This is Prototype 4 of the Tax Value Method Demonstration Legislation. It is published by the Board of Taxation for the purposes of public consultation. It has not been considered or endorsed by the Government.

Income Tax Assessment (Tax Value Method) Bill 200?

ISBN 0 642 74100 X

Disclaimer

While all care has been taken to assure the highest possible standards and accuracy of the contents of this publication, no person is entitled to place legal reliance on it. Any specific or other tax advice required should be obtained from a qualified professional person.

Status of the demonstration legislation and explanatory material

1. The tax value method (TVM) demonstration legislation and accompanying explanatory material have been prepared under the auspices of the Board of Taxation. They set out the legislative framework that the Board has developed to effectively demonstrate the TVM concept and to allow comprehensive evaluation and testing of it. Depending on outcomes, the Board ultimately will make recommendations to the Government as to whether TVM should or should not proceed.

2. As such, the demonstration legislation and explanatory material have not been endorsed by the Treasurer or any other Minister, nor does it reflect the official views of the Treasury, the Australian Taxation Office, the Office of the Parliamentary Counsel or the Board of Taxation.

Work in progress

3. The demonstration legislation and explanatory material are works in progress (‘prototypes’). This is the fourth prototype TVM demonstration legislation to be released since the Board’s consultative process began early in 2001. This prototype and explanatory material are not being put forward as the final product or even as what the final product would necessarily look like. Rather, they are being exposed as the present state of the TVM demonstration legislation. Should the process continue, significant additions and deletions could be made to these drafts in the future.

4. It is important to recognise also that in developing the TVM demonstration legislation and explanatory material it has been necessary, in some circumstances, to make assumptions about the taxation treatment of particular transactions. As with the demonstration legislation and explanatory material themselves, those assumptions may be subject to change with further consideration of the issues, and should be regarded as in no way prejudicing any future consideration the Government may give to the relevant issues.

Comments Welcome

5. The exposure of the demonstration legislation and explanatory material reflects a broad consultative approach being taken to this particular piece of legislation by the Board of Taxation. This recognises the potential importance of TVM to the income tax system and the Board's wish to evaluate TVM in light of all perspectives.

6. Comments on the demonstration legislation and explanatory material are welcome. Comments in writing should be addressed to:

The Board of Taxation
C/- The Treasury
Langton Crescent
PARKES ACT 2600

7. Alternatively, comments can be e-mailed to the Board of Taxation Secretariat through its website at 'www.taxboard.gov.au'.

Contents

The Parliament of Australia enacts:

Chapter 1—Introduction and core rules

Part 1-1—Preliminary

Division 1—Preliminary

Table of sections

1-1 Short title

This Act may be cited as the *Income Tax Assessment (Tax Value Method) Act 200?*.

1-2 Commencement

This Act commences on 1 July 200?.

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

Part 1-2—A Guide to this Act

> *Additional Guide material will be included here, and in later Divisions and Subdivisions, as the legislation develops.*

Division 2—What this Act is about

Table of sections

2-5 Annual income tax

(1) Income tax is payable for each year by each individual and 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*.

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.

To find out what instalments of income tax you have to pay, and when and how you pay them, see Parts 2-1, 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) This Act is principally concerned with how you work out how much income tax you must pay.

See Division 4, starting at section 4-1.

———————————

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

(4) The *Taxation Administration Act 1953* deals with these questions relating to your income tax:

1. What happens if your income tax is *more* than the instalments you have paid? When and how must you pay the rest?
2. What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?
3. What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?

See section 2-10 of this Act.

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

See section 2-15 of this Act.

5. If a dispute between you and the Commissioner of Taxation cannot be settled by agreement, what procedures for objection, review and appeal are available?

2-10 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; and

(b) to lodge returns.

Tax file numbers

(2) 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.

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

2-15 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 Division 16 in Schedule 1 to the *Taxation Administration Act 1953*.

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

Division 3—How to use this Act

Table of Subdivisions

Subdivision 3-A—How to find your way around

3-1 The design

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

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

(3) You can start at Division 2 (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.

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

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

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

Table of sections

3-10 When defined terms are identified

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

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

3-15 When terms are *not* identified

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

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

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

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

(4) This is the first:

Key participants in the income tax system

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

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

Key participants in the income tax system

Item	This term:	is defined in:
4	entity	section 995-1
5	foreign resident	section 995-1
6	individual	section 995-1
7	partnership	section 995-1
8	person	section 995-1
9	trustee	section 995-1
10	you	section 4-5

(5) This is the second:

Core concepts

Item	This term:	is defined in:
1	amount	section 995-1
2	assessment	section 995-1
3	asset	section 10-15
4	have (a liability)	sections 12-20, 24-110 and 24-200
5	hold (an asset)	sections 10-20, 24-10, 24-100 and 545-215
6	income tax	section 995-1
7	income year	section 995-1
8	liable	section 995-1
9	liability	section 12-15
10	net income	section 6-55
11	pay	sections 6-65 and 6-70
12	receive	sections 6-65 and 6-70
13	taxable income	section 6-15
14	tax value	Division 10 (for assets) and Division 12 (for liabilities)

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

3-20 Identifying the defined term in a definition

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

Subdivision 3-C—The numbering system

3-25 Purposes

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

- To indicate the relationship between units at different levels.

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

- To allow for future expansion of the Act by the insertion of new Divisions and sections. The main technique here is leaving gaps between numbers.

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

Table of sections

3-35 Non-operative material

(1) In addition to the operative provisions, 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.

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

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

3-40 Guides

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

(2) Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 905-150.

3-45 Other material

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

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

Part 1-3—How to work out your income tax

Division 4—Who must pay income tax

> *Chapter 24 of the Explanatory Material sets out a table that relates the provisions of this Demonstration Legislation to the corresponding provisions of the current income tax law.*

Table of sections

4-1 Individuals, companies and other entities

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

For a full list of who must pay income tax, see section 220-1.

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

Note 2: An entity that is exempt under Division 510 does not have to pay income tax.

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

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

4-10 Annual income tax

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

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

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

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

Note: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 60-20 in Schedule 1 to the *Taxation Administration Act 1953* [planned equivalent of section 18 of the *Income Tax Assessment Act 1936*].

4-15 Australian residents and foreign residents

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

Where to find the rules for working out your income tax

Item	**In this case:**	**See:**
1	You are an Australian resident throughout the income year	Division 5
2	You are a foreign resident during some or all of the income year	Part 5-5

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

Part 1-5—How to work out your income tax if you are an Australian resident

Division 5—Income tax

5-10 How to work out your income tax

Income tax = [Taxable income × Rate(s)] – Tax offsets

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

Method statement

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

To do this, see section 6-15.

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*.

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

For the list of tax offsets, see Division 178.

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

Step 4.	Work out the tax offsets (if any) that you can carry forward from earlier income years and apply in this income year.
	See Division 180.
Step 5.	Subtract the step 3 and step 4 amounts from your basic income tax liability. If the result is a positive amount, it is the amount of income tax you owe for the income year. Otherwise, you do not owe any income tax for the income year.
	Note: If the result is a negative amount, see Division 8 (about excess tax offsets).

Note: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year based on the amount of their taxable income. See the *Medicare Levy Act 1986*.

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

Division 6—Taxable income

Table of Subdivisions

Subdivision 6-A—What makes up taxable income

6-15 How to work out your taxable income for an income year

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

$$\text{Net income} + {}^{*}\text{Taxable income adjustment} - {}^{*}\text{Unused tax losses}$$

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

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

Note: You may, however, have a tax loss for the income year, which may reduce your taxable income in a later income year. See Division 170.

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

Special cases

Item	**For this case:**	**See:**
1	A company does not maintain continuity of ownership and control during the income year	Subdivision 300-B [equivalent of Subdivision 165-B of the *Income Tax Assessment Act 1997*]
2	[*Further cases to be added as required*]	

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

Subdivision 6-B—Net income

Table of sections

The net income formula

Receipts and payments

Closing and opening tax values

> *Rules will be developed to give effect to Recommendation 4.4 of the Final Report of the Review of Business Taxation (under which individuals would take into account only specified assets and liabilities in working out their taxable income).*

The net income formula

6-50 Object of this Subdivision

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

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

(b) takes account of all your receipts and payments during the income year, and of the tax value of all your assets and liabilities at the start and end of the income year (except so

---

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

far as any of them are excluded by other provisions of this Act).

Note: For example, in working out an individual's net income, most items of a private or domestic nature are disregarded. See Division 222.

6-55 How to work out your net income

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

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

Method statement

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

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

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

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

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

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

Note 1: In working out an individual's net income, most items of a private or domestic nature are disregarded. See Division 222.

Note 2: Pre-CGT investment assets, and receipts and payments relating to them, are disregarded in working out net income. See Division 50.

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

6-60 Alternative method for entities without private items to calculate their receipts and payments

The following steps can be used to work out the result of steps 1 and 2 of the *net income formula for an entity other than:

(a) an individual; or

(b) a partnership, if at any time during the income year an individual was a partner in the partnership.

(The result of step 2 may be a negative amount.)

Method statement
Step 1. Add up the money in hand the entity held at the *end* of the income year.
Step 2. Subtract from the step 1 result the money in hand the entity held at the *start* of the income year.

Receipts and payments

6-65 Receipts and payments: amounts lost or found

(1) When you find money, you are taken to ***receive*** it.

(2) When you lose money, you are taken to ***pay*** it.

6-70 Receipts and payments: amounts that are applied or dealt with for you

(1) You are taken to ***receive*** an amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

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

Example: Cogal Ltd owes money to Andrew. Andrew and Cogal agree that, instead of paying the money to him, Cogal will pay it to Intones Pty Ltd for music lessons to be provided to Andrew's daughter.

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

Subsection (1) treats Andrew as receiving the money when it is paid to Intones. Subsection (2) treats Andrew as then paying the money to Intones for the music lessons.

6-75 Notional receipts and payments

The table lists provisions under which you are taken to receive and pay amounts.

Notional receipts and payments

Item	These provisions:	Deal with this topic:
1	Subdivision 16-B	Short-term trade credit
2	Subdivision 16-C	Two-sided non-cash transactions
3	Subdivision 16-D	One-sided non-cash transactions
4	Subdivision 16-E	Splitting, merging, transforming and substituting assets or liabilities
5	Subdivision 28-B	Notional receipts and payments when uncertain obligation becomes certain etc

Closing and opening tax values

6-80 Closing tax value

The ***closing tax value*** of an asset that you hold, or a liability that you have, at the end of an income year is the tax value of the asset or liability at the *end* of the income year.

See Division 10 (for assets) and Division 12 (for liabilities).

6-85 Opening tax value

(1) The ***opening tax value*** of an asset that you hold, or a liability that you have, at the start of an income year is the same as the *closing tax value of the asset or liability that was taken into account in working out your net income for the previous income year.

(2) If no closing tax value was so taken into account, the ***opening tax value*** is a nil amount.

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

Subdivision 6-C—Taxable income adjustment

Table of sections

6-90 How to work out your taxable income adjustment

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

$$^{*}\text{Upward adjustments} - {}^{*}\text{Downward adjustments}$$

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

For a list of all upward and downward adjustments, see Division 95.

6-95 Downward or upward adjustment for net exempt income

(1) You have a *downward adjustment or *upward adjustment for an income year if you have *net exempt income for the income year.

To work out your net exempt income for the income year, see Division 130.

(2) If the *net exempt income is a positive amount, you have a ***downward adjustment*** equal to that amount

(3) If the *net exempt income is a negative amount, you have an ***upward adjustment*** equal to that amount (expressed as a positive amount).

Subdivision 6-D—Unused tax losses

Rules are being developed about how tax losses are carried forward and applied in working out taxable income for later income years. Division 170 tells you how to work out your tax loss for an income year.

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

Division 8—Excess tax offsets

8-10 Refundable tax offsets

If you have *tax offsets that are subject to the refundable tax offset rules in Division 182 and whose total exceeds your basic income tax liability, you can, after allowing certain other tax offsets, get a refund of the excess under section 182-30 [equivalent of section 67-30 of the *Income Tax Assessment Act 1997*].

8-15 No refund in other cases

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

Note: However, some tax offsets can be carried forward to a later year. See Division 180.

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

Part 1-7—Assets and liabilities

Division 10—Assets and their tax value

Guide to Division 10

10-1 What this Division is about

> This Division establishes these fundamental concepts:
>
> (a) asset;
>
> (b) holding an asset;
>
> (c) tax value of an asset.
>
> They play a crucial role in determining the extent to which changes in your economic position are recognised in your net income so as to affect your taxable income.

Table of sections

[This is the end of the Guide.]

Operative provisions

10-15 Meaning of *asset*

An ***asset*** is anything that embodies future economic benefits.

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

Note 1: The 2 main kinds of future economic benefits come from using the asset, and from disposing of it.

Note 2: An asset can be something that is created or acquired. It may or may not be property. It may be tangible or intangible. It may be capable or not capable of being traded.

Note 3: Whether a particular composite item is itself an asset, or whether its components are separate assets, is a question of fact and degree to be determined in the light of all the circumstances of the particular case.

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

Note 4: For special rules about identifying assets, see Subdivision 22-A.

10-20 Who *holds* an asset: general rules

The table sets out general rules for working out who ***holds*** an asset (if anyone does).

Note: There are special rules that override the general rules. The special rules are in section 24-10, and in the provisions set out in section 24-100.

General rules about who holds an asset

Item	For this kind of asset:	This is the rule:
1	An asset that is any kind of property	The owner of the property, or the legal owner if there is both a legal and equitable owner, ***holds*** the asset
2	An asset that is a legal or equitable right that is not property	The owner of the right, or the legal owner if there is both a legal and equitable owner, ***holds*** the asset
3	Information: (a) that an entity acquires from another entity (except one that the first entity engaged to generate the information for it); and (b) whose *cost is mainly attributable to the information not being generally available	The acquiring entity ***holds*** the asset so long as the information is not generally available

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

General rules about who holds an asset		
Item	**For this kind of asset:**	**This is the rule:**
4	Any other asset	No entity ***holds*** the asset

10-40 Tax value of an asset

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

Tax value of an asset		
Item	**For this kind of asset:**	**The tax value at that time is:**
1	A *listed zero tax value asset (see Division 68), even if it is also covered by another item in this table	Nil
2	An item of *trading stock	The amount worked out under Division 70
3	A *depreciating asset	The amount worked out under Division 72 or Subdivision 545-C
4	A *market value asset (whose tax value you have chosen under Division 74 to work out on a market value basis)	The asset's *market value at that time
5	A *financial asset (except a *market value asset)	The amount worked out under Division 76
6	An *investment asset (any other asset that you hold)	The amount worked out under Division 78 (usually the cost of the asset at that time)

Note: For the cost of an asset, see Division 14.

Tax value cannot be less than nil

(2) The ***tax value*** of an asset is nil if, apart from this subsection, it would be less than nil.

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

Division 12—Liabilities and their tax value

Guide to Division 12

12-1 What this Division is about

This Division establishes these fundamental concepts:

(a) liability;

(b) having a liability;

(c) tax value of a liability.

They play a crucial role in determining the extent to which changes in your economic position are recognised in your net income so as to affect your taxable income.

Table of sections

[This is the end of the Guide.]

Operative provisions

12-15 Meaning of *liability*

(1) A ***liability*** consists of one or more obligations to provide future economic benefits. (The entity to which an obligation is owed need not be the entity to which the benefits are to be provided.)

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

Note 1: Whether a particular collection of obligations is itself a liability, or whether those obligations (and which of them) are separate liabilities, is a question of fact and degree to be determined in the light of all the circumstances of the particular case.

Note 2: For special rules about identifying liabilities, see the rest of this section and Subdivision 22-B.

(2) The amount of a company's *paid up share capital is taken to be a ***liability***.

(3) [*Similar rule for trusts.*]

(4) To avoid doubt, a lessor is taken:

(a) to have an obligation to provide to the lessee the future economic benefits embodied in the asset that the lessee holds because of the lease; and

(b) to perform that obligation continuously over the term of the lease.

When a liability increases or decreases

(5) A liability ***increases*** when there is an increase in the future economic benefits to be provided.

(6) A liability ***decreases*** when there is a decrease in the future economic benefits to be provided (otherwise than because the benefits are provided under the liability).

12-20 Who *has* a liability: general rules

The table sets out general rules for working out who ***has*** a liability (if anyone does).

General rules about who has a liability

Item	For this kind of liability:	This is the rule:
1	A liability that consists of a present legal or equitable obligation	The entity that owes the obligation ***has*** the liability
2	Any other liability	No entity ***has*** the liability

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

Note 1: There are special rules that override the general rules. The special rules are in section 24-110, and in the provisions set out in section 24-200.

Note 2: There can be a present legal or equitable obligation even though performance of the obligation is subject to some contingency being met. For example, the grantor of an option has such an obligation until the grantee exercises the option. For rules relevant to contingent obligations, see Division 28.

12-40 Tax value of a liability

(1) The table tells you how to work out the ***tax value*** at a particular time of a liability you have.

Tax value of a liability

Item	**For this kind of liability:**	**The tax value at that time is:**
1	A *listed zero tax value liability (see Division 68), even if it is also covered by another item in this table	Nil
2	A *depreciating liability	The amount worked out under Division 72
3	A *market value liability (whose tax value you have chosen under Division 74 to work out on a market value basis)	The liability's *market value at that time
4	A *financial liability (except a *market value liability)	The amount worked out under Division 76
5	The amount of a company's *paid up share capital	That amount
6	[*Similar rule for trusts.*]	
7	Any other liability	The *proceeds (as at that time) of incurring the liability

Note: For the proceeds of incurring a liability, see Division 14.

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

Tax value cannot be less than nil

(2) The ***tax value*** of a liability is nil if, apart from this subsection, it would be less than nil.

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

Division 14—Cost and proceeds of assets and liabilities

Guide to Division 14

14-1 What this Division is about

> The cost of an asset, and the proceeds of incurring a liability, are essential building blocks in working out the tax value of the asset or liability.
>
> The proceeds of realising an asset, and the cost of extinguishing a liability, are sometimes necessary for working out the gain or loss on the asset or liability, and for other purposes.

Table of sections

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

[This is the end of the Guide.]

Cost of an asset and proceeds of realising an asset

14-20 Cost of an asset

(1) At a particular time, the ***cost*** of an asset you hold is the total of:

(a) each amount that has been included in the *first element at or before that time (or nil if no amount has been so included); and

(b) each amount that has been included in the *second element at or before that time (or nil if no amount has been so included).

(2) An amount you pay is included in the ***first element*** or ***second element*** only to the extent that the amount is *reasonably attributable to the asset.

Note 1: For items excluded from the cost of an asset, see section 14-35.

Note 2: For special rules about the cost of an asset, see section 26-20.

14-25 First element of cost

(1) An amount you pay in order to start holding the asset is included in the ***first element*** when you pay it, or when you start to hold the asset (if that happens later).

Note 1: These are examples of amounts included in the first element:

- if you acquire the asset from someone else: the amount you paid for the asset;
- if you create the asset: amounts you paid in order to create it;
- amounts you paid incidental to acquiring or creating the asset.

Note 2: In a range of situations, Division 16 and Subdivision 28-B may treat you as having paid an amount for the asset.

(2) The amount of a decrease in the total of the tax values of your other assets that is attributable to your starting to hold the asset is included in the ***first element*** when the decrease happens, or when you start to hold the asset (if that happens later).

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

Example 1: You have a right to get a car because of a prepayment. When you get the car, the right disappears, so that its tax value is no longer included in the total of the tax values of your other assets. The decrease in that total is included in the first element of the cost of the car.

Example 2: You exercise a call option granted to you over shares. When the shares are transferred to you, your rights under the call option disappear, so that its tax value is no longer included in the total of the tax values of your other assets. The decrease in that total is included in the first element of the cost of the shares.

(3) The amount of a decrease in the total of the tax values of your liabilities that is attributable to your starting to hold the asset *reduces* the ***first element*** when the decrease happens, or when you start to hold the asset (if that happens later).

Example: You grant a put option over shares. The grantee exercises the option. When the shares are transferred to you, your liability under the put option disappears, so that its tax value is no longer included in the total of the tax values of your liabilities. The decrease in that total reduces the first element of the cost of the shares.

14-30 Second element of cost

(1) An amount you pay in order to bring the asset to its condition and location from time to time is included in the ***second element*** when you pay it.

Note 1: These are examples of amounts included in the second element:

- amounts you pay for improving the asset or otherwise increasing its economic value;
- amounts you pay for making the asset ready for use or sale.

Note 2: In a range of situations, Division 16 and Subdivision 28-B may treat you as having paid an amount in order to bring the asset to its present condition and location.

(2) The amount of a decrease in the total of the tax values of your other assets that is attributable to bringing the asset to its condition and location from time to time is included in the ***second element*** when the decrease happens.

Example: You have a right to get services over a period of years. As you get the services, you use them to improve an asset you hold. The decline in tax value of the right over that period is included in the second element of the cost of the asset.

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

(3) The amount of a decrease in the total of the tax values of your liabilities that is attributable to bringing the asset to its condition and location from time to time *reduces* the ***second element*** when the decrease happens.

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

(4) If the asset is *land, each amount you pay, to the extent that it is *reasonably attributable to the land and is of a *private or domestic nature, is included in the ***second element*** when you pay it.

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

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

(5) For each amount that subsection (4) includes in the *cost of *land, a ***loss reduction amount*** arises for the land.

Note: When you cease to hold the asset, the loss reduction amount may give rise to an upward adjustment under item 3 of the table in section 101-10.

14-35 Items excluded from cost of an asset

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

(a) interest on money *borrowed; or

(b) an amount to the extent that you have paid it in order to maintain, repair or insure the asset; or

(c) rates or land tax.

Note: An amount does not become included in the cost of an asset held by an individual or partnership if paragraph 222-10(1)(a) (about payments of a private or domestic nature) has prevented some or all of the amount from being taken into account under step 2 of the net income formula for an earlier income year. See subsection 222-10(3).

There is a similar rule for collectables held by an individual or partnership: see subsection 234-30(2).

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

(2) If the asset is *land, its ***cost*** includes an item covered by subsection (1) of this section, but only to the extent that subsection 14-30(4) provides.

14-40 Proceeds of realising an asset

The ***proceeds of realising*** an asset are the total of:

(a) each amount you receive, before or at the time when you stop holding the asset, because you stop holding it (to the extent that the amount is *reasonably attributable to the asset); and

(b) the amount of each decrease in the total of the tax values of your liabilities that is attributable to your ceasing to hold the asset;

reduced by the amount of each decrease in the total of the tax values of your other assets that is attributable to your ceasing to hold the asset.

Note 1: In a range of situations, Division 16 and Subdivision 28-B may treat you as receiving an amount for the asset.

Note 2: For special rules about the proceeds of realising an asset, see section 26-35.

Example 1: You have a liability to give a car because of a prepayment. When you give the car, the liability disappears, so that its tax value is no longer included in the total of the tax values of your liabilities. The decrease in that total is included in your proceeds of realising the car.

Example 2: You grant a call option over shares. The grantee exercises the option. When you transfer the shares, your liability under the call option disappears, so that its tax value is no longer included in the total of the tax values of your liabilities. The decrease in that total is included in your proceeds of realising the shares.

Example 3: You exercise a put option granted to you over shares. When you transfer the shares, your rights under the put option disappear, so that its tax value is no longer included in the total of the tax values of your other assets. The decrease in that total reduces your proceeds of realising the shares.

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

Proceeds of incurring, and cost of extinguishing, a liability

14-75 Proceeds of incurring a liability

(1) At a particular time, the ***proceeds of incurring*** a liability you have are the total of:

(a) each amount that has been included in the *first element at or before that time (or nil if no amount has been so included); and

(b) each amount that has been included in the *second element at or before that time (or nil if no amount has been so included).

(2) An amount you receive is included in the ***first element*** or ***second element*** only to the extent that the amount is *reasonably attributable to the liability.

Note 1: For special rules about the proceeds of incurring a liability, see section 26-75.

Note 2: An amount you receive does not become included in proceeds of incurring a liability of an individual or partnership if paragraph 222-20(1)(a) (about receipts of a private or domestic nature) has prevented some or all of the amount from being taken into account under step 1 of the net income formula for an earlier income year. See subsection 222-20(3).

14-80 First element of proceeds

(1) If:

(a) you start to have the liability because you receive one or more amounts; or

(b) you receive one or more amounts because you start to have the liability;

each amount is included in the ***first element*** when you receive it, or when you start to have the liability (if that happens later).

Note: In a range of situations, Division 16 and Subdivision 28-B may treat you as having received an amount for starting to have the liability.

(2) The amount of a decrease in the total of the tax values of your other liabilities that is attributable to your starting to have the

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

liability is included in the ***first element*** when the decrease happens, or when you start to have the liability (if that happens later).

Example: You grant a put option over a liability to make a stream of payments. The grantee exercises the option. When you assume the liability, your liability under the put option disappears, so that its tax value is no longer included in the total of the tax values of your other liabilities. The decrease in that total will be included in the first element of your proceeds of incurring the liability to make the stream of payments.

(3) The amount of a decrease in the total of the tax values of your assets that is attributable to your starting to have the liability *reduces* the ***first element*** when the decrease happens, or when you start to have the liability (if that happens later).

Example: You exercise a call option granted to you over a liability to make a stream of payments. When you assume the liability, your rights under the call option disappear, so that its tax value is no longer included in the total of the tax values of your assets. The decrease in that total reduces the first element of your proceeds of incurring the liability to make the stream of payments.

14-85 Second element of proceeds

(1) If:

(a) the liability *increases because you receive one or more amounts; or

(b) you receive one or more amounts because the liability increases;

each amount is included in the ***second element*** when you receive it or at the time of the increase (if that happens later).

Note: In a range of situations, Division 16 and Subdivision 28-B may treat you as having received an amount because the liability increased.

(2) The amount of a decrease in the total of the tax values of your other liabilities that is attributable to the liability increasing is included in the ***second element*** when the decrease in that total happens, or when the liability increases (if that happens later).

(3) The amount of a decrease in the total of the tax values of your assets that is attributable to the liability increasing *reduces* the

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

second element when the decrease in that total happens, or when the liability increases (if that happens later).

14-90 Cost of extinguishing a liability

The ***cost of extinguishing*** a liability is the total of:

(a) each amount you pay, before or at the time when you stop having the liability, in order to stop having it (to the extent that the amount is *reasonably attributable to the liability); and

(b) the amount of each decrease in the total of the tax values of your assets that is attributable to your ceasing to have the liability;

reduced by the amount of each decrease in the total of the tax values of your other liabilities that is attributable to your ceasing to have the liability.

Note 1: In a range of situations, Division 16 and Subdivision 28-B may treat you as paying an amount in order to stop having the liability.

Note 2: For special rules about the cost of extinguishing a liability, see section 26-90.

Example 1: You exercise a put option granted to you over a liability you have to make a stream of payments. When the grantor of the put option assumes your liability, your rights under the option disappear, so that its tax value is no longer included in the total of the tax values of your assets. The decrease in that total is included in your cost of extinguishing the liability to make the stream of payments.

Example 2: You grant a call option over a liability you have to make a stream of payments. The grantee exercises the option. When the grantee assumes your liability, your liability under the call option disappears, so that its tax value is no longer included in the total of the tax values of your other liabilities. The decrease in that total reduces your cost of extinguishing the liability to make the stream of payments.

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

Apportionment etc

14-120 How much of an amount is reasonably attributable to something (such as an asset or liability)

If some but not all of an amount is reasonably attributable to something (for example, an asset or liability), how much of the amount is ***reasonably attributable*** to that thing must be worked out having regard to the relative *market values, at the time when the amount is paid or received, of:

(a) that thing; and

(b) everything else to which any of the amount is reasonably attributable.

14-130 No double-counting

(1) This section is to avoid doubt.

(2) The *cost of an asset you hold at a particular time does not include an amount, to the extent that the amount is included in:

(a) the cost of another asset you hold at that time (even if the tax value at that time of one or both of the assets is not worked out by reference to cost); or

(b) your *cost of extinguishing a liability.

(3) Your *proceeds of realising an asset do not include an amount, to the extent that the amount is included in your proceeds of realising another asset.

(4) The *proceeds of incurring a liability you have at a particular time do not include an amount, to the extent that the amount is included in:

(a) the proceeds of incurring another liability you have at that time (even if the tax value at that time of one or both of the liabilities is not worked out by reference to the proceeds of incurring); or

(b) your proceeds of realising an asset.

---

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

(5) Your cost of extinguishing a liability does not include an amount, to the extent that the amount is included in your cost of extinguishing another liability.

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

Division 16—Notional receipts and payments

Table of Subdivisions

Guide to Division 16

16-1 What this Division is about

In various situations where:

- you start or stop holding an asset otherwise than for money only; or
- you start or stop having a liability otherwise than for money only;

this Division treats you as having received an amount and then paid it.

