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This is a third prototype, as developed to 5 December 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 3

Status of the working draft

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

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

Work in progress

3. The draft legislation is a work in progress (‘prototype’). It is not being put forward as the final product or even as what the final product would look like. Rather, it is being exposed as the present state of the draft Tax Value Method legislation. Significant additions and deletions may be made to this draft.

4. It is important to recognise also that in developing the Tax Value Method 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.

Circulation of the draft

5. The draft has been prepared for the purposes of furthering the consideration of the Tax Value Method by the Board of Taxation’s Working Group.

6. It is not a secret document and members of the Working Group should consider themselves free to disclose it to professional associates and colleagues for the purposes of enhancing their own deliberations and improving their feedback to the rest of the Working Group.

Comments Welcome

7. 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.

8. To realise the Board’s vision for this piece of legislation, the Working Group is invited (and encouraged) to provide comments on the draft legislation.

9. If it were to become legislation implementing the Tax Value Method, what more would be needed? What should be removed? How could what is there already be improved and why? Your opinions on these and other matters are vital if the Legislation Group is to progress this draft to the point where it can be exposed for full public comment.

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Contents

Income Tax Assessment Act

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

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

Section 3-15

(5) This is the second:

Core concepts		
Item	**This term:**	**is defined in:**
1	amount	section 995-1
2	assessment	section 995-1
3	asset	section 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	section 5-65
11	receive	section 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

Income tax = [Taxable income × Rate(s)] − 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

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

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

See the *Income Tax Rates Act 1986*.

Step 3. Work out your tax offsets 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
- [equivalent of 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:

Net income + * Taxable income adjustment - * Unused tax losses

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

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

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

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

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

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

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.

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

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.

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: If you gave or got a non-cash benefit during the income year, Division 11 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.

5-57 Alternative method for entities without private items to calculate their receipts and payments

The following steps can be used to work out the result of steps 1 and 2 of the method statement in section 5-55 for an entity other than:

(a) an individual; or

(b) a partnership to which Division 12 (about excluding private items in working out taxable income) applies.

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

Method statement

Step 1. Add up the *money the entity held at the *end* of the income year.

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

Step 2.	Subtract from the step 1 result the *money the entity held at the *start* of the income year.

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.

(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.

5-70 Closing and opening tax values

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

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

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

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.

For upwards and downwards adjustments, see Division 23.

———————————————

*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.

Subdivision 6-A—Objects of Division

Subdivision 6-B—What is an asset and who holds it?

Table of sections

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

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.

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.

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

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

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

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

(4) This Act applies as if:

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

(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 11-55 (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.

[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.

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 11-130(2)
3	[*Further cases to be added as required.*]	

6-20 Who *holds* an asset: general rules

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

Note: There are special rules that override the general rules. The special rules are in section 6-21, and in the provisions set out in section 6-22.

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.

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

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

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

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

Special rules about who holds an asset

Item	For this kind of asset:	While this is the case:	This is the rule:
Right to use and enjoyment of an asset			
1	An asset of a kind referred to in item 1 or 2 of the table in section 6-20	An entity: (a) has, under an *arrangement, the right to the use and enjoyment of the asset (otherwise than as a beneficiary under a trust); and (b) will or may start to hold the asset, at or before the end of the arrangement, because of another item of this table or the table in section 6-20	The entity ***holds*** the asset. An entity that, apart from this item, would hold the asset under item 1 or 2 of the table in section 6-20, does *not* ***hold*** the asset.[2]
Trusts, partnerships and co-ownership			
2	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.

[2] 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:**
3	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.
4	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.
Fixtures and improvements to land			
5	A fixture on land that is (or has been) subject to a *quasi-ownership right	The owner (or former owner) of the quasi-ownership right has a right to remove the fixture from the land	The owner (or former owner) of the quasi-ownership right ***holds*** the fixture.[3]

[3] Do we need to say that the holder of the land does not hold the fixture or improvement?

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

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

(2) An entity identified in an item in the table in subsection (1) as *not* holding an asset also does not ***hold*** the asset under any other item of that table or of the table in section 6-20, or under any other provision of this Act.

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

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

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

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

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

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 and when. 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	Asset held by an individual or partnership ceasing to be a private asset	Section 12-30
4	Asset held by an individual or partnership becoming a private asset	Section 12-35
5	Leases of luxury cars	[]
6	Pools of depreciating assets held by an STS taxpayer	Subdivision 328-D
7	[*Further cases to be added as required.*]	

Subdivision 6-C—Tax value of an asset

Table of sections

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.

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 [70]
3	A *depreciating asset (see Note 2)	The amount worked out under Division 40
4	An asset (except one covered by item 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
8A	A *share in a company or an [interest in a trust]	The amount worked out under Division 44.
9	Any other asset that you hold	The *cost of the asset as at that time

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

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

- project development pools, low-value asset pools and in-house software pools (see Subdivision 40-B);
- a general STS pool or long life STS pool (see Subdivision 328-D);
- amortisable payments (see Subdivision 40-F).

Tax value cannot be less than nil

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

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

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

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

(h) 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. In particular, further

[4] List to be updated.

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

> *work is being done on how to implement the aspect of that recommendation that deals with work-in-progress.*

Financial assets

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

- (a) a right to receive 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, the contract is entirely unperformed.

Rights and liabilities where benefits received match benefits provided

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

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

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

is substantially the same as:

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

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

6-47 Effect of ceasing to be a routine right or routine liability

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

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

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

*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.

Subdivision 7-A—Objects of Division

Subdivision 7-B—What is a liability and who has it?

Table of sections

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

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 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

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

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;[5] 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 incurring the obligation for nothing, see section 11-57.

(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.

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 11-133(2)
3	[*Further cases to be added as required.*]	

[5] Compare footnote 1.

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

7-23 Who *has* a liability: general rules

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

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

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

Note 2: There can be a present legal or equitable obligation even though performance of the obligation is subject to some contingency being met. For example, the grantor of an option has such an obligation until the grantee exercises the option. See also section 7-22.

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

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

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

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

Special rules about who has a liability			
Item	**For this kind of liability:**	**While this is the case:**	**This is the rule:**
4	A liability consisting of obligations to provide some or all of the economic benefits embodied by an asset covered by subsection 6-21(3) (special rules about who holds an asset)	No entity holds the asset because of that subsection	No entity ***has*** the liability.

(2) An entity identified in an item in the table in subsection (1) as *not* having a liability also does not ***have*** the liability under any other item of that table or 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	A liability that an individual or partnership has stops being a private liability	Section 12-65
3	A liability that an individual or partnership has becomes a private liability	Section 12-70
4	[*Further cases to be added as required.*]	

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

Subdivision 7-C—Tax value of a liability

7-75 Tax value of a liability

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

Tax value of a liability

Item	For this kind of liability:	The tax value at that time is:
1	A *listed zero tax value liability (see subsection (2)), even if it is also covered by another item in this table	Nil
2	A *depreciating liability	The amount worked out under Division 40
3	A *financial liability (but not one covered by item 4 or 5 in this table) for which you have elected under Subdivision 45-D to work out the tax value on a 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 incurring the liability

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

Tax value cannot be less than nil

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

Listed zero tax value liabilities

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

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

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

Financial liabilities

(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 9—Cost and proceeds of assets and liabilities