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Tax Value Method Prototype: Divisions 4 to 8

Version 1: May 2001

Status of the working draft

1. This draft legislation and accompanying explanatory material has been prepared under the auspices of the Board of Taxation. It will form part of a broader legislative framework that the Board is seeking to develop to effectively demonstrate the Tax Value Method (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 the TVM should or should not proceed.

2. As such, neither the draft legislation nor the explanatory material have 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. This draft legislation and the explanatory material are works in progress ('prototypes'). They are not being put forward as the final product or even as what the final product would look like. Rather, they are being exposed as the present state of the draft TVM legislation. Significant additions and deletions may be made to these drafts.

4. It is important to recognise also that in developing the TVM legislative framework it has been necessary, in some circumstances, to make assumptions about the taxation treatment of particular transactions. As with the structure of the legislation itself, 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.

5. Further elements of the draft TVM legislative framework and associated explanatory material will be released on this website as and when they are developed.

Comments Welcome

6. It is uncommon for legislation to be exposed at this early stage of its preparation. That it is being exposed reflects a broader consultative approach being taken to this particular piece of legislation by the Board of Taxation because of its potential importance to the income tax system and because of the Board's wish to be able to evaluate the best possible product.

7. Comments on this draft legislation as well as the explanatory material are welcome. Comments in writing should be addressed to:

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

8. Alternatively, comments can be e-mailed to the Board of Taxation Secretariat through this website.

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Chapter 1—Introduction and core rules

3-15 When terms are *not* identified

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

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

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

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

(4) This is the first:

Key participants in the income tax system

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

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

Section 3-15

Core concepts

Item	**This term:**	**is defined in:**
1	amount	section 995-1
2	assessment	section 995-1
3	asset	section 6-15
4	have (a liability)	section 7-23
5	hold (an asset)	section 6-20
6	income tax	section 995-1
7	income year	section 995-1
8	liability, liable	section 7-20
9	net income	section 5-55
10	pay	sections 5-60 and 5-65
11	receive	sections 5-60 and 5-65
12	taxable income	section 5-15
13	tax value	Division 6 (for assets) and Division 7 (for liabilities)

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

Part 1-3—Core rules

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

Table of sections

4-1 Who must pay income tax

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

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

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

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

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

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 [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	[*Other cases*]	[*Rules to be drafted*]

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

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

Table of Subdivisions

Subdivision 5-A—Income tax and taxable income

Table of sections

5-10 How to work out your income tax

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

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

Method statement

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

To do this, see section 5-15.

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

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

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

See the *Income Tax Rates Act 1986.*

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

Step 3.	Work out your tax offsets for the income year. A ***tax offset*** reduces the amount of income tax you have to pay. For the list of tax offsets, see [*list being developed*].
Step 4.	Subtract your *tax offsets from your basic income tax liability. The result is how much income tax you owe for the income year.

Excess tax offsets

(2) If you have *tax offsets that are subject to the refundable tax offset rules in Division 67 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 67-30.

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

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

- Division 65 of this Act, which deals with carrying forward excess tax offsets; and
- section 160AFE of the *Income Tax Assessment Act 1936*, which deals with the carry forward of excess foreign tax credits.

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

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

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

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

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

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

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

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

Special cases

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

Subdivision 5-B—Net income

Table of sections

Rules will be developed to give effect to:

- *Recommendations 17.1 and 17.2 of the Final Report of the Review of Business Taxation (about a simplified tax system for small business); and.*
- *Recommendation 4.4 (under which individuals would take into account only specified assets and liabilities in working out their taxable income).*

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

5-50 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 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 12.

5-55 How to work out your net income

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

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

Method statement

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

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

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

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

Step 4.	Subtract from the step 3 result the *opening tax value of each asset (other than *money) that you held at the *start* of the income year.
Step 5.	Subtract from the step 4 result the *closing tax value of each liability that you 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: Only amounts of money are taken into account under Steps 1 and 2. If you have gotten or given a non-cash benefit during the income year, Division 8 treats you as having received or paid an amount, depending on the circumstances.

Note 2: In working out an individual's net income, most items of a private or domestic nature are disregarded. See Division 12.

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

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

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

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

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

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

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

Meaning of money account

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

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

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

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

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

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

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

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

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

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

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. Subsection (1) treats Andrew as receiving the money when it is paid to

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

Intones. Subsection (2) treats Andrew as then paying the money to Intones for the music lessons.

5-70 Closing and opening tax values

(1) The ***closing tax value*** of an asset or liability that you hold at the end of an income year is the tax value of the asset or liability at the *end* of the income year (see Divisions 6 and 7).

(2) The ***opening tax value*** of an asset or liability that you hold 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. (If no closing tax value was so taken into account, the ***opening tax value*** is a nil amount.)

Note: The opening tax value of assets and liabilities for the first income year to which this Act applies is worked out under section 5-70 of the *Income Tax (Transitional Provisions) Act 1997*.

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

(a) an asset that is the credit balance in an account that was a *money account for the previous income year but is not a money account for this year; or

(b) a liability that is the debit balance in such an account;

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

Subdivision 5-C—Taxable income adjustment

Table of sections

5-90 How to work out your taxable income adjustment

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

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

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

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

5-95 Table of adjustments

You have ***upward adjustments*** and ***downward adjustments*** for the income year as shown in the table.

