's total assessable income for the later income year exceeds the entity's total deductions (except \*tax losses), the entity is to deduct from that excess so much of the tax loss as the entity chooses. The entity may choose a nil amount.

*If the entity has net exempt income*

- (3) If the entity has \*net exempt income for the later income year and the entity's total assessable income (if any) for that year exceeds the entity's total deductions (except \*tax losses), the entity is to:
- (a) first, deduct the tax loss from the net exempt income; and
  - (b) secondly, deduct from the part of the total assessable income that exceeds those deductions so much of the undeducted amount of the tax loss (if any) as the entity chooses.

The entity may choose a nil amount under paragraph (b).

Note: To work out the corporate tax entity's net exempt income: see section 36-20.

- (4) However, if the entity has \*net exempt income for the later income year and those deductions exceed the entity's total assessable income, the

- (a) subtract that excess from the net exempt income; and
- (b) deduct the \*tax loss from any net exempt income that remains.

Note: This means there is no choice available under this subsection.

- (4A) For subsection (3) or (4), if the entity has \*exempt income under section 51-100 (about shipping) for the later income year, disregard 90% of so much of the entity's \*net exempt income for the later income year as directly relates to that exempt income.

*Limit to how much the entity can choose*

- (5) The choice that the entity has under subsection (2) or (3) for the later income year is subject to both of the following:
- (a) the entity must choose a nil amount if, disregarding the \*tax loss and other tax losses of the entity, the entity would have an amount of \*excess franking offsets for that year;
  - (b) if, disregarding the tax loss and other tax losses of the entity, the entity would *not* have an amount of excess franking offsets for that year—the entity must not choose an amount that would result in the entity

offsets for that year.

Example: For the 2002-2003 income year, Company A has:

- a tax loss of \$150 from a previous income year; and
- assessable income of \$200 (franked distribution of \$70, franking credit of \$30 and \$100 of income from other sources); and
- no deductions; and
- no net exempt income.

The tax offset of \$30 from the franking credit is not stated in Division 67 to be subject to the refundable tax offset rules.

Company A would not have an amount of excess franking offsets for that year if the tax loss were disregarded (see section 36-55). This is because the tax offset of \$30 is less than \$60, the amount of income tax that Company A would have to pay if it did not have the tax offset and the tax loss. Paragraph (a) therefore does not apply.

If Company A chooses to deduct the full amount of the tax loss, it would have an amount of excess franking offsets of \$15:

~~$$\$30 = ((\$200 - \$150) \times 30\%)$$~~  
 Company A therefore cannot make this choice because of paragraph (b).

However, if Company A chooses to deduct \$100 of the tax loss, it would not have an amount of excess franking offsets:

~~$$\$30 = ((\$200 - \$100) \times 30\%)$$~~  
 Company A therefore can choose to deduct \$100 of the tax loss.

- (6) The entity must state its choice under subsection (2) or (3) in its <sup>\*</sup>income tax return for the later income year.

*General*

- (7) If the entity has 2 or more \*tax losses, the entity is to deduct them in the order in which the entity incurred them.
- (8) A \*tax loss can be deducted under this section only to the extent that it has not already been deducted.
- (9) If, under this section, a \*corporate tax entity does not or cannot deduct all or part of a \*tax loss in an income year, the entity can carry forward the undeducted amount to the next income year. This Subdivision then applies in working out how it can deduct the tax loss in that income year.

Note: The entity's tax losses may be reduced if any of its commercial debts have been forgiven in the income year: see Subdivision 245-E.

*Recalculation of amounts resulting in a choice or a change of a choice*

- (10) Subsection (11) or (12) applies if at least one of the following amounts is recalculated after an entity has lodged its \*income tax return for an income year:
  - (a) the amount of a \*tax loss that the entity can deduct in that year;
  - (b) the amount of the difference between the entity's total assessable income for that

(other than \*tax losses) for that year;

- (c) the amount of the entity's \*net exempt income for that year;

whether or not the amount is recalculated in an amendment of the entity's assessment for that year, and whether or not the amount was a nil amount before the recalculation (or has become a nil amount after the recalculation).