This is necessary in order to work out:

- the cost of assets; and
- the proceeds of realising assets; and
- the proceeds of incurring liabilities; and

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

- the cost of extinguishing liabilities.

Because the amount you are to taken to receive always equals the amount you are taken to pay, the amounts will not increase or decrease your net income. However, in the case of an individual (or partnership in which an individual is a partner), net income *will* be affected if one of the amounts is of a private or domestic nature or relates to a private asset or liability.

Subdivision 16-A—Objects and common rules

Table of sections

16-5 Objects

The objects of this Division are:

(a) to ensure that:
  (i) *non-cash benefits are appropriately taken into account in working out your taxable income; and
  (ii) their difference in form from receipts and payments of money does not result in different income tax outcomes; and

(b) to simplify the income tax law by providing a consistent treatment for non-cash benefits; and

(c) to support the rules for working out:
  (i) the tax value of assets and liabilities; and
  (ii) the proceeds of realising assets; and
  (iii) the cost of extinguishing liabilities.

16-10 Amounts you are taken to receive or pay

An amount that you are taken to receive or pay for something because of this Division is taken into account (for example, in

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

working out the *cost of an asset under section 14-20) *in addition to*:

(a) any amount that you *actually* receive or pay for that thing; and

(b) any other amount that you are taken to receive or pay because of this Division or any other provision of this Act.

Example: If an asset is split into 2 or more assets under an arrangement that involves you both giving and getting non-cash benefits, you may be taken to receive or pay one amount because of Subdivision 16-E and another because of Subdivision 16-C.

Subdivision 16-B—Short-term trade credit

16-15 Treatment of debtor and creditor

(1) This section treats amounts as being received and paid if:

(a) under an *arrangement, an entity (the ***debtor***) starts to have a *financial liability to another entity (the ***creditor***); and

(b) the financial liability is covered by item 2 of the table in section 76-115; and

Note: Item 2 sets out the tax value a financial liability to pay an amount for getting a non-cash benefit (other than a financial asset) if the amount:

- must be paid within 12 months after the liability comes into existence; or
- would have to be paid within those 12 months if each uncertain obligation that the liability consists of or includes were a certain obligation.

(c) the only economic benefits that the debtor gets under the arrangement are the one or more *non-cash benefits that the financial liability is for; and

(d) the only economic benefits that the creditor gets under the arrangement are:

(i) the *financial asset corresponding to the financial liability; and

(ii) any amounts that the debtor pays.

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

Note: An arrangement *not* covered by this section may be covered by section 16-25 (about two-sided non-cash transactions).

(2) Amounts are taken to have been received and paid when the debtor started to have the *financial liability. Those amounts are worked out under the table in subsection (4) by reference to the financial liability's tax value at that time (the ***base amount***).

(3) Amounts are also taken to have been received and paid each time the tax value of the financial liability increases. Those amounts are worked out under the table in subsection (4) by reference to the amount of the increase (also the ***base amount***).

Note: The tax value of the financial liability can increase because of the determination of a contingency on which depends an obligation that the liability consists of or includes.

(4) This is the table.

Notional receipts and payments

Item	**This entity**	**Is taken to have received an amount equal to the base amount:**	**And is taken to have paid the same amount:**
1	The debtor	because of starting to have the *financial liability	for the one or more *non-cash benefits that the debtor *got
2	The creditor	for the one or more *non-cash benefits that the debtor *got	for the *financial asset that the creditor starts to hold and that corresponds to the *financial liability

Subdivision 16-C—Two-sided non-cash transactions

Table of sections

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

16-25 How a two-sided non-cash transaction is treated

(1) You are treated as having received and paid amounts if:

(a) under an *arrangement, you *give one or more *non-cash benefits; and

(b) under the same arrangement, you *get one or more *non-cash benefits; and

(c) the arrangement is not covered by section 16-15 (about short-term trade credit).

Note 1: This section treats you as:

- *selling* the non-cash benefits you *give*; and
- *buying* the non-cash benefits you *get*;

for an amount equal to the market value of the benefits you get.

Note 2: If any of the non-cash benefits you give and get consist of uncertain obligations, see Division 28 (about contingent assets and liabilities).

The $300 exemption for non-cash business benefits (see subsection 23L(2) of the Income Tax Assessment Act 1936) will be included in the draft legislation later.

(2) For the one or more *non-cash benefits you **give*, you are taken to *receive* an amount equal to the *market value, or the total of the market values, of the one or more non-cash benefits you **get*. (The market value of each non-cash benefit you get is determined as at when you get it.)

Note: To work out how much of the amount you are taken to receive is reasonably attributable to each non-cash benefit you give, see section 14-120.

(3) For the one or more *non-cash benefits you **get*, you are taken to *pay* the amount you are taken to receive under subsection (2).

Note: To work out how much of the amount you are taken to pay is reasonably attributable to each non-cash benefit you get, see section 14-120.

(4) You are taken to receive the amount under subsection (2) when you *give the one or more *non-cash benefits. You are taken to pay

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

the amount under subsection (3) when you *get the one or more non-cash benefits.

If you actually pay an amount under the arrangement

(5) If you actually pay one or more amounts under the *arrangement, the amount you are taken to *receive* under subsection (2), and to *pay* under subsection (3), is worked out using this formula:

$$\frac{\text{NCBs you give}}{(\text{NCBs you give} + \text{Payments})} \times \text{NCBs you get}$$

(6) For the purposes of the formula in subsection (5):

NCBs you get means the *market value, or the total of the market values, of the one or more *non-cash benefits you *get under the *arrangement.

NCBs you give means the *market value, or the total of the market values, of the one or more *non-cash benefits you *give under the *arrangement.

Payments means the total of the one or more amounts you actually pay under the *arrangement.

Note: If you also actually *receive* one or more amounts under the arrangement, see section 16-35.

16-35 Setting off cash on both sides of the transaction

(1) Section 16-25 applies differently if, at or soon after the time when the *arrangement begins to be carried out:

(a) you actually *pay* one or more amounts under the *arrangement; and

(b) you also actually *receive* one or more amounts.

(2) The one or more amounts you actually *pay* are set off against the one or more amounts you actually *receive*. Section 16-25 applies as if, to the extent of the set off, the amounts had been paid and

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

received under a separate *arrangement, instead of under the arrangement referred to in subsection 16-25(1).

> *Work is continuing on the appropriate treatment of executory contracts. This work will result in changes to Subdivision 16-C, and perhaps also consequential changes to sections 68-45 and 68-50 about routine rights and liabilities.*

Subdivision 16-D—One-sided non-cash transactions

Table of sections

16-55 Getting a non-cash benefit for nothing

If:

(a) you *get from another entity a *non-cash benefit consisting of, or including, something other than an *uncertain obligation that the other entity starts to have; and

(b) you pay nothing, and you *give no non-cash benefit, to any entity at any time for the non-cash benefit you get;

you are taken:

(c) to receive an amount equal to the *market value of the benefit; and

(d) to pay the same amount for the benefit;

at the time when you get the benefit.

Note 1: Depending on the nature of the non-cash benefit you get, the amount may form part of the cost of an asset or the cost of extinguishing a liability: see Division 14.

Note 2: If the non-cash benefit you get consists of or includes an uncertain obligation, see Division 28 (about contingent assets and liabilities).

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

16-60 Giving a non-cash benefit for nothing

If:

(a) you *give to another entity a *non-cash benefit consisting of, or including, something other than an *uncertain obligation that you start to have; and

(b) you receive no payment, and you *get no non-cash benefit, from any entity at any time for the non-cash benefit you give;

you are taken:

(c) to pay an amount equal to the *market value of the benefit; and

(d) to receive the same amount for the benefit;

at the time when you give the benefit.

Note 1: Depending on the nature of the non-cash benefit you give, the amount may form part of the proceeds of realising an asset or of incurring a liability: see Division 14.

Note 2: If the non-cash benefit you give consists of or includes an uncertain obligation, see Division 28 (about contingent assets and liabilities).

16-65 Market value of a non-cash benefit

For the purposes of this Subdivision, the *market value of a *non-cash benefit you *give or *get is to be determined at the time when you give it or get it.

Subdivision 16-E—Splitting, merging, transforming and substituting assets or liabilities

Table of sections

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

16-80 Splitting, merging or transforming assets

(1) There are consequences if a splitting, merging, or change in nature (in whole or in part), of one or more assets (the ***original assets***) that you hold results in the original assets becoming one or more different assets (the ***new assets***) that you hold.

(2) This Act applies as if, at the time of the splitting, merging or change in nature, you had:

- (a) stopped holding the original assets; and
- (b) started holding the new assets; and
- (c) received, because you stopped holding the original assets, an amount equal to the total of their tax values just before that time; and
- (d) paid the same amount for the new assets.

Note: Section 14-120 tells you how to apportion the amount in order to work out the cost of each of the new assets.

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

On 1 July in income year 2, he subdivides the land into 3 blocks. Each block is of the same size, and has no locational advantage over any of the others, so each has the same market value on that day.

The tax value of the land just before it is subdivided is $1,200,000. The effect for income tax purposes is the same as if he had sold the land for that amount and bought back the 3 blocks at a cost of $400,000 each.

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

Example: Barry owns a block of land with a tax value of $150,000. He sells to Chris a one-third share (Chris and he to hold as tenants in common). Barry is taken to have split his interest in the land into 2 assets, and to have paid $150,000 for them. Because of section 14-120, that amount is reasonably attributable to each asset to the extent of its market value relative to the other.

On that basis, the cost of the share sold to Chris is $50,000 and the cost of Barry's remaining share is $100,000.

---

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

(4) To avoid doubt, you do not split a *depreciating asset merely because you *use the asset.

Example: Under a contract, you have the right to receive 20 lessons in tax accounting. Each time you take one of the lessons, you do not stop split off the part of the asset that consists of the right to receive one lesson.

This section does not need to apply, because the asset is a depreciating asset whose tax value is worked out under Division 72 so as to take account of the consumption of the economic benefits over time.

It may be necessary to include a rule to indicate that separating the economic benefits embodied in an asset by granting a lease or right over the asset is not a split unless the grant is to be treated as a partial realisation.

(5) To avoid doubt, subsection (1) does not apply to a mere change in the characterisation of an asset for the purposes of this Act.

Example: You cease to hold a car as an item of trading stock, so it becomes a depreciating asset. Subsection (1) does not apply. Instead, see section 70-110.

16-85 Splitting, merging or transforming liabilities

(1) There are consequences if a splitting, merging, or change in nature (in whole or in part), of one or more liabilities (the ***original liabilities***) that you have results in the original liabilities becoming one or more different liabilities (the ***new liabilities***) that you have.

(2) This Act applies as if, at the time of the splitting, merging or change in nature, you had:

(a) stopped having the original liabilities; and

(b) started having the new liabilities; and

(c) paid, in order to stop having the original liabilities, an amount equal to the total of their tax values just before that time; and

(d) received the same amount because you started having the new liabilities.

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

Note: Section 14-120 tells you how to apportion the amount in order to work out the proceeds of incurring each of the new liabilities.

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

(4) To avoid doubt, you do not stop split a *depreciating liability merely because you provide economic benefits under the liability.

Example: Under a contract, you have the obligation to provide 20 lessons in tax accounting. Each time you provide one of the lessons, you do not split off the part of the liability that consists of the obligation to provide one lesson.

This section does not need to apply, because the liability is a depreciating liability whose tax value is worked out under Division 72 so as to take account of the providing of the economic benefits over time.

(5) To avoid doubt, subsection (1) does not apply to a mere change in the characterisation of a liability for the purposes of this Act.

16-90 Substituting one or more assets consisting of rights for one or more other such assets

(1) There are consequences if:

(a) you stop holding one or more assets (the ***original assets***); and

(b) one or more different assets (the ***new assets***) are substituted for the original assets; and

(c) each of the original assets and the new assets consists only of one or more rights; and

(d) the new assets embody the same future economic benefits that the original assets embodied.

(2) This Act applies as if:

(a) at the time when you stopped holding the original assets, you had received, because you stopped holding them, an amount equal to the total of their tax values just before that time; and

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

(b) when you started holding the new assets, you had paid the same amount for them.

Note: Section 14-120 tells you how to apportion the amount in order to work out the proceeds of realising each of the original assets, and the cost of each of the new assets.

16-95 Substituting one or more liabilities for one or more other liabilities

(1) There are consequences if:

(a) you stop having one or more liabilities (the ***original liabilities***); and

(b) one or more different liabilities (the ***new liabilities***) are substituted for the original liabilities; and

(c) the future economic benefits that are to be provided pursuant to the new liabilities are the same as those that were to be provided pursuant to the original liabilities;

(2) This Act applies as if:

(a) at the time when you stopped having the original liabilities, you had paid, in order to stop having them, an amount equal to the total of their tax values just before that time; and

(b) when you started having the new liabilities, you had received the same amount because you started having them.

Note: Section 14-120 tells you how to apportion the amount in order to work out the cost of extinguishing each of the original liabilities, and the proceeds of incurring each of the new liabilities.

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

Chapter 2—Rules of general application

Part 2-1—Overview of Chapter

Part 2-5—Special rules about receipts, payments, assets and liabilities

Division 22—Identifying assets and liabilities

Table of Subdivisions

Subdivision 22-A—Assets

Guide to Subdivision 22-A

22-1 What this Subdivision is about

> This Subdivision sets out rules for distinguishing one asset from another in particular cases.

Table of sections

Operative provisions

[This is the end of the Guide.]

———————

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

Operative provisions

22-20 Fixtures and improvements to land

A fixture on *land, or an improvement to land:

(a) is treated as being separate from the land; and

(b) is taken *not* to be land;

whether the fixture or improvement is removable or not.

Note: A building is an example of a fixture. Examples of improvements to land are dams, landscaping and roads. Fixtures and improvements are treated as separate assets so that they can have different income tax treatment from the land. For example, unlike land, they will usually be depreciating assets.

22-25 Extension or renewal of a right

A renewal or extension of a right is treated as a continuation of the original right.

22-30 Insurance contracts

(1) The rights of an insured under an insurance contract are treated as the following separate assets:

(a) an asset consisting of the future economic benefits arising from the provision of insurance, during the term of the contract, against the risk concerned; and

(b) an asset consisting of the future economic benefits arising from the insurer's *uncertain obligation to satisfy each claim under the contract.

Note: The first asset is a depreciating asset whose tax value declines to nil over the term of the contract, resulting in a decrease in the insured's net income.

The other assets are necessary to ensure that the insured's rights to have claims under the contract satisfied, and the payments made to satisfy the claims, get the appropriate tax treatment. See Subdivision 28-B (about contingent assets and liabilities).

(2) The insurance premiums are treated as being paid solely for the asset referred to in paragraph (1)(a).

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

22-100 Other special rules for distinguishing between assets

The table shows where to find other special rules for distinguishing between assets.

Special rules for distinguishing between assets

Item	For special rules on this matter:	See:
1	You stop holding part of an asset and continue to hold the rest	Subsection 16-80(3)
2	[*Further cases to be added as required.*]	

Subdivision 22-B—Liabilities

Guide to Subdivision 22-B

22-101 What this Subdivision is about

This Subdivision sets out rules for distinguishing one liability from another in particular cases.

Table of sections

[This is the end of the Guide.]

Operative provisions

22-125 Extension or renewal of a liability

A renewal or extension of a liability is treated as a continuation of the original liability.

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

22-130 Insurance contracts

(1) The obligations of an insurer under an insurance contract are treated as the following separate liabilities:

(a) a liability consisting of the obligation to provide insurance, during the term of the contract, against the risk concerned; and

(b) a liability consisting of the *uncertain obligation to satisfy each claim under the contract.

Note: The first liability is a depreciating liability whose tax value declines to nil over the term of the contract, resulting in an increase in the insurer's net income.

The other liabilities are necessary to ensure that the insurer's obligations to satisfy claims under the contract, and the payments made to satisfy the claims, get the appropriate tax treatment. See Subdivision 28-B (about contingent assets and liabilities).

(2) The insurance premiums are treated as being received solely because of the insurer starting to have the liability referred to in paragraph (1)(a).

22-200 Other special rules for distinguishing between liabilities

The table shows where to find other special rules for distinguishing between liabilities.

Special rules for distinguishing between liabilities

Item	For special rules on this matter:	See:
1	You stop having part of a liability and continue to have the rest of the liability	Subsection 16-85(3)
2	[*Further cases to be added as required.*]	

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

Division 24—Holding assets and having liabilities

Table of sections

24-10 Who *holds* an asset: special rules

(1) These special rules override the general rules in section 10-20.

Note: For further consequences of the rules in the table, see subsections (2) and (3).

Special rules about who holds an asset

Item	For this asset:	While this is the case:	This is the rule:
Right to use and enjoyment of an asset			
1	An asset of a kind referred to in item 1 or 2 of the table in section 10-20	An entity: (a) has, under an *arrangement, the right to the use and enjoyment of the asset (otherwise than as a beneficiary under a trust); and (b) will or may start to hold the asset, at or before the end of the arrangement, because of another item of this table or the table in section 10-20	The entity ***holds*** the asset. An entity that, apart from this item, would hold the asset under item 1 or 2 of the table in section 10-20, does *not* ***hold*** the asset

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

Special rules about who holds an asset			
Item	**For this asset:**	**While this is the case:**	**This is the rule:**
Trusts, partnerships and co-ownership			
2	An asset of a kind referred to in item 1, 2 or 3 of the table in section 10-20	The owner of the asset holds it as trustee for a beneficiary who is absolutely entitled to the asset as against the trustee	The beneficiary ***holds*** the asset and the trustee does not
3	An asset of a kind referred to in item 1, 2 or 3 of the table in section 10-20	The asset is a partnership asset	The partnership ***holds*** the asset and any particular partner does *not* Nor does any particular partner ***hold*** an asset consisting of an interest in the first asset
4	An asset of a kind referred to in item 1, 2 or 3 of the table in section 10-20	Apart from this item, 2 or more entities would hold the asset, and each also holds an asset consisting of an interest as co-owner of the first asset	No entity ***holds*** the first asset
Fixtures and improvements to land			
5	A fixture on land that is (or has been) subject to a *quasi-ownership right	The owner (or former owner) of the quasi-ownership right has a right to remove the fixture from the land	The owner (or former owner) of the quasi-ownership right ***holds*** the fixture

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

Special rules about who holds an asset

Item	For this asset:	While this is the case:	This is the rule:
6	A fixture on land, or an improvement to land, that: (a) was fixed or made to the land, by the owner of a *quasi-ownership right, for that owner's own use; and (b) cannot be removed from the land.	The land is subject to a quasi-ownership right	The owner of the quasi-ownership right referred to in column 3 ***holds*** the fixture or improvement
7	An asset that is fixed to land and was subject to a lease just before it was fixed to the land	The lessor has a right to recover the asset	The lessor ***holds*** the asset

Note: Item 1 covers cases like hire purchase agreements and sales subject to retention of title clauses. It can also cover cases (like chattel mortgages, and legal mortgages of land not brought under the system of registration of title) where an entity has stopped being the legal owner, but retains the right to use and enjoyment and will again become the legal owner when the secured debt is repaid.

(2) An entity identified in an item in the table in subsection (1) as *not* holding an asset also does not ***hold*** the asset under any other item of that table or of the table in section 10-20, or under any other provision of this Act.

(3) While an entity holds an asset (the ***main asset***) because of an item in the table in subsection (1):

(a) the entity does not also ***hold*** an asset consisting of the interest or rights that make it the holder of the main asset; and

(b) if, but for that item, a different entity would be taken to hold the main asset because of having an interest or rights in

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

respect of the main asset—that entity does not ***hold*** an asset consisting of the interest or rights.

24-100 Who *holds* an asset: where to find other special rules

This table shows where to find other special rules about who ***holds*** an asset and when. These special rules override the rules in section 10-20.

Other special rules about who holds an asset

Item	For special rules on this matter:	See:
1	Asset held by an individual or partnership ceasing to be a private asset	Section 222-55
2	Asset held by an individual or partnership becoming a private asset	Section 222-60
3	Leases of luxury cars	
4	[*Further cases to be added as required.*]	

24-110 Who *has* a liability: special rules

(1) These special rules override the general rules in section 12-20.

Special rules about who has a liability

Item	For this kind of liability:	While this is the case:	This is the rule:
1	The amount of a company's *paid up share capital	The company is in existence	The company ***has*** the liability
2	[*Similar rule for trusts.*]		
3	A liability that consists of a present legal or equitable obligation	The liability is a partnership liability	The partnership ***has*** the liability and any particular partner does *not*

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

Special rules about who has a liability

Item	For this kind of liability:	While this is the case:	This is the rule:
4	A liability consisting of obligations to provide some or all of the economic benefits embodied by an asset covered by subsection 24-10(3) (special rules about who holds an asset)	No entity holds the asset because of that subsection	No entity ***has*** the liability

(2) An entity identified in an item in the table in subsection (1) as *not* having a liability also does not ***have*** the liability under any other item of that table, or under section 12-20 or any other provision of this Act.

24-200 Who *has* a liability: where to find other special rules

This table shows where to find other special rules about who has a liability. These special rules override the rules in section 12-20.

Other special rules about who has a liability

Item	For special rules on this matter:	See:
1	A liability that an individual or partnership has stops being a private liability	Section 222-95
2	A liability that an individual or partnership has becomes a private liability	Section 222-100
3	[*Further cases to be added as required.*]	

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

Division 26—Special rules about cost and proceeds of assets and liabilities

Table of sections

26-20 Cost of an asset

The rules in the table have effect despite sections 14-20 to 14-35. (If more than one item covers the asset, apply the first item that covers it.)

Special rules about cost

Item	**In this case:**	**This is the rule:**
1	You start holding an asset because it has devolved to you as the *legal personal representative of a person who has died	The *first element of the asset's *cost is the asset's tax value at the time of the person's death
2	An asset is an animal you hold as live stock, and you acquired it by natural increase	The *first element of the asset's *cost is the amount worked out under [equivalent of section 70-55 of the *Income Tax Assessment Act 1997*]
3	The Minister for Finance has determined a cost for you, for an asset, under section 49A, 49B, 50A, 50B, 51A or 51B of the *Airports (Transitional) Act 1996*	The *first element of the asset's *cost is the cost so determined

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

Special rules about cost

Item	In this case:	This is the rule:
4	Just before an asset becomes a partnership asset, one or more of the partners hold the asset (whether or not any other entity also has an interest in the asset or a right in respect of it)	For the partnership, the *first element of the asset's *cost is the asset's *market value when the partnership starts to hold it
5	Luxury car limit	[to be drafted]

Note: See also section 76-50 (first element of cost of financial asset that stops having a certain gain).

26-40 Proceeds of realising an asset

The rules in the table have effect despite section 14-40. If more than one item covers the asset, apply the first item that covers it.

Special rules about proceeds of realising an asset

Item	In this case:	This is the rule:
1	You stop holding an asset because you die, and it devolves to your *legal personal representative	The *proceeds of realising the asset are equal to the asset's tax value just before your death
2	Just before an asset becomes a partnership asset, one or more of the partners hold the asset (whether or not any other entity also has an interest in the asset or a right in respect of it)	For the one or more partners, the *proceeds of realising the asset are equal to the asset's *market value when the partnership starts to hold it

26-75 Proceeds of incurring a liability

The rules in the table have effect despite section 14-75. If more than one item covers the asset, apply the first item that covers it.

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

Special rules about proceeds of incurring a liability

Item	In this case:	This is the rule:
1	You start having a liability because it has devolved to you as the *legal personal representative of a person who has died	The *first element of the *proceeds of incurring the liability are equal to the liability's tax value at the time of the person's death
2	Just before a liability becomes a partnership liability, one or more of the partners have the liability	For the partnership, the *first element of the *proceeds of incurring the liability are equal to the liability's *market value when the partnership starts to have it

Note: See also section 76-150 (first element of cost of financial liability that stops having a certain loss).

26-90 Cost of extinguishing a liability

The rules in the table have effect despite section 14-90. If more than one item covers the liability, apply the first item that covers it.

Special rules about cost of extinguishing a liability

Item	In this case:	This is the rule:
1	You stop having a liability because you die, and it devolves to your *legal personal representative	The *cost of extinguishing the liability is equal to the liability's tax value just before your death
2	Just before a liability becomes a partnership liability, one or more of the partners have the liability	For the one or more partners, the *cost of extinguishing the liability is equal to the liability's *market value when the partnership starts to have it

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

Division 28—Contingent assets and liabilities

Table of Subdivisions

Guide to Division 28

28-1 What this Division is about

An uncertain obligation is not taken into account in working out the notional receipts and payments arising from a two-sided non-cash transaction, except to the extent that the other side of the transaction consists of assets (other than unperformed obligations).

Instead, notional receipts and payments arise under Subdivision 28-B if and when an uncertain obligation becomes certain.

Subdivision 28-A—Effect of uncertain obligations on two-sided non-cash transactions

Table of sections

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

28-10 Effect of uncertain obligation that is a non-cash benefit you give

(1) For the purposes of Subdivision 16-C (about two-sided non-cash transactions), disregard a *non-cash benefit you *give, to the extent that it consists of an *uncertain obligation.

Note: If the uncertain obligation becomes certain, see Subdivision 28-B.

(2) However, subsection (1) does not apply if the *non-cash benefits you get under the *arrangement consist only of one or more assets, none of which is an *unperformed obligation.

Note: In that case, the normal two-sided non-cash transaction rules apply to the uncertain obligation.

Example: A barrister agrees to represent the plaintiff in a court case for a contingency fee of $50,000 if the plaintiff is awarded damages of at least $100,000.

The obligation to pay the contingency fee is a non-cash benefit that the plaintiff gives to the barrister. The barrister's obligation to provide services is a non-cash benefit that the plaintiff gets from the barrister.

Because the obligation to pay the contingency fee is also an uncertain obligation, subsection (1) means that it is disregarded for the purposes of the two-sided non-cash transaction rules, which then will not apply at all to the arrangement. (It is not, however, disregarded for the purposes of the one-sided transaction rules in Subdivision 16-D, so these will not apply either.)

The exception in this subsection does not apply because, although the barrister's obligation to provide services is an asset that the plaintiff gets under the arrangement, it is an unperformed obligation.

In the result, all assets and liabilities under the arrangement will have an initial tax value of nil.

(3) If the *non-cash benefits you *get under the *arrangement include at least one asset that is not an *unperformed obligation, the amount you are taken to receive because of subsection 16-25(2), to the extent that it is for the *uncertain obligation, is worked out using the formula:

$$\text{Unreduced amount} \times \frac{\text{MV Assets}}{\text{Total MV}}$$

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

(4) For the purposes of the formula in subsection (3):

Unreduced amount means the amount that, apart from this section, you would be taken to receive for the *uncertain obligation.

MV Assets means the total of the *market value of each *non-cash benefit you *get under the *arrangement that is an asset and is not an *unperformed obligation.

Total MV means the *market value, or the total of the market values, of the one or more *non-cash benefits you *get under the *arrangement.

(5) If subsection (3) applies:

(a) the amount you are taken to pay because of subsection 16-25(3) is reduced accordingly; and

(b) so much of the reduced amount as equals the amount worked out under subsections (3) and (4) of this section is taken to be paid only for each *non-cash benefit you *get under the *arrangement that is an asset and is not an *unperformed obligation.

28-15 Effect of uncertain obligation that is a non-cash benefit you get

(1) For the purposes of Subdivision 16-C (about two-sided non-cash transactions), disregard a *non-cash benefit you *get, to the extent that it consists of an *uncertain obligation.

Note: If the uncertain obligation becomes certain, see Subdivision 28-B.

(2) However, subsection (1) does not apply if the *non-cash benefits you *give under the *arrangement consist only of one or more assets none of which is an *unperformed obligation.

Note: In this case, the normal two-sided non-cash transaction rules apply to the uncertain obligation.

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

Example: A barrister agrees to represent the plaintiff in a court case for a contingency fee of $50,000 if the plaintiff is awarded damages of at least $100,000.

The obligation to pay the contingency fee is a non-cash benefit that the barrister gets from the plaintiff. The barrister's obligation to provide services is a non-cash benefit that the barrister gives to the plaintiff.

Because the obligation to pay the contingency fee is also an uncertain obligation, subsection (1) means that it is disregarded for the purposes of the two-sided non-cash transaction rules, which then will not apply at all to the arrangement. (It is not, however, disregarded for the purposes of the one-sided transaction rules in Subdivision 16-D, so these will not apply either.)

The exception in this subsection does not apply because, although the barrister's obligation to provide services is an asset that the barrister gives under the arrangement, it is an unperformed obligation.

In the result, all assets and liabilities under the arrangement will have an initial tax value of nil.