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

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

Adjustments

Item	If this happens:	There is this adjustment:
15	During the income year you pay an amount by way of gift or contribution, all or some of which is *not* taken into account under section 5-55 in working out your net income (for example, because it is of a private or domestic nature).	A ***downward adjustment*** equal to so much of the amount as is covered by [*equivalent of Division 30 (Gifts or contributions) in the Income Tax Assessment Act 1997*].

5-100 Table of other rules about adjustments

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

Adjustments under other provisions of this Act

Item	In this case:	See:
1	Asset stops being, or becomes, a private asset	Section 12-30 or 12-35
2	Liability stops being, or becomes, a private liability	Section 12-40 or 12-45
3	Expenditure on research and development	[*provisions to be developed*]
4	Depreciating asset used otherwise than for taxable purpose	Section 40-80
5	You stop holding a depreciating asset that you have used otherwise than for taxable purpose	Section 40-85
6	Electricity supply or telephone line to which an amortisable payment relates is used otherwise than for specified purposes	Section 40-550
7	You stop holding land to which an amortisable payment for electricity supply or telephone line relates	Section 40-555

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

Adjustments under other provisions of this Act

Item	In this case:	See:
8	Luxury car limit applies	Section 40-630
9	Entertainment expenditure	[*provisions corresponding to Division 32 of the Income Tax Assessment Act 1997*]
10	General anti-avoidance rules	[*provisions being developed*]

Subdivision 5-D—Net exempt income

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

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

Division 6—Assets and their tax value

Table of Subdivisions

Guide to Division 6

6-1 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, and hence affect your income tax result.

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

Subdivision 6-A—Objects of Division

Subdivision 6-B—What is an asset?

Table of sections

6-15 Meaning of *asset*

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

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.

> *An alternative approach to defining* ***asset*** *has been considered. It would limit the concept to:*
>
> - *any kind of property;*
> - *a legal or equitable right that is not property*
> - *information acquired by an entity that is not generally available.*
>
> *The present draft achieves the same limitation in practice by providing (in section 6-20) that these are the only kinds of asset that an entity can* ***hold****. Only assets held by an entity are taken into account in working out net income under section 5-55.*

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

6-18 Distinguishing one asset from another

(1) This section sets out rules for distinguishing one asset from another in certain cases.

Fixtures and improvements to land

(2) 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.

Contingent rights under an arrangement

(3) The rights that you start to have under an *arrangement because some contingency is met are not part of the same asset as the rights that you have under the arrangement regardless of whether that contingency is met.

Example 1: The rights under an option contract that the grantee of the option has before the option is exercised are not part of the same asset as the rights that the grantee has under the contract that arises from the exercise of the option.

Example 2: The rights of an insured, under an insurance contract, to the provision of insurance against the risk concerned are not part of the same asset as the insured's right to have the claim satisfied once an event has happened in respect of which the insured can claim under the contract.

Example 3: The rights (including a warranty of fitness) that the buyer has under a contract for the sale of goods are not part of the same asset as the buyer's right to claim under the warranty once it is discovered that the goods are defective.

(4) This Act applies as if:

(a) you started to have the rights first mentioned in subsection (3) when the contingency was met; and

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

(b) you did not *get those rights under the *arrangement; and

(c) you paid nothing, and *gave no *non-cash benefit, for those rights.[1]

Example: In Example 2 in subsection (2), the insured's right to have the claim satisfied is treated as not arising under the insurance contract. The insured is treated as getting that right for nothing when the event insured against happens.

Note: For the effects of getting the rights for nothing, see section 8-55 (Getting a non-cash benefit for nothing).

(5) Subsection (3) does not apply to a contingency that is artificial, or is virtually certain to be met.

Other special rules for distinguishing between assets

(6) The table shows where to find special rules for distinguishing between assets.

Special rules for distinguishing between assets

Item	For special rules on this matter:	See:
1		[*Specialist rules to be drafted later*]
2	[*Further cases to be added as required.*]	

6-20 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 6-21, and in the provisions set out in section 6-22.

[1] Consider further, for example, the option case, where the option premium needs to be included in the cost of the rights resulting from the option being exercised.

*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:**
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
4	Any other asset	No entity ***holds*** the asset.

6-21 Who *holds* an asset: special rules

(1) These special rules override the general rules in section 6-20.

Special rules about who holds an asset			
Item	**For this kind of asset:**	**While this is the case:**	**This is the rule:**
1	[2]A *luxury car	The lessee under a lease of the car has the right to use the car	The lessee ***holds*** the car and the lessor does not (see subsection (2)).

[2] We are considering moving the substantive rule to the luxury car provisions and putting a signpost in section 6-22 instead.

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

Special rules about who holds an asset			
Item	**For this kind of asset:**	**While this is the case:**	**This is the rule:**
2	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.
3	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.
4	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.

