200?

This is a second prototype, as developed to the end of June 2001 for the purposes of discussion within the Working Group. It will be developed further as a result of those discussions.

Tax Value Method Prototype 2: Divisions 4 to 8, 36 to 45 and Dictionary

Version 2: 6 July 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.

Contents

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.

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*.

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*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.

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*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.

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.

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

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.

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

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

(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 4 (tax value of a financial asset worked out on a mark to market basis) of the table in subsection 6-40(1); or

(b) is an asset covered by item 1 (tax value of a financial asset worked out on an accruals basis) of the table in section 45-15; or

(c) is a liability covered by item 3 (tax value of a financial asset worked out on a mark to market basis) of the table in subsection 7-75(1); or

(d) is a liability covered by item 1 (tax value of a financial liability worked out on an accruals basis) or of the table in section 45-40.

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

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

5-70 Closing and opening tax values

(1) The ***closing tax value*** of an asset or liability 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:

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

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

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

5-95 Table of adjustments

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).
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*].

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

5-100 Table of other rules about adjustments

This table sets out a list of other provisions of this Act under which you can have ***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
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*]

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

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:

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

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

(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.

Extension or renewal of a right

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

Other special rules for distinguishing between assets

(7) 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		
2	You stop holding part of an asset and continue to hold the rest	Subsection 7B-130(2)
3	[*Further cases to be added as required.*]	

[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.

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.

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.

*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:**
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	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.

[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:**
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.

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

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 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.

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.

*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 mark to market 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 if: (a) the amount must be paid within 12 months after the day when the asset comes into existence; and (b) the amount is for *giving a *non-cash benefit (other than a financial asset)	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

*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:**
9	Any other asset that you hold	The *cost of the asset as at that time

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

Note 2: These things are treated as depreciating assets: [4]

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

Tax value cannot be less than nil

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

Listed zero tax value assets

(3) 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;

[4] List to be updated.

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

(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

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

(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

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

(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:

(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[5] the total value of:

- the economic benefits you received during the income year under the contract (as a proportion of the total

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

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

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.

(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;[6] 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.

Extension or renewal of a liability

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

Other special rules for distinguishing between liabilities

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

[6] 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:**
1		
2	You stop having part of a liability and continue to have the rest of the liability	Subsection 7B-133(2)
3	[*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.

*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:
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*. (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

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

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.

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

*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:**
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 mark to market 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 if: (a) the amount must be paid within 12 months after the day when the liability comes into existence; and (b) the amount is for *getting a *non-cash benefit (other than a *financial asset)	The amount you are liable to pay
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

Tax value cannot be less than nil

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

Listed zero tax value liabilities

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

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

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

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

Financial liabilities

(4) 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[7]—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.

7 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[8]. If more than one item covers the asset, apply the first item that covers it.

[8] And other provisions?

*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:
1	You start holding an asset pursuant to a right that you have, and as a result, all or part of the right ends[9] [10]	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 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][11].
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.

[9] 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.
[10] Example to be included.
[11] 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]	[12]

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[13]. If more than one item covers the asset, apply the first item that covers it.

[12] Perhaps this item should be no more than a signpost to the provisions in Division 40?
[13] 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:
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.

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 that you have received, and because of receiving which you started having the liability; and

(b) the ***second element***, which is the total of each amount you have received, and because of receiving which the liability has *increased.

(An amount is included in the first or second element only to the extent that the amount *relates to the liability.)

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

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

7A-80 Special rules

The rules in the table have effect despite section 7A-75[14]. If more than one item covers the asset, apply the first item that covers it.

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 stop having it (to the extent that the amount *relates to the liability).

Note: If you give a non-cash benefit in order to 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[15]. If more than one item covers the asset, apply the first item that covers it.

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14 And other provisions?
15 And other provisions?

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*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

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*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 7B—Splitting, merging, transforming and substituting assets or liabilities

7B-127 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 working out the *cost of an asset under section 7A-20) *in addition to*:

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

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

Example: If an asset is split into 2 or more assets under an arrangement that involves you giving or getting a non-cash benefit, you may be taken to receive or pay an amount because of Division 8.