(3) If the *non-cash benefits you *give under the *arrangement include at least one asset that is not an *unperformed obligation, the amount you are taken to receive because of subsection 16-25(2), to the extent that it is attributable to the *uncertain obligation, is worked out using the formula:

$$\text{Unreduced amount} \times \frac{\text{MV Assets}}{\text{Total MV}}$$

(4) For the purposes of the formula in subsection (3):

Unreduced amount means the amount that, apart from this section, you would be taken to receive because of subsection 16-25(2), to the extent that it would be attributable to the *uncertain obligation.

MV Assets means the total of the *market value of each *non-cash benefit you *give under the *arrangement that is an asset and is not an *unperformed obligation.

Total MV means the *market value, or the total of the market values, of the one or more *non-cash benefits you *give under the *arrangement.

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

(5) If subsection (3) applies:

(a) the amount worked out under subsections (3) and (4) of this section is taken to be received only for each *non-cash benefit you *give under the *arrangement that is an asset and is not an *unperformed obligation; and

(b) the amount you are taken to pay because of subsection 16-25(3) is reduced by the difference between:

(i) the amount that, apart from this section, you would be taken to receive because of subsection 16-25(2), to the extent that it would be attributable to the *uncertain obligation; and

(ii) the amount worked out under subsections (3) and (4) of this section.

> *Further rules are needed for the case where an uncertain obligation is exchanged for an unperformed obligation to give an asset, and the asset is later given.*

Subdivision 28-B—Effects when uncertain obligation becomes certain etc

Table of sections

28-50 When this Subdivision does *not* apply

Short-term trade credit

(1) This Subdivision does *not* apply to an *uncertain obligation under an *arrangement covered by section 16-15 (about short-term trade credit).

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

Uncertain obligation to provide or accept an asset (other than money)

(2) This Subdivision does *not* apply to an *uncertain obligation:
(a) to provide an asset (other than money); or
(b) to accept an asset (other than money);
unless the asset is a replacement asset provided under an insurance contract or a warranty.

Examples: The obligation of the grantor of a call option over an asset is an example of an uncertain obligation covered by paragraph (1)(a). Another is the obligations of the seller under a contract of sale of land that is conditional on the local government authority granting a permit for the land to be used in a particular way.

The obligation of the grantor of a put option over an asset is an example of an uncertain obligation covered by paragraph (1)(b).

Note: This exclusion ensures that the uncertain obligation becoming certain is not a taxing point in these cases.

28-55 Obligation owed *to* you

If, at a particular time:
(a) an *uncertain obligation owed to you becomes *certain; or
(b) there is an increase in the extent of the future economic benefits to be provided under a *certain obligation owed to you (whether because of an increase in the reasonable estimate under subsection 975-15(2) or because the certain obligation becomes one of *certain amount);
and the obligation's *market value at that time exceeds:
(c) the tax value (apart from this section) of the asset you hold that corresponds to the obligation; or
(d) the tax value (apart from this section) of an asset you hold that corresponds to a liability, to the extent that the liability includes the obligation and the asset's tax value is attributable to the obligation;
you are taken:
(e) to pay at that time an amount equal to the excess, in order to start holding that asset; and

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

(f) to receive the same amount, and to receive it for each *non-cash benefit (if any) that you *gave in return for the obligation, or in return for it becoming certain.

Example: Continuing the example in subsection 28-15(2): the plaintiff is successful in the court case and is awarded $100,000 damages. As a result, the plaintiff's uncertain obligation to pay the contingency fee becomes certain, and has a market value equal to its nominal value of $50,000.

That market value exceeds the tax value of the barrister's asset consisting of her right to the contingency fee. (That tax value is nil: see the example in subsection 28-15(2).)

Under this section, the barrister is taken to pay the excess ($50,000) for that asset, and to have received the same amount for representing the plaintiff in the court case.

Paragraph (f) needs further development to apply correctly in a case where subsections 28-15(3), (4) and (5) have applied, and in some other cases.

28-60 Obligation owed *by* you

If, at a particular time:

(a) an *uncertain obligation you owe becomes *certain; or

(b) there is an increase in the extent of the future economic benefits to be provided under a *certain obligation you owe (whether because of an increase in the reasonable estimate under subsection 975-15(2) or because the certain obligation becomes one of *certain amount);

and the obligation's *market value at that time exceeds:

(c) the tax value (apart from this section) of the liability you have that consists of the obligation; or

(d) the tax value (apart from this section) of a liability you have, to the extent that the liability includes the obligation and its tax value is attributable to the obligation;

you are taken:

(e) to receive an amount equal to the excess because you started having the obligation; and

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

(f) to pay the same amount, and to pay it for each *non-cash benefit (if any) that you *got in return for the obligation or in return for it becoming certain.

Example: Continuing the example in subsection 28-10(2): the plaintiff is successful in the court case and is awarded $100,000 damages. As a result, the plaintiff's uncertain obligation to pay the contingency fee becomes certain, and has a market value equal to its nominal value of $50,000.

That market value exceeds the tax value of the plaintiff's liability to pay to the contingency fee. (That tax value is nil: see the example in subsection 28-10(2).)

Under this section, the plaintiff is taken to receive the excess ($50,000) because of starting to have that liability, and to have paid the same amount for the barrister's services.

Paragraph (f) needs further development to apply correctly in a case where subsections 28-10(3), (4) and (5) have applied, and in some other cases.

Division 30—Partial realisation of assets and liabilities

Division 35—Non-arm's length dealings

Division 40—Amounts relating to income tax

Division 45—Effect of GST

Division 50—Pre-CGT investment assets

This Division will exclude pre-CGT investment assets, and receipts and payments relating to them, from the net income formula in a way that is similar to how Division 222 treats private assets. This Division will also define pre-CGT investment asset, based on the rules in Division 149 of the Income Tax Assessment Act 1997.

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

Part 2-10—How to work out the tax value of assets and liabilities

Division 68—Listed zero tax value assets and liabilities

Table of sections

68-10 What are listed zero tax value assets and liabilities

(1) Each of these is a ***listed zero tax value asset***:

(a) a *routine right (see section 68-45);

(b) your consumable stores and spare parts that are not your *trading stock;

(c) your office supplies that are not your *trading stock;

(d) standing crops, or timber, that you have established for sale, or for environmental works on rural land;

(e) the results of your mining or quarrying exploration or prospecting activities;

(f) an item of *intellectual property whose subject matter is advertising material, unless you *acquired the item from another entity (except one that you engaged to generate the advertising material for you);

(g) a right to receive an amount from a company:

(i) in respect of a *share in the company that you hold; and

(ii) otherwise than because you stop holding the share;

(h) a right of a company or trust to receive a capital contribution from a member or beneficiary.

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

Most of these items are based on Recommendation 4.3 of the Final Report of the Review of Business Taxation. Further consideration is being given to the details of implementing this recommendation.

Listed zero tax value liabilities

(2) Each of these is a ***listed zero tax value liability***:

(a) a *routine liability (see section 68-45);

(b) a liability of a company to pay a *dividend to a member.

Further listed zero tax value liabilities may need to be added to cover liabilities that do not meet the "incurred" test in the current income tax law. See Recommendation 4.21 of the Final Report of the Review of Business Taxation.

68-45 Routine rights and liabilities

(1) If, at the end of an income year:

(a) you hold an asset consisting of a right arising under a contract; and

(b) you also have a liability arising under the same contract; and

(c) subsection (2) or (3) is satisfied;

the right is taken to have been a ***routine right*** at all times when you held it during the income year, and the liability is taken to have been a ***routine liability*** at all times when you had it during the income year.

Rights and liabilities under unperformed contract

(2) This subsection is satisfied if, as at the end of the income year, the contract is entirely unperformed.

Rights and liabilities where benefits received match benefits provided

(3) This subsection is satisfied if, as at the end of the income year:

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

- the total value of the economic benefits you have provided through performance of the contract (as a proportion of the total value of all economic benefits you have so provided and will so provide);

is substantially the same as:

- the total value of the economic benefits you have received through performance of the contract (as a proportion of the total value of all the economic benefits you have so received and will so receive).

(In working out the total values mentioned in this subsection, assume that the *market value of the economic benefits has not changed since the contract was entered into.)

68-50 Effect of ceasing to be a routine right or routine liability

(1) If an asset was a *routine right at the end of an income year but is not a routine right at the end of a later income year, its tax value at any time after the start of the later income year is worked out as if the asset had never been a routine right.

(2) If a liability was a *routine liability at the end of an income year but is not a routine liability at the end of a later income year, its tax value at any time after the start of the later income year is worked out as if the liability had never been a routine liability.

(3) However, subsection (1) or (2) does not affect the tax value of the asset or liability at the end of the first-mentioned income year or at any earlier time.

Division 70—Trading stock

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

Division 72—Depreciating assets and liabilities

> *Division 72 sets up a broad platform for the treatment of depreciating assets and liabilities. It includes the capital allowances treatment in Division 40 of the Income Tax Assessment Act 1997, as well as other features of the current law (eg the principle in the Arthur Murray case).*
>
> *It also implements most of the recommendations on rights (including prepayments) in the Final Report of the Review of Business Taxation. So far, it deals with the core recommendations (4.6(b), 10.1 and 10.3) that set the default position for rights.*
>
> *However, the treatment of some assets and liabilities within this framework is subject to further consideration, and some recommendations are yet to be considered. These include Recommendation 10.4, which provides for different treatment from the default for the grantors of some rights, such as restrictive covenants and franchises.*

Table of Subdivisions

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

Guide to Division 72

72-1 What this Division is about

This Division tells you how to work out the tax value of:

(a) a *depreciating asset* (an asset that can be used for only a limited period); or

(b) a *depreciating liability* (a liability under which economic benefits will be provided for only a limited period).

The decline in the asset or liability's tax value for an income year is generally measured by reference to the asset or liability's effective life.

Note: This Division does not deal with partial realisations of a depreciating asset or liability. These are the subject of rules applying to assets generally. See Division 30.

Subdivision 72-A—Objects of Division

72-15 Objects of Division

The objects of this Division are:

(a) to set out rules for working out the tax value of a *depreciating asset or *depreciating liability; and

(b) to ensure that the tax value declines at an appropriate rate based on:

(i) the expected consumption of economic benefits embodied in the asset; or

(ii) the expected provision of economic benefits under the liability.

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

Subdivision 72-B—Core rules

Guide to Subdivision 72-B

72-20 What this Subdivision is about

The rules that apply to most depreciating assets and depreciating liabilities are in this Subdivision. It explains:

- what is a *depreciating asset* and a *depreciating liability*; and
- when a depreciating asset or liability starts to decline in tax value; and
- how to work out the tax value, and the annual decline in tax value, of a depreciating asset or liability.

Table of sections

[This is the end of the Guide.]

---

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

Depreciating assets and their tax value

72-30 What is a *depreciating asset*

(1) An asset is a ***depreciating asset*** if, and only if, the total period for which it can be *used (whether by the entity that currently holds it, a future holder, or anyone else) is limited.

Note: A fixture on land, or an improvement to land, is separate from the land and also is taken not to be land: see section 22-20. Whether it is a depreciating asset depends on whether it is an asset that falls within the definition in this section. See also subsection (4) of this section.

(2) To ***use*** an asset means to consume economic benefits from the asset, or receive economic benefits in respect of the asset.

(3) However, none of these is a ***depreciating asset***:

(a) an item of *trading stock;

(b) a *financial asset;

(c) a share [*equity generally, in both companies and trusts, is to be covered here*];

(d) a *collectable that section 234-40 prevents from being a depreciating asset;

(e) an *interest in a collectable if section 234-40 prevents the interest from being a depreciating asset.

(4) To avoid doubt, an asset is a ***depreciating asset*** if it is capital works to which Division 73 (about depreciating capital works) applies.

Note: Your gain or loss on this kind of asset is subject to special treatment through taxable income adjustments under Division 100.

The uniform capital allowances system in Division 40 of the Income Assessment Act 1997 does not cover depreciating assets that are capital works (such as building and structures) covered by Division 43 of that Act. The implications of that system for buildings and structures will be subject to further consultation: see Treasurer's Press Release No 74 dated 11 November 1999.

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

This Demonstration Legislation continues the same treatment of buildings and structures as under Division 43 of the 1997 Act.

72-35 *Tax value* of depreciating asset

(1) The ***tax value***, at the end of an income year, of a *depreciating asset you hold is:

(a) if the asset *started to decline in tax value during or before the income year—the asset's *base value for the income year less its *decline in tax value for the income year; or

(b) if, as at the end of the income year, the asset has not yet *started to decline in tax value—the asset's *cost (as at the end of the year).

Note 1: For the tax value of assets and amounts in pools: see Subdivision 72-E.

Note 2: The tax value of most depreciating assets held by an STS taxpayer is worked out under Subdivision 545-C.

Prepayments that under the current law are given immediate write off will be added to the listed zero tax value assets in section 68-10.

(2) The ***base value*** of the asset for the income year is:

(a) if the asset *started to decline in tax value during the income year—the asset's *cost (as at the end of the year); or

(b) if the asset *started to decline in tax value before the income year—the sum of:

(i) the asset's *opening tax value for the income year; and

(ii) each amount included during the income year in the asset's cost.

(3) The asset ***starts to decline in tax value*** when you first *use it, or have it *installed ready for use, for any purpose at or after the time when you start to hold it.

Example 1: Paving Ltd buys a cement mixer for use in its landscaping business. Immediately on delivery by the supplier, the cement mixer is loaded

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

onto a truck bound for a paving job. It starts to decline in tax value immediately, because it has been installed ready for use.

Example 2: Paving Ltd also acquires the right to enter on someone else's land and remove gravel from it. The right is to last for 10 years. It starts to decline in tax value when Paving Ltd first removes gravel from the land.

Example 3: George grants Peter a right of way across George's land. The right of way leads from a road to Peter's land, and is to last for 10 years. The right of way starts to decline in tax value immediately.

(4) The ***tax value*** of the asset at the start of an income year is its *opening tax value for that income year.

(5) The ***tax value*** of the asset at a time *other than* the start or end of an income year is worked out under this Division as if that time were the end of the income year in which it occurs.

Example: A depreciating asset you hold is split on 1 February. Under section 16-80 its tax value immediately before that day is relevant to working out what you are taken to have paid for the new assets into which it has been split.

> *The application of the Division needs to be modified in some respects for subsection (5) to work properly. In particular, the table in section 72-40 and the formulas that refer to 365 days.*

72-40 How to measure the annual decline in tax value of a depreciating asset

(1) The table tells you how to work out the ***decline in tax value*** of a *depreciating asset for an income year (the ***current year***).

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

Decline in tax value for an income year		
Item	**For this depreciating asset:**	**The decline in tax value is:**
1	A *depreciating asset that is: (a) a tangible asset (not covered by item 4); or (b) a *mining, quarrying or prospecting right; or (c) an *IRU; or (d) an interest as co-owner of an asset covered by an earlier paragraph of this item	Worked out applying the *diminishing value method or the *straight line method, according to the rules in sections 72-65, 72-70 and 72-75
2	A *depreciating asset (*not* covered by item 1 or 4) if you know, or can reasonably estimate, that: (a) the economic benefits you received during the current year because of holding the asset; and (b) the economic benefits you will receive, because of holding the asset, during each future income year, all or part of which will be within the asset's *effective life; will be the same in extent, assuming that you will continue to hold the asset for the rest of its effective life (see also subsections (2) and (3))	Worked out applying the *straight line method (see section 72-75)
3	A *depreciating asset (*not* covered by item 1, 2 or 4) if you know, or can reasonably estimate, the percentage you have received, during the current year, of the total economic benefits: (a) you received during the current year because of holding the asset; and (b) you will receive during future income years, because of holding the asset, if you continue to hold it for the rest of its *effective life (See also subsection (2))	Worked out by multiplying the asset's *base value for the income year by that percentage
4	A *depreciating asset that is capital works to which Division 73 (about depreciating capital works) applies	Worked out under that Division
5	[*Other methods for measuring annual decline in tax value are being considered: for example, to deal with the proper treatment of long term rights.*]	

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

Decline in tax value for an income year		
Item	**For this depreciating asset:**	**The decline in tax value is:**
6	Any other *depreciating asset	The market value of the economic benefits that you consumed or received during the current year because of holding the asset

Note 1: Item 2 covers assets of the following kinds, under which economic benefits are received continuously over the effective life:

- a right to use a tangible asset (including land) for a period;
- a right to use a statutory right or information for a period;
- a right (such as a franchise) to carry on an activity for a period;
- a right to insurance against risk for a period;
- a right to receive, at regular intervals during a period, non-cash benefits (such as services) of similar economic value;
- a right (such as a restrictive covenant) to have someone else refrain from engaging in an activity for a period.

Note 2: Item 3 covers assets of the following kinds:

- a right to receive a fixed quantity of services over a fixed period, if the services are to be provided from time to time at the discretion of the holder of the right;
- a right to enter on someone else's land and remove gravel from it, up to a specified maximum quantity, if the gravel can be removed from time to time at the discretion of the holder of the right, and it is reasonable to expect that the limit will be reached within the term of the right.

Note 3: Item 6 covers assets such as a right to enter on someone else's land and remove gravel from it during a limited period, if no maximum quantity is specified and the gravel can be removed from time to time at the discretion of the holder of the right.

(2) Under item 2 or 3 of the table in subsection (1):

(a) the extent of the economic benefits you have received or will receive; or

(b) the percentage you have received of total economic benefits;

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

is worked out by reference to what would have been the *market value of all economic benefits mentioned in that item at the time you receive them, if you had received them all at the time when you started to hold the asset.

Note: This subsection ensures that changes in market value of economic benefits during the effective life of a depreciating asset do not distort the application of items 2 and 3. For example, a right to insurance against risk for a period of 10 years will be covered by item 2 because this subsection ensures that the value of the cover in year 10 is treated as being the same as the value of the cover in year 1.

(3) In determining whether a *depreciating asset is covered by item 2 of the table in subsection (1), if:

(a) the asset *started to decline in tax value after the start of the current year, and a particular number of days before its end; or

(b) the asset's *effective life will end a particular number of days after the start of a future income year, but before the end of that income year;

the extent of the economic benefits you have received during the current year, or will receive during that future income year, is worked out by multiplying the result under subsection (2) by the following fraction:

$$\frac{365}{\text{That number of days} + 1}$$

Depreciating liabilities and their tax value

72-45 What is a *depreciating liability*

(1) A ***depreciating liability*** is a liability under which economic benefits will be provided for only a limited period.

(2) However, none of these is a ***depreciating liability***:

(a) a *financial liability;

(b) the amount of a company's *paid up share capital;

(c) [*Similar rule for trusts.*].

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

72-50 *Tax value* of a depreciating liability

(1) The ***tax value***, at the end of an income year, of a *depreciating liability you have is:

(a) if the liability *started to decline in tax value during or before the income year—the liability's *base value for the income year less its *decline in tax value for the income year; or

(b) if, as at the end of the income year, the liability has not yet *started to decline in tax value—the *proceeds of incurring the liability (as at the end of the current year).

(2) The ***base value*** of the liability for the income year is:

(a) if the liability *started to decline in tax value during the income year—the *proceeds of incurring the liability (as at the end of the year); or

(b) if the liability *started to decline in tax value before the income year—the sum of:

(i) the liability's *opening tax value for the income year; and

(ii) each amount included during the income year in the proceeds of incurring the liability.

(3) The liability ***starts to decline in tax value*** when you first provide economic benefits under the liability.

Example 1: In Example 2 in subsection 72-35(3), the liability of the grantor of Paving Ltd's right to enter the land and remove gravel from it starts to decline in tax value when Paving Ltd first removes gravel from the land.

Example 2: In Example 3 in subsection 72-35(3), George's liability in respect of the right of way granted to Peter starts to decline in tax value immediately.

(4) The ***tax value*** of the liability at the start of an income year is its *opening tax value for that income year.

(5) The ***tax value*** of the liability at a time *other than* the start or end of the income year is worked out under this Division as if that time were the end of the income year in which it occurs.

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

Example: A depreciating liability you hold is split on 1 February. Under section 16-85 its tax value immediately before that day is relevant to working out what you are taken to have paid for the new liabilities into which it has been split.

> *The application of the Division needs to be modified in some respects for subsection (5) to work properly. In particular, the table in section 72-55 and the formulas that refer to 365 days.*

72-55 How to measure the annual decline in tax value of a depreciating liability

(1) The table tells you how to work out the ***decline in tax value*** of a *depreciating liability for an income year (the ***current year***).

Decline in tax value for an income year

Item	For this depreciating liability:	The decline in tax value is:
1	A *depreciating liability if you know, or can reasonably estimate, that: (a) the economic benefits you provided during the current year because of having the liability; and (b) the economic benefits you will provide, because of having the liability, during each future income year, all or part of which will be within the liability's *effective life; will be the same in extent, assuming that you will continue to have the liability for the rest of its effective life (see also subsections (2) and (3))	Worked out applying the *straight line method (see section 72-75)

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

Decline in tax value for an income year		
Item	**For this depreciating liability:**	**The decline in tax value is:**
2	A *depreciating liability if you know, or can reasonably estimate, the percentage you have provided, during the current year, of the total economic benefits that: (a) you provided during the current year because of having the liability; and (b) you will provide in future income years because of having the liability if you continue to have it for the rest of its *effective life; but item 1 does not apply (see also subsection (2))	Worked out by multiplying the liability's *base value for the income year by that percentage
3	[*Other methods for measuring annual decline in tax value are being considered: for example, to deal with the proper treatment of long term liabilities.*]	
4	Any other *depreciating liability	The market value of the economic benefits that you provided during the current year because of having the liability

Note 1: Item 1 covers the liabilities that correspond to the rights described in Note 1 to subsection 72-40(1).

Note 2: Item 2 covers the liabilities that correspond to the rights described in Note 2 to subsection 72-40(1).

Note 3: Item 4 covers the liability that corresponds to the right described in Note 3 to subsection 72-40(1).

(2) Under item 1 or 2 of the table in subsection (1):

(a) the extent of the economic benefits you have provided or will provide; or

(b) the percentage you have provided of total economic benefits;

is worked out by reference to what would have been the *market value of all economic benefits mentioned in that item at the time you provide them, if you had provided them all at the time when you started to have the liability.

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

Note: This subsection does for depreciating liabilities what subsection 72-40(2) does for depreciating assets.

(3) In determining whether a *depreciating liability is covered by item 1 of the table in subsection (1), if:

(a) the liability *started to decline in tax value after the start of the current year, and a particular number of days before its end; or

(b) the liability's *effective life will end a particular number of days after the start of a future income year, but before the end of that income year;

the extent of the economic benefits you have provided during the current year, or will provide during that future income year, is worked out by multiplying the result under subsection (2) by the following fraction:

$$\frac{365}{\text{That number of days} + 1}$$

Methods for measuring annual decline in tax value

72-65 Choice of methods for measuring the annual decline in tax value of certain depreciating assets

(1) You have a choice of 2 methods to work out the ***decline in tax value*** of a *depreciating asset that is covered by item 1 of the table in subsection 72-40(1). You must choose to apply either the *diminishing value method or the *straight line method.

Note 1: Once you make the choice for an asset, you cannot change it: see section 72-130.

Note 2: For the diminishing value method, see section 72-70. For the straight line method, see section 72-75.

Exception: asset acquired from associate

(2) If:

(a) just before you started to hold the asset, an *associate of yours held it; and

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

(b) the associate has already chosen a method to work out the *decline in tax value of the asset for an income year;

you must apply the same method as the associate was applying.

Note: You can require the associate to tell you which method the associate was applying: see section 72-140.

(3) However, you must apply the *diminishing value method if:

(a) you do not know, and cannot readily find out, which method the *associate was applying; or

(b) the associate has not already chosen a method.

Exception: former user or their associate still using the asset

(4) If:

(a) just before you started to hold the asset, it was held by an entity (the ***former holder***) that has already chosen a method to work out the *decline in tax value of the asset for an income year; and

(b) that or another entity (the ***former user***) was *using the asset at some time before you began to hold the asset; and

(c) while you hold the asset, the former user or an *associate of the former user uses the asset;

you must apply the same method as the former holder was applying.

(5) However, you must apply the *diminishing value method if:

(a) you do not know, and cannot readily find out, which method the former holder was applying; or

(b) the former holder has not already chosen a method.

Exception: assets in pools

(6) The ***decline in tax value*** of a *depreciating asset in a low-value pool is worked out under Subdivision 72-E instead of this Subdivision. The ***decline in tax value*** of a depreciating asset in a *general STS pool or *long life STS pool is worked out under Subdivision 545-C instead of this Subdivision.

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

72-70 Diminishing value method

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

$$*\text{Base value} \times \frac{\text{Days}}{365} \times \frac{150\%}{*\text{Effective life}}$$

where:

days is the number of days you held the asset in the income year, ignoring:

(a) any days in that year before the asset *started to decline in tax value; and

(b) if the asset is a tangible asset—any days in that year when you did not *use the asset, or have it *installed ready for use, for any purpose; and

(c) if the asset is an interest as co-owner of a tangible asset—any days in that year when no co-owner *used the tangible asset, or had it *installed ready for use, for any purpose.

Note: If you recalculate the effective life of a depreciating asset, you use that recalculated life in working out the decline in tax value.

You can choose to recalculate effective life because of changed circumstances: see section 72-105. That section also requires you to recalculate effective life in some cases.

72-75 Straight line method

(1) You work out the ***decline in tax value*** of a *depreciating asset or *depreciating liability for an income year applying the ***straight line method*** in this way:

$$*\text{Base value} \times \frac{\text{Days}}{365} \times \frac{100\%}{*\text{Remaining effective life}}$$

where:

days is the number of days you held the asset, or had the liability, in the income year, ignoring:

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

(a) any days in that year before the asset or liability *started to decline in tax value; and

(b) in the case of a tangible asset—any days in that year when you did not *use the asset, or have it *installed ready for use, for any purpose; and

(c) in the case of an interest as co-owner of a tangible asset—any days in that year when no co-owner *used the tangible asset, or had it *installed ready for use, for any purpose.

Example: Greg acquires an asset for $3,500 and first uses it on the 26th day of the income year. If the effective life of the asset is $3^1/3$ years, the asset would decline in tax value in that year by:

$$\$3{,}500 \times \frac{(365 - 25)}{365} \times \frac{100\%}{3\frac{1}{3}} = \$978$$

The asset's tax value at the end of the income year is:

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

(2) The ***remaining effective life*** of a *depreciating asset or *depreciating liability is any period of its *effective life that is yet to elapse as at the later of:

(a) when the asset or liability *starts to decline in tax value; or

(b) the start of the income year.

Subdivision 72-C—How to determine effective life

Table of sections

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

Commissioner's determination of effective life

Depreciating assets

72-95 Methods for determining effective life

(1) For a *depreciating asset, you must choose either:

(a) to apply the *effective life determined by the Commissioner under section 72-125 and in force as mentioned in subsection (3) of this section; or

(b) to work out the effective life of the asset yourself under section 72-100.

If no effective life so determined by the Commissioner is so in force, you must work out the effective life of the asset yourself under section 72-100.

(2) You must make the choice for the income year in which the asset *starts to decline in tax value.

Note: For rules about choices: see section 72-130.

(3) Your choice of an *effective life determined by the Commissioner is limited to one in force:

(a) if the asset *starts to decline in tax value within 5 years after the time (the ***test time***) when you entered into a contract to start to hold the asset, you otherwise started to hold it, or you started to construct it—at the test time; or

(b) if the asset is *plant and the test time is before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999—at the test time; or[1]

(c) otherwise—when it *starts to decline in tax value.

[1] This paragraph may be moved to the Transitional Provisions Act.

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

Exceptions: asset acquired from associate; former user or their associate still using the asset

(4) If:

(a) subsection 72-65(2) requires you to apply the same method for a *depreciating asset as your *associate was applying; or

(b) subsection 72-65(4) requires you to apply the same method for a *depreciating asset as the former holder was applying;

you must also apply:

(c) if the associate or former holder was applying the *diminishing value method for the asset—the same *effective life that the associate or former holder was using; or

(d) if the associate or former holder was applying the *straight line method—an effective life equal to any period of the asset's effective life the associate or former holder was applying that is yet to elapse at the time you started to hold the asset.

Note: You can require the associate to tell you which effective life the associate was applying: see section 72-140.

Exceptions overridden in some cases

(5) However, you must apply an *effective life determined by the Commissioner for the asset under section 72-125 if:

(a) you do not know, and cannot readily find out, which effective life the *associate or former holder was applying; and

(b) such an effective life is in force as mentioned in subsection (3) of this section.

Otherwise, you must work out the effective life of the asset yourself under section 72-100.

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

Exception: intangible depreciating assets

(6) The ***effective life*** of an intangible *depreciating asset mentioned in this table does not end until the end of the period applicable to that asset under the table. This is so despite anything else in this Subdivision.