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

Special rules about who holds an asset

Item	For this kind of asset:	While this is the case:	This is the rule:
5	An asset of a kind referred to in item 1, 2 or 3 of the table in section 6-20	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. The beneficiary does not ***hold*** an asset consisting of a separate beneficial interest in the asset. (See also subsection (2) of this section.)
6	An asset of a kind referred to in item 1 or 2 of the table in section 6-20	An entity has, under an *arrangement (with the owner or anyone else), the right to the use and enjoyment of the asset, and title in the asset will or may pass to the entity at or before the end of the arrangement	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 6-20, does not hold the asset (see subsection (2) of this section).[3]

[3] What happens if the agreement ends without title passing? We may need to add rules about the cost and the proceeds of realisation in that case.

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

Special rules about who holds an asset			
Item	**For this kind of asset:**	**While this is the case:**	**This is the rule:**
7	An asset of a kind referred to in item 1 or 2 of the table in section 6-20	An entity has stopped being the legal owner of the asset but: (a) under an *arrangement, the entity still has the right to the use and enjoyment of the asset (otherwise than as a beneficiary under a trust); and (b) title in the asset will or may pass to the entity at or before the end of the arrangement	The entity ***holds*** the asset and the legal owner does not (see subsection (2) of this section).
8	An asset of a kind referred to in item 1, 2 or 3 of the table in section 6-20	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. (See also subsection (2).)
9	An asset of a kind referred to in item 1, 2 or 3 of the table in section 6-20	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.

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

Special rules about who holds an asset

Item	For this kind of asset:	While this is the case:	This is the rule:
10	An asset consisting of the interest or rights that an entity has in respect of another asset if: (a) another entity holds the other asset because of an item in this table; and (b) because of the interest or rights, the first entity would be taken, but for that item, to hold the other asset	The other entity holds the other asset because of that item	No entity ***holds*** the first asset.
11	An asset consisting of the interest or rights that an entity has in respect of another asset if, because of the interest or rights, the entity holds the other asset because of an item in this table	The entity holds the other asset because of that item	No entity ***holds*** the first asset.

Note 1: Item 6 covers cases like hire purchase agreements and sales subject to retention of title clauses.

Note 2: Item 7 covers cases like assets subject to chattel mortgages and legal mortgages of land not brought under the system of registration of title.

Example: Power Finance leases a luxury car to Kris. Item 1 makes Kris (as lessee who has the right to use the car) the holder of the car. Power Finance, as the legal owner, would normally hold the car under item 1 of the table in section 6-20.

Item 10 of the table in this subsection ensures that Power Finance's interest in the car as lessor is not held as an asset separate from the

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

car. (However, the financial asset consisting of the lessor's rights to lease payments is not affected.)

Item 11 of that table ensures that Kris's interest as lessee is not held as an asset in addition to the car.

(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 6-20, or under any other provision of this Act.

6-22 Who *holds* an asset: where to find other special rules

This table shows where to find other special rules about who ***holds*** an asset. These special rules override the rules in section 6-20[4].

Other special rules about who holds an asset		
Item	**For special rules on this matter:**	**See:**
1	Rights you start to have under an *arrangement because a contingency is met	Subsection 6-18(4)
2	[Software pools etc in Division 40.]	
3	[*Further cases to be added as required.*]	

Subdivision 6-C—Tax value of an asset

6-40 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.

[4] What about the rules in 6-21?

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

Tax value of an asset		
Item	**For this kind of asset:**	**The tax value at that time is:**
1	A *listed zero tax value asset (see subsection (2)), 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 38
3	A *depreciating asset (see Note 2)	The amount worked out under Division 40
4	An asset (except one covered by item 1, 5 or 6) for which you have elected under Subdivision 45-D to work out the tax value on a market value basis	The asset's *market value at that time
5	A *financial asset consisting of your right to receive an amount that is *due and payable	The amount you have the right to receive
6	A *financial asset consisting of your right to receive an amount that must be paid within 12 months after the day when the asset comes into existence	The amount you have the right to receive
7	A *financial asset (except one covered by an earlier item in this table)	The amount worked out under Division 45
8	Goodwill	(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
9	Any other asset that you hold	The *cost of the asset as at that time

Note 1: [Signpost to merging and splitting rules?].

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

Note 2: These things are treated as depreciating assets:[5]

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

Listed zero tax value assets

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

(a) a *routine right (see section 6-45);

(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) an item of non-billable work-in-progress;

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

(g) 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);

(h) a right to receive a *dividend from a company;

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

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.

Financial assets

(3) A ***financial asset*** is an asset that consists of one or more of the following:

[5] List to be updated.

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

(a) a right to be paid an amount;

(b) a right to receive all or part of an asset that is a financial asset because of any other application or applications of this definition.

6-45 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:

(a) you have provided no economic benefits under the contract (except by starting to have a liability under the contract); and

(b) you have received no economic benefits under the contract (except an economic benefit that another party to the contract provided by starting to have a liability under the contract); and

(c) neither the right referred to in paragraph (1)(a) nor the liability referred to in paragraph (1)(b) is subject to a contingency, or both are subject to the same contingency.