7B-130 Splitting an asset

(1) If an asset (the ***original asset***) you hold is split into 2 or more assets (the ***new assets***), this Act applies as if, at the time of the split, you had:

(a) stopped holding the original asset; and

(b) started holding the new assets; and

(c) received, because you stopped holding the original asset, an amount equal to its tax value just before the split; and

(d) paid the same amount for the new assets.

Note: Subsection 7A-120(2) 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 2005 at a cost of $1,200,000.

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

The tax value of the land just before it is subdivided is $1,200,000. The effect for income tax purposes is the same as if he had sold the

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

land for that amount and bought back the 3 blocks at a cost of $400,000 each.

(2) 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)[16]. Barry is taken to have split his interest in the land into 2 assets, and to have paid $150,000 for them. Because of subsection 7A-120(2), that amount relates 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.

(3) To avoid doubt, you do not stop holding part of 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 holding the part of the asset that consists of the right to receive one lesson. Subsection (2) does not need to apply, because the asset is a depreciating asset whose tax value is worked out under Division 40, taking 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.

[16] Check whether as a matter of conveyancing law a sole owner can carve out a share as tenant in common, as distinct from transferring the whole interest to itself and the new co-owner. This question may have come up in the stamp duty context, because it is obviously cheaper to transfer the lesser interest if possible.

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

7B-133 Splitting a liability

(1) If a liability (the ***original liability***) you have is split into 2 or more liabilities (the ***new liabilities***), this Act applies as if, at the time of the split, you had:

(a) stopped having the original liability; and

(b) started having the new liabilities; and

(c) paid, in order to stop having the original liability, an amount equal to its tax value just before the split; and

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

Note: Subsection 7A-120(2) tells you how to apportion the amount in order to work out the proceeds of assuming each of the new liabilities.

Example: [to be drafted].

(2) 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.)

(3) To avoid doubt, you do not stop having part of 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 stop having the part of the liability that consists of the obligation to provide one lesson. Subsection (2) does not need to apply, because the liability is a depreciating liability whose tax value is worked out under Division 40, taking account of the providing of the economic benefits over time.

7B-135 Merging assets

If 2 or more assets (the ***original assets***) that you hold are merged into one or more assets (the ***new asset or assets***), this Act applies as if, at the time of the merging, you had:

(a) stopped holding the original assets; and

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

(b) started holding the new asset or assets; and

(c) received, because you stopped holding the original assets, an amount equal to the total of their tax values just before the merging; and

(d) paid the same amount for the new asset or assets.

Note: Subsection 7A-120(2) 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.

Example: [to be drafted].

7B-137 Merging liabilities

If 2 or more liabilities (the ***original liabilities***) that you have are merged into one or more liabilities (the ***new liability or liabilities***), this Act applies as if, at the time of the merging, you had:

(a) stopped holding the original liabilities; and

(b) started holding the new liability or liabilities; and

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

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

Note: Subsection 7A-120(2) 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 assuming each of the new liabilities.

Example: [to be drafted].

7B-150 Transforming an asset

(1) If an asset (the ***original asset***) you hold changes in whole or in part into an asset of a different nature (the ***new asset***), this Act applies as if, at the time of the change, you had:

(a) stopped holding the original asset; and

(b) started holding the new asset; and

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

(c) received, because you stopped holding the original asset, an amount equal to its tax value just before the change; and

(d) paid the same amount for the new asset.

Example: [to be drafted].

(2) 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 an asset as an item of trading stock, and so it becomes a depreciating asset. Subsection (1) does not apply. Instead, see section 70-110.

7B-153 Transforming a liability

(1) If a liability (the ***original liability***) you have changes in whole or in part into a liability of a different nature (the ***new liability***), this Act applies as if, at the time of the change, you had:

(a) stopped having the original liability; and

(b) started having the new liability; and

(c) paid, in order to stop having the original liability, an amount equal to its tax value just before the change; and

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

Example: [to be drafted].

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

Example: [to be drafted].

7B-161 Substituting one or more assets consisting of rights for one or more other such assets

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

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

(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;[17]

this Act applies as if:

(e) 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

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

Note: Subsection 7A-120(2) 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.

Example: [to be drafted].

7B-163 Substituting one or more liabilities for one or more other liabilities

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;

this Act applies as if:

[17] There are issues about how this Division interacts with Division 8, which are not confined to the substitution rules, but apply to all the provisions dealing with liabilities, because starting to have a liability, and a liability ending, involve non-cash benefits. These issues need to be examined further.