***Effective life* of certain intangible depreciating assets**

Item	For this asset:	The effective life does not end until the end of:
1	Standard patent	20 years from when the patent starts to exist
2	Innovation patent	8 years from when the patent starts to exist
3	Petty patent	6 years from when the patent starts to exist
4	Registered design	15 years from when the design starts to exist
5	Copyright	The shorter of: (a) 25 years from when the copyright starts to exist; or (b) the period until the copyright ends
6	A licence relating to a copyright	The shortest of these: (a) 25 years from when the copyright starts to exist; (b) the period until the copyright ends; (c) the period until the licence ends
7	An item of *in-house software	$2^1/_2$ years from when the item starts to exist
8	A *datacasting transmitter licence	15 years from when the licence starts to exist
9	An *IRU	The *effective life of the international telecommunications submarine cable over which the IRU is granted

72-100 Self-assessing effective life of a depreciating asset

(1) You work out the ***effective life*** of a *depreciating asset yourself by estimating the period, as from the time when the asset *starts to

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

decline in tax value, during which the asset will be *used by any entity for any purpose. (The period must be expressed in years, including a fraction of a year if necessary.)

(2) In the case of a tangible asset:

(a) have regard to the wear and tear you reasonably expect from your expected circumstances of *use; and

(b) assume that the asset will be maintained in reasonably good order and condition.

(3) If, in estimating that period for a tangible asset, you conclude that you would be likely to scrap the asset, sell it for no more than scrap value, or abandon it, before the end of that period, the asset's ***effective life*** ends at the earlier time.

72-105 Recalculating effective life of an asset

Changed circumstances relating to use of the asset

(1) You may choose to recalculate the *effective life of a *depreciating asset from a later income year if the effective life you have been applying is no longer accurate because of changed circumstances relating to the *use of the asset.

Example: Some examples of changes in circumstances that may result in your recalculating the effective life of a depreciating asset are:

- your use of the asset turns out to be more or less intensive than you expected (or was anticipated by the Commissioner's determination);
- there is a downturn in demand for the goods or services the asset is used to produce that will result in the asset being scrapped;
- legislation prevents the asset's continued use;
- changes in technology make the asset redundant;
- the nature of your use of the asset changes (for example, you expected to use a pump to remove water from a dam, but instead you use it to extract petrol from a tank);
- in the case of a right, the right is renewed or extended beyond the period expected when its effective life was last calculated (section 22-25 treats the extension or renewal as a continuation of the original right).

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

Increase in cost of an asset

(2) You *must* recalculate a *depreciating asset's *effective life from a later income year if:

(a) you:

(i) worked out its effective life yourself under section 72-100; or

(ii) are applying an effective life worked out under section 72-125 (about the Commissioner's determination) and the *straight line method; or

(iii) you are applying an effective life because of subsection 72-95(4); and

(b) its *cost is increased in that year by at least 10%.

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

Example 1: Paul buys a photocopier and self-assesses its effective life at 6 years. In a later year he pays an amount to increase the quality of the reproductions it makes. The payment exceeds 10% of the cost of the photocopier as at the start of the income year in which the payment is made. He recalculates the photocopier's effective life, but concludes that it remains the same.

Example 2: Fiona also buys a photocopier and self-assesses its effective life at 6 years. In a later year she pays an amount to incorporate a more robust paper handling system. The payment exceeds 10% of the cost of the photocopier as at the start of the income year in which the payment is made. She recalculates the photocopier's effective life, and concludes that it is increased to 7 years.

(3) You must recalculate a *depreciating asset's *effective life for the income year in which you started to *hold it if:

(a) you are applying an effective life because of subsection 72-95(4); and

(b) the asset's *cost is increased in that year (after you started to hold it) by at least 10%.

Method of recalculation

(4) A recalculation under this section must be done applying section 72-100 (about self-assessing effective life).

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

Depreciating liabilities

72-110 Methods for determining effective life

(1) For a *depreciating liability, you must choose either:

(a) to apply the *effective life determined by the Commissioner under section 72-125 and in force as mentioned in subsection (3) of this section; or

(b) to work out the effective life of the liability yourself under section 72-115.

If no effective life so determined by the Commissioner is so in force, you must work out the effective life of the liability yourself under section 72-115.

(2) You must make the choice for the income year in which the liability *starts to decline in tax value.

Note: For rules about choices: see section 72-130.

(3) Your choice of an *effective life determined by the Commissioner is limited to one in force:

(a) at the time when:

(i) if you began to have the liability under a contract—you entered into the contract; or

(ii) otherwise—you began to have the liability;

if the liability *starts to decline in tax value within 5 years after that time; or

(b) otherwise—when the liability *starts to decline in tax value.

72-115 Self-assessing effective life of a depreciating liability

You work out the ***effective life*** of a *depreciating liability yourself by estimating the period, as from the time when the liability *starts to decline in tax value, during which economic benefits will be provided under the liability. (The period must be expressed in years, including a fraction of a year if necessary.)

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

72-120 Recalculating effective life of a liability

Changed circumstances

(1) You may choose to recalculate the *effective life of a *depreciating liability from a later income year if the effective life you have been applying is no longer accurate because of changed circumstances.

Example: A depreciating liability is renewed or extended beyond the period expected when its effective life was last calculated. This results in your recalculating the effective life of the liability because section 22-125 treats the extension or renewal as a continuation of the original liability.

Increase in proceeds of incurring liability

(2) You *must* recalculate a *depreciating liability's *effective life from a later income year if:

(a) you:

(i) worked out its effective life yourself under section 72-115; or

(ii) are applying an effective life worked out under section 72-125 (about the Commissioner's determination) and the *straight line method; and

(b) the *proceeds of incurring it increased in that year by at least 10%.

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

Method of recalculation

(3) A recalculation under this section must be done applying section 72-115 (about self-assessing effective life).

Commissioner's determination of effective life

72-125 Rules about determinations

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

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

liabilities. The determination may specify conditions for particular assets or liabilities.

(2) A determination may specify a day on which it comes into force for *depreciating assets or *depreciating liabilities (or both) specified in the determination.

(3) So far as it covers a *depreciating asset or *depreciating liability, a determination may operate retrospectively to a day specified in the determination if:

(a) there was no applicable determination at that day for that asset or liability; or

(b) there was an applicable determination at that day for that asset or liability, but the new determination specifies a shorter *effective life for the asset or liability than that applicable determination does.

(4) The Commissioner is to make a determination of the ***effective life*** of a *depreciating asset by estimating the period during which it can be *used by any entity for any purpose. (The period must be expressed in years, including a fraction of a year if necessary.)

(5) The Commissioner is to make a determination of the ***effective life*** of a *depreciating liability by estimating the period during which economic benefits can be provided under the liability. (The period must be expressed in years, including a fraction of a year if necessary.)

(6) So far as a determination relates to a tangible asset (or to an interest as co-owner of one), it is to be made:

(a) assuming that the asset will be subject to wear and tear at a reasonable rate; and

(b) assuming that the asset will be maintained in reasonably good order and condition; and

(c) having regard to the period within which the asset is likely to be scrapped, sold for no more than scrap value or abandoned.

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

Subdivision 72-D—Miscellaneous

Table of sections

72-130 Choices

(1) A choice you can make under this Division about a *depreciating asset or *depreciating liability must be made:

(a) by the day you lodge your *income tax return for the first income year to which the choice relates; or

(b) within a further time allowed by the Commissioner.

(2) Your choice, once made, applies to that income year and all later income years.

Exception: recalculating effective life

(3) However, subsection (2) does not prevent you choosing to recalculate the *effective life of a *depreciating asset under section 72-105, or the *effective life of a *depreciating liability under section 72-120.

72-140 Getting tax information from associates

(1) If subsection 72-65(2) requires you to apply the same method for a *depreciating asset as your *associate was applying, you may give the associate a written notice requiring the associate to tell you:

(a) the method the associate was applying to work out the *decline in tax value of the asset; and

(b) the *effective life the associate was applying.

(2) The notice must:

(a) be given within 60 days after you start to hold the asset; and

(b) specify a period of 60 days within which the information must be given; and

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

(c) set out the effect of subsection (3) or (5), as appropriate.

Note: Subsections (4) and (5) explain how this subsection operates if the associate is a partnership.

Requirement to comply with notice

(3) The *associate must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Giving the notice to a partnership

(4) If the *associate is a partnership:

(a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and

(b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

(5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

(6) Only one notice can be given in relation to the same *depreciating asset.

> *The Criminal Code will be applied to offences under this Division.*

Subdivision 72-E—Low-value and software development pools

> *To be drafted, based on Subdivision 40-E of the Income Tax Assessment Act 1997.*

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

Subdivision 72-F—Primary production depreciating assets

> *To be drafted, based on Subdivision 40-F of the Income Tax Assessment Act 1997.*

Subdivision 72-G—[Capital expenditure of primary producers and other landholders]

> *To be drafted, based on Subdivision 40-G of the Income Tax Assessment Act 1997.*

Subdivision 72-H—[Capital expenditure that is immediately deductible]

> *To be drafted, based on Subdivision 40-H of the Income Tax Assessment Act 1997. Most of the provisions in that Subdivision will not be needed under the tax value method, because the expenditure they cover will not go into the cost of an asset. Some rules may be needed to ensure that expenditure on environmental protection activities immediately reduces taxable income even though it improves an asset.*

Subdivision 72-I—[Capital expenditure that is deductible over time]

> *To be drafted, based on Subdivision 40-H of the Income Tax Assessment Act 1997.*

Division 73—Depreciating capital works

> *To be drafted, based on Division 43 of the Income Tax Assessment Act 1997.*

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

Division 74—Choosing market value as tax value

Division 76—Financial assets and liabilities

Table of Subdivisions

Subdivision 76-A—How to work out the tax value of a financial asset

Table of sections

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

General

76-10 Meaning of *financial asset*

A ***financial asset*** is an asset that consists only of one or more of the following:

(a) a right to receive an amount (whether denominated in Australian currency or foreign currency);

(b) a right to receive:

(i) an asset that is a financial asset because of any other application or applications of this definition; or

(ii) part of such an asset;

(c) foreign currency (except a *collectable).

> *Additional rules will be needed for financial assets that involve foreign currency.*
>
> *How the definition of* **financial asset** *and the other rules in this Division are to interact with the rules in Division 974 of the Income Tax Assessment Act 1997 about debt and equity interests is still being considered.*

76-15 Tax value of financial assets

The table tells you how to work out the ***tax value*** at a particular time of a *financial asset you hold (other than a *market value asset). If more than one item covers the asset, apply the first item that covers it.

Tax value of a financial asset

Item	**For this kind of financial asset:**	**The tax value at that time is:**
1	A *financial asset that: (a) consists of your right to receive an amount that is *due and payable; and (b) is not covered by item 2	The amount you have the right to receive

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

Section 76-15

Tax value of a financial asset

Item	**For this kind of financial asset:**	**The tax value at that time is:**
2	A *financial asset consisting of your right to receive an amount for *giving a *non-cash benefit (other than a financial asset) if the amount: (a) must be paid within 12 months after the day when the asset comes into existence; or (b) would have to be paid within those 12 months if each *uncertain obligation that the *financial liability corresponding to the asset consists of or includes were a *certain obligation	The amount you actually have the right to receive, or nil if you do not actually have at that time the right to receive any of the amount
3	A *financial asset if: (a) you are an individual; or (b) you were an *STS taxpayer when you began to hold the asset; and: (c) the only return on the asset is interest that must be paid within 12 months after the day when it accrues, and the rate of which changes over the life of the asset (if at all) only because of fluctuations in market interest rates; or (d) when you began to hold the asset, the only return on it (apart from interest covered by paragraph (c)) represented an annual rate of return of not more than 1% of the asset's *cost when you began to hold it; or (e) when you began to hold the asset, its remaining term was not more than 12 months	The *cost of the asset at that time, reduced by the total of each amount you receive in respect of the asset at or before that time, to the extent that the amount represents repayment of that cost
4	A *financial asset that has a *certain gain	The amount worked out under Subdivision 76-C
5	Any other *financial asset	The *cost of the asset at that time, reduced by the total of each amount you receive in respect of the asset at or before that time, to the extent that the amount represents repayment of that cost

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

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

- Financial assets that have a certain gain are taxed on an "accruals" basis (see item 4).
- A financial asset covered by item 3 or 5 in the table is taxed on a "realisation" basis.

Note 2: An example of an asset covered by item 3 is an ordinary bank savings account held by an individual, with interest accruing daily and paid at the end of each quarter.

Note 3: The tax value of a financial asset that is a market value asset is the asset's market value. See Division 74.

76-20 Assumptions to be made

In working out the tax value of a *financial asset under item 3, 4 or 5 of the table in section 76-15, assume that:

(a) the holder of the asset will continue to hold it for the rest of its life; and

(b) an amount received in respect of the asset was received when it became *due and payable or, if it was received before it became due and payable, when it would have become due and payable; and

(c) an amount to be received in respect of the asset:

(i) will be received when it becomes due and payable; or

(ii) was received when it became due and payable;

as appropriate.

Certain gain

76-40 When a financial asset has a *certain gain*

A *financial asset you hold has a ***certain gain*** at a particular time if, and only if, at that time it is substantially more likely than not that the total of the following will exceed the asset's *cost at that time:

(a) each amount that:

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

(i) you received in respect of the asset at or before that time; and

(ii) was a *certain receipt for some period until it became *due and payable; and

(b) each amount that is to be received in respect of the asset after that time, and is a *certain receipt at that time.

76-50 If a financial asset stops having a certain gain

At and after the time when a *financial asset stops having a *certain gain, the ***first element*** of the asset's *cost is the asset's tax value immediately before that time.

Note: The asset's tax value at and after that time is worked out under section 76-15.

Certain receipts

76-70 What is a *certain receipt*

An amount to be received in respect of an asset is a ***certain receipt*** at a particular time if, and only if, at that time an entity has a *certain obligation to pay the amount (even if the obligation is of *uncertain amount).

Note: Subsection 975-15(2) provides for determining the extent of the future economic benefits to be provided under a certain obligation of uncertain amount. However, see also sections 76-80 and 76-90 and Subdivision 76-E.

76-80 Regulations

(1) The regulations may prescribe the amounts, or how to work out the amounts, of *certain receipts that depend on:

(a) the future value or level at a particular time of variables prescribed for the purposes of this subsection; or

(b) future changes in the value or level of such variables over a period.

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

Exclusion for amount depending on variable prescribed by regulations

(2) An amount is *not* a ***certain receipt*** if it depends on:

(a) the future value or level at a particular time of a variable prescribed by the regulations for the purposes of this subsection; or

(b) a future change in the value or level of such a variable over a period.

Effect of regulations under this section

(3) Regulations in force for the purposes of this section have effect despite section 76-70 and subsection 975-15(2) (about estimating the extent of the future economic benefits to be provided under a certain obligation of uncertain amount).

(4) However, if at a particular time:

(a) an amount is to be received in respect of an asset and would be a certain receipt apart from subsection (2); and

(b) the amount cannot be less than a minimum amount that does not depend on a matter referred to in that subsection (even if the minimum amount is not known and cannot be worked out at that time);

the amount is a ***certain receipt*** at that time equal to that minimum amount.

76-90 Right to receive a financial asset

If, at a particular time:

(a) a *financial asset consists of or includes a right to receive:

(i) another asset that is a financial asset; or

(ii) part of such an asset; and

(b) there is a *certain obligation to provide the other asset or part (even if the obligation is of *uncertain amount);

the right to receive the other asset or part is taken to be at that time:

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

(c) an amount that is to be received in respect of the asset and will be received at the latest time when the asset or part can be provided in accordance with that obligation; and

(d) a ***certain receipt*** of an amount equal to what it is reasonable at that time to expect will be the *market value of the other asset or part at that latest time.

Subdivision 76-B—How to work out the tax value of a financial liability

Table of sections

General

76-110 Meaning of *financial liability*

A ***financial liability*** is a liability that consists of one or more of the following:

(a) an obligation to pay an amount (whether denominated in Australian currency or foreign currency);

(b) an obligation to provide a *financial asset or part of one.

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

> *Additional rules will be needed for financial liabilities that involve foreign currency.*
>
> *How the definition of **financial liability** and the other rules in this Division are to interact with the rules in Division 974 of the Income Tax Assessment Act 1997 about debt and equity interests is still being considered.*

76-115 Tax value of financial liabilities

The table tells you how to work out the ***tax value*** at a particular time of a *financial liability you have (other than a *market value liability). If more than one item covers the asset, apply the first item that covers it.

Tax value of a financial liability

Item	For this kind of financial liability:	The tax value at that time is:
1	A *financial liability to pay an amount that is *due and payable (except a financial liability covered by item 2)	The amount you are liable to pay
2	A *financial liability to pay an amount for *getting a *non-cash benefit (other than a *financial asset) if the amount: (a) must be paid within 12 months after the day when the liability comes into existence; or (b) would have to be paid within those 12 months if each *uncertain obligation that the liability consists of or includes were a *certain obligation	The amount you are actually liable at that time to pay, or nil if you are not actually liable at that time to pay any of the amount

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

Tax value of a financial liability

Item	For this kind of financial liability:	The tax value at that time is:
3	A *financial liability if: (a) you are an individual; or (b) you were an *STS taxpayer when you began to have the liability; and: (c) the only return on the liability is interest that must be paid within 12 months after the day when it accrues, and the rate of which changes over the life of the liability (if at all) only because of fluctuations in market interest rates; or (d) when you began to have the liability, the only return on it (apart from interest covered by paragraph (c)) represented an annual rate of return of not more than 1% of the *proceeds of incurring the liability (as at when you began to have it); or (e) when you began to have the liability, its remaining term was not more than 12 months	The *proceeds of incurring the liability (as at that time) reduced by the total of each amount you pay in respect of the liability at or before that time, to the extent that the amount represents repayment of those proceeds
4	A *financial liability that has a *certain loss	The amount worked out under Subdivision 76-D
5	Any other *financial liability	The *proceeds of incurring the liability (as at that time) reduced by the total of each amount you pay in respect of the liability at or before that time, to the extent that the amount represents repayment of those proceeds

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

- Financial liabilities that have a certain loss are taxed on an "accruals" basis (see item 4).
- A financial liability covered by item 3 or 5 in the table is taxed on a "realisation" basis.

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

Note 2: An example of a liability covered by item 3 is an ordinary bank overdraft owed by an individual, with interest accruing daily and paid at the end of each quarter.

Note 3: The tax value of a financial liability that is a market value liability is the liability's market value. See Division 74.

76-120 Assumptions to be made

In working out the tax value of a *financial liability under item 3, 4 or 5 of the table in section 76-115, assume that:

(a) an amount paid in respect of the liability was paid when it became *due and payable or, if it was paid before it became due and payable, when it would have become due and payable; and

(b) an amount to be paid in respect of the liability:

(i) will be paid when it becomes *due and payable; or

(ii) was paid when it became due and payable;

as appropriate.

Certain loss

76-140 When a financial liability has a *certain loss*

A *financial liability you have has a ***certain loss*** at a particular time if, and only if, at that time it is substantially more likely than not that the total of the following will exceed your *proceeds of incurring the liability (as at that time):

(a) each amount that:

(i) you paid in respect of the liability at or before that time; and

(ii) was a *certain payment for some period until it became *due and payable; and

(b) each amount that is to be paid in respect of the liability after that time, and is a *certain payment at that time.

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

76-150 If a financial liability stops having a certain loss

At and after the time when a *financial liability stops having a *certain loss, the ***first element*** of the *proceeds of incurring the liability is the liability's tax value immediately before that time.

Note: The liability's tax value at and after that time is worked out under section 76-115.

Certain payments

76-170 What is a *certain payment*

An amount to be paid in respect of a liability you have is a ***certain payment*** at a particular time if, and only if, at that time you have a *certain obligation to pay the amount (even if the obligation is of *uncertain amount).

Note: Subsection 975-15(2) provides for determining the extent of the future economic benefits to be provided under a certain obligation of uncertain amount. However, see also sections 76-180 and 76-190 and Subdivision 76-E.

76-180 Regulations

(1) The regulations may prescribe the amounts, or how to work out the amounts, of *certain payments that depend on:

(a) the future value or level at a particular time of variables prescribed for the purposes of this subsection; or

(b) future changes in the value or level of such variables over a period.

Exclusion for amount depending on variable prescribed by regulations

(2) An amount is *not* a ***certain payment*** if it depends on:

(a) the future value or level at a particular time of a variable prescribed by the regulations for the purposes of this subsection; or

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

(b) a future change in the value or level of such a variable over a period.

Effect of regulations under this section

(3) Regulations in force for the purposes of this section have effect despite section 76-170 and subsection 975-15(2) (about estimating the extent of the future economic benefits to be provided under a certain obligation of uncertain amount).

(4) However, if at a particular time:

(a) an amount is to be paid in respect of a liability and would be a certain payment apart from subsection (2); and

(b) the amount cannot be less than a minimum amount that does not depend on a matter referred to in that subsection (even if the minimum amount is not known and cannot be worked out at that time);

the amount is a ***certain payment*** at that time equal to that minimum amount.

76-190 Obligation to provide a financial asset

If, at a particular time:

(a) a *financial liability you have consists of or includes an obligation to provide a *financial asset or part of one; and

(b) you have a *certain obligation to provide the financial asset or part (even if the obligation is of *uncertain amount);

the obligation is taken to be at that time:

(c) an amount that is to be paid in respect of the financial liability and will be paid at the latest time when the financial asset or part can be provided in accordance with that obligation; and

(d) a ***certain payment*** of an amount equal to what it is reasonable at that time to expect will be the *market value of the financial asset or part at that latest time.

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

Subdivision 76-C—Tax value of a financial asset worked out on an accruals basis

Table of sections

76-205 Application

The ***tax value*** of a *financial asset is worked out under this Subdivision if item 4 of the table in section 76-15 tells you to.

> *You will be able to choose to work out on a straight-line accruals basis the tax value of all financial assets that:*
>
> - *you start to hold after you make the choice; and*
> - *would otherwise have their tax value worked out under the formula in section 76-210; and*
> - *when you start to hold them, have a remaining term of at most 12 months and cash flows that are known, or meet alternative criteria to be set out in the regulations.*

76-210 Tax value

(1) If the asset has a *certain gain when you begin to hold it, its ***tax value*** at that time is its *cost at that time, reduced by the total of each amount that:

(a) you receive in respect of the asset at or before that time; and

(b) is a *certain receipt for some period until it becomes *due and payable.

---

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

(2) If the asset starts to have a *certain gain *after* you begin to hold it, its ***tax value*** when it starts to have a certain gain is its tax value immediately before that time, reduced by the total of each amount that:

(a) you receive in respect of the asset at that time; and

(b) is a *certain receipt for some period until it becomes *due and payable.

(3) In either case, the ***tax value*** of the asset at a later time (the ***test time***) when it has a *certain gain is worked out using this formula:

$$\left[\text{Last tax value} \times \left(1 + \text{Rate}\right)\right] - \text{Reset amounts}$$

(4) The rest of this Subdivision explains the terms used in the formula.

76-220 Last tax value

Last tax value means the tax value of the asset (worked out under this Subdivision) at the most recent time (the ***previous test time***) before the test time when one or more of these things happened:

(a) you began to hold the asset;

(b) the asset started to have a *certain gain;

(c) you received in respect of the asset an amount that was a *certain receipt for some period until it became *due and payable;

(d) an income year ended;

(e) a *certain receipt became receivable in respect of the asset;

(f) an amount already receivable in respect of the asset became a *certain receipt;

(g) a *certain receipt stopped being receivable in respect of the asset;

(h) an amount receivable in respect of the asset stopped being a *certain receipt;

(j) the amount of a *certain receipt receivable in respect of the asset changed;

(k) the *cost of the asset increased.

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

76-230 Rate

(1) ***Rate*** means the rate of return (compounded in accordance with subsection (2) and expressed as a percentage) that, if used to work out the present value, at the previous test time, of each amount that:

(a) as at that time, was to be received in respect of the asset; and

(b) was a *certain receipt at that time;

would result in the total of those present values equalling the asset's tax value at the previous test time.

(2) You may choose the compounding period for the purposes of an application of subsection (1), but it must not exceed 12 months.

Example: Frugal Ltd lends $10,000. The borrower agrees to pay Frugal Ltd $11,236 at the end of 2 years.

The cost of Frugal's financial asset is $10,000, which is also its tax value when Frugal starts to hold it.

At that time, the present value of the $11,236 receipt equals the tax value if:

- a 6% rate of return is used; and
- a compounding period of 12 months is chosen.

(3) If the period starting at the previous test time and ending at the test time is greater or less than the compounding period chosen under subsection (2), ***Rate*** is worked out using the formula:

$$[(1+\text{Base rate})^{(\text{Days} \div \text{Compounding period})}]-1$$

(4) For the purposes of the formula in subsection (3):

Base rate means the rate worked out under subsection (1).

Compounding period means the number of days in the compounding period chosen under subsection (2).

Days means the number of days in the period starting at the previous test time and ending at the test time.

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

76-240 Reset amounts

Reset amounts means the total (which may be a negative amount) of these:

(a) each amount that you received at the test time in respect of the asset, and that was a *certain receipt for some period until it became *due and payable;

(b) each increase (expressed as a negative amount) at the test time in the *cost of the asset;

or 0 if there is no such amount.

Note: The receipts *reduce* the tax value of the financial asset at the test time (and hence its closing tax value if you still hold it at the end of the income year), but they also *increase* your net income for the income year: see subsection 6-55(1).

Subdivision 76-D—Tax value of a financial liability worked out on an accruals basis

Table of sections

76-305 Application

The ***tax value*** of a *financial liability is worked out under this Subdivision if item 4 of the table in section 76-115 tells you to.

You will be able to choose to work out on a straight-line accruals basis the tax value of all financial liabilities that:

- *you start to hold after you make the choice; and*
- *would otherwise have their tax value worked out under the formula in section 76-310; and*

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

> • *when you start to hold them, have a remaining term of at most 12 months and cash flows that are known, or meet alternative criteria to be set out in the regulations.*

76-310 Tax value

(1) If the liability has a *certain loss when you begin to have it, its ***tax value*** at that time is equal to your *proceeds of incurring it (as at that time), reduced by the total of each amount that:

(a) you pay in respect of the liability at or before that time; and

(b) is a *certain payment for some period until it becomes *due and payable.

(2) If the liability starts to have a *certain loss *after* you begin to have it, its ***tax value*** when it starts to have a certain loss is its tax value immediately before that time, reduced by the total of each amount that:

(a) you pay in respect of the liability at that time; and

(b) is a *certain payment for some period until it becomes *due and payable.

(3) In either case, the ***tax value*** of the liability at a later time (the ***test time***) when it has a *certain loss is worked out using this formula:

$$[\text{Last tax value} \times (1 + \text{Rate})] - \text{Reset amounts}$$

(4) The rest of this Subdivision explains the terms used in the formula.

76-320 Last tax value

Last tax value means the tax value of the liability (worked out under this Subdivision) at the most recent time (the ***previous test time***) before the test time when one or more of these things happened:

(a) you began to have the liability;

(b) the liability started to have a *certain loss;

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

(c) you paid in respect of the liability an amount that was a *certain payment for some period until it became *due and payable;

(d) an income year ended;

(e) a *certain payment became payable in respect of the liability;

(f) an amount already payable in respect of the liability became a *certain payment;

(g) a *certain payment stopped being payable in respect of the liability;

(h) an amount payable in respect of the liability stopped being a *certain payment;

(j) the amount of a *certain payment payable in respect of the liability changed;

(k) the *proceeds of incurring the liability increased.

76-330 Rate

(1) ***Rate*** means the rate of return (compounded in accordance with subsection (2) and expressed as a percentage) that, if used to work out the present value, at the *previous* test time, of each amount that:

(a) as at that time, was to be paid in respect of the liability; and

(b) was a *certain payment at that time;

would result in the total of those present values equalling the liability's tax value at the previous test time.

(2) You may choose the compounding period for the purposes of an application of subsection (1), but it must not exceed 12 months.

Example: Frugal Ltd lends $10,000. The borrower agrees to pay Frugal Ltd $11,236 at the end of 2 years.

The borrower's proceeds of incurring its financial liability is $10,000, which is also the liability's tax value when the borrower starts to have it.

At that time, the present value of the $11,236 payment equals the tax value if:

- a 6% rate of return is used; and
- a compounding period of 12 months is chosen.

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

(3) If the period starting at the previous test time and ending at the test time is greater or less than the compounding period chosen under subsection (2), ***Rate*** is worked out using the formula:

$$[(1 + \text{Base rate})^{(\text{Days} \div \text{Compounding period})}] - 1$$

(4) For the purposes of the formula in subsection (3):

Base rate means the rate worked out under subsection (1).