(11) If:

- (a) before the recalculation, a choice under subsection (2) or (3) for the income year was not available to the entity; but
- (b) as a result of the recalculation, the choice has (apart from subsection (6)) become available to the entity;

the entity can make that choice by written notice given to the Commissioner.

(12) If:

- (a) the entity made a choice under subsection (2) or (3) for the income year; but
- (b) as a result of the recalculation, the entity wishes to change that choice;

the entity can do so by written notice given to the Commissioner.

section 170 of the *Income Tax Assessment Act 1936* (about amendment of assessments).

### 36-20 Net exempt income

- (1) If you are an Australian resident, your ***net exempt income*** is the amount by which your total \*exempt income from all sources exceeds the total of:
  - (a) the losses and outgoings (except capital losses and outgoings) you incurred in deriving that exempt income; and
  - (b) any taxes payable outside Australia on that exempt income.
- (2) If you are a foreign resident, your ***net exempt income*** is the amount (if any) by which the total of:
  - (a) your \*exempt income \*derived from sources in Australia; and
  - (b) your exempt income to which section 26AG (Certain film proceeds included in assessable income) of the *Income Tax Assessment Act 1936* applies; exceeds the total of:
    - (c) the losses and outgoings (except capital losses and outgoings) you incurred in deriving exempt income covered by paragraph (a) or (b); and

- (d) any taxes payable outside Australia on income covered by paragraph (b).

### 36-25 Special rules about tax losses

#### *Tax losses of individuals*

Item	For the special rules about this situation ...	See:
1.	You go bankrupt, or you are released from debts under a bankruptcy law: your right to deduct tax losses of an earlier income year may be affected.	Subdivision 36-B

#### *Tax losses of companies*

Item	For the special rules about this situation ...	See:
1.	A company has had a change of ownership or control during the income year, and has not satisfied the same business test: it works out its taxable income and its tax loss in a special way.	Subdivision 165-B
2.	A company wants to deduct a tax	Subdivision 165-A



loss. It cannot do

so unless:

- the same people owned the company during the loss year, the income year and any intervening year; and
- no person controlled the company's voting power at any time during the income year who did not also control it during the whole of the loss year and any intervening year;

*or* the company has satisfied the same business test.

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3.	One or more of these things happen:	Division 175
	<ul style="list-style-type: none"><li>• income is injected into a company;</li><li>• a tax benefit is obtained from available losses or deductions;</li><li>• a deduction is injected into a</li></ul>	

- a tax benefit is obtained because of available income.

The Commissioner can disallow tax losses or current year deductions.

4.	A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. (Both companies must be members of the same wholly-owned group.)	Subdivision 170-A
<i>See also: Tax losses of pooled development funds (PDFs) below</i>		
5.	A life insurance company	Subdivision 320-D

*Tax losses of corporate tax entities*

Item	For the special rules about this situation...	See:
1.	A corporate tax entity that has an amount of excess	Subdivision 36-C

banking assets for  
an income year: it  
works out its tax  
loss in a special  
way.

*Tax losses of entities generally*

Item	For the special rules about this situation ...	See:
3.	You have deductions in relation to deriving income under section 26AG of the <i>Income Tax Assessment Act 1936</i> from the proceeds of a film: your tax loss may have a film component, which is deductible from your film income only.	Former Subdivision 375-G

*Tax losses of pooled development funds (PDFs)*

Item	For the special rules about this situation ...	See:
1.	A company is a pooled development fund (PDF) at the end of an income year for which it has a tax loss: it can only deduct the loss while	Section 195-5

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2.	A company becomes a PDF during an income year: special rules affect how it works out a tax loss and how the loss is deducted in a later income year.	Section 195-15
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*Tax losses of VCLPs, ESVCLPs, AFOFs and VCMPs*

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Item	For the special rules about this situation ...	See:
1.	A limited partnership that has a tax loss becomes a VCLP, an ESVCLP, an AFOF or a VCMP: it cannot deduct the loss while it is a VCLP, an ESVCLP, an AFOF or a VCMP.	Subdivision 195-B

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*Tax losses of entities that become foreign hybrids*

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Item	For the special rules about this situation...	See:
1.	An entity that has a tax loss becomes a foreign hybrid: it cannot deduct the loss while it is a foreign hybrid.	Section 830-11