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

(d) 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

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

Note: Subsection 7A-120(2) 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 assuming each of the new liabilities.

Example: [to be drafted].

*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.

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

Table of sections

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.

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

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:
>
> - *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.]

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

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.

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 decrease or 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

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

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.

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;

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

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* one 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.

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* 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

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

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) a *financial asset consisting of an entity's right to receive an amount that is *due and payable; or
- (b) a financial asset consisting of an entity's right to receive an amount if:
  - (i) the amount must be paid within 12 months after the day when the asset comes into existence; and
  - (ii) the amount is for *giving a *non-cash benefit (other than a financial asset);

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) a *financial liability consisting of an entity's liability to pay an amount that is *due and payable; or
- (b) a financial liability consisting of an entity's liability to pay an amount if:
  - (i) the amount must be paid within 12 months after the day when the liability comes into existence; and
  - (ii) the amount is for *getting a *non-cash benefit (other than a *financial asset);

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

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

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

(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*:

(a) any amount that you *actually* receive or pay under the *arrangement; and

(b) any amount that you are taken to receive or pay because of a provision of this Act outside this Subdivision.

Example: If the arrangement involves splitting an asset into 2 or more assets, you may be taken to receive or pay an amount because of section 7B-130.

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

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

(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

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

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

(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.

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.

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

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

(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.

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

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.

Chapter 2—Rules of general application

Part 2-1—Unused tax losses

Division 36—Tax losses of earlier income years

Table of Subdivisions

36-1 Object

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

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

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

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

*Net income + *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.

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

Part 2-10—Tax value of assets and liabilities

Division 40—Depreciating assets and liabilities

Table of Subdivisions

Guide to Division 40

40-1 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.

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

> *This Division will not deal with partial realisations of a depreciating asset or liability. These will be the subject of rules applying to assets generally.*

Subdivision 40-A—Objects of Division

40-15 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.

Subdivision 40-B—Core rules

Guide to Subdivision 40-B

40-20 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.

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

Table of sections

[This is the end of the Guide.]

Depreciating assets and their tax value

40-30 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.

(2) ***Use*** an asset means consume economic benefits from the asset, or receive economic benefits in respect of the asset.[18]

(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*];

(#) [19].

Note: A fixture on land, or an improvement to land, is separate from the land and also is taken not to be land: see subsection 6-18(2). Whether it is a depreciating asset depends on whether it is an asset that falls within the definition in this section.

40-35 *Tax value* of depreciating asset

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

[18] We need to rationalise the terminology around this: compare the provisions that talk about receiving economic benefits because of holding an asset.
[19] Other exceptions?

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

(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).

> *Prepayments that under the current law are given immediate write off will be added to the listed zero tax value assets in subsection 6-40(2).*

(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 *second element of the asset's cost.

Note: For the tax value of assets and amounts in pools: see Subdivision 40-E.

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

[Note: Previous use by a transition entity is ignored: see section 58-70.]

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 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.

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

(4) 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.

40-40 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***).

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; or (b) an interest as co-owner of a tangible asset; or (c) an *IRU[20]	Worked out applying the *diminishing value method or the *straight line method, according to the rules in sections 40-65, 40-70 and 40-75

[20] Some other intangible depreciating assets for which the diminishing value method is available under the New Business Tax System (Capital Allowances) Bill 2001 may need to be added to this list.

*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:**
2	A *depreciating asset (*not* covered by item 1) 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)) [21]	Worked out applying the *straight line method (see section 40-75)
3	A *depreciating asset (*not* covered by item 1 or 2) 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	[*Other methods for measuring annual decline in tax value are being considered: for example, to deal with the proper treatment of long term rights.*]	

[21] Is it to be possible for an asset to move from item 2 (or a later item) to item 3 (or a later item)? One example where it might be necessary is if the effective life is recalculated, or money is spent on the asset that does not change its effective life but increases the expected economic benefits.

*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:**
5	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 5 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

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

(b) the percentage you have received 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 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

40-45 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;

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

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

(#) [22].

40-50 *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 assuming 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 assuming 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 *second element of the proceeds of assuming 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 40-35(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.

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[22] Other exceptions?