Rights and liabilities where benefits received match benefits provided

(3) This subsection is satisfied if:

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

(a) during the income year you received economic benefits under the contract, and you also provided economic benefits under the contract; and

(b) the economic benefits you received during the income year under the contract related *only* to the economic benefits you provided during the income year under the contract (not to economic benefits you provided in an earlier income year, or will provide in a later income year, under the contract); and

(c) the economic benefits you provided during the income year under the contract related *only* to the economic benefits you received during the income year under the contract (not to economic benefits you received in an earlier income year, or will receive in a later income year, under the contract); and

(d) the total value of:

- the economic benefits you provided during the income year under the contract (as a proportion of the total value of all the economic benefits you have provided, and will provide, under the contract)

is reasonable having regard to[6] the total value of:

- the economic benefits you received during the income year under the contract (as a proportion of the total value of all the economic benefits you have received, and will receive, under the contract).

(Work out the total values mentioned in paragraph (d) on the basis of the *market value of the economic benefits when the contract was entered into.)

Effect of ceasing to be a routine right or routine liability

(4) 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.

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[6] A tighter option would be "is substantially the same as".

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

(5) 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.

(6) However, subsection (4) or (5) 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.

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

Division 7—Liabilities and their tax value

Table of Subdivisions

Guide to Division 7

7-1 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, and hence affect your income tax result.

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

Subdivision 7-A—Objects of Division

Subdivision 7-B—What is a liability?

Table of sections

7-20 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.

Note: 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.

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

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

When a liability increases or decreases

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

(5) A liability ***decreases*** when there is a decrease in the future economic benefits to be provided.

7-22 Distinguishing one liability from another

(1) This section sets out rules for distinguishing one liability from another in certain cases.

Contingent obligations under an arrangement

(2) An obligation you start to owe under an *arrangement because some contingency is met is not part of the same liability as the

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

obligations you owe under the arrangement regardless of whether that contingency is met.

Example 1: The obligations under an option contract that the grantor of the option has before the option is exercised are not part of the same liability as the obligations that the grantor has under the contract that arises from the exercise of the option.

Example 2: The obligations of an insurer, under an insurance contract, to provide insurance against the risk concerned are not part of the same liability as the insurer's obligation to satisfy the claim once an event has happened in respect of which the insured can claim under the contract.

(3) This Act applies as if:

(a) you started to owe the obligation first mentioned in subsection (2) when the contingency was met; and

(b) you did not start to owe that obligation under the *arrangement;[7] and

(c) you received no amount, and *got no *non-cash benefit, for starting to owe that obligation.

Example: In Example 2 in subsection (1), the insurer's obligation to satisfy the claim satisfied is treated as not arising under the insurance contract. The insurer is treated as starting to owe that obligation for nothing when the event insured against happens.

Note: For the effects of assuming the obligation for nothing, see section 8-57.

(4) Subsection (2) does not apply to a contingency that is artificial, or is virtually certain to be met.

Other special rules for distinguishing between liabilities

(5) The table shows where to find special rules for distinguishing between liabilities.

Special rules for distinguishing between liabilities

Item	**For special rules on this matter:**	**See:**

[7] Compare footnote 1.

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

Special rules for distinguishing between liabilities		
Item	**For special rules on this matter:**	**See:**
	[*Further cases to be added as required.*]	

7-23 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.

Note 1: There are special rules that override the general rules. The special rules are in section 7-24, and in the provisions set out in section 7-25.

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. See also section 7-22.

7-24 Who *has* a liability: special rules

(1) These special rules override the general rules in section 7-23.

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.*]		

*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:
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*. (See subsection (2).)
4	A liability consisting of obligations to provide some or all of the economic benefits embodied by an asset covered by item 10 or 11 in the table in subsection 6-21(1) (special rules about who holds an asset)	No entity holds the asset because of that item	No entity ***has*** the liability.

Example: To continue the example in subsection 6-21(1): while item 10 of the table in that subsection has the effect that no entity holds the lessor's interest in the car, item 4 in the table in this subsection ensures that the corresponding liability of the lessee (to return the car at the end of the lease) is also excluded from the calculation of net income. (However, the financial liability of the lessee to make lease payments is not affected.)

Similarly, while item 11 of the table in subsection 6-21(1) has the effect that no entity holds the lessee's interest, item 4 in the table in this subsection ensures that the corresponding liability of the lessor (to allow the lessee to use the car during the lease) is also excluded from the calculation of net income.

(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 of the table in section 7-22, or under any other provision of this Act.

7-25 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 7-23.

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

Other special rules about who has a liability

Item	For special rules on this matter:	See:
1	An obligation you start to owe under an *arrangement because some contingency is met	Subsection 7-22(3)
2		
3	[*Further cases to be added as required.*]	

Subdivision 7-C—Tax value of a liability

7-75 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 subsection (2)), even if it is also covered by another item in this table	Nil
2	A *depreciating liability	The amount worked out under Division 40
3	A *financial liability (but not one covered by item 4 or 5 in this table) for which you have elected under Subdivision 45-D to work out the tax value on a market value basis	The liability's *market value at that time
4	A *financial liability to pay an amount that is *due and payable	The amount you are liable to pay
5	A *financial liability to pay an amount that must be paid within 12 months of the day when the liability comes into existence	The amount you are liable to pay

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

Tax value of a liability		
Item	**For this kind of liability:**	**The tax value at that time is:**
6	The amount of a company's *paid up share capital	That amount
7	[*Similar rule for trusts.*]	
8	A *financial liability (except one covered by another item in this table)	The amount worked out under Division 45
9	Any other liability	The *proceeds (as at that time) of assuming the liability

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

(a) a *routine liability (see section 6-45);

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

Financial liabilities

(3) A ***financial liability*** is a liability that consists of one or more of the following:

(a) an obligation to pay an amount;

(b) an obligation to provide a *financial asset.