Compounding period means the number of days in the compounding period chosen under subsection (2).

Days means the number of days in the period starting at the previous test time and ending at the test time.

76-340 Reset amounts

Reset amounts means the total (which may be a negative amount) of these:

(a) each amount that you paid at the test time in respect of the liability, and that was a *certain payment for some period until it became *due and payable;

(b) each increase (expressed as a negative amount) at the test time in the *proceeds of incurring the liability;

or 0 if there is no such amount.

Note: The payments *reduce* the tax value of the financial liability at the test time (and hence its closing tax value if you still have it at the end of the income year), but they also *reduce* your net income for the income year: see subsection 6-55(1).

Subdivision 76-E—Estimating future receipts and payments for accruals purposes

Table of sections

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

76-370 Application of this Subdivision

(1) This Subdivision sets out rules for estimating the amount at a particular time (the ***estimate time***) of a future receipt or payment whose actual amount is not known, and cannot be worked out, as at that time. The amount of the future receipt or payment at the estimate time is taken to be the amount estimated under this Subdivision.

(2) This Subdivision has effect:

(a) for the purposes of working out the tax value of a *financial asset under Subdivision 76-C (subject to regulations made for the purposes of subsection 76-80(1)); and

(b) for the purposes of working out the tax value of a *financial liability under Subdivision 76-D (subject to regulations made for the purposes of subsection 76-180(1));

despite subsection 975-15(2) (about estimating the extent of the future economic benefits to be provided under a certain obligation of uncertain amount).

(3) For those purposes, it also applies to working out the *cost of a *financial asset and the *proceeds of incurring a *financial liability.

76-380 Assumptions to be made in making estimates

(1) If the actual amount of the future receipt or payment depends on the value or level at a particular time of a variable, assume that its value or level will be:

(a) the same as was taken into account in working out the last amount, of the kind specified in the applicable item of the table, that depended on the value or level of that variable; or

(b) if there is no such amount, the same as at the end of the last financial year to end before the estimate time.

Example: A future receipt or payment is to be worked out by reference to a variable interest rate, an interest rate benchmark or the Consumer Price Index.

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

Last amount worked out using the value or level of the variable

Item	In the case of:	The kind of amount is:
1	A future receipt in respect of a *financial asset	An amount that: (a) was received in respect of the asset before the estimate time; or (b) is to be received in respect of the asset and became *due and payable before the estimate time
2	A future receipt in respect of a *financial liability	An amount that: (a) was received in respect of the liability before the estimate time; or (b) is to be received in respect of the liability and became *due and payable before the estimate time
3	A future payment in respect of a *financial asset	An amount that: (a) was paid in respect of the asset before the estimate time; or (b) is to be received in respect of the asset and became *due and payable before the estimate time
4	A future payment in respect of a *financial liability	An amount that: (a) was paid in respect of the liability before the estimate time; or (b) is to be paid in respect of the liability and became *due and payable before the estimate time

(2) If the actual amount of the future receipt or payment depends on a change over a period in the value or level of a variable, assume that the rate of that change will be:

(a) the same as was taken into account in working out the last amount, of the kind specified in the applicable item of the table in subsection (1), that depended on a change in the value or level of that variable over an earlier period of the same length; or

(b) if there is no such amount, the same as it was for the earlier period of the same length ending at the end of the last financial year to end before the estimate time.

Example: A future receipt or payment is to be worked out by reference to changes in the Consumer Price Index over a 12 month period.

(3) In any other case, the estimate must be consistent with the fact that:

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

(a) the *financial asset concerned has a *certain gain; or

(a) the *financial liability concerned has a *certain loss;

as appropriate, having regard to the application (if any) of subsections (1) and (2) to other future receipts or payments in respect of the asset or liability.

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

Division 78—Investment assets

Guide to Division 78

78-1 What this Division is about

> The tax value of an investment asset is usually its cost. This means that a gain or loss on the asset does not affect your net income until the asset is realised.

Note: Gains and losses on investment assets are also subject to special treatment through taxable income adjustments under Division 100.

Table of sections

Operative provisions

[This is the end of the Guide.]

Operative provisions

78-10 Meaning of *investment asset*

An ***investment asset*** is an asset other than:

(a) a *listed zero tax value asset; or

(b) an item of *trading stock; or

(c) a *depreciating asset; or

(d) a *market value asset; or

(e) a *financial asset.

Note: Examples of assets that can be investment assets are:

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

- land;
- shares in a company or units in a unit trust;
- a perpetual option;
- a high-cost private-use collectable.

78-20 Tax value of investment assets generally

(1) The tax value at a particular time of an *investment asset you hold is the asset's *cost at that time.

(2) The rest of this Division sets out special rules for working out the tax value of particular kinds of *investment asset.

78-50 Tax value of goodwill

The tax value at a particular time of an *investment asset you hold that consists of goodwill is:

(a) if some or all of it is goodwill you acquired from another entity—the *first element of the *cost of the goodwill that you so acquired; and

(b) otherwise—nil.

78-100 Tax value of a share

(1) The ***tax value*** at a particular time of a *share in a company that you hold is the *cost of the share as at that time, reduced by the *non-dividend part of each amount you receive from the company in respect of the share at or before that time.

(2) The ***non-dividend part*** of an amount that you receive from a company:

(a) in respect of a *share in the company that you hold; and

(b) otherwise than because you stop holding the share;

is so much of the amount (which may be all of it) as:

(c) is not a *dividend; and

(d) is not taken to be a dividend under [equivalent of section 47 of the *Income Tax Assessment Act 1936*].

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

(3) In working out the *non-dividend part of an amount you receive, disregard:

(a) any of the amount you repay; and

(b) any compensation you pay that can reasonably be regarded as a repayment of all or part of the amount.

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

Part 2-15—Taxable income adjustments

Division 95—Finding lists for upward and downward adjustments

95-20 Table

This table sets out a list of the provisions of this Act under which you can have *upward adjustments and *downward adjustments for an income year.

Upward and downward adjustments		
Item	**In this case:**	**See:**
1	You have net exempt income	Section 6-95 and Division 130
2	You make one or more investment asset gains or investment asset losses	Division 100
3	There is a gain reduction amount or loss reduction amount for an asset that you stop holding	Section 101-10
4	You pay an amount by way of gift or contribution	Section 103-15
5	You spend money on entertainment	Division 110
6	An individual (or a partnership in which an individual is a partner) holds a depreciating asset, or has a depreciating liability, whose tax value declines during the income year and that has a private percentage	Subdivision 222-F
7	An individual (or a partnership in which an individual is a partner) stops holding a depreciating asset, or stops having a depreciating liability, that has a private percentage	Subdivision 222-F
8	An individual (or a partnership in which an individual is a partner) makes one or more investment asset gains or investment asset losses from high-cost private-use collectables	Subdivisions 234-C and 234-D

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

Section 95-20

Upward and downward adjustments

Item	In this case:	See:
9	An STS taxpayer who is an individual (or a partnership in which an individual is a partner) holds an STS depreciating asset that has a private percentage	Subdivision 545-C
10	You spend money on research and development	[*to be drafted*]
11	Luxury car limit applies	[*to be drafted*]
12	General anti-avoidance rules	Part 2-40

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

Division 100—Investment assets: discounting gains and quarantining losses

Table of Subdivisions

Guide to Division 100

100-1 What this Division is about

Under the rules before this Division, your gains and losses from investment assets are automatically taken into account in working out your net income.

Note: The tax value of an investment asset is worked out primarily by reference to the asset's cost, so a gain or loss occurs only on realisation. See Division 78.

This Division gives investment asset gains and losses 2 kinds of special treatment. Both are achieved by taxable income adjustments.

First, gains by individuals (and by some other entities) on investment assets held for at least 12 months are discounted (after reduction by available investment asset losses) by excluding a percentage of the gain from taxable income.

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

> Secondly, investment asset *losses* are quarantined, and can only be offset against investment asset gains.

Note 1: This Division also applies to a depreciating asset that is capital works to which Division 73 (about depreciating capital works) applies.

Note 2: Later Divisions create other concessions for investment asset gains:

- Some gains are wholly or partly exempted by excluding them from taxable income. (Losses of the same kind are excluded to the same extent.) See, for example, Division 136.
- Some gains are rolled over. (Losses of the same kind are also rolled over.) See, for example, Divisions 152 and 154.

Subdivision 100-A—Objects

100-5 Objects of this Division

(1) The main objects of this Division are:

(a) to reduce the income tax payable by individuals (and some other entities) on certain *investment asset gains; and

(b) to ensure that *investment asset losses are quarantined so that they reduce taxable income from investment asset gains made in the same or a later income year, and do not reduce other taxable income.

Note: Without the quarantining mentioned in paragraph (1)(b), entities that have unrealised losses on investment assets could selectively realise those losses in order to reduce their income tax.

(2) These objects are achieved by *taxable income adjustments that modify the effect that gains and losses from realising *investment assets would otherwise have on taxable income.

> *Exemptions and roll-overs are not dealt with in this Division, but will be preserved in other Divisions: for example, Division 550 dealing with small business relief. Some roll-overs extend beyond investment assets to include, for example, some depreciating assets.*

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

Subdivision 100-B—Identifying your investment asset gains and losses

Table of sections

100-15 Investment assets excluded from this Division

This Division does *not* apply to these kinds of *investment asset:

(a) an asset covered by item 3 of the table in section 10-20 (about purchased information that is not generally available);

(b) a *pre-CGT investment asset;

(c) a *private asset held by an individual, or by a partnership in which an individual is a member;

(d) Australian currency (except a *collectable)

Note: This Division does not apply to a private asset or a pre-CGT asset because a gain or loss from such an asset is not reflected in your net income. (The only investment assets that are private assets are certain collectables: see section 234-35.)

> *Recommendation 4.10(b)(i) in the Final Report of the Review of Business Taxation provides that a share in a company (or an interest in a trust) that an entity last began to hold before the transition to the tax value method should not have investment asset treatment if it was a revenue asset of the entity immediately before the transition.*

100-20 Division also applies to capital works begun before commencement

This Division applies to a *depreciating asset that is capital works to which Division 73 (about depreciating capital works) applies, in the same way as it applies to *investment assets.

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

100-25 Investment asset gains and losses

(1) You may have one or more *taxable income adjustments under this Division if, during the income year, you made one or more *investment asset gains or *investment asset losses.

(2) You can make an *investment asset gain or *investment asset loss only from an *investment asset event.

(3) The main ***investment asset event*** happens when you cease to hold an *investment asset. These are the other ***investment asset events***:

(a) a *non-dividend payment for shares event[2];

(b) a *trust capital distribution event[3].

Note: Those other events are set out in Subdivision 100-D.

100-45 Working out your investment asset gain or loss

(1) You work out as follows whether you have made an ***investment asset gain*** or an ***investment asset loss*** from ceasing to hold an *investment asset. The gain or loss is made when you cease to hold the asset.

Working out your investment asset gain or loss
Step 1. Work out your *proceeds of realising the asset.
Step 2. Subtract from the step 1 result:
(a) the asset's tax value immediately before you ceased to hold it; and
(b) each amount you paid in order to cease to hold the asset, except so far as it has become part of that tax value.

[2] This is the existing CGT Event G1.
[3] This is the existing CGT Event E4.

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

Step 3. If the step 2 result is a positive amount, it is your ***investment asset gain*** from ceasing to hold the asset. If it is a negative amount, your ***investment asset loss*** from ceasing to hold the asset is that amount expressed as a positive amount.

Note: If the result is nil, you have neither an investment asset gain nor an investment asset loss.

Note 1: Under the core rules, your investment asset gains and losses are automatically taken into account in working out your net income. The purpose of identifying them separately is to work out whether you have taxable income adjustments.

Note 2: If:

- the investment asset is shares in a company or an interest in a trust; and
- there has been a fall in the market value of a high cost collectable held by the company (or a member of the same wholly-owned group) or trust mainly for your (or your associate’s) personal use or enjoyment;

section 234-70 changes how this section applies.

(2) You work out as provided in Subdivision 100-D (other investment asset events) whether you have made an ***investment asset gain*** or an ***investment asset loss*** from any other *investment asset event.

100-65 Effect of exemptions, roll-overs and gain or loss reduction amounts

(1) The amount of an *investment asset gain you make during the income year is reduced (but not below nil) by the amount of each *downward adjustment that you have for the income year and that is specific to that gain.

Note: A downward adjustment that exempts all or part of a gain from income tax, or rolls it over, is specific to the gain. The adjustment reverses the effect the gain would otherwise have on net income. For examples of exemptions and roll-overs, see Divisions 136, 152 and 154.

A downward adjustment because of a gain reduction amount is also specific to the gain. See item 1 in the table in section 101-10.

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

(2) The amount of an *investment asset loss you make during the income year is reduced (but not below nil) by the amount of each *upward adjustment that you have for the income year and that is specific to that loss.

Note: An upward adjustment that reverses the effect a loss would otherwise have on net income is specific to that loss. For examples, see Divisions 136, 152 and 154.

An upward adjustment because of a loss reduction amount is also specific to the gain. See item 3 in the table in section 101-10.

Under the tax value method, replacement asset rollovers will be implemented by giving the replacement asset a cost equal to the tax value of the asset it is replacing when you ceased to hold it. The investment asset gain or loss on the old asset also needs to be adjusted for the difference between the rolled over tax value and what would otherwise be the cost of the replacement asset.

Subdivision 100-C—Adjustments giving effect to discounting and quarantining

Table of sections

100-75 Working out your adjustments

(1) Compare:

- the total of the *investment asset gains you made during the income year; with
- the total of the *investment asset losses you made during the income year.

Note: If you are an individual:

- your investment asset gains from high-cost private-use collectables are taken into account under this section only to the extent provided in section 234-55; and

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

- your investment asset losses from high-cost private-use collectables are not taken into account under this section: see section 234-50.

Gains exceed losses

(2) If the total of the gains exceeds the total of the losses, you have ***downward adjustments*** as worked out under this method statement.

> *Downward adjustments*
>
> *Step 1*. Reduce the gains (in whichever order you choose) by the losses.
>
> *Step 2*. Reduce any remaining amounts of the gains (in whichever order you choose) by applying any previously unapplied *carry forward investment asset losses from earlier income years (in the order in which you made them). You have a ***downward adjustment*** equal to the total of the carry forward losses so applied.
>
> *Step 3*. For each remaining gain that is a *discountable gain (see Subdivision 100-E), you have a ***downward adjustment*** equal to the *discount percentage multiplied by the remaining amount of the gain.

Example: For income year 1, Camille has $10,000 of investment asset gains, all of which are discountable gains. She also has $6,000 of investment asset losses for that income year. She has no other net income for the income year, so her net income is:

$10,000 - $6,000=$4,000

She also has an unapplied carry forward investment asset loss of $1,000 for an earlier income year.

She works out downward adjustments as follows:

Step 1: The investment asset gains are reduced by the investment asset losses:

$10,000 - $6,000=$4,000

Step 2: The remaining amounts of investment asset gains are reduced by the unapplied carry forward investment asset loss:

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

$4,000 - $1,000=$3,000

She has a downward adjustment for the $1,000.

Step 3: She also has a downward adjustment worked out by multiplying the discount percentage by the remaining amounts of investment asset gains:

50% x $3,000=$1,500.

So the $4,000 of her net income is reduced by $1,000+$1,500=$2,500 of downward adjustments, resulting in $1,500 of taxable income.

Losses exceed gains

(3) If the total of the losses exceeds the total of the gains:

(a) you have an ***upward adjustment*** equal to that excess; and

(b) the excess is your ***carry forward investment asset loss*** for the income year.

Note: The upward adjustment quarantines the excess losses by reversing their effect on net income. When the carry forward investment asset loss is applied in a later income year, it gives rise to a downward adjustment under Step 2 of the method statement in subsection (2).

100-80 What is the *discount percentage* for a discountable gain?

The ***discount percentage*** for an amount of a *discountable gain is:

(a) 50% if the gain is made:

(i) by an individual; or

(ii) by a trust (other than a trust that is a *complying superannuation entity); or

(b) $33^1/_3$% if the gain is made:

(i) by a complying superannuation entity; or

(ii) by a *life insurance company from an *investment asset that is a *virtual PST asset.

Rules about bankrupts to be included later. These will be generic, based on existing Subdivision 36-B and subsections 102-5(2) and (3).

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

Subdivision 100-D—Other investment asset events

Table of sections

100-85 Non-dividend payment for shares event

(1) A ***non-dividend payment for shares event***[4] happens at the time when you receive one or more amounts from a company:

(a) in respect of a *share in the company that is an *investment asset that you hold; and

(b) otherwise than because you stop holding the share;

if:

(c) at least one amount has a *non-dividend part (see section 44-50); and

(d) the total of the one or more non-dividend parts of the one or more amounts exceeds the share's tax value immediately before that time.

(2) You make an ***investment asset gain*** from the event equal to the amount of the excess. The gain is made at the time of the event.

Note 1: You cannot make an investment asset loss from the event.

Note 2: The share's tax value is also reduced to nil: see section 78-100 and subsection 10-40(2).

100-95 Trust capital distribution event

(1) A ***trust capital distribution event***[5] happens at the time when….:

The gain is made at the time of the event.

> *This event is the trust analogy of the non-dividend payment for shares event.*

[4] This is the existing CGT Event G1.

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

Subdivision 100-E—Discountable gains

Table of sections

What is a discountable gain?

100-155 Conditions to be met

A ***discountable gain*** is an *investment asset gain that:

(a) meets the requirements of sections 100-160 and 100-185; and

(b) is *not* prevented by section 100-205 from being a discountable gain.

Note: The gain is not a discountable gain if a gain reduction amount arises because of indexation of the investment asset's cost base before the commencement of this Act, and you choose under subsection 101-65(2) to have that gain reduction amount give rise to a downward adjustment under item 1 of the table in section 101-10.

100-160 Who can make a discountable gain?

To be a *discountable gain, the gain must be made by:

(a) an individual; or

(b) a *complying superannuation entity; or

(c) a trust; or

[5] This is the existing CGT Event E4.

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

(d) a *life insurance company in relation to a *discountable gain from an *investment asset event in respect of an *investment asset that is a *virtual PST asset.

100-185 You must have held the asset for at least 12 months

(1) To be a *discountable gain, the gain must result from an *investment asset event happening after the period of 12 months beginning on the day you last started to hold the asset.

(2) Also, the event must not happen under an agreement you made before the end of that period of 12 months.

What investment asset gains are *not* discountable gains?

100-205 Investment asset gain from equity in an entity with newly acquired assets

Purpose of this section

(1) The purpose of this section is to deny you a *discountable gain on your *share in a company or interest in a trust if you would *not* have had *discountable gains on the majority of *investment assets (by *cost and by *market value) underlying the share or interest if:

(a) you had held them for the same period as the company or trust did; and

(b) *investment asset events had happened to them when the investment asset event happened to your share or interest.

When an investment asset gain is not a discountable gain

(2) Your *investment asset gain from an *investment asset event happening to:

(a) your *share in a company; or

(b) your *trust voting interest, unit or other fixed interest in a trust;

is *not* a discountable gain if the 3 conditions in subsections (3), (4) and (5) are met. This section has effect despite section 100-155.

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

Note: This section does not prevent an investment asset gain from being a discountable gain if:

(a) there are at least 300 members or beneficiaries of the company or trust and control of the company or trust is not and cannot be concentrated (see section 100-210); or

(b) the investment asset gain is from a trust capital distribution event due to payments from the discounted parts of the trust's discountable gains (see section 100-220).

You had at least 10% of the equity in the entity before the event

(3) The first condition is that, just before the *investment asset event, you and your *associates beneficially owned:

(a) at least 10% by *market value of the *shares in the company (except shares that carried a right only to participate in a distribution of profits or capital to a limited extent); or

(b) at least 10% of the *trust voting interests, issued units or other fixed interests (as appropriate) in the trust.

Tax values of new assets are more than 50% of all tax values of entity's assets

(4) The second condition is that:

- the total of the tax values of *investment assets that the company or trust had, at the time of the *investment asset event, held for *less* than 12 months;

is *more* than half of:

- the total of the tax values of the *investment assets the company or trust held at that time.

Net gain on entity's new investment assets would be more than 50% of net gain on all the entity's investment assets

(5) The third condition is that the amount worked out under subsection (6) is *more* than half of the amount worked out under subsection (7).

(6) Work out the amount by which the total of the *investment asset gains made by the company or trust during the income year would

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

exceed the total of the *investment asset losses it made during that year if:

(a) just before the *investment asset event, the company or trust had ceased to hold all the *investment assets that it had held for less than 12 months at the time of the event; and

(b) it had received the *market value of those assets as the *proceeds of realising them; and

(c) it had made no other investment asset gains or investment asset losses during that year; and

(d) it had not had a *carry forward investment asset loss for an earlier income year.

(7) Work out the amount by which the total of the *investment asset gains made by the company or trust during the income year would exceed the total of the *investment asset losses it made during that year if:

(a) just before the *investment asset event, the company or trust had ceased to hold all the *investment assets that it then held; and

(b) it had received the *market value of those assets as the *proceeds of realising them; and

(c) this Division applied to investment assets covered by paragraphs 100-15(b) and (c) (which prevent pre-CGT investment assets and private from being investment assets); and

(d) section 100-65 (about the effect of exemptions and roll-overs) were disregarded in working out the amounts of those gains and losses, except so far as it applies to a *downward adjustment because of a *gain reduction amount or to an *upward adjustment because of a *loss reduction amount; and:

(e) the company or trust had made no other investment asset gains or investment asset losses during that year; and

(f) the company or trust had not had a *carry forward investment asset loss for an earlier income year.

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

100-210 Discountable gain from equity in certain entities

Investment asset gain from share in company with 300 members

(1) Section 100-205 does not prevent an *investment asset gain from an *investment asset event happening to a *share in a company with at least 300 *members from being a *discountable gain, unless subsection (3) or (6) applies in relation to the company.

Investment asset gain from interest in fixed trust with 300 beneficiaries

(2) Section 100-205 does not prevent an *investment asset gain from an *investment asset event happening to an interest in a trust from being a *discountable gain if:

- (a) entities have fixed entitlements to all of the income and capital of the trust; and
- (b) the trust has at least 300 beneficiaries; and
- (c) neither subsection (4) nor subsection (6) applies in relation to the trust.

No discountable gain if ownership is concentrated

(3) Section 100-205 may prevent an *investment asset gain from a *share in a company from being a *discountable gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, *shares in the company:

- (a) carrying fixed entitlements to:
  - (i) at least 75% of the company's income; or
  - (ii) at least 75% of the company's capital; or
- (b) carrying at least 75% of the voting rights in the company.

(4) Section 100-205 may prevent an *investment asset gain from an interest in a trust from being a *discountable gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, interests in the trust:

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

(a) carrying fixed entitlements to:

(i) at least 75% of the trust's income; or

(ii) at least 75% of the trust's capital; or

(b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

(5) Subsections (3) and (4) operate as if all of these were a single individual:

(a) an individual, whether or not the individual holds *shares in the company or interests in the trust (as appropriate);

(b) the individual's *associates;

(c) for any *shares or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

No discountable gain if rights can be varied to concentrate ownership

(6) Section 100-205 may prevent an *investment asset gain from a *share in a company, or from an interest in a trust, from being a *discountable gain if, because of anything listed in subsection (7), it is reasonable to conclude that the rights attaching to any of the *shares in the company or interests in the trust (as appropriate) *can be* varied or abrogated in such a way that subsection (3) or (4) would be satisfied.

(7) These are the things:

(a) any provision in the constituent document of the company or trust, or in any contract, agreement or instrument:

(i) authorising the variation or abrogation of rights attaching to any of the *shares in the company or interests in the trust (as appropriate); or

(ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or interests;

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

(b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those shares or interests;

(c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or interests.

(8) It does not matter for the purposes of subsection (6) whether or not the rights attaching to any of the *shares or interests *are* varied or abrogated in the way described in that subsection.

100-220 Discountable gain from trust capital distribution event[6]

To be included, taking account of how this event develops.

Subdivision 100-F—Other special rules

100-300 Exceptions and modifications

[6] This is the existing CGT Event E4.

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

Division 101—Gain reduction and loss reduction amounts

Table of sections

101-10 Effect of gain reduction and loss reduction amounts

(1) You have ***upward adjustments*** and ***downward adjustments*** for an income year as shown in the table.

Adjustments

Item	If this happens:	There is this adjustment:
1	During the income year you make an *investment asset gain from ceasing to hold an *investment asset at a time when there is a *gain reduction amount for the asset	A ***downward adjustment*** equal to the lesser of: (a) the investment asset gain; and (b) the gain reduction amount
2	During the income year you cease to hold an asset (except an *investment asset) at a time when there is a *gain reduction amount for the asset, and your *proceeds of realising the asset exceed by an amount (the ***gain***) the asset's tax value immediately before you ceased to hold it	A ***downward adjustment*** equal to the lesser of: (a) the gain reduction amount; and (b) the gain
3	During the income year you make an *investment asset loss from ceasing to hold an *investment asset at a time when there is a *loss reduction amount for the asset	An ***upward adjustment*** equal to the lesser of: (a) the investment asset loss; and (b) the loss reduction amount

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

Adjustments		
Item	**If this happens:**	**There is this adjustment:**
4	During the income year you cease to hold an asset (except an *investment asset) at a time when there is a *loss reduction amount for the asset, and the asset's tax value immediately before you ceased to hold it exceeds by an amount (the ***loss***) your *proceeds of realising the asset	An ***upward adjustment*** equal to the lesser of: (a) the loss reduction amount; and (b) the loss

(2) A *downward adjustment under item 1 or 2 of the table in subsection (1) is specific to the gain referred to in that item. An *upward adjustment under item 3 or 4 of that table is specific to the loss referred to in that item.

101-60 Gain reduction amount or loss reduction amount continues while you hold the asset

A *gain reduction amount or *loss reduction amount for an asset that you hold continues while you hold the asset.

101-65 Transitional gain reduction amount or loss reduction amount for investment asset held since before the transition

Indexation of cost base generates gain reduction amount

(1) A ***gain reduction amount*** arises at the commencement of this Act for an *investment asset that you hold at that time if, immediately before that time:

(a) you held the asset; and

(b) its *cost base *including* indexation exceeded its *cost base worked out *without* indexation.

The gain reduction amount equals the excess.

(2) To the extent that a *gain reduction amount arises under subsection (1) of this section, it gives rise to a downward adjustment under item 1 of the table in section 101-10 only if you so choose. In that

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

case, your investment asset gain from ceasing to hold the asset is *not* a discountable gain.

Note: This means you must choose between:

- the downward adjustment under item 1 of that table (to replicate the effect of indexation); and
- a downward adjustment under section 100-75 based on the investment asset discount.

> *The tax value of an investment asset that you hold at the commencement of this Act and that you started to hold before that commencement will be the asset's CGT cost base under the Income Tax Assessment Act 1997.*

Reduced cost base generates loss reduction amount

(3) A ***loss reduction amount*** arises at the commencement of this Act for an *investment asset that you hold at that time if, immediately before that time:

(a) you held the asset; and

(b) its *cost base exceeded its *reduced cost base.

The loss reduction amount equals the excess.

Note: When you cease to hold the asset, the loss reduction amount may give rise to an upward adjustment under item 3 of the table in section 101-10.

101-100 Finding table for other gain reduction and loss reduction amounts

Gain reduction and loss reduction amounts		
Item	**In this case:**	**See:**
1	An amount (such as interest on money borrowed, rates or land tax) is included in the cost of land because it is of a private or domestic nature	Subsections 14-30(4) and (5)
2	[*Further cases to be added as required*]	
3		

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

Division 103—Gifts and contributions

103-15 Upward or downward adjustment for gift or contribution

(1) You have an ***upward adjustment*** equal to an amount you pay by way of gift or contribution, except to the extent that:

- (a) you pay the amount for the purpose of gaining an economic benefit for yourself; or
- (b) the amount is covered by this Division; or
- (c) the amount is *not* taken into account under step 2 of the *net income formula (for example, because it is of a *private or domestic nature).

(2) You have a ***downward adjustment*** equal to an amount you pay by way of gift or contribution, to the extent that:

- (a) the amount is *not* taken into account under step 2 of the *net income formula (for example, because it is of a *private or domestic nature); and
- (b) the amount is covered by this Division.

> *The rest of this Division will reproduce the effect of Division 30 (Gifts or contributions) of the Income Tax Assessment Act 1997.*

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

Section

Division 105—Miscellaneous receipts excluded from taxable income

Division 107—Miscellaneous payments excluded from taxable income

Division 110—Entertainment

Division 115—Debt forgiveness: financial distress arrangements

Part 2-20—Net exempt income

Division 130—Working out net exempt income

The concept of net exempt income will be constructed in a similar way to net income, based on exempt receipts, and payments, assets and liabilities that relate to exempt receipts. An entity's net exempt income for an income year will be an adjustment in working out their taxable income: see section 6-95.