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

Example 2: In Example 3 in subsection 40-35(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 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.

40-55 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))[23]	Worked out applying the *straight line method (see section 40-75)

[23] Is it to be possible for a liability to move from item 1 (or a later item) to item 2 (or a later item)?

*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 40-40(1).

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

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

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

you provide them, if you had provided them all at the time when you started to have the liability.

Note: This subsection does for depreciating liabilities what subsection 40-40(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

40-65 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 40-40(1). You must choose[24] 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 40-130.

Note 2: For the diminishing value method, see section 40-70. For the straight line method, see section 40-75.

[24] Relationship of this rule to later rules in this section needs to be considered.

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

Exception: asset acquired from associate

(2) If:

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

(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 40-140.

(2A) 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: sale and lease back, and similar cases

(3) 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.

(4) 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.

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

Exception: low-value pools

(5) The ***decline in tax value*** of a *depreciating asset in a low-value pool is worked out under Subdivision 40-E instead of this Subdivision.[25]

40-70 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 [or an *IRU]—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 40-110. That section also requires you to recalculate effective life in some cases.

[25] Also STS pools.

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

40-75 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:

(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 [or an *IRU]—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:

$$\$3{,}500 \times \frac{\left[365 - 25\right]}{365} \times \frac{100\%}{3\frac{1}{3}} = \$978$$

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.

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

Subdivision 40-C—How to determine effective life

Depreciating assets

40-95 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 40-127 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 40-105.

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 40-105.

(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 40-130.

(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[26]

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

[26] 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; sale and lease back, and similar cases

(4) If:

(a) subsection 40-65(2) requires you to apply the same method for a *depreciating asset as your *associate was applying; or

(b) subsection 40-65(3) 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 40-140.

Exceptions overridden in some cases

(5) However, you must apply an *effective life determined by the Commissioner for the asset under section 40-127 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 40-105.

*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

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

Effective life of certain intangible depreciating assets		
Item	**For this asset:**	**The effective life does not end until the end of:**
9	An *IRU	The *effective life of the international telecommunications submarine cable over which the IRU is granted

40-105 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 decline in tax value, during which the asset can 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.

40-110 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.

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

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 (subsection 6-18(6) treats the extension or renewal as a continuation of the original right).

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 40-105; or

(ii) are applying an effective life worked out under section 40-127 (about the Commissioner's determination) and the *straight line method; or

(iii) you are applying an effective life because of subsection 40-95(4); and

(b) its *cost is increased in that year by at least 10%.[27]

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

Example 1: Paul purchases 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.

[27] Bring this into line with other terminology about increasing cost or proceeds.

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

Example 2: Fiona also purchases 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 40-95(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 40-105 (about self-assessing effective life).

Depreciating liabilities

40-115 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 40-127 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 40-120.

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 40-120.

(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 40-130.

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

(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;[28] 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.

40-120 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.)

40-125 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: Some examples of changes in circumstances that may result in your recalculating the effective life of a depreciating liability are:

- a liability is renewed or extended beyond the period expected when its effective live was last calculated (subsection 7-22(5) treats the extension or renewal as a continuation of the original liability).

[28] What if the liability remains contingent for more than the 5 years?

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

Increase in proceeds of assuming 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 40-120; or

(ii) are applying an effective life worked out under section 40-127 (about the Commissioner's determination) and the *straight line method; and

(b) the *proceeds of assuming it increased in that year by at least 10%.[29]

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

Example: [to be drafted.]

Method of recalculation

(3) A recalculation under this section must be done applying section 40-120 (about self-assessing effective life).

Commissioner's determination of effective life

40-127 Rules about determinations

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

[29] Bring this into line with other terminology about increasing cost or proceeds.

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

(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.

Subdivision 40-D—Miscellaneous

40-130 Choices

(1) A choice you can make under this Division about a *depreciating asset or *depreciating liability must be made:

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

(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 40-110, or the *effective life of a *depreciating liability under section 40-125.

40-135 Certain anti-avoidance provisions

Section 40-135 in the New Business Tax System (Capital Allowances) Bill 2001 modifies the application of:

- *section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the Income Tax Assessment Act 1936; and*
- *Division 16D (Certain arrangements relating to the use of property) of Part III of that Act.*

Consideration is being given to whether a corresponding provision is needed here.