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

Division 7A[8]—Cost and proceeds

Guide to Division 7A

Subdivision 7A-A—Objects of Division

Subdivision 7A-B—The cost of an asset

Table of sections

7A-20 General rule

(1) The ***cost*** at a particular time (the ***test time***) of an asset you hold is the total of:

(a) the ***first element***, which is the total of each amount you have paid in order to start holding the asset (to the extent that the amount *relates to the asset); and

(b) the ***second element***, which is the total of each amount you have paid in order to bring the asset to its present condition and location from time to time until the test time (to the extent that the amount relates to the asset).

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

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

Note 2: These are examples of amounts included in the second element:

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

[8] We will renumber this Division and its provisions later.

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

Note 3: If you have given a non-cash benefit in order to hold the asset, or to bring the asset to its present condition and location, Subdivision 8-A treats you as having paid an amount.

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

(2) If the asset is *land, the second element of its *cost also includes each amount that you have paid at or before the test time, to the extent that the amount *relates to the land and is of a private or domestic nature.

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

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

7A-25 Items excluded from cost

(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.

(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 7A-20(2) provides.

7A-30 Special rules

The rules in the table have effect despite sections 7A-20 and 7A-25[9]. If more than one item covers the asset, apply the first item that covers it.

[9] And other provisions?

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

1

Special rules about cost

Item	In this case:	This is the rule:
1	You start holding an asset pursuant to a right that you have, and as a result, all or part of the right ends[10] [11]	The *first element of the asset's *cost is: (a) if the right is part of another asset—the amount by which the other asset's tax value falls because all or part of the right ends; or (b) if the right is itself an asset—the tax value of the right just before it ends, or the amount by which its tax value falls because part of the right ends, as appropriate.
2	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.
3	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 [section 70-55][12].
4	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.

[10] Perhaps we should talk of the right decreasing (and define it analogously to the definition of a decrease in a liability in section 7-20). The difficulty is that rights (unlike assets and liabilities) are not defined in terms of future economic benefits.
[11] Example to be included.
[12] This is the provision in the current *Income Tax Assessment Act 1997* that deals with this. A special rule like the one in 385-55 in the Ralph ED will replace 70-75.

*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:
5	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.
6	[Luxury car limit]	[13]

Subdivision 7A-C—Proceeds of realising an asset

7A-55 General rule

The ***proceeds of realising*** an asset are the total of 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 *relates to the asset).

Note: If because you stop holding the asset you get a non-cash benefit (for example, a right to receive an amount), Subdivision 8-A treats you as receiving an amount.

7A-60 Special rules

The rules in the table have effect despite section 7A-55[14]. 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

[13] Perhaps this item should be no more than a signpost to the provisions in Division 40?
[14] And other provisions?

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

Special rules about proceeds of realising an asset

Item	In this case:	This is the rule:
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.

Subdivision 7A-D—Proceeds of assuming a liability

7A-75 General rule

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

(a) the ***first element***, which is the total of each amount you have received because[15] you started having the liability (to the extent that the amount *relates to the liability); and

(b) the ***second element***, which is the total of each amount you have received because of an *increase in the liability (to the extent that the amount relates to the liability).

Note: If you got a non-cash benefit because you started having a liability, or because the amount of your liability has increased, Subdivision 8-A treats you as having received an amount.

7A-80 Special rules

The rules in the table have effect despite section 7A-75[16]. If more than one item covers the asset, apply the first item that covers it.

[15] Should it be the other way around: "because of receiving which you started having the liability"? Similarly with increases.

[16] And other provisions?

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

Special rules about proceeds of assuming 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 assuming 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 assuming the liability are equal to the liability's *market value when the partnership starts to have it

Subdivision 7A-E—The cost of extinguishing a liability

7A-100 General rule

The ***cost of extinguishing*** a liability is the total of each amount you pay, before or at the time when you stop having the liability, in order to *decrease it or stop having it (to the extent that the amount *relates to the liability).

Note: If you give a non-cash benefit in order to decrease or stop having the liability, Subdivision 8-A treats you as paying an amount.

7A-105 Special rules

The rules in the table have effect despite section 7A-100[17]. If more than one item covers the asset, apply the first item that covers it.

[17] And other provisions?

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

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.

Subdivision 7A-F—Apportionment rules

7A-120 When an amount *relates to* an asset or liability

(1) An amount ***relates to*** an asset or liability to the extent that it is reasonably attributable to the asset or liability.

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

(a) the asset or liability; and

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

(3) In the case of an amount that Division 8 treats you as having paid or received for a *non-cash benefit that is an asset, the whole of the amount ***relates to*** the asset.

(4) In the case of an amount that Division 8 treats you as having:

(a) received for a *non-cash benefit you *gave that consists of you starting to have a liability, or of an *increase in a liability you have; or

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

(b) paid for a non-cash benefit you *got that consists of a liability you have *decreasing or ending;

the whole of the amount ***relates to*** the liability.