Division 132—Miscellaneous exempt receipts

Division 134—Miscellaneous exempt payments

Division 136—Miscellaneous exempt assets

Part 2-25—Rollovers

Division 150—Rollover for disposal of assets to, or creation of assets in, a wholly owned company

Division 152—Replacement asset rollovers

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

Division 154—Same asset rollovers

Division 156—Effect of death

Division 158—Marriage breakdown

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

Part 2-30—Unused tax losses

Division 170—Tax losses of earlier income years

Table of sections

170-1 Object

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

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

170-10 How to calculate your tax loss for an income year

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

*Net income + *Taxable income adjustment

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

*Net income + *Taxable income adjustment + *Net exempt income

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

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

Section

Part 2-35—Tax offsets

Division 178—List of tax offsets

Division 180—Tax offset carry forward rules

Division 182—Refundable tax offset rules

Division 184—Generally applicable tax offsets

Division 186—Residents of isolated areas

Part 2-40—Anti-avoidance

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

Chapter 3—Rules specific to individuals and other types of entity

Part 3-1—Overview of Chapter

Division 219—Overview

Division 220—Entities that must pay income tax

220-1 List of entities

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

Meaning of *private asset*

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 corporate limited partnership	
4	A mutual insurance association	
5	A trustee (except one covered by a later item in this table)	
6	The trustee of a corporate unit trust	
7	The trustee of a public trading trust	
8	The trustee of a complying superannuation fund	
9	The trustee of a non-complying superannuation fund	
10	The trustee of a complying approved deposit fund	

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

Meaning of *private asset*

Item	Income tax is payable by this kind of entity:	because of this provision:
11	The trustee of a non-complying approved deposit fund	
12	The trustee of a pooled superannuation trust	

Note: There are special rules in Division [*to be drafted*] for applying the Act to entities that are not legal persons.

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

Part 3-5—Individuals (and partnerships in which they are partners)

Division 222—Excluding private items in working out taxable income

Table of Subdivisions

Subdivision 222-A—Object and application

Table of sections

222-1 Object of this Division

The object of this Division is to exclude from the taxable income of:

(a) an individual; or

(b) a partnership in which an individual is a partner;

receipts, payments, liabilities, and most assets, to the extent that they are private or domestic in nature. In this way, those items are excluded from the income tax base.

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

Note: Some assets are *not* excluded even when they are private or domestic in nature:

- investment assets (for example, land and high-cost private-use collectables);
- rights to hold investment assets.

Treatment of companies and trusts in this area is still under consideration. In principle, the approach that this draft takes to partnerships could also be applied to companies and trusts.

222-5 Application

Individuals

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

Partnerships

(2) This Division also applies in working out the taxable income of a partnership for an income year if at any time during that year an individual was a partner in the partnership.

Note: Different tests apply to a partnership in some areas. See Subdivision 222-G.

Subdivision 222-B—Payments excluded from net income

Table of sections

222-10 Payments

(1) The amount of a payment you make during the income year is *not* taken into account under step 2 of the *net income formula to the extent that:

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

(a) the payment is a *payment of a private or domestic nature (see section 222-15); or

(b) the amount becomes included during the income year in the *cost of a *private asset you hold; or

(c) the amount becomes included during the income year in the *cost of extinguishing a liability that:

(i) you stop having during the income year; and

(ii) is a *private liability immediately before you stop having it.

Note 1: Here are some examples of payments of a private or domestic nature that are not taken into account in working out net income:

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

Note 2: To the extent that an amount you pay relates to a collectable, section 234-30 may apply instead of paragraph (1)(a) of this section.

(2) Paragraph (1)(a) does *not* apply to the extent that the amount becomes included during the income year in:

(a) the *cost of an asset that you hold that is *not* a *private asset; or

(b) the *cost of extinguishing a liability that:

(i) you stop having during the income year; and

(ii) is *not* a *private liability immediately before you stop having it.

Example: You pay council rates for land that you hold, and on which your holiday house is built. Even though it is a payment of a private or domestic nature, paragraph (1)(a) does not apply, because subsection 14-30(4) includes it in the second element of the cost of the land.

(3) However, to the extent that paragraph (1)(a) does apply, none of the amount becomes included in a *later* income year in the *cost of an asset that you hold.

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

222-15 Extended meaning of *payment of a private or domestic nature*

(1) A ***payment of a private or domestic nature*** includes a payment you make, to the extent that:

(a) it relates to one or more of these matters:

(i) your education or training;

(ii) your travel;

(iii) your accommodation;

(iv) your sustenance;

(v) your health; and

(b) the one or more matters are for the purposes of:

(i) a field of employment you have not yet entered; or

(ii) your business, investment or other commercial activities that have not yet begun.

(2) A ***payment of a private or domestic nature*** includes a payment you make, to the extent that it relates to your hobbies or *recreation.

(3) Subsection (2) does not apply to the extent that the amount relates to providing your efforts or skills.

Note: However, to that extent, the amount may still be of a private or domestic nature, either under the ordinary meaning of that expression or under subsection (1).

Subdivision 222-C—Receipts excluded from net income

Table of sections

222-20 Receipts

(1) An amount you receive during the income year is *not* taken into account under step 1 of the *net income formula to the extent that:

(a) it is a *receipt of a private or domestic nature (see section 222-25); or

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

(b) it becomes included during the income year in the *proceeds of incurring a *private liability that you have; or

(c) it becomes included during the income year in the *proceeds of realising an asset that:

(i) you stop holding during the income year; and

(ii) is a *private asset immediately before you stop holding it.

(2) Paragraph (1)(a) does *not* apply to the extent that the amount becomes included during the income year in:

(a) the *proceeds of incurring a liability that you have that is *not* a *private liability; or

(b) the *proceeds of realising an asset that:

(i) you stop holding during the income year; and

(ii) is *not* a *private asset immediately before you stop holding it.

(3) However, to the extent that paragraph (1)(a) does apply, none of the amount becomes included in a *later* income year in the *proceeds of incurring a liability that you have.

222-25 Extended meaning of *receipt of a private or domestic nature*

(1) A ***receipt of a private or domestic nature*** includes an amount you receive, to the extent that it:

(a) arises out of your hobbies or *recreation; or

(b) compensates you for any wrong, injury or illness you suffer personally and does not represent the replacement of salary, wages or other earnings; or

(c) is a gift, inheritance or windfall that does *not* arise out of your employment, or out of your business, investment or other commercial activities.

(2) Paragraph (1)(a) does not apply to the extent that the amount is for providing your efforts or skills.

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

Subdivision 222-D—Private assets

Table of sections

222-40 In working out net income, disregard private assets

(1) An asset that was a *private asset at the *end* of the income year is *not* taken into account under step 3 of the *net income formula.

(2) An asset that was a *private asset at the *start* of the income year is *not* taken into account under step 4 of the *net income formula.

Note: If a depreciating asset is not a private asset but has a private percentage, there may be taxable income adjustments under Subdivision 222-F.

222-45 Meaning of *private asset*

(1) An asset that you hold is a ***private asset*** as shown in the table.

Meaning of *private asset*

Item	This kind of asset:	Is a *private asset*:
1	An item of *trading stock	Never
2	A *financial asset	Never
3	A *collectable, or an *interest in a *collectable	As set out in section 234-35
4	An *investment asset not covered by item 3	Never[7]

[7] However, existing CGT exemptions are to be preserved.

Meaning of *private asset*		
Item	**This kind of asset:**	**Is a *private asset*:**
5	Any other asset (except one consisting of a right to hold another asset that you do not hold)	If: (a) you intend to *use the asset solely for *private or domestic purposes so long as you hold it; or (b) the asset is for you essentially private or domestic in nature
6	Any other asset consisting of a right to hold another asset that you do not hold	If: (a) you intend to *use the *other* asset solely for *private or domestic purposes so long as you hold the other asset; or (b) the *other* asset is for you essentially private or domestic in nature

Example: Cogal buys a ride-on mower for use at her home. She also intends to allow her neighbour to use the mower occasionally as a favour. The neighbour's use also counts as use by Cogal for private or domestic purposes.

(2) For the purposes of the table in subsection (1) (and of this subsection), if an asset consists of a right to hold another asset (the ***underlying asset***), each of the following is also treated as a right to hold the underlying asset:

(a) a right to hold the first asset;

(b) a right to hold an asset that, because of one or more other applications of this subsection, is treated as a right to hold the first asset.

(3) For the purposes of the table in subsection (1) (but not of subsection (2)), a right covered by paragraph (2)(a) or (b) is treated as *not* being a right to hold an asset other than the underlying asset.

222-50 Extended meaning of using an asset for *private or domestic purposes*

(1) To the extent that:

(a) you use an asset for one or more of these purposes:

(i) your education or training;

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

(ii) your travel;

(iii) your accommodation;

(iv) your sustenance;

(v) your health; and

(b) that use is for the purposes of:

(i) a field of employment you have not yet entered; or

(ii) your business, investment or other commercial activities that have not yet begun; and

(c) apart from this section, that use is not for your private or domestic purposes;

the use is taken to be for your ***private or domestic purposes***.

(2) To the extent that you use an asset for the purposes of your hobbies or *recreation, the use is taken to be for your ***private or domestic purposes***.

(3) Subsection (2) does not apply to the extent that your use of the asset relates to providing your efforts or skills.

Note: However, to that extent, the use may still be for your private or domestic purposes, either under the ordinary meaning of that expression or under subsection (1).

222-55 Effects when asset stops being private asset

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

(a) you had started to hold the asset at the time immediately after it stopped being a private asset; and

(b) in order to start holding it, you had paid at that time an amount equal to the asset's *market value[8] at that time.

(2) In working out the asset's *cost at a time after it stopped being a *private asset, disregard each amount that formed part of its cost when it was a private asset.

[8] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

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

222-60 Effects when asset becomes private asset

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

(a) you had stopped holding the asset at the time immediately before it became a private asset; and

(b) because you stopped holding it, you had received at that time an amount equal to:

(i) its *market value at that time[9], unless subparagraph (ii) applies; or

(ii) its *cost at that time, if the asset was then an item of your *trading stock[10].

(2) Subsection (1) does not prevent section 222-55 applying to the asset after that time.

222-65 Special rules about other assets that have a private character

The table shows where to find special rules about how certain assets are treated.

Other assets having a private or domestic character		
Item	**For rules about this kind of asset:**	**See:**
1	Your main residence	[*Main residence exemption to be included*]
2	A decoration for valour or brave conduct	[*Equivalent of section 118-5 in the Income Tax Assessment Act 1997*]
3	Collectables	Division 234
4	[*Further cases to be added as required.*]	

9 This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

10 This preserves the current outcome under 70-110 of the *Income Tax Assessment Act 1997*.

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

Subdivision 222-E—Private liabilities

Table of sections

222-80 In working out net income, disregard private liabilities

(1) A liability that was a *private liability at the *end* of the income year is *not* taken into account under step 5 of the *net income formula.

(2) A liability that was a *private liability at the *start* of the income year is *not* taken into account under step 6 of the *net income formula.

Note: If a depreciating liability is not a private liability but has a private percentage, there may be taxable income adjustments under Subdivision 222-F.

222-85 Meaning of *private liability*

A liability that you have is a ***private liability*** as shown in the table.

Meaning of *private liability*

Item	This kind of liability:	Is a *private liability*:
1	A *financial liability	If it is for you solely a *liability of a private or domestic nature, having regard to: (a) how the *proceeds of incurring the liability are currently applied; and (b) the purposes for which, and the reasons why, you began to have the liability
2	A liability to provide an asset that you hold	If the asset is for you a *private asset
3	Any other liability	If it is for you solely a *liability of a private or domestic nature

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

Example: A liability to repay a personal loan is a private liability under item 1 if the loan was used to pay for a holiday.

222-90 Extended meaning of *liability of a private or domestic nature*

(1) A ***liability of a private or domestic nature*** includes a liability you have, to the extent that:

(a) it relates to one or more of these matters:

(i) your education or training;

(ii) your travel;

(iii) your accommodation;

(iv) your sustenance;

(v) your health; and

(b) the one or more matters are for the purposes of:

(i) a field of employment you have not yet entered; or

(ii) your business, investment or other commercial activities that have not yet begun.

(2) A ***liability of a private or domestic nature*** includes a liability you have, to the extent that it relates to your hobbies or *recreation.

(3) Subsection (2) does not apply to the extent that the liability relates to providing your efforts or skills.

Note: However, to that extent, the liability may still be of a private or domestic nature, either under the ordinary meaning of that expression or under subsection (1).

222-95 Effects when liability stops being private liability

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

(a) you had started to have the liability at the time immediately after it stopped being a private liability; and

(b) you had received at that time an amount equal to the liability's *market value[11] at that time; and

[11] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

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

(c) you had started to have the liability because of receiving that amount.

(2) In working out the *proceeds of incurring the liability, as at a time after it stopped being a *private liability, disregard each amount that formed part of those proceeds as at a time when it was a private liability.

222-100 Effects when liability becomes private liability

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

(a) you had stopped having the liability at the time immediately before it became a private liability; and

(b) in order to stop having it, you had paid at that time an amount equal to the liability's *market value[12] at that time.

(2) Subsection (1) does not prevent section 222-95 applying to the liability after that time.

Subdivision 222-F—Taxable income adjustments for private percentage

Table of sections

[12] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

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

Depreciating assets that are not private assets

222-120 Upward adjustment for private percentage of decline in tax value during income year

(1) You have an ***upward adjustment*** under this section for an income year if:

(a) you hold an asset for some or all of the income year; and

(b) the asset's tax value during the period for which you hold it during the income year is to be worked out under Division 72 (about depreciating assets); and

(c) there is a *decline in tax value for the asset for the income year; and

(d) the asset is a *private asset at no time during the period for which you hold it during the income year, but has a *private percentage for that period.

(2) The amount of the adjustment is the *decline in tax value multiplied by the *private percentage.

(3) If you stop holding an asset during an income year and later start holding it again during the same income year, this section applies separately to:

(a) the period ending when you stopped holding it; and

(b) the period starting when you started holding it again.

Example: On 2 July in an income year you start to hold a depreciating asset. On 10 September in that year it becomes a private asset (so that section 222-60 treats you as if you had stopped holding it). On the following 5 January the asset stops being private (so that section 222-55 treats you as if you had started holding it) and you continue to hold it until the end of the income year.

This section applies separately to the period 2 July to 10 September, and to the period 5 January to 30 June, in that income year.

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

222-125 Further adjustment if proceeds of realising asset differ from final tax value

(1) You have a *taxable income adjustment under this section for an income year (the ***current year***) if:

(a) you stop holding a *depreciating asset during the current year; and

(b) your *proceeds of realising the asset are different from the asset's tax value immediately before you stop holding it; and

(c) since you started holding the asset, you have had one or more *upward adjustments under section 222-120 for the asset; and

(d) the asset is *not* capital works to which Division 73 (about depreciating capital works) applies.

(The adjustment under this section is additional to any adjustment under section 222-120 for the current year.)

(2) If the asset's tax value immediately before you stop holding it exceeds your *proceeds of realising the asset, you have an ***upward adjustment***. Otherwise, you have a ***downward adjustment***.

(3) The amount of the adjustment under this section is:

- the difference (expressed as a positive amount) between the asset's tax value immediately before you stop holding it and your *proceeds of realising the asset;

multiplied by:

- the total of the one or more *upward adjustments under section 222-120;

divided by:

- the total of each *decline in tax value used to work out the amount of any of the one or more upward adjustments.

222-130 Working out the *private percentage* for a period

(1) A *depreciating asset that you hold during a period has a ***private percentage*** for that period as shown in the table, but not otherwise.

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

Working out a depreciating asset's *private percentage*		
Item	**This kind of asset:**	**Has this *private percentage* for the period**:
1	A *depreciating asset (except one consisting of a right to hold another asset that you do not hold)	The percentage that fairly represents the extent to which your *use of the asset, during that period, was for *private or domestic purposes
2	A *depreciating asset consisting of a right to hold another depreciating asset that you do not hold	The percentage that fairly represents the extent to which you intend to *use the other asset for *private or domestic purposes

(2) Subsections 222-45(2) and (3) (about rights to hold assets) also apply for the purposes of the table in subsection (1) of this section.

Depreciating liabilities that are not private liabilities

222-150 Downward adjustment for private percentage of decline in tax value during income year

(1) You have a ***downward adjustment*** under this section for an income year if:

(a) you have a *depreciating liability for some or all of the income year; and

(b) there is a *decline in tax value for the liability for the income year; and

(c) the liability is a *private liability at no time during the period for which you have it during the income year, but has a *private percentage for that period.

(2) The amount of the adjustment is the *decline in tax value multiplied by the *private percentage.

222-155 Further adjustment if cost of extinguishing liability differs from final tax value

(1) You have a *taxable income adjustment under this section for an income year (the ***current year***) if:

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

(a) you stop having a *depreciating liability during the current year; and

(b) your *cost of extinguishing the liability is different from the liability's tax value immediately before you stop having it; and

(c) you have had one or more *downward adjustments under section 222-150 for the liability.

(The adjustment under this section is additional to any adjustment under section 222-150 for the current year.)

(2) If your *cost of extinguishing the liability exceeds the liability's tax value immediately before you stop having it, you have an ***upward adjustment***. Otherwise, you have a ***downward adjustment***.

(3) The amount of the adjustment under this section is:

- the difference (expressed as a positive amount) between your *cost of extinguishing the liability and the liability's tax value immediately before you stop having it;

multiplied by:

- the total of the one or more *downward adjustments under section 222-150;

divided by:

- the total of each *decline in tax value used to work out the amount of any of the one or more downward adjustments.

222-160 Working out the *private percentage* for a period

A liability that you have during a period has a ***private percentage*** for that period as shown in the table.

Working out a liability's *private percentage*

Item	This kind of liability:	Has this *private percentage* for the period:
1	A liability to provide an asset you hold	Nil

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

Working out a liability's *private percentage*		
Item	**This kind of liability:**	**Has this *private percentage* for the period**:
2	Any other liability	The percentage that fairly represents the extent to which the liability was, from time to time during that period, a *liability of a private or domestic nature

These rules will be extended to cover financial liabilities whose tax value is worked out on an accruals basis and that have a private percentage.

Subdivision 222-G—Special rules for partnerships

222-200 Meaning of terminology

(1) A payment by a partnership is a ***payment of a private or domestic nature*** for the partnership to the extent that:

(a) it is a *payment of a private or domestic nature for an individual who is a partner in the partnership; or

(b) it would be a payment of a private or domestic nature for such an individual if he or she had made the payment instead of the partnership.

(2) An amount received by a partnership is a ***receipt of a private or domestic nature*** for the partnership to the extent that:

(a) it is a *receipt of a private or domestic nature for an individual who is a partner in the partnership; or

(b) it would be a receipt of a private or domestic nature for such an individual if he or she had received the amount instead of the partnership.

(3) *Use of an asset is for ***private or domestic purposes*** of a partnership to the extent that it is for *private or domestic purposes of an individual who is a partner in the partnership.

(4) A *liability that a partnership has is a ***liability of a private or domestic nature*** for the partnership to the extent that:

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

(a) it is a *liability of a private or domestic nature for an individual who is a partner in the partnership; or

(b) it would be a liability of a private or domestic nature for such an individual if he or she had the liability instead of the partnership.

Division 226—Substantiation

Division 228—Car expenses

Division 230—Exempt pensions, benefits and allowances

Division 232—Superannuation, termination of employment and kindred receipts

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

Division 234—How collectables affect taxable income

Table of Subdivisions

Guide to Division 234

234-1 What this Division is about

A collectable is subject to special treatment if, when you began to hold it, you intended to use it at least partly for private or domestic purposes. (Similar rules apply to interests in collectables.)

There are 3 kinds of special treatment:

- Payments relating to the collectable do not reduce your net income to the extent that they exceed your receipts relating to the collectable.
- If you bought the collectable for up to $10,000, your gain or loss from ceasing to hold it does not affect your taxable income.
- If you bought the collectable for more than $10,000, a loss you make from ceasing to hold it is quarantined, and can only be set off against your gains from ceasing to hold similar collectables.

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

Subdivision 234-A—Object and application

Table of sections

234-5 Object

234-10 Application

Individuals

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

Partnerships

(2) This Division also applies in working out the taxable income of a partnership for an income year if at any time during that year an individual was a partner in the partnership.

> *Treatment of companies and trusts in this area is still under consideration. In principle, the approach that this draft takes to partnerships could also be applied to companies and trusts.*

234-15 Meaning of *collectable* and *interest* in a collectable

(1) A ***collectable*** includes (but is not limited to) the following:

- (a) *artwork, jewellery, an antique, a coin or a medallion; or
- (b) a rare folio, manuscript or book; or
- (c) a postage stamp or first day cover.

However, to be a collectable under this subsection, an asset must be a tangible asset (other than *land).

(2) An ***interest*** in a *collectable includes (but is not limited to):

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

(a) an option or right to start to hold the collectable; or

(b) an option or right to start to hold something that is an interest in the collectable because of one or more other applications of this subsection.

234-20 Meaning of *high-cost private-use collectable*

(1) A *collectable that you hold is a ***high-cost private-use collectable*** if:

(a) the collectable is not *trading stock; and

(b) when you began to hold the collectable, you intended to *use it at least partly for *private or domestic purposes; and

(c) the *first element of the collectable's *cost is more than $10,000.

(2) An *interest that you hold in a *collectable is a ***high-cost private-use collectable*** if:

(a) neither the interest nor the collectable is *trading stock; and

(b) when you began to hold the interest:

(i) you intended to *use the collectable at least partly for *private or domestic purposes; and

(ii) the collectable's *market value was more than $10,000.

Subdivision 234-B—Treatment of collectables in working out net income

Table of sections

234-30 Payments reasonably attributable to private use collectables but not part of their cost

(1) If, when you began to hold a *collectable, you intended to *use it at least partly for *private or domestic purposes, the table determines

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

how much of a payment that you make during an income year is taken into account under step 2 of the *net income formula, to the extent that the amount of the payment:

(a) is *reasonably attributable to the *collectable; but

(b) does *not* become included during the income year in the collectable's *cost.

To that extent, such a payment is a ***collectable expense***, whether or not it is a *payment of a private or domestic nature.

Note: Expenses such as insurance and interest are examples of collectable expenses: they may be reasonably attributable to a collectable, but do not become included in its cost.

By contrast, this section does not apply to freight expenses that are reasonably attributable to a collectable and are paid to bring the collectable to its present condition and location. This is because they become included in the second element of cost: see section 14-30.

Treatment of collectable expenses[13]

Item	In this case:	This is the result:
1	The total of your *collectable expenses for the income year is *less than or equal to* the total (***total non-private receipts from the collectable***) of all amounts you receive during the income year, to the extent that they: (a) are *reasonably attributable to the *collectable; and (b) are *not* *receipts of a private or domestic nature; and (c) do not become included during the income year in your *proceeds of realising the collectable	Paragraph 222-10(1)(a) (about payments of a private or domestic nature) does not prevent any of the collectable expenses from being taken into account under step 2 of the *net income formula

[13] This reflects Recommendation 4.13(f)(i) of the Final Report of the Review of Business Taxation.

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

Treatment of collectable expenses[13]

Item	In this case:	This is the result:
2	If the total of your *collectable expenses for the income year is *greater than* the total non-private receipts from the collectable	So much of the total of your collectable expenses for the income year as equals the total non-private receipts is not prevented by paragraph 222-10(1)(a) (about payments of a private or domestic nature) from being taken into account under step 2 of the *net income formula The rest is *not* taken into account under step 2 of the *net income formula
3	If during the income year you receive no amount some or all of which meets the conditions in paragraphs (a), (b) and (c) in item 1	None of your *collectable expenses for the income year is taken into account under step 2 of the *net income formula

Excluded payment also excluded from cost in later income year

(2) If this section prevents some or all of a payment from being taken into account under step 2 of the *net income formula for the income year in which you make it, none of the amount becomes included during a *later* income year in the *cost of an asset that you hold.

234-35 Which collectables, and interests in collectables, are private assets

A *collectable that you hold, or an *interest that you hold in a collectable, is a ***private asset*** as shown in the table.

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

Which collectables, and interests in collectables, are private assets

Item	This kind of asset:	Is a *private asset*:
1	A *collectable (except a *high-cost private-use collectable)	If: (a) the collectable is not *trading stock; and (b) when you began to hold the collectable, you intended to *use it at least partly for *private or domestic purposes[14]
2	An *interest in a *collectable (except an interest that is a *high-cost private-use collectable)	If: (a) neither the interest nor the collectable is *trading stock; and (b) when you began to hold the interest, you intended to *use the collectable at least partly for *private or domestic purposes[15]
3	A *high-cost private-use collectable	Never

> *The effect of existing section 108-15 of the Income Tax Assessment Act 1997 will be preserved by an asset identification rule that a set of collectables is a single asset, so that if the first element of the cost of the set is more than $10,000, the set will be a high-cost private-use collectable and won't qualify as a private asset.*
>
> *If an item in the set is disposed of separately, there would be splitting of the asset (see 16-80). There would need to be an exemption if the tax value of the separated item was $10,000 or less, unless the partial realisation was for the purpose of getting the private asset exemption.*

234-40 Which collectables, and interests in collectables, are not depreciating assets

(1) A *collectable that you hold is *not* a *depreciating asset if when you began to hold it, you intended to *use it at least partly for *private or domestic purposes.

[14] This reflects Recommendation 4.13(f)(ii) of the Final Report of the Review of Business Taxation.
[15] See footnote 14.

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

(2) An *interest that you hold in a *collectable is *not* a *depreciating asset if, when you began to hold the interest, you intended to *use the collectable at least partly for *private or domestic purposes.

Subdivision 234-C—Quarantining losses from high-cost private-use collectables

Table of sections

234-50 How investment asset gains and losses from high-cost private-use collectables are treated

If during the income year you made one or more *investment asset gains or *investment asset losses (or both) from *high-cost private-use collectables:

(a) the losses *cannot* be used to reduce investment asset gains in working out your *taxable income adjustments under section 100-75; and

(b) the gains are *not* taken into account in working out those adjustments, except as provided in section 234-55; and

(c) you may have a taxable income adjustment under section 234-55.

234-55 Working out your taxable income adjustments for high-cost private-use collectables

(1) Compare:

- the total of the *investment asset gains you made from *high-cost private-use collectables during the income year; with
- the total of the *investment asset losses you made from high-cost private-use collectables during the income year.

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

Gains exceed losses

(2) If the total of the gains exceeds the total of the losses, the consequences are worked out under this method statement.

Method statement

Step 1. Reduce the gains (in whichever order you choose) by the losses.

Step 2. Reduce any remaining amounts of the gains (in whichever order you choose) by applying any previously unapplied *carry forward investment asset losses from high-cost private-use collectables from earlier income years (in the order in which you made them). You have a ***downward adjustment*** equal to the total of the carry forward investment asset losses so applied.

Step 3. Each remaining gain is taken into account in working out your *taxable income adjustments under section 100-75 (in the same way as an investment asset gain that is *not* from a high-cost private-use collectable).

Note: One effect of Step 3 is that a remaining investment asset gain from a high-cost private-use collectable can be further reduced by an investment asset loss, or a carry forward investment asset loss, that is *not* from a high-cost private-use collectable: see Steps 1 and 2 of the method statement in subsection 100-75(2). If any of the gain remains after that, it may be a discountable gain: see Subdivision 100-E.

Losses exceed gains

(3) If the total of the losses exceeds the total of the gains:

(a) you have an ***upward adjustment*** equal to that excess; and

(b) the excess is your ***carry forward investment asset loss from high-cost private-use collectables*** for the income year.

Example: For the income year, you have an investment asset gain of $200 from a high-cost private-use collectable and an investment asset loss of $600 from another high-cost private-use collectable.

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

Your loss from the one collectable reduces your gain from the other to nil. Because of subsection 234-50(1), you cannot apply the remaining $400 of the loss in this income year, but you can apply it in a later income year under step 2 of the method statement in subsection (2) of this section.

(4) A *taxable income adjustment or *carry forward investment asset loss under this section is additional to a taxable income adjustment or carry forward investment asset loss under section 100-75.

Subdivision 234-D—Special investment asset loss from high-cost collectable

234-70 Special collectable loss on ceasing to hold shares or trust interest

(1) The purpose of this section[16] is to ensure that the tax consequences of a fall in the *market value of a *high-cost collectable that a company or trust holds for your (or your *associate's) personal use or enjoyment:

(a) are similar to what they would have been if you had held the collectable yourself; and

(b) take effect when you cease to hold *shares in the company (or in a company that is a member of the same *wholly-owned group) or an interest in a trust.