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

40-140 Getting tax information from associates[30]

(1) If subsection 40-65(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

(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.

[30] There may be scope for making some of this standard and putting it in eg the TAA.

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

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 40-E—Low-value and software development pools

Under reconstruction.

Subdivision 40-F—Primary production depreciating assets

To be drafted.

Subdivision 40-G—Capital expenditure of primary producers and other landholders

To be drafted.

Subdivision 40-H—[Capital expenditure that is immediately deductible]

To be drafted. Most of the provisions in the corresponding Subdivision in the New Business Tax System (Capital Allowances) Bill 2001 will not be needed under TVM, because the expenditure they cover will not relate to an asset. Some rules may be needed to ensure that expenditure on environmental protection activities remains immediately deductible even though it improves an asset.

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

Subdivision 40-I—[Capital expenditure that is deductible over time]

To be drafted, based on the New Business Tax System (Capital Allowances) Bill 2001.

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

Division 45—Financial assets and liabilities

Table of Subdivisions

Subdivision 45-A—How to work out the tax value of a financial asset

Table of sections

45-15 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 that is covered by item 7 of the table in section 6-40 (tax value of an asset).

Tax value of a financial asset

Item	For this kind of financial asset:	The tax value at that time is:
1	A *financial asset if, when you begin to hold it, all amounts you will receive in respect of the asset while you hold it are certain (assuming that you will hold it for the rest of its life)	If that time is when you begin to hold the 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; or If that time is later—the amount worked out under Subdivision 45-C

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

Tax value of a financial asset		
Item	**For this kind of financial asset:**	**The tax value at that time is:**
2	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

Rules are being developed about the criteria for determining what receipts and payments are certain.

Note: 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:

- Some financial assets are taxed on an "accruals" basis (see item 1).
- An asset covered by item 2 in the table is taxed on a "realisation" basis.

Further rules about specific exclusions from accruals treatment are being developed.

Subdivision 45-B—How to work out the tax value of a financial liability

Table of sections

45-40 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 that is covered by item 8 in the table in section 7-75.

*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:
1	A *financial liability if when you begin to have it, all amounts you will pay in respect of the liability while you have it are certain (assuming you will have it for the rest of its life)	If that time is when you begin to have the liability—the *proceeds of assuming 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; or If that time is later—the amount worked out under Subdivision 45-C
2	Any other *financial liability	The *proceeds of assuming 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: 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:

- Some financial liabilities are taxed on an "accruals" basis (see item 1).
- A financial liability covered by item 2 in the table is taxed on a "realisation" basis.

Subdivision 45-C—Tax value worked out on an accruals basis

Table of sections

45-60 Application

(1) Work out under this Subdivision the ***tax value*** of a *financial asset you hold if the table in section 45-15 tells you to do so.

(2) Work out under this Subdivision the ***tax value*** of a *financial liability you have if the table in section 45-40 tells you to do so.

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

45-75 Tax value when cash flows are certain

(1) The ***tax value*** of the asset or liability at a particular time (the ***test time***) *after* you begin to hold or have it is worked out using this formula:

$$\left[\text{Last tax value} \times \left(1 + \text{Interest\%}\right)\right] - \text{Cash flows at the test time}$$

The rest of this section explains the terms used in the formula.

Last tax value

(2) ***Last tax value*** means the tax value of the asset or liability (worked out under this Subdivision) at the most recent time (the ***previous time***) before the test time when one or more of these things happened:

(a) in the case of an asset:

(i) you received an amount in respect of the asset for a period;

(ii) an income year ended;

(iii) you began to hold the asset; or

(b) in the case of a liability:

(i) you paid an amount in respect of the liability for a period;

(ii) an income year ended;

(iii) you began to have the liability.

Interest%

(3) ***Interest%*** means the annualised compounded rate of return (expressed as a percentage) that results in the net present value of the following (at the time when you began to hold the asset or have the liability) equalling 0:

(a) in the case of an asset:

(i) a payment by you, at that time, equal to the *cost of the asset at that time;

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

(ii) the amounts that you will receive after that time in respect of the asset, assuming that you will hold the asset for the rest of its life and you will receive each amount at the earliest time when it is liable to be paid;[31] or

(b) in the case of a liability:

(i) an amount received by you, at that time, equal to the *proceeds of assuming the liability (as at that time);

(ii) the amounts that you will pay after that time in respect of the liability, assuming that you will have the liability for the rest of its life and you will pay each amount at the earliest time when it is liable to be paid.