7A-130 No double-counting

To avoid doubt:

(a) the *cost of an asset you hold does not include an amount, to the extent that the amount is included in the cost of another asset (even if the tax value at a particular time of one or both of the assets is not worked out by reference to cost); and

(b) 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; and

(c) the *proceeds of assuming a liability you have do not include an amount, to the extent that the amount is included in the proceeds of assuming another liability (even if the tax value at a particular time of one or both of the liabilities is not worked out by reference to the proceeds of assuming it or them); and

(d) your *cost of extinguishing a liability do 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 8—Notional receipts and payments under credit and other non-cash transactions

Table of Subdivisions

Guide to Division 8

8-1 What this Division is about

This Division sets out rules about:

- a two-sided non-cash transaction (an arrangement under which you both give and get non-cash benefits); and
- a one-sided non-cash transaction (an arrangement with a non-cash benefit on one side and nothing on the other side).

Note: A common example of a two-sided non-cash transaction is supplying goods or services on credit (that is, in return for a promise to pay at a later time).

The rules exist so that you can work out the following amounts:

- the cost of an asset that you get under the arrangement;
- the proceeds of realising an asset you give under the arrangement;
- the proceeds of your assuming or increasing a liability under the arrangement;
- the cost of extinguishing a liability you have.

Table of sections

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

> *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.*

8-5 What transactions are *not* covered by this Division

This Division does *not* cover transactions where a non-cash benefit is exchanged for money only. An example is buying an item of trading stock for money.

Subdivision 8-AA—Objects of this Division

8-7 Objects

The objects of this Division are:

(a) to ensure that *non-cash benefits are appropriately taken into account in working out your taxable income, so that the fact that they differ 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, under which you are taken to receive amounts for the non-cash benefits you *give, and to pay amounts for the non-cash benefits you *get; and

(c) to support the rules for working out the tax value of assets and liabilities, the proceeds of realising assets and the cost of extinguishing liabilities.

Subdivision 8-A—Two-sided non-cash transactions

Guide to Subdivision 8-A

8-10 What this Subdivision is about

> If under an arrangement you both give and get non-cash benefits, you are, in effect:

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

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

This Subdivision enables you to work out:

- the amounts of money that you are taken to *receive* for the benefits you *sell*; and
- the amounts of money that you are taken to *pay* for the benefits you *buy*.

Note: The practical importance of these amounts is in determining the cost of assets, the proceeds of realising assets, the proceeds of assuming liabilities and the cost of extinguishing liabilities.

These amounts will not change the net total of your *actual* receipts and payments, because this Subdivision ensures that the total of amounts that you are taken to *pay* under an arrangement equals the total of amounts you are taken to *receive*. (A further consequence is that any gain or loss you make under the arrangement is counted only once for income tax purposes.)

Table of sections

[This is the end of the Guide.]

Operative provisions

8-25 How a two-sided non-cash transaction is treated

(1) There are consequences 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.

(2) Those consequences are worked out under this Subdivision by analysing the arrangement as set out in sections 8-28 and following.

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

Note: In working out those consequences, some non-cash benefits are disregarded. See section 8-31A.

8-27 Meaning of *non-cash benefit*

(1) If an entity provides to another entity an asset or services in any form except *money, the asset or services are a ***non-cash benefit*** that the first entity ***gives*** to the other entity, and that the other entity ***gets*** from the first entity.

(2) If an entity starts to have a liability to another entity, or there is an *increase in a liability to another entity that the first entity already has, the liability or increase is a ***non-cash benefit*** that the first entity ***gives*** to the other entity, and that the other entity ***gets*** from the first entity.

(3) If a liability that an entity has to another entity *decreases or ends (otherwise than by the first entity providing economic benefits pursuant to the liability), the ending is a ***non-cash benefit*** that the other entity ***gives*** to the first entity, and that the first entity ***gets*** from the other entity.

(4) 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), (2) or (3).)

> *Work is continuing on how to analyse correctly tri-partite non-cash transactions, including the kind of case that subsection (4) 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.

8-28 Non-cash benefits you *give*

Cash-like benefits

(1) For each *cash-like benefit that you *give* under the *arrangement, you are taken to *receive* an amount equal to the *market value of the benefit.

Note 1: Section 8-31 deals with determining market value.

Note 2: A cash-like benefit is virtually the same as a payment of money. For this reason it is treated as being exchanged for an amount equal to its market value. Under section 8-29 that amount is then treated as part of the notional payment for the non-cash benefits you *get* under the arrangement.

Note 3: If under the arrangement you actually receive an amount or you *get* a cash-like benefit, sections 8-36 and 8-38 may affect the operation of this subsection.

(2) A ***cash-like benefit*** is a *non-cash benefit an entity *gives:

(a) by starting to have a *financial liability; or

(b) because there is an *increase in a *financial liability that the entity already has.

Other non-cash benefits

(3) If:

(a) the *only* *non-cash benefit you *give* under the *arrangement is *not* a *cash-like benefit; and

(b) you do not actually pay an amount under the arrangement;

you are taken to *receive* for the non-cash benefit an amount equal to the total *market value of the one or more non-cash benefits you *get* under the arrangement.