Note: This is achieved by:

- reversing, to the extent of the impact of the fall in market value of the collectable, what would otherwise have been the outcome of your ceasing to hold the shares or interest (see subsections (2) and (3)); and
- in effect converting the impact of the fall in market value of the collectable into an investment asset loss from a collectable that you make when you cease to hold the shares or interest (see subsection (4)).

(2) This section changes the way you work out your *investment asset gain or *investment asset loss under section 100-45 if:

---

[16] This replaces CGT Event K5.

---

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

(a) the *investment asset you cease to hold is *shares in a company or an interest in a trust, and no roll-over or exemption applies to your ceasing to hold it; and

(b) while you held the investment asset there was a fall in the *market value of a *collectable:

(i) held by the company (or by a company that is a member of the same *wholly-owned group) or by the trust; and

(ii) *used or kept mainly for your (or your *associate's) personal use or enjoyment; and

(c) the *first element of the collectable's *cost is more than $10,000; and

(d) the *market value of the investment asset when you stopped holding it (worked out as if the fall in market value of the *collectable had not happened) exceeds your *proceeds of realising the investment asset.

(3) In working out under section 100-45 whether you have made an *investment asset gain or *investment asset loss from ceasing to hold the *investment asset:

- the *market value of the investment asset when you stopped holding it (worked out as if the fall in market value of the *collectable had not happened);

is treated as being:

- your *proceeds of realising the asset.

Note: This effectively increases your proceeds of realising the investment asset by the amount attributable to the fall in market value of the collectable. The effect is either to reduce your investment asset loss from ceasing to hold the asset, to turn the loss into a gain, or to increase your investment asset gain from ceasing to hold the asset.

(4) In addition to the *investment asset gain or *investment asset loss worked out under section 100-45, you make an ***investment asset loss*** (from ceasing to hold the *investment asset) equal to the excess referred to in paragraph (2)(d). That investment asset loss is treated as being from a *high-cost private-use collectable.

Note: The investment asset loss can be applied only against investment asset gains you made from high-cost private-use collectables during the

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

income year. Any of the loss that remains will result in an upward adjustment. See section 234-55.

Example: You own 50% of the shares in a company. You bought them for $60,000. The company owns a painting worth $100,000 and another asset worth $20,000. The painting falls in value to $40,000.

You sell your shares for $30,000 (the actual proceeds of realising them). Apart from this section, you would make an investment asset loss of $30,000 under section 100-45.

However, under this section the actual proceeds of realising the shares are replaced with $60,000 (the market value of the shares if the painting had not fallen in value). As a result, you do not make an investment asset loss under section 100-45.

Instead, you make an investment asset loss under this section from a high-cost private-use collectable. The loss is equal to:

$60,000 - $30,000=$30,000.

Division 236—Losses from non-commercial business activities

Division 238—Non-compulsory uniforms

Division 240—Employee share schemes

Division 242—Above-average special professional income of authors, inventors, performing artists, produciton associates and sportspersons

Division 244—Income of certain children

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

Section

Part 3-10—Corporate taxpayers and corporate distributions

Division 270—General

Division 275—Franking a distribution

Division 277—Effect of receiving a franked distribution

Division 280—Private companies

Division 282—Share buy-backs

Division 284—Non-share capital accounts

Part 3-15—Corporate tax losses

Division 300—Changing ownership or control of a company

Division 302—Changing ownership or control of a listed public company

Division 304—Using a company's losses to avoid income tax

Division 306—Information about family trusts with interests in companies

Part 3-20—Co-operative and mutual companies

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

Section

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

Section

Part 3-35—Partnerships and partnership distributions

Division 350—General

Division 352—Corporate limited partnerships

Part 3-40—Consolidated groups

Part 3-45—Value shifting

Part 3-50—Superannuation funds

Part 3-55—Pooled development funds

Division 505—Pooled development funds

Part 3-60—Exempt entities

Division 510—Exempt entities

Division 512—Ceasing to be an exempt entity

Division 514—Certain State and Territory bodies

Division 516—Income diverted under certain tax avoidance schemes

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

Chapter 4—Rules about particular industries and transactions

Part 4-1—Overview of Chapter

Division 540—Overview

Part 4-5—Small business

Division 545—STS taxpayers

Table of Subdivisions

Guide to Division 545

545-5 What this Division is about

This Division gives you a choice to change the way the income tax law applies to you in these 3 ways if you are carrying on a business with a small turnover, and you pass certain other criteria:

- you use a cash accounting system; and

- you only account for annual changes in trading stock value that are more than $5,000; and

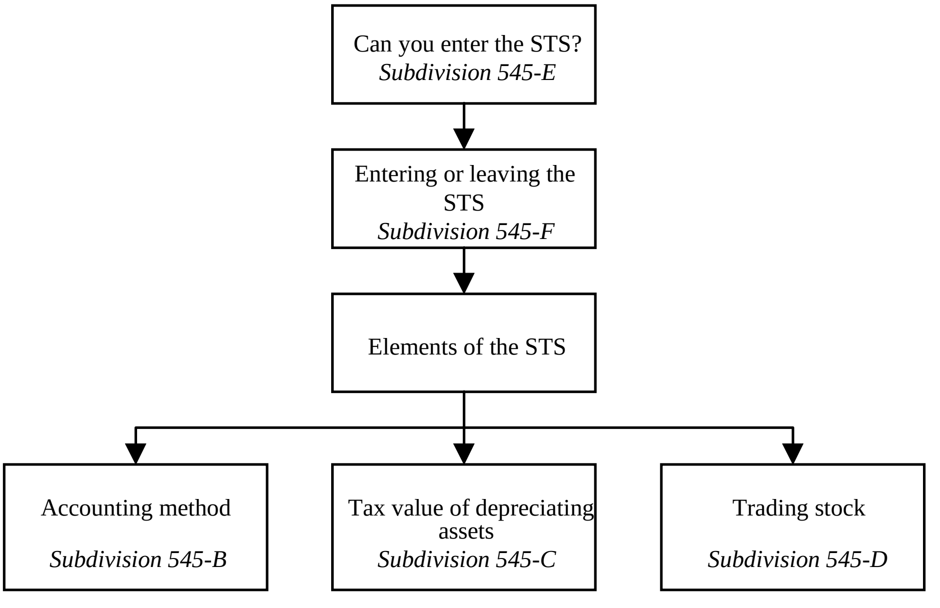
*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- you put your depreciating assets (of certain kinds) into either a long life pool or a general pool and treat each pool as a single asset.

In usual circumstances, these changes will simplify the working out of your taxable income, and so reduce your compliance costs.

545-10 Map of this Division

The following map shows the elements of the simplified tax system and how they relate to each other:



Subdivision 545-A—Objects of this Division

545-50 Objects of this Division

(1) The main object of this Division is to offer eligible small businesses the choice of a new platform to deal with their tax. The

____

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

platform is designed to benefit those businesses in one or more of these ways:

- reducing their tax;
- providing simpler rules for determining their net income;
- providing simpler depreciating asset and trading stock rules;
- reducing their compliance costs.

(2) This Division also provides rules that are intended to prevent other businesses from taking advantage of those benefits.

Subdivision 545-B—Accounting method for STS taxpayers

Guide to Subdivision 545-B

545-100 What this Subdivision is about

> STS taxpayers account for most receivables when *received*, and for most trade debts when *paid*.

Table of sections

[This is the end of the Guide.]

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

Accounting for amounts you have the right to receive

545-105 Most receivables not taken into account until received

(1) The *closing tax value of a *financial asset covered by item 2 of the table in section 76-15 is *not* taken into account under step 3 of the *net income formula for an income year for which you are an *STS taxpayer.

Note 1: This has the effect that, while you are in the STS, you are not taxed on an amount you have the right to receive until you receive it, if the amount is for giving a non-cash benefit (other than a financial asset) and:

- must be paid within 12 months after the right comes into existence; or
- would have to be paid within those 12 months if each uncertain obligation that the liability corresponding to the asset consists of or includes were a certain obligation.

However, you are taken to have received an amount when it is applied or dealt with on your behalf or as you direct: see section 6-70.

Note 2: A further effect is that the asset's opening tax value for the next income year will be nil: see subsection 6-85(2). This is so even if you have left the STS.

Note 3: This subsection does not affect the opening tax value of an asset for an income year when you join or rejoin the STS. It will be the same as the asset's closing tax value for the previous year (when you were not in the STS): see subsection 6-85(1).

Exception

(2) However, subsection (1) does not exclude the *closing tax value of a *financial asset consisting of your right to receive an amount to the extent that, supposing you had received the amount instead of starting to hold the asset, it would have formed some or all of your *proceeds of realising a *depreciating asset or an *investment asset.

545-110 Liabilities excluded because of excluding financial assets

(1) If:

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

(a) section 545-105 excludes for an income year some or all of the *closing tax value of a *financial asset; and

(b) had you received the excluded amount instead of starting to hold the asset, some or all of it would have formed some or all of your *proceeds of incurring a liability;

a proportion of the closing tax value of the liability is *not* taken into account under step 5 of the *net income formula for the income year.

(2) The proportion is:

- the excluded amount, to the extent that it would have formed some or all of those proceeds;

divided by:

- those proceeds as at the end of the income year.

Accounting for amounts you are liable to pay

545-120 Most trade debts not taken into account until paid

(1) The *closing tax value of a *financial liability covered by item 2 of the table in section 76-115 is *not* taken into account under step 5 of the *net income formula for an income year for which you are an *STS taxpayer.

Note 1: This has the effect that you do not get tax relief for an amount you are liable to pay until you pay it, if the amount is for getting a non-cash benefit (other than a financial asset) and:

- must be paid within 12 months after the liability comes into existence; or
- would have to be paid within those 12 months if each uncertain obligation that the liability consists of or includes were a certain obligation.

Note 2: A further effect is that the liability's opening tax value for the next income year will be nil: see subsection 6-85(2). This is so even if you have left the STS.

Note 3: This subsection does not affect the opening tax value of a liability for an income year when you join or rejoin the STS. It will be the same as the liability's closing tax value for the previous year (when you were not in the STS): see subsection 6-85(1).

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

Exception

(2) However, subsection (1) does not exclude the *closing tax value of a *financial liability to pay an amount to the extent that, supposing you had paid the amount instead of starting to have the liability, it would have formed some or all of your *cost of:

(a) a *depreciating asset (except one that consists of one or more rights to have things done); or

(b) an *investment asset.

545-125 Assets excluded because of excluding financial liabilities

(1) If:

(a) section 545-120 excludes for an income year some or all of the *closing tax value of a *financial liability; and

(b) had you paid the excluded amount instead of starting to have the liability, some or all of it would have formed some or all of your *cost of an asset;

a proportion of the closing tax value of the asset is *not* taken into account under step 3 of the *net income formula for the income year.

(2) The proportion is:

- the excluded amount, to the extent that it would have formed some or all of the *cost of the asset;

divided by:

- that cost as at the end of the income year.

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

Subdivision 545-C—Tax value of depreciating assets held by STS taxpayer

Guide to Subdivision 545-C

545-170 What this Subdivision is about

> STS taxpayers write off their depreciating assets on a diminishing value basis using a pool that is treated as a single depreciating asset.
>
> Broadly, a pool is made up of the costs of the depreciating assets that are allocated to it or, in some cases, a proportion of those costs.
>
> The pool rate is 30% for most depreciating assets, and 5% for depreciating assets that have an effective life of 25 years or more.
>
> There is an immediate write off for low-cost assets.
>
> This Subdivision sets out how to calculate the tax value of a pool, and also sets out the consequences of:
>
> (a) ceasing to hold depreciating assets; and
>
> (b) ceasing to be an STS taxpayer; and
>
> (c) changing the extent of private use of depreciating assets.

Table of sections

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

[This is the end of the Guide.]

Assets covered by this Subdivision

545-175 STS depreciating assets

(1) The ***tax value***, at a time when you are an *STS taxpayer, of a *depreciating asset you hold is worked out under this Subdivision if the asset is any of these:

- (a) a tangible asset;
- (b) an intangible asset of any of these kinds:
  - (i) a *mining, quarrying or prospecting right;
  - (ii) an item of *intellectual property;
  - (iii) an item of *in-house software;
  - (iv) an *IRU;
  - (v) a *spectrum licence;
  - (vi) a *datacasting transmitter licence;
- (c) an interest as co-owner of an asset covered by paragraph (a) or (b);

unless any of the exclusions in sections 545-180 to 545-200 applies.

(2) An asset whose tax value is worked out under this Subdivision is an ***STS depreciating asset***.

Assets excluded from this Subdivision

545-180 Assets used in primary production can be excluded

(1) You can choose *not* to have the tax value of an asset worked out under this Subdivision if:

- (a) you *use the asset to carry on a *primary production business; and
- (b) apart from this Subdivision, the asset's tax value would be worked out under:
  - (i) Subdivision 72-F (about primary production depreciating assets); or

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

(ii) Subdivision 72-G (about [capital expenditure of primary producers and other landholders]).

(2) Once you have made the choice for an asset, you cannot change it.

(3) An entity that is an individual, or is a partnership in which an individual is a partner, must make the choice for the later of:

(a) the first income year for which the entity is, or last became, an *STS taxpayer; or

(b) the income year in which the entity first *uses the asset, or has it *installed ready for use, otherwise than for *private or domestic purposes.

(4) Any other entity must make the choice for the later of:

(a) the first income year for which the entity is, or last became, an *STS taxpayer; or

(b) the income year in which the asset *starts to decline in tax value.

545-185 Horticultural plants are excluded

The tax value of a *horticultural plant (including a grapevine) is not worked out under this Subdivision.

545-190 Asset let on depreciating asset lease is excluded

The tax value of an asset is not worked out under this Subdivision if the asset is being let, or is intended to be let, predominantly on a *depreciating asset lease.

545-195 Asset in a software development pool or low-value pool is excluded

The tax value of an asset is not worked out under this Subdivision if:

(a) expenditure on the asset has been allocated to a software development pool under Subdivision 72-E; or

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

(b) the asset has been allocated to a low-value pool under that Subdivision.

545-200 Long life asset that started to decline in tax value before 1 July 2001 can be excluded

(1) You can choose *not* to have the tax value of an asset worked out under this Subdivision if:

(a) the asset *started to decline in tax value before 1 July 2001; and

(b) the asset's *effective life at the start of the first income year for which you are an *STS taxpayer is 25 years or more.

Note: If you make this choice, the tax value of the asset continues to be worked out under Division 72.

(2) You must make that choice for that first income year. Once you have made the choice for an asset, you cannot change it.

STS depreciating assets *not* allocated to pools

545-205 Low cost assets

(1) At the end of an income year (the ***current year***) for which you are an *STS taxpayer, the ***tax value*** of an *STS depreciating asset you hold that is also a *low-cost asset is nil, unless:

(a) the asset *started to decline in tax value during an earlier income year for which you were *not* an STS taxpayer; or

(b) the total of the amounts included during the current year in the *second element of the asset's *cost is $1,000 or more.

Note: If paragraph (1)(a) applies, the asset is allocated to a pool under subsection 545-220(2).

If paragraph (1)(b) applies, the asset is allocated to a pool under subsection 545-220(4).

An asset is *not* allocated to a pool if its tax value is worked out under this section. See paragraph 545-220(3)(b).

(2) A ***low-cost asset*** is a *depreciating asset that:

(a) has *started to decline in tax value; and

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

(b) whose *cost was less than $1,000 at the end of the income year in which that happened.

However, a *horticultural plant (including a grapevine) cannot be a ***low-cost asset***.

Upward adjustment for expected private use

(3) You have an ***upward adjustment*** for an income year if:

(a) Division 222 (about excluding private items in working out taxable income) applies to you; and

(b) at the end of the income year, the tax value of an asset you hold is nil because of subsection (1) of this section; and

(c) at the end of the income year, it was reasonable to expect that the asset would have a *private percentage for its *effective life (including any of its effective life that has already elapsed).

(4) The amount of the adjustment equals that percentage of:

(a) if the asset *started to decline in tax value in that income year—the asset's *cost as at the end of the income year; or

(b) otherwise—the total of the amounts (if any) included in that income year in the *second element of the asset's *cost.

545-210 STS depreciating assets that have not yet started to decline in tax value

At the end of an income year for which you are an *STS taxpayer, the ***tax value*** of an *STS depreciating asset you hold that has not yet *started to decline in tax value is the asset's *cost at that time.

Pools for STS depreciating assets

545-215 Creation of STS pools

(1) At the start of the first income year for which you are an *STS taxpayer, you start to ***hold***:

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

(a) a ***general STS pool*** for *STS depreciating assets having *effective lives of *less than* 25 years; and

(b) a ***long life STS pool*** for STS depreciating assets having effective lives of 25 years or more.

(2) Each of those pools is treated as a *depreciating asset:

(a) that you continue to ***hold***, even after you stop being an *STS taxpayer; and

(b) whose tax value is worked out under this Subdivision (instead of Division 72); and

(c) whose *private percentage for any period is nil.

545-220 Allocating assets to a pool; effect on the cost of the pool

(1) An *STS depreciating asset that you hold is automatically allocated to your *general STS pool or *long life STS pool (according to the asset's *effective life) as provided in this section. When that happens, this section includes an amount in the *first element or *second element of the *cost of the pool.

Note: For an individual, or a partnership in which an individual is a partner, sections 545-250 and 545-255 affect how much is included in the cost of the pool for an asset that is used partly for private or domestic purposes.

If the asset has already started to decline in tax value when you join (or rejoin) STS

(2) The asset is allocated at the *start* of an income year if:

(a) you are an *STS taxpayer for the income year, but you were not one for the previous income year; and

(b) at the end of the previous income year, you held the asset and it had *started to decline in tax value; and

(c) the asset is not already in your *general STS pool or *long life STS pool.

An amount equal to the *opening tax value of the asset for the income year is included in the ***first element*** of the ***cost*** of the pool when the asset is allocated.

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

If the asset starts to decline in tax value while you are an STS taxpayer

(3) The asset is allocated when it *starts to decline in tax value if:

(a) you are an *STS taxpayer for the income year in which that happens; and

(b) the asset is *not* a *low-cost asset.

The asset's *cost at that time is included at that time in the ***second element*** of the ***cost*** of the pool.

Note: It follows that an asset is not allocated to an STS pool if you are not an STS taxpayer for the income year in which it starts to decline in value. If you still hold the asset when you again become an STS taxpayer, it is allocated under subsection (2).

If the second element of the cost of a low-cost asset increases by $1,000 or more in an income year

(4) If the asset is a *low-cost asset (except one allocated under subsection (2)):

(a) it is allocated the first time the total of the amounts included in the *second element of the asset's *cost during an income year for which you are an *STS taxpayer is $1,000 or more; and

(b) there is included at that time in the ***second element*** of the ***cost*** of the pool the total of the amounts included in the *second element of the asset's *cost:

(i) during the income year in which it is allocated; and

(ii) before or at that time.

Addition to cost of asset already in pool

(5) When an amount becomes included in the *second element of the *cost of the asset after it is allocated, the amount is also included in the ***second element*** of the ***cost*** of the pool. (This happens even if you are *not* an *STS taxpayer for the income year in which that happens.)

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

Asset in pool not separately taken into account in working out net income

(6) If the asset is allocated under this section, its *closing tax value is *not* taken into account under step 3 of the *net income formula for that income year or for a later income year in which you continue to hold it, even after you stop being an *STS taxpayer.

Note 1: This has the effect that the asset's opening tax value for each later income year will be nil: see subsection 6-85(2). This is so even if you have left the STS.

Note 2: This subsection does not affect the opening tax value of an asset for an income year when you join or rejoin the STS. It will be the same as the asset's closing tax value for the previous year (when you were not in the STS): see subsection 6-85(1).

Asset leaves pool when you cease to hold the asset

(7) An asset stops being in your *general STS pool or *long life STS pool when you stop holding the asset.

Working out the tax value of an STS pool

545-225 *Tax value* of an STS pool

(1) The ***tax value***, at the end of an income year, of your *general STS pool or *long life STS pool is worked out as follows:

Method statement

Step 1. Subtract from the pool's *base value for the income year its *decline in tax value for the income year.

Step 2. Add to the step 1 result:

(a) in the case of your *general STS pool—15%; or

(b) in the case of your *long life STS pool—2.5%;

of each amount that was included during the income year in the *second element of the *cost of the pool.

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

> Note: This halves the decline in tax value for new assets, and additions to cost, in their first year in the pool.
>
> *Step 3.* Subtract from the step 2 result the *proceeds of realising each asset that:
>
> (a) you stopped holding during the income year; and
>
> (b) was in the pool immediately before you stopped holding it.

Note: The tax value of the pool is nil if its base value, minus the proceeds of realising pool assets, is less than $1,000. See section 545-240.

(2) The ***tax value*** of the pool at the start of an income year is its *opening tax value for that income year.

(3) The ***tax value*** of the pool at a time *other than* the start or end of an income year is worked out under this Subdivision as if that time were the end of the income year in which it occurs.

545-230 *Base value* of an STS pool

The ***base value*** of your *general STS pool or *long life STS pool for an income year is the total of:

(a) the pool's *opening tax value for the income year; and

(b) if you are an *STS taxpayer for the income year, but you were not one for the previous income year—each amount that subsection 545-220(2) includes at the start of the income year in the *first element of the pool's *cost; and

(c) each amount included during the income year in the *second element of the pool's *cost.

545-235 How to measure the annual *decline in tax value* of an STS pool

(1) The ***decline in tax value*** of your *general STS pool for an income year equals 30% of the pool's *base value for the income year.

---

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

(2) The ***decline in tax value*** of your *long life STS pool for an income year equals 5% of the pool's *base value for the income year.

545-240 Closing tax value reduced to nil if otherwise less than $1,000

The tax value of your *general STS pool or *long life STS pool at the end of an income year is nil if the pool's *base value for the income year, minus the *proceeds of realising each asset that:

(a) you stopped holding during the income year; and

(b) was in the pool immediately before you stopped holding it;

is less than $1,000.

Note: If the total proceeds of realising assets during the income year exceed the base value of the pool, the excess will increase your net income and so be taxable for the income year.

Private use of assets in STS pools held by individuals (and partnerships in which they are partners)

545-245 Application of sections 545-250 to 545-265

Sections 545-250 to 545-265 apply to an individual, and to a partnership in which an individual is a partner.

545-250 Effect of private use in year asset allocated to pool

(1) If:

(a) an asset has a *private percentage for the income year in which it is allocated to your *general STS pool or *long life STS pool; and

(b) section 545-220 includes an amount in the *first element or *second element of the *cost of the pool in respect of the asset;

that percentage of the amount is taken *not* to have been so included.

Note: This subsection also affects the amount (if any) by which step 2 of the method statement in subsection 545-225(1) increases the closing tax value of the pool in order to halve the decline in tax value for the asset in its first year in the pool.

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

Upward adjustment for private percentage

(2) Also, you have for that income year an ***upward adjustment*** equal to the amount that subsection (1) treats as not having been included in the *cost of the pool.

545-255 Effect of private use on treatment of amount included in second element of pooled asset's cost

(1) If an amount (the ***cost addition***) becomes included during an income year in the *second element of the *cost of an asset that is already in your *general STS pool or *long life STS pool, this section may treat a percentage of the cost addition as *not* having been included under subsection 545-220(5) in the *cost of the pool.

Note: This section also affects the amount by which step 2 of the method statement in subsection 545-225(1) increases the closing tax value of the pool in order to halve the decline in tax value for the cost addition in its first year in the pool.

(2) It does so if:

(a) subsection 545-250(1) treats a percentage of an amount in respect of the asset as not having been included in the *cost of the pool; or

(b) an adjustment has had to be made for the asset under section 545-265 (because its private percentage changes by more than 10%) for at least one earlier income year since the asset was allocated to the pool.

(3) The percentage of the cost addition that is taken *not* to have been included under subsection 545-220(5) in the *cost of the pool is the same as:

(a) the percentage referred to in paragraph (2)(a), unless paragraph (2)(b) applies; or

(b) if paragraph (2)(b) applies—the asset's *private percentage for the income year for which the last such adjustment had to be made.

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

Upward adjustment for private percentage

(4) Also, you have for the income year referred to in subsection (1) an ***upward adjustment*** equal to the amount that subsection (3) treats as *not* having been included under subsection 545-220(5) in the *cost of the pool.

545-260 Combined effect of private percentage, and proceeds of realising an asset, on closing tax value of an STS pool

(1) In applying:

(a) step 3 of the method statement in subsection 545-225(1); or

(b) section 545-240;

to work out the tax value of your *general STS pool or *long life STS pool, a percentage of your *proceeds of realising an asset is disregarded if:

(c) subsection 545-250(1) prevented a percentage of an amount in respect of the asset from being included in the *cost of the pool; or

(d) an adjustment has had to be made for the asset under section 545-265 (because its private percentage changes by more than 10%) since it was allocated to the pool.

(2) If paragraph (1)(c) applies but not paragraph (1)(d), the percentage of the proceeds to be disregarded is the same as the percentage referred to in paragraph (1)(c).

(3) If paragraph (1)(d) applies, the percentage of the proceeds to be disregarded is the average of the percentage applicable to the asset, under the table below, for each income year from (and including) the income year in which the asset was allocated to the pool, to (and including):

(a) if the income year in which you stop holding the asset is at least 3 income years after the one in which the asset was allocated to your *general STS pool—the third income year after the one in which it was allocated; or

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

(b) if the income year in which you stop holding the asset is at least 20 income years after the one in which the asset was allocated to your *long life STS pool—the 20th income year after the one in which it was allocated; or

(c) otherwise—the one in which you stopped holding the asset.

Percentage applicable to an asset for an income year

Item	For this income year:	The percentage applicable to the asset is:
1	The income year in which the asset was allocated to the pool, if subsection 545-250(1) prevented a percentage of an amount in respect of the asset from being included in the *cost of the pool	That percentage
2	The income year in which the asset was allocated to the pool, if item 1 does not apply	0%
3	An income year for which an adjustment has had to be made for the asset under section 545-265 since it was allocated to the pool	The asset's *private percentage for the income year
4	Any other income year	The percentage applicable to the asset under this table for the previous income year

(4) In either case, you have a ***downward adjustment*** for the income year equal to the amount to be disregarded under subsection (2) or (3).

545-265 Base value of STS pool is adjusted if asset's private percentage changes by more than 10%

(1) The *base value of your *general STS pool or *long life STS pool for an income year is adjusted for each asset in the pool:

(a) that was allocated to the pool in an earlier income year; and

(b) whose *private percentage (the ***new percentage***) for the income year differs by more than 10 percentage points from the percentage (the ***old percentage***) set out in the table;

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

but not for any other asset.

Old percentage for asset in an STS pool		
Item	**In this case:**	**The *old percentage* is:**
1	Subsection 545-250(1) prevented a percentage of an amount in respect of the asset from being included in the *cost of the pool, and item 2 does not apply	That percentage
2	An adjustment has had to be made for the asset under this section for at least one income year since the asset was allocated to the pool	The asset's *private percentage for the income year for which the last such adjustment had to be made
3	Any other case	0%

(2) However, an adjustment must *not* be made under this section for an asset if the income year is:

(a) at least 3 income years after the one in which the asset was allocated to your *general STS pool; or

(b) at least 20 income years after the one in which the asset was allocated to your *long life STS pool;

as appropriate.

(3) The adjustment for an asset is worked out using the formula:

$$\text{NTV} \times \left[\frac{\text{Old percentage} - \text{New percentage}}{100\% - \text{Old percentage}} \right]$$

where:

NTV means the amount that would have been the *opening tax value of the pool for the income year if the asset had been the only asset ever allocated to the pool.

Example:

Effect of increase in private percentage

(4) If the result of the formula is a negative amount:

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

(a) the *base value of the pool is reduced by that amount (expressed as a positive amount); and

(b) you also have an ***upward adjustment*** for the income year equal to that amount (expressed as a positive amount).

Effect of decrease in private percentage

(5) If the result of the formula is a positive amount:

(a) the *base value of the pool is increased by that amount; and

(b) you also have a ***downward adjustment*** for the income year equal to that amount.

Personal services income

545-270 Interaction with Part 4-10 (about personal services income)

Subdivision 545-D—Trading stock for STS taxpayers

545-285 Closing tax value of your trading stock equals opening tax value if difference would otherwise be $5,000 or less

(1) The ***tax value***, at the end of an income year for which you are an *STS taxpayer, of an item of *trading stock you hold is worked out under subsection (2) if the difference between these totals is $5,000 or less:

(a) the total of the *opening tax value of each item of trading stock you held at the start of the income year; and

(b) the total you reasonably estimate of what would be, apart from this section, the tax value at the end of the income year of each item of trading stock you hold at the end of the income year.