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*Tax losses of trusts*

Item	For the special rules about this subsection...	See:
1.	<p>A trust has had a change of ownership or control or there has been an abnormal trading in its units:</p> <ul style="list-style-type: none"> <li>• if this happens in the income year, it works out its net income and tax loss in a special way; or</li> <li>• if this happens at any time from the start of a loss year until the end of the income year, it cannot deduct a tax loss from the loss year.</li> </ul> <p>This will not be the case if the trust is an excepted trust. However, if it became one by making a family trust election, a special tax may be payable on certain distributions and other amounts.</p>	Divisions 266, 267 and 268 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>
2.	A trust is involved in a scheme to take advantage of deductions. The trust may be prevented from making full use of them.	Division 270 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>

## **bankrupt**

### **Guide to Subdivision 36-B**

#### **36-30 What this Subdivision is about**

After you become bankrupt, you cannot deduct a tax loss that you incurred beforehand. However, you may be able to deduct repayments of debts you incurred in the loss year.

#### **Table of sections**

##### **Operative provisions**

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| 36-35 | No deduction for tax loss incurred before bankruptcy            |
| 36-40 | Deduction for amounts paid for debts incurred before bankruptcy |
| 36-45 | Limit on deductions for amounts paid                            |

#### **Operative provisions**

##### **36-35 No deduction for tax loss incurred before bankruptcy**

- (1) If:
- (a) you became bankrupt; or
  - (b) you were released from a debt by the operation of an Act relating to bankruptcy;

before the income year, you cannot deduct a  
\*tax loss that you incurred before the day on  
which you either became bankrupt or were  
released.

(2) If:

- (a) you became bankrupt before the income  
year; and
- (b) the bankruptcy is later annulled under  
section 74 of the *Bankruptcy Act 1966*  
because your creditors have accepted  
your proposal for a composition or  
scheme of arrangement; and
- (c) under the composition or scheme of  
arrangement, you have been, will be or  
may be released from some or all of the  
debts from which you would have been  
released if you had instead been  
discharged from the bankruptcy;

you cannot deduct a \*tax loss that you incurred  
before the day on which you became bankrupt.

### **36-40 Deduction for amounts paid for debts incurred before bankruptcy**

*Tax losses generally*

(1) If:

- (a) you pay an amount in the income year for

income year; and

(b) you have a \*tax loss covered by

section 36-35 for that earlier income year; you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the tax loss.

*Film losses*

(2) If:

(a) you pay an amount in the income year for a debt that you incurred in an earlier income year; and

(b) you incurred the debt in the course of deriving or gaining \*assessable film income or \*exempt film income; and

(c) you also incurred a \*film loss covered by section 36-35 in that earlier income year; you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the film loss.

(3) A ***film loss*** is the \*film component (if any) of a \*tax loss.



(4) Your <sup>\*</sup>tax loss for an income year has a ***film component*** if your <sup>\*</sup>film deductions for the year exceed the sum of:

- (a) your <sup>\*</sup>assessable film income for the year; and
- (b) your <sup>\*</sup>net exempt film income for the year.

The amount of the ***film component*** is the excess or the tax loss, whichever is lesser.

(5) However, if your <sup>\*</sup>tax loss worked out under a provision listed in the table, the ***film component*** is what that tax loss would have been if:

- (a) your <sup>\*</sup>film deductions for the <sup>\*</sup>loss year had been your only deductions; and
- (b) your <sup>\*</sup>assessable film income for the loss year had been your only assessable income; and
- (c) your <sup>\*</sup>net exempt film income for the loss year had been your only <sup>\*</sup>net exempt income.

However, the ***film component*** cannot exceed the actual tax loss.

<b>Working out film component of tax loss</b>		
<b>Item</b>	<b>Provision</b>	<b>Type of entity</b>
1	165-70	Company— income year when ownership or control changed

		Company deductions that have been used to obtain a tax benefit disallowed
3	268-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>	Trust—income year when ownership or control changed

36-45 Limit on deductions for amounts paid

*Tax losses generally*

- (1) The total of your deductions under subsection 36-40(1) for amounts paid in the income year for debts incurred in the \*loss year cannot exceed the amount of the \*tax loss reduced by the sum of:
  - (a) your deductions under that subsection for amounts paid in earlier income years for debts incurred in the loss year; and
  - (b) any amounts of the tax loss deducted in earlier income years; and
  - (c) any amounts of the tax loss that, apart from section 36-35, would have been deductible from your \*net exempt income for the income year or earlier income years.