Note: Section 8-31 deals with determining market value.

(4) If you *give* 1 or more *non-cash benefits (at least one of which is *not* a *cash-like benefit) under the *arrangement, you are taken to *receive* for each of them (that is *not* a *cash-like benefit) an amount that equals a proportion of the total *market value of the one or more non-cash benefits you *get* under the arrangement.

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

Note: Section 8-31 deals with determining market value.

(5) That proportion is worked out on the basis of the relative *market values of all *non-cash benefits you *give* under the *arrangement (including *cash-like benefits).

(6) However, if you actually pay one or more amounts under the *arrangement, the proportion is worked out on the basis of the *market value of the *non-cash benefit (that is not a *cash-like benefit) relative to the total of:

(a) the *market values of all *non-cash benefits you *give* under the *arrangement (including *cash-like benefits); and

(b) the one or more amounts you actually pay.

8-29 Non-cash benefits you *get*

(1) If you *get* only one *non-cash benefit under the arrangement, you are taken to *pay* for it an amount equal to the total of all amounts you are taken to *receive* because of section 8-28.

(2) If you *get* 2 or more *non-cash benefits under the arrangement, you are taken to *pay* for them amounts whose total equals the total of all amounts you are taken to *receive* because of section 8-28.

(3) The amount you are taken to *pay* for each non-cash benefit is the same proportion of that total as the *market value of that non-cash benefit is of the total *market value of the 2 or more non-cash benefits.

8-31 Market value of a non-cash benefit

(1) 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 you *give it or *get it.

Short term financial assets and liabilities

(2) This Subdivision applies to a *financial asset consisting of:

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

(a) an entity's right to receive an amount that is *due and payable; or

(b) an entity's right to receive an amount that must be paid within 12 months after the day when the asset comes into existence;

as if the asset's *market value were equal to the amount that the entity has the right to receive.

(3) This Subdivision applies to a *financial liability consisting of:

(a) an entity's liability to pay an amount that is *due and payable; or

(b) an entity's liability to pay an amount that must be paid within 12 months after the day when the liability comes into existence;

as if the liability's *market value were equal to the amount that the entity is liable to pay.

8-31A Exceptions

No notional receipt or payment to the extent that non-cash benefit is gotten or given in discharge of a right or liability

(1) If:

(a) you *get a *non-cash benefit pursuant to a right that you have; and

(b) as a result, all or part of the right ends; and

(c) the ending is a non-cash benefit that you *give (see subsection 8-27(3));

disregard both non-cash benefits in applying this Division.

(2) If:

(a) you *give a *non-cash benefit pursuant to a liability that you have; and

(b) as a result, the liability *decreases or ends; and

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

(c) the ending is a non-cash benefit that you *get (see subsection 8-27(3));

disregard both non-cash benefits in applying this Division.

8-32 To avoid doubt

(1) An amount that you are taken to receive or pay for something because of this Subdivision is taken into account (for example, under section 5-55 in working out your net income) *in addition to* any amount that you *actually* receive or pay under the *arrangement.

(2) For this Subdivision to apply, it does not matter:

(a) whether or not you also give or get anything else under the *arrangement (for example, *money); or

(b) whether the entity to which you give a benefit, or from which you get a benefit, under the arrangement is a party to the arrangement; or

(c) whether the entity to which you give a benefit under the arrangement is an entity from which you get a benefit under the arrangement; or

(d) whether the entity from which you get a benefit under the arrangement is an entity to which you give a benefit under the arrangement; or

(e) if you give or get 2 or more benefits under the arrangement—whether you give them all to the same entity or get them all from the same entity.

Subdivision 8-B—Two-sided non-cash transactions with cash or cash-like benefits on each side

Guide to Subdivision 8-B

8-33 What this Subdivision is about

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

Table of sections

[This is the end of the Guide.]

8-34 Netting off cash on both sides of the transaction

(1) This section changes the operation of this Division if, under the *arrangement (the ***original arrangement***) mentioned in subsection 8-25(1):

(a) you actually pay one or more amounts; and

(b) you actually receive one or more amounts.

(2) If the total of what you actually pay (or receive) is *less* than the total of what you actually receive (or pay), this Division applies as if:

(a) under the original arrangement, you had actually paid (or received) no amount; and

(b) the only amount that you actually received (or paid) under the original arrangement had been equal to the difference between those totals; and

(c) under a separate arrangement:

(i) you had actually paid (or received) the total of what (apart from paragraph (a)) you actually paid (or received) under the original agreement; and

(ii) you had actually received (or paid) the total referred to in subparagraph (i).

(3) If the total of what you actually pay *equals* the total of what you actually receive, this Division applies as if:

(a) under the original arrangement, you had actually paid and received no amount; and

(b) you had actually paid and received that total under a separate arrangement.

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

8-36 Allocating cash on one side of the transaction to a cash-like financial asset on the other side

> *These rules will be included later. They will be based on the approach shown in section 8-34.*

8-38 Allocating a cash-like financial asset on one side of the transaction to a cash-like financial asset on the other side

> *These rules will be included later. They will be based on the approach shown in section 8-34.*

Subdivision 8-C—One-sided non-cash transactions

Table of sections

8-55 Getting a non-cash benefit for nothing

(1) If:

(a) you get a *non-cash benefit from another entity; and

(b) you pay nothing, and you *give no non-cash benefit, for the non-cash benefit (whether before, at or after the time when you get it, and whether to the other entity or anyone else);

you are taken:

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

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

at the time when you get the benefit.