(4) If the period starting at the previous time and ending at the test time is less than 365 days, ***interest%*** means the rate of return referred to in subsection (3) multiplied by:

$$\frac{\text{Number of days in that period}}{365}$$

Cash flows

(5) ***Cash flows at the test time*** means the total of each amount:

(a) you received in respect of the asset at the test time; or

(b) you paid in respect of the liability at the test time;

or 0 if there is no such amount.

Note: The receipts *reduce* the tax value of the financial asset at the test time (and hence its closing tax value if you still hold it at the end of the income year), but they also *increase* your net income for the income year: see subsection 5-55(1).

The payments *reduce* the tax value of the financial liability at the test time (and hence its closing tax value if you still hold it at the end of

[31] This assumes that the whole cost will be paid up front. Allowing for the effect of the NCT rules, there is an automatic bifurcation of a financial instrument which provides for both a stream of receipts and a stream of payments. Similarly with (b)(ii).

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

the income year), but they also *reduce* your net income for the income year: see subsection 5-55(1).

Subdivision 45-D—Tax value worked out on a market value basis

These rules are being developed.

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

Chapter 4—The Dictionary

Part 4-5—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.

arrangement means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

assessment has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

asset has the meaning given by section 6-15.

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

associate has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

Australian resident means a taxpayer who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

authorised deposit-taking institution means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

Note: This includes banks, building societies and credit unions.

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

B

business includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

C

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.

Commissioner means the Commissioner of Taxation.

company means:

(a) a body corporate; or

(b) any other unincorporated association or body of persons;

but does not include a *partnership.

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.

D

deceased estate means any trust for the administration of the estate of a deceased person.

decline in tax value has the meaning given by sections 40-40, 40-55 and 40-65 to 40-75.

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

depreciating asset has the meaning given by section 40-30.

depreciating liability has the meaning given by section 40-45.

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

diminishing value method has the meaning given by section 40-70.

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.

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 40-C, and expressed in years (including a fraction of a year, if necessary).

F

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

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

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 7A-20; and

(b) ***first element*** of the *proceeds of assuming a liability has the meaning given by section 7A-75.

foreign resident means a taxpayer who is not an Australian resident.

G

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.

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

H

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.

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.

I

income tax means income tax imposed by any of these:

(a) the *Income Tax Act 1986*;

(b) the *Income Tax (Diverted Income) Act 1981*;

(c) the *Income Tax (Former Complying Superannuation Funds) Act 1994*;

(d) the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*;

(e) the *Income Tax (Fund Contributions) Act 1989*.

income year: the basic meaning is given by subsection 4-10(2). Some provisions refer to a particular income year. (They may describe it in different ways: for example, as the income year ending on 30 June 2001, or the 2000-01 income year.) For a taxpayer who adopts an accounting period in place of the particular income year, the reference includes that accounting period.

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

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

individual means a natural person.

*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; and

(b) it is a co-ownership interest in a tangible asset, and the tangible asset is installed ready for use and held in reserve.

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) 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.

live stock does *not* include animals used as beasts of burden or working beasts in a *business other than a *primary production business.

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

luxury car has the same meaning as in Division 42A in Schedule 2E to the *Income Tax Assessment Act 1936*.

M

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

(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; and

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

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

N

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

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

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

non-depreciating asset means an asset that is not a *depreciating asset.

O

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

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

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.[32]

partnership means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company.

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

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

person includes a company.

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.

R

realisation event for an asset [*to be defined*].

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

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

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.

[32] 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.

S

second element:

(a) ***second element*** of the *cost of an asset has the meaning given by section 7A-20; and

(b) ***second element*** of the *proceeds of assuming a liability has the meaning given by section 7A-75.

starts to decline in tax value: a *depreciating asset or *depreciating liability ***starts to decline in tax value*** as provided in sections 40-35 and 40-50.

straight line method has the meaning given by section 40-75.

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 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.

trading stock means [*to be defined*].

U

unused tax losses means [*to be defined*].

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

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

use an asset has the meaning given by section 40-30.

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