*Film losses*

(2) The sum of your deductions under subsection

36-40(2) for amounts paid in the income year for debts incurred in the \*loss year cannot exceed the amount of the \*film loss reduced by the sum of:

- (a) your deductions under that subsection for amounts paid in earlier income years for debts incurred in the loss year; and
- (b) any amounts of the film loss deducted in earlier income years; and
- (c) any amounts of the film loss that, apart from section 36-35, would have been deductible from your \*net exempt film income for the income year or earlier income years.

**Subdivision 36-C—Excess franking offsets**

**Guide to Subdivision 36-C**

**36-50 What this Subdivision is about**

Amounts of tax offsets to which a corporate tax entity is entitled under Division 207 and Subdivision 210-H may in some circumstances be converted into an amount of a tax loss for the entity.

**Table of sections**

**Operative provision**

36-55 Converting excess franking offsets into tax loss

**Operative provision****36-55 Converting excess franking offsets into tax loss***Excess franking offsets*

(1) An entity that is a \*corporate tax entity at any time during an income year has an amount of *excess franking offsets* for that year if:

- (a) the total amount of \*tax offsets to which the entity is entitled for that year under Division 207 and Subdivision 210-H (except those that are subject to the refundable tax offset rules because of section 67-25);

exceeds:

- (b) the amount of income tax that the entity would have to pay on its taxable income for that year if:
  - (i) it did not have those tax offsets; and
  - (ii) it did not have any tax offsets that are subject to the tax offset carry forward rules or the refundable tax offset rules; and
  - (iii) it did not have any tax offset under

section 203-10;

but had all its other tax offsets.

The excess is the amount of *excess franking offsets*.

Note: Division 65 sets out the tax offset carry forward rules. Division 67 sets out which tax offsets are subject to the refundable tax offset rules.

Example: For the 2002-2003 income year, Company E has:

- assessable income of \$200 (franked distribution of \$140 and franking credit of \$60); and
- \$100 of deductions that are allowable.

The tax offset of \$60 from the franking credit is not stated in Division 67 to be subject to the refundable tax offset rules.

Disregarding the tax offset of \$60 from the franking credit, the amount of income tax that Company E would have to pay is \$30:

~~$((\$140 + \$60) - \$100) \times 30\%$~~   
 This amount is \$30 less than the tax offset of \$60. Company E therefore has an amount of excess franking offsets of \$30 for that year.

*How to work out the amount of the tax loss*

- (2) For the purposes of this Act, if:
- an entity has an amount of \*excess franking offsets for an income year; and
  - the result of applying the following method statement is a positive amount;
- then:
- the entity is taken to have a \*tax loss for that year equal to that positive amount (instead of an amount of tax loss worked

out under section 36-10, 165-70, 175-35 or 701-30); and

- (d) that year is taken to be a \*loss year for the entity if the entity would not otherwise have a tax loss for that year.

*Method statement*

Step 1. Work out the amount (if any) that would have been the entity's \*tax loss for that year under section 36-10, 165-70, 175-35 or 701-30 if the entity's \*net exempt income for that year (if any) were disregarded.

Note: See section 36-20 for the calculation of net exempt income.

Step 2. Divide the amount of \*excess franking offsets by the \*corporate tax rate.

Step 3. Add the results of steps 1 and 2.

Step 4. Reduce the result of step 3 by the entity's \*net exempt income for that year (if any).

The result of this step is taken to be the entity's \*tax loss for that year.

However, if the result of this step is nil or a negative amount, the company does not have any tax loss for that year.

Example: Assume that company E did not derive any exempt income for the 2002-2003 income year and that it would not otherwise have any tax loss for that year under section 36-10, 165-70, 175-35 or 701-30.

Applying the method statement, the amount of excess franking offsets of \$30 generates a tax loss of \$100 for that year, which can be deducted in a later income year under section 36-15 or 36-17.