Note: In applying paragraph (1)(b) special valuation rules may be used, for example, about obsolete stock, natural increase of livestock, or horse breeding stock.

(2) The ***tax value*** of the item at the end of the income year is worked out on the basis that:

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

- the total of the tax value at the end of the income year of each item of trading stock you hold at the end of the income year;

is equal to:

- the total of the opening tax value of each item of trading stock you held at the start of the income year;

and on the basis of the item's *cost at the end of the income year as a proportion of the total of the cost at that time of each item of trading stock you hold at that time.

Exception: choice to account for trading stock

(3) However, you can choose not to have this section apply to you for an income year.

Note: If you make this choice, you will have to do a stocktake and account for the change in the value of all your trading stock: see Subdivision 70-C.

Subdivision 545-E—Entities eligible to be STS taxpayers

Guide to Subdivision 545-E

545-360 What this Subdivision is about

This Subdivision explains that you can choose to be an STS taxpayer only if you are carrying on a business. In addition, you (together with any others who can be expected to act in concert with you in your business) must have:

- an average annual business turnover of less than $1m; and
- depreciating assets whose total closing tax value is below $3m.

You normally work out your average turnover using any 3 of the last 4 years, but there are special rules for some other cases.

Table of sections

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

Operative provisions

[This is the end of the Guide.]

Operative provisions

545-365 Eligibility to be an STS taxpayer

(1) You are eligible to be an *STS taxpayer for an income year if:

(a) you carry on a *business in that year; and

(b) your *STS average turnover for that year is less than $1,000,000 (ignoring any *input tax credits to which you are entitled and *decreasing adjustments that you have); and

(c) the sum of the *closing tax values of the *depreciating assets that:

(i) are covered by paragraph 545-175(1)(a), (b) or (c) (about the kinds of assets that can be STS depreciating assets); and

(ii) you, and entities (the ***grouped entities***) whose value of business supplies is grouped with yours in accordance with section 545-380, held at the end of that year;

is less than $3,000,000.

Note: If you are eligible to be an STS taxpayer, you can choose to become one: see section 545-435.

(2) In working out whether paragraph (1)(c) applies to you, use the *closing tax value of a *general STS pool, *long life STS pool or low-value pool instead of the closing tax values of the *depreciating assets allocated to the pool.

(3) This Subdivision applies to you as if you carried on a *business in an income year if:

---

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

(a) in that year you were winding up a business you previously carried on; and

(b) you were an *STS taxpayer for the income year in which you stopped carrying on that business.

545-370 Meaning of STS average turnover

(1) Your ***STS average turnover*** for an income year (the ***present year***) is:

$$\frac{\text{Sum of relevant STS group turnovers}}{\text{Number of averaging years}}$$

where:

number of averaging years is:

(a) 3; or

(b) the number of years you take into account under paragraph (b) of the definition of ***sum of relevant STS group turnovers***.

sum of relevant STS group turnovers is:

(a) the sum of your *STS group turnovers for any 3 of the previous 4 income years; or

(b) if you did not carry on a *business in each of those last 4 years—the sum of your STS group turnovers for each of those years in which you carried on a business.

(2) For the purpose of working out your *STS average turnover under subsection (1) where you or a grouped entity carried on a *business for part only of one or more of those years, use a reasonable estimate of what your *STS group turnover would have been for that year or those years if you and the grouped entity had carried on a business throughout those years.

(3) You work out your ***STS average turnover*** for an income year (also the ***present year***) in this way if you are not eligible to be an *STS taxpayer for that year using subsection (1):

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

(a) work out your *STS group turnover for the present year or a reasonable estimate of it and a reasonable estimate of it for each of the 2 following income years (ignoring any of those years if you do not expect to be carrying on a *business at any time in that year); and

(b) work out the average of your *STS group turnovers for those years.

(4) For the purpose of working out your *STS average turnover under subsection (3) where you or a grouped entity carried on a *business for part only of the present year, use a reasonable estimate of what your *STS group turnover would have been for that year if you and the grouped entity had carried on a business throughout that year.

Example: Kevin starts his locksmith business on 1 January in income year 1. He decides that he would like to enter the STS. He works out his STS average turnover for the income year as $420,000, calculated as follows:

- Kevin's estimated turnover for the period 1 January to 30 June in that income year is $200,000; and
- he estimates that, if he had been in business for the period 1 July to 31 December in that income year, his turnover would have been $190,000, making a total of $390,000 for the year; and
- his estimated turnover for income year 2 is $420,000, and the estimate for income year 3 is $450,000.

The total STS turnover for the 3 years is $1,260,000, and the average for those years is $420,000. The value of Kevin's depreciating assets is $120,000. He is therefore eligible to be an STS taxpayer.

545-375 Meaning of STS group turnover

(1) Your ***STS group turnover*** for an income year is the sum of:

(a) the *value of the business supplies you made in the income year; and

(b) the value of the business supplies made in the income year by grouped entities while they were grouped with you;

reduced by:

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

(c) the value of the business supplies you made in the income year to entities grouped with you while they were grouped with you; and

(d) the value of the business supplies entities grouped with you made in the income year to you while you were grouped with them; and

(e) the value of the business supplies another entity made in the income year to a third entity while the other entity and the third entity were grouped with you.

(2) To the extent that the *taxable supplies an entity makes in an income year include *gambling supplies, use an amount equal to 11 times the entity's *global GST amount for those supplies rather than the *value of the business supplies in working out the entity's *STS group turnover.

(3) In working out the *value of the business supplies made by an entity, disregard:

(a) any *supply made to the extent that the consideration for the supply is a payment or a supply by an insurer in settlement of a claim under an insurance policy; and

(b) to the extent that a supply is constituted by a loan—any repayment of principal, and any obligation to repay principal.

(4) The regulations may provide that *STS group turnover is to be calculated in a different way, but only so that it would be less than the amount worked out under this section.

545-380 Grouped entities

(1) The *value of the business supplies made in an income year by an entity is grouped with another entity's if:

(a) either entity controls the other entity in the way described in this section; or

(b) both entities are controlled in that way by the same third entity; or

(c) the entities are *STS affiliates of each other.

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

(2) This section applies to an entity that directly controls a second entity as if the first entity also controlled any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.

Individuals, companies and fixed trusts

(3) An entity controls another entity if the first entity, its *STS affiliates or the first entity together with its STS affiliates:

(a) legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the other entity that carry between them the right to receive at least 40% of any distribution of income or capital by the other entity; or

(b) if the other entity is a company—legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the company that carry between them the right to exercise, or control the exercise of, at least 40% of the voting power in the company.

Non-fixed trusts

(4) An entity controls a trust that is not a *fixed trust if:

(a) the trustee has made a distribution, in any of the last 4 income years (except the present year) of $100,000 or more to the entity, its *STS affiliates or the entity together with its STS affiliates; or

(b) the entity, its *STS affiliates or the entity together with its STS affiliates:

(i) have the power, directly or indirectly, to obtain the beneficial enjoyment of any of the capital or income of the trust; or

(ii) are capable of gaining that enjoyment under a *scheme; or

(c) a trustee of the trust is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions,

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

instructions or wishes of the entity, its STS affiliates or the entity together with its STS affiliates.

Partnerships

(5) An entity controls a partnership if the entity, its *STS affiliates or the entity together with its STS affiliates have the right to at least 40% of the partnership net income, or have at least a 40% interest in assets used in the partnership *business (except assets that are leased to the partnership).

(6) A partnership (the ***first entity***) controls another entity if a partner in the first entity, or 2 or more partners in the first entity, have the right to receive at least 40% of the partnership net income, or have at least a 40% interest in assets used in the partnership *business, and:

(a) if the other entity is a company—the same partner, or the same 2 or more partners, have the right to receive at least 40% of any distribution of income or capital by the other entity, or to exercise, or to control the exercise of, at least 40% of the voting power in the company; or

(b) if the other entity is a *fixed trust—the same partner, or the same 2 or more partners, have the right to receive at least 40% of any distribution of income or capital by the other entity; or

(c) if the other entity is a trust that is not a fixed trust—a condition in a paragraph of subsection (4) is satisfied for the same partner, or the same 2 or more partners in relation to the trust; or

(d) if the other entity is a partnership—the same partner, or the same 2 or more partners, have the right to receive at least 40% of the partnership net income, or have at least a 40% interest in assets used in the partnership business, of the other entity.

(7) If the control percentage mentioned in this section is at least 40%, but less than 50%, then the Commissioner may determine that the first entity does not control the other entity if the Commissioner is

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

satisfied, or thinks it reasonable to assume, that the other entity is controlled by an entity other than, or by entities that do not include, the first entity or any of its *STS affiliates.

(8) An entity is an ***STS affiliate*** of yours if the entity acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you, in relation to the affairs of the entity's *business.

(9) Another partner in a partnership in which you are a partner is not your ***STS affiliate*** only because the partner acts, or could reasonably be expected to act, in concert with you in relation to the affairs of the partnership.

Subdivision 545-F—Entering and leaving the STS

Guide to Subdivision 545-F

545-430 What this Subdivision is about

> Eligible taxpayers have a choice as to whether to enter the STS.
>
> The rules for entering and leaving the STS are set out in this Subdivision.

Table of sections

Operative provisions

[This is the end of the Guide.]

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

Operative provisions

545-435 Entering the STS

You are an ***STS taxpayer*** for an income year if:

(a) you are eligible to be an *STS taxpayer for that year (see Subdivision 545-E); and

(b) you notify the Commissioner, in the *approved form, of your choice to become such a taxpayer for that year.

545-440 Leaving the STS

(1) You continue to be an ***STS taxpayer*** for each later income year unless:

(a) you notify the Commissioner, in the *approved form, of your choice to stop being an STS taxpayer; or

(b) you are not eligible to be an STS taxpayer for that later year (see Subdivision 545-E).

(2) If you are not eligible to be an STS taxpayer for that later year, you must notify the Commissioner, in the *approved form, of that fact.

Restriction on re-entry

(3) If you *choose* to stop being an *STS taxpayer, you cannot again become an STS taxpayer until at least 5 years after the income year that you left the STS.

Note: If you stop being an STS taxpayer because of increased turnover or because of the value of your depreciating assets, you can become an STS taxpayer for an income year again as soon as you are eligible.

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

Section

Division 550—Investment assets: small business relief

Part 4-10—Personal services income

Part 4-15—Primary producers

Part 4-20—Insurance

Part 4-25—Superannuation

Part 4-30—Financial arrangements

Part 4-35—Leasing

Part 4-40—Drought investment allowance

Part 4-45—Other rules for particular industries and occupations

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

Chapter 5—International aspects of income tax

Part 5-1—Overview of Chapter

Part 5-5—General

Part 5-10—Dividend, interest and royalty withholding

Part 5-15—Controlled foreign companies (CFCs)

Part 5-20—Foreign investment funds (FIFs)

Part 5-25—Foreign tax credits

Part 5-30—Miscellaneous

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

Chapter 6—The Dictionary

Part 6-1—Overview of Chapter

Division 900—Overview

Part 6-5—Concepts and topics

Division 902—Rules for interpreting this Act

Division 905—General

905-150 Guides, and their role in interpreting this Act

(1) A ***Guide*** consists of:

(a) sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.; or

(b) a Subdivision, Division or Part that is identified as a Guide by a provision in the Subdivision, Division or Part.

(2) Guides form part of this Act, but they are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered:

(a) in determining the purpose or object underlying the provision; or

(b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or

(c) in determining the provision's meaning if the provision is ambiguous or obscure; or

(d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context

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

in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

Division 960—Non-cash benefits

960-50 Non-cash benefits

(1) The table sets out what is a ***non-cash benefit*** that an entity ***gives*** to another entity, and that the other entity ***gets*** from the first entity.

Non-cash benefits		
Item	**In this case:**	**The *non-cash benefit* is:**
1	The first entity provides to the other entity an asset or services in any form except money	the asset or services
2	The first entity starts to have a liability to the other entity	the liability
3	There is an *increase in a liability that the first entity has to the other entity	the increase
4	A liability that the other entity has to the first entity *decreases or ends (otherwise than by the other entity providing economic benefits pursuant to the liability)	the decrease or ending

Constructive giving and getting of non-cash benefits

(2) If a *non-cash benefit is applied or dealt with on behalf of an entity, or as an entity directs, the benefit is taken to be ***given*** to the entity, and the entity is taken to ***get*** the benefit. (This does not affect the treatment of another entity to which the benefit is given, or that gets the benefit, as mentioned in subsection (1).)

Work is continuing on how to analyse correctly tri-partite non-cash transactions, including the kind of case that subsection (2) contemplates. The main issue is to ensure that economic benefits are not double counted either by taxing the same amount twice or allowing a loss twice.

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

Division 974—Debt and equity interests

Division 975—Certain and uncertain obligations

Table of sections

975-10 What is a *certain obligation* and an *uncertain obligation*

(1) An obligation to provide future economic benefits is a ***certain obligation*** if, and only if, the requirement to fulfil the obligation is *not* contingent (as determined under section 975-25). Otherwise, it is an ***uncertain obligation***.

(2) To avoid doubt, the obligation is an ***uncertain obligation*** if the matter of whether any future economic benefits at all are to be provided under the obligation *is* contingent (as determined under section 975-25).

975-15 When a certain obligation is of *certain amount* or *uncertain amount*

(1) A *certain obligation is of ***certain amount*** if, and only if, the extent of the future economic benefits to be provided is also *not* contingent (as determined under section 975-25). Otherwise, it is of ***uncertain amount***.

(2) The rest of this Act (outside this Division) applies to a *certain obligation that is of *uncertain amount on the basis that, at a particular time, the extent of the future economic benefits to be provided is determined by what is a reasonable estimate as at that time.

---

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

975-25 How to determine whether or not something is contingent under this Division

(1) For the purposes of this Division, whether a matter relating to an obligation is contingent or not is to be determined:

(a) according to whether, in substance or effect, that matter is contingent on any event, condition or situation (including the economic performance of the entity having the obligation), other than the ability or willingness of that entity to meet the obligation; and

(b) having regard to:

(i) the artificiality, or the contrived nature, of any contingency on which the matter depends; and

(ii) the pricing, terms and conditions of any *scheme relating to the obligation; and

(iii) anything else that is relevant.

Note: The artificiality, or the contrived nature, of a contingency would tend to indicate that, in substance or effect, the matter is not contingent as mentioned in paragraph (a).

(2) The matter can be contingent as mentioned in paragraph (1)(a) even if the entity having the obligation will suffer some detrimental practical or commercial consequences if it does not fulfil the obligation.

Example A contingent obligation to make payments in respect of an income security issued by an approved deposit-taking institution (ADI) is not non-contingent merely because of the detrimental effect non-payment would have on the ADI's business.

Division 976—Concepts about companies

Division 977—Concepts about trusts

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

Part 6-10—Dictionary definitions

Division 995—Definitions

995-1 Definitions

(1) In this Act, except so far as the contrary intention appears:

A

amount includes a nil amount.

Note: ***Amount*** and its grammatical forms are not asterisked in this Act.

arrangement means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

artwork means:

(a) a painting, sculpture, drawing, engraving or photograph; or

(b) a reproduction of such a thing; or

(c) property of a similar description or use.

assessment means [to be defined based on the meaning in subsection 6(1) of the *Income Tax Assessment Act 1936*].

Note: ***Assessment*** and its grammatical forms are not asterisked in this Act.

asset has the meaning given by section 10-15.

Note: ***Asset*** and its grammatical forms are not asterisked in this Act.

associate means [to be defined based on the meaning in section 318 of the *Income Tax Assessment Act 1936*].

Australian resident means [to be defined based on the meaning in the *Income Tax Assessment Act 1936*].

---

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

authorised deposit-taking institution means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

Note: This includes banks, building societies and credit unions.

B

base value:

(a) ***base value*** of a *depreciating asset has the meaning given by subsection 72-35(2); and

(b) ***base value*** of a *depreciating liability has the meaning given by subsection 72-50(2); and

(c) ***base value*** of a *general STS pool or *long life STS pool has the meaning given by section 545-230.

business includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

C

carry forward investment asset loss has the meaning given by section 100-75.

carry forward investment asset loss from high-cost private-use collectables has the meaning given by section 234-55.

certain amount, in relation to a *certain obligation, has the meaning given by section 975-15.

certain obligation has the meaning given by section 975-10.

closing tax value of an asset or liability for an income year has the meaning given by section 6-80.

collectable has the meaning given by section 234-15.

collectable expense has the meaning given by section 234-30.

Commissioner means the Commissioner of Taxation.

Note: ***Commissioner*** and its grammatical forms are not asterisked in this Act.

---

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

Commonwealth law means a law of the Commonwealth.

company means:

(a) a body corporate; or

(b) any other unincorporated association or body of persons;

but does not include a *partnership.

Note 1: A limited partnership is treated as a company not as a partnership. See Division 352 [equivalent of Division 5A of Part III of the *Income Tax Assessment Act 1936*].

Note 2: ***Company*** and its grammatical forms are not asterisked in this Act.

cost of an asset has the meaning given by sections 14-20 to 14-35 and 26-20.

cost of extinguishing a liability has the meaning given by sections 14-90 and 26-90.

cost base of an *investment asset means the cost base of the asset as a CGT asset, worked out under Subdivision 110-A of the *Income Tax Assessment Act 1997*.

D

datacasting transmitter licence has the meaning given by section 5 of the *Radiocommunications Act 1992*.

deceased estate means any trust for the administration of the estate of a deceased person.

decline in tax value:

(a) ***decline in tax value*** of a *depreciating asset has the meaning given by sections 72-40 and 72-65 to 72-75; and

(b) ***decline in tax value*** of a *depreciating liability has the meaning given by section 72-55; and

(c) ***decline in tax value*** of a *general STS pool or *long life STS pool has the meaning given by section 545-235.

decrease: a liability ***decreases*** as set out in section 12-15.

depreciating asset has the meaning given by section 72-30.

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

depreciating liability has the meaning given by section 72-45.

diminishing value method has the meaning given by section 72-70.

discountable gain has the meaning given by Subdivision 100-E.

discount percentage for an amount of a *discountable gain has the meaning given by section 100-80.

downward adjustment for an income year has the meaning given by the provisions of this Act that create downward adjustments for the income year.

Note: For a list of those provisions, see Division 95. A downward adjustment reduces your taxable income.

due and payable: an amount is ***due and payable*** if the time for payment of the amount has arrived.

E

effective life: the ***effective life*** of a *depreciating asset or *depreciating liability means the effective life of the asset or liability, worked out under Subdivision 72-C, and expressed in years (including a fraction of a year, if necessary).

entity means [to be defined based on the meaning in section 960-100 of the *Income Tax Assessment Act 1997*].

F

financial asset has the meaning given by section 76-10.

financial liability has the meaning given by section 76-110.

financial year means a period of 12 months beginning on 1 July.

first element:

(a) ***first element*** of the *cost of an asset has the meaning given by section 14-25; and

(b) ***first element*** of the *proceeds of incurring a liability has the meaning given by section 14-80.

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

foreign law means a law of a foreign country.

Note: ***Foreign country*** is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*.

foreign resident means an entity that is not an Australian resident.

Note: ***Foreign resident*** and its grammatical forms are not asterisked in this Act.

G

gain reduction amount for an asset has the meaning given by the provisions of this Act that create gain reduction amounts for the asset.

Note: To find those provisions, see Division 101. When you cease to hold the asset, the gain reduction amount may give rise to a downward adjustment under item 1 or 2 of the table in section 101-10.

get a *non-cash benefit has the meaning given by section 960-50.

general STS pool has the meaning given by section 545-215.

give a *non-cash benefit has the meaning given by section 960-50.

Guide has the meaning given by section 905-150.

H

has: see ***have***.

Note: ***Have*** and its grammatical forms are not asterisked in this Act.

have a liability has the meaning given by sections 12-20, 24-110 and 24-200.

Note: ***Have*** and its grammatical forms are not asterisked in this Act.

held: see ***hold***.

Note: ***Hold*** and its grammatical forms are not asterisked in this Act.

high-cost private-use collectable has the meaning given by section 234-20.

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

hold an asset has the meaning given by sections 10-20, 24-10, 24-100 and 545-215.

Note: ***Hold*** and its grammatical forms are not asterisked in this Act.

income tax means income tax imposed by any of these:

(a) the *Income Tax Act 1986*;
(b) the *Income Tax (Diverted Income) Act 1981*;
(c) the *Income Tax (Former Complying Superannuation Funds) Act 1994*;
(d) the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*;
(e) the *Income Tax (Fund Contributions) Act 1989*.

Note: ***Income tax*** and its grammatical forms are not asterisked in this Act.

income year: the basic meaning is given by subsection 4-10(2). Some provisions refer to a particular income year. (They may describe it in different ways: for example, as the income year ending on 30 June 2001, or the 2000-01 income year.) For an entity that adopts an accounting period in place of the particular income year, the reference includes that accounting period.

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

Note: ***Income year*** and its grammatical forms are not asterisked in this Act.

increase: a liability ***increases*** as set out in section 12-15.

individual means a natural person.

Note: ***Individual*** and its grammatical forms are not asterisked in this Act.

in-house software is computer software, or a right to use computer software, that:

(a) you acquire, develop or have another entity develop; and
(b) that is mainly for you to use in performing the functions for which the software was developed.

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

installed ready for use: a *depreciating asset is ***installed ready for use*** if, and only if:

(a) it is a tangible asset and is installed ready for *use and held in reserve; or

(b) it is a co-ownership interest in a tangible asset, and the tangible asset is installed ready for use and held in reserve.

intellectual property: an item of ***intellectual property*** consists of the rights (including equitable rights) that an entity has under a *Commonwealth law as:

(a) the patentee, or a licensee, of a patent; or

(b) the owner, or a licensee, of a registered design; or

(c) the owner, or a licensee, of a copyright;

or of equivalent rights under a *foreign law.

interest in a *collectable has the meaning given by section 234-15.

investment asset has the meaning given by section 78-10.

investment asset event has the meaning given by section 100-25.

investment asset gain has the meaning given by section 100-45.

investment asset loss has the meaning given by sections 100-45 and 234-70.

IRU is an indefeasible right to use an international telecommunications submarine cable system.

L

land has a meaning affected by:

(a) paragraph 22(1)(c) of the *Acts Interpretation Act 1901* (which extends the meaning to include, for example, interests in land); and

(b) section 22-20 of this Act (which treats fixtures and improvements as separate from land).

liability has the meaning given by section 12-15.

---

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

Note: ***Liability*** and its grammatical forms are not asterisked in this Act.

liable: to avoid doubt, ***liable*** is another part of speech or grammatical form of *liability, and so has a corresponding meaning.

Note 1: This clarifies the application of section 18A of the *Acts Interpretation Act 1901*, which gives a corresponding meaning to other parts of speech and grammatical forms of a word that is given a particular meaning by an Act.

Note 2: ***Liability*** and its grammatical forms are not asterisked in this Act.

listed zero tax value asset has the meaning given by section 68-10.

listed zero tax value liability has the meaning given by section 68-10.

live stock does *not* include animals used as beasts of burden or working beasts in a *business other than a *primary production business.

long life STS pool has the meaning given by section 545-215.

loss reduction amount for an asset has the meaning given by the provisions of this Act that create loss reduction amounts for the asset.

Note: To find those provisions, see Division 101. When you cease to hold the asset, the loss reduction amount may give rise to an upward adjustment under item 3 or 4 of the table in section 101-10.

low-cost asset has the meaning given by section 545-205.

luxury car [to be defined based on the meaning in Division 42A in Schedule 2E to the *Income Tax Assessment Act 1936*].

M

market value:

(a) the ***market value*** of an obligation is what would be the *market value of an asset that embodies all (and only) the future economic benefits that are to be provided pursuant to

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

the obligation (whether or not that asset actually exists or is held by some entity); and

(b) in working out the ***market value*** of a *non-cash benefit, disregard anything that would prevent or restrict conversion of the benefit to money.

market value asset has the meaning given by Division 74.

market value liability has the meaning given by Division 74.

mining, quarrying or prospecting right [to be defined, based on the definition in section 995-1 of the *Income Tax Assessment Act 1997*.]

N

net exempt income has the meaning given by Division 130.

net income has the meaning given by section 6-55.

Note: ***Net income*** and its grammatical forms are not asterisked in this Act.

net income formula means the method statement in section 6-55.

non-cash benefit has the meaning given by section 960-50.

non-dividend payment for shares event has the meaning given by section 100-85.

O

opening tax value of an asset or liability for an income year has the meaning given by section 6-85.

P

paid-up share capital of a company means the amount standing to the credit of the company's share capital account reduced by the amount (if any) that represents amounts unpaid on shares.

partnership means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company.

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

Note 1: A limited partnership is treated as a company not as a partnership. See Division 352 [equivalent of Division 5A of Part III of the *Income Tax Assessment Act 1936*].

Note 2: ***Partnership*** and its grammatical forms are not asterisked in this Act.

pay has a meaning affected by sections 6-65 and 6-70.

Note: ***Pay*** and its grammatical forms are not asterisked in this Act.

person includes a company.

Note: ***Person*** and its grammatical forms are not asterisked in this Act.

pre-CGT investment asset has the meaning given by Division 50.

primary production business [to be defined, based on the definition in section 995-1 of the *Income Tax Assessment Act 1997*.]

private asset has the meaning given by sections 222-45 and 234-35.

private liability has the meaning given by section 222-85.

private or domestic nature has the additional meaning given by sections 222-15, 222-25, 222-90 and 222-200.

private or domestic purposes has the additional meaning given by section 222-50 and 222-200.

private percentage:

(a) for a *depreciating asset, has the meaning given by section 222-130; and

(b) for a *depreciating liability, has the meaning given by section 222-160.

proceeds of realising an asset has the meaning given by sections 14-40 and 26-35.

proceeds of incurring a liability has the meaning given by sections 14-75 to 14-85 and 26-75.

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

R

reasonably attributable: section 14-120 sets out rules affecting how to work out how much of an amount is ***reasonably attributable*** to something (for example, an asset or liability).

receive, in relation to an amount, has a meaning affected by sections 6-65 and 6-70.

Note: ***Receive*** and its grammatical forms are not asterisked in this Act.

recreation includes amusement, sport or similar leisure-time pursuits.

reduced cost base of an *investment asset means the cost base of the asset as a CGT asset, worked out under Subdivision 110-B of the *Income Tax Assessment Act 1997*.

remaining effective life has the meaning given by section 72-75.

routine liability has the meaning given by section 68-45.

routine right has the meaning given by section 68-45.

S

second element:

(a) ***second element*** of the *cost of an asset has the meaning given by section 14-30; and

(b) ***second element*** of the *proceeds of incurring a liability has the meaning given by section 14-85.

spectrum licence has the meaning given by section 5 of the *Radiocommunications Act 1992*.

starts to decline in tax value: a *depreciating asset or *depreciating liability ***starts to decline in tax value*** as provided in sections 72-35 and 72-50.

straight line method has the meaning given by section 72-75.

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

STS affiliate has the meaning given by subsections 545-380(8) and (9).

STS average turnover has the meaning given by section 545-370.

STS depreciating asset has the meaning given by section 545-175.

STS group turnover has the meaning given by section 545-375.

STS taxpayer has the meaning given by sections 545-435 and 545-440.

T

tax means:

(a) income tax imposed by the *Income Tax Act 1986*, as assessed under this Act; or

(b) income tax imposed as such by any other Act, as assessed under this Act.

taxable income has the meaning given by section 6-15.

Note: ***Taxable income*** and its grammatical forms are not asterisked in this Act.

taxable income adjustment:

(a) your ***taxable income adjustment*** for an income year is worked out under section 6-90; and

(b) a ***taxable income adjustment*** is a *downward adjustment or an *upward adjustment.

tax offset has the meaning given by section 5-10.

tax value of an asset or liability at a particular time has the meaning given by Divisions 10 and 12.

Note: ***Tax value*** and its grammatical forms are not asterisked in this Act.

trading stock means [*to be defined*].

trust capital distribution event has the meaning given by section 100-95.

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

trustee means [to be defined based on the definition in section 6(1) of the *Income Tax Assessment Act 1936*].

Note: ***Trustee*** and its grammatical forms are not asterisked in this Act.

U

uncertain amount, in relation to an obligation, has the meaning given by section 975-15.

uncertain obligation has the meaning given by section 975-10.

unperformed obligation means a *non-cash benefit covered by item 2 or 3 of the table in subsection 960-50(1) (about non-cash benefits consisting of liabilities).

unused tax losses means [*to be defined*].

upward adjustment for an income year has the meaning given by the provisions of this Act that create upward adjustments for the income year.

Note: For a list of those provisions, see Division 95. An upward adjustment increases your taxable income.

use an asset has the meaning given by section 72-30.

Y

you has the meaning given by section 4-5.

Note: ***You*** and its grammatical forms are not asterisked in this Act.

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