Note: This puts you in the same position for income tax purposes as if you had received money from the other entity, and then paid it to the other entity to get the non-cash benefit.

(2) Subsection (1) does not apply if:

(a) you *get the *non-cash benefit under an *arrangement; and

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

(b) under the same arrangement, you *give one or more non-cash benefits.

Note: In this case, Subdivisions 8-A and 8-B apply instead.

8-57 Assuming or increasing a liability for nothing

(1) If:

(a) you *give a *non-cash benefit to another entity:

(i) by starting to have a liability; or

(ii) because there is an *increase in a liability that you already have; and

(b) you receive no payment, and you *get no non-cash benefit, for the non-cash benefit (whether before, at or after the time when you give it, and whether from the other entity or anyone else);

you are taken:

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

(d) to receive the same amount from the other entity for the benefit;

at the time when you give the benefit.

Note: This puts you in the same position for income tax purposes as if you had given money to the other entity, and the other entity had paid you the money to get the non-cash benefit.

(2) Subsection (1) does not apply if:

(a) you *give the *non-cash benefit under an *arrangement; and

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

Note: In this case, Subdivisions 8-A and 8-B apply instead.

Non-cash benefits consisting of untraded contingent assets and liabilities will be excluded from the operation of Subdivision 8-C. An example is a cause of action for negligence, which is an asset from the point of view of the plaintiff and a liability from the point of view of the tortfeasor.

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

8-61 Market value of a non-cash benefit

Section 8-31 applies for the purposes of this Subdivision in the same way as it applies for the purposes of Subdivision 8-A.

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

Dictionary items

asset has the meaning given by section 6-15.

Note: ***Asset*** and its grammatical forms are not asterisked in this Act.

cash-like benefit has the meaning given by section 8-28.

closing tax value of an asset or liability for an income year has the meaning given by section 5-70.

cost:

(a) ***cost*** of an asset has the meaning given by Subdivision 7A-B; and

(b) ***cost*** of extinguishing a liability has the meaning given by Subdivision 7A-E.

decrease: a liability ***decreases*** as set out in section 7-20.

downward adjustment has the meaning given by section 5-95 and the provisions listed in the table in section 5-100.

due and payable: an amount is ***due and payable*** if the time for payment of the amount has arrived.

financial asset has the meaning given by section 6-40.

financial liability has the meaning given by section 7-75.

first element of the *cost of an asset has the meaning given by section 7A-20.

get a *non-cash benefit has the meaning given by section 8-27.

give a *non-cash benefit has the meaning given by section 8-27.

have a liability has the meaning given by sections 7-23, 7-24 and 7-25.

Note: ***Have*** and its grammatical forms are not asterisked in this Act.

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

held: see ***hold***.

Note: ***Hold*** and its grammatical forms are not asterisked in this Act.

hold an asset has the meaning given by sections 6-20, 6-21 and 6-22.

Note: ***Hold*** and its grammatical forms are not asterisked in this Act.

increase: a liability ***increases*** as set out in section 7-20.

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) subsection 6-18(2) of this Act (which treats fixtures on, and improvements to, land as separate from the land).

liability has the meaning given by section 7-20.

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 6-40.

listed zero tax value liability has the meaning given by section 7-75.

market value:

(a) the ***market value*** of a liability 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 the liability (whether or not that asset actually exists or is held by some entity); and

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

(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.

money means:

(a) money in hand (whether or not in Australian currency); and

(b) a credit balance in a *money account.

money account has the meaning given by section 5-60.

net exempt income has the meaning given by Subdivision 5-D.

net income has the meaning given by section 5-55.

non-cash benefit has the meaning given by section 8-27.

opening tax value of an asset or liability for an income year has the meaning given by section 5-70.

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.[18]

pay has a meaning affected by sections 5-60 and 5-65.

Note: ***Pay*** and its grammatical forms are not asterisked in this Act.

proceeds:

(a) ***proceeds*** of realising an asset has the meaning given by Subdivision 7A-C; and

(a) ***proceeds*** of assuming a liability has the meaning given by Subdivision 7A-D.

receive has a meaning affected by sections 5-60 and 5-65.

Note: ***Receive*** and its grammatical forms are not asterisked in this Act.

[18] This is the same as the current definition in the *Income Tax Assessment Act 1997* (as at 21/03/2001).

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

relate: an amount ***relates to*** an asset or liability as set out in section 7A-120.

routine liability: has the meaning given by section 6-45.

routine right: has the meaning given by section 6-45.

second element of the *cost of an asset has the meaning given by section 7A-20.

taxable income has the meaning given by section 5-15.

taxable income adjustment has the meaning given by section 5-90.

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 6 and 7.

Note: ***Tax value*** and its grammatical forms are not asterisked in this Act.

upward adjustment has the meaning given by section 5-95 and the provisions listed in the table in section 5-100.

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

Do not delete the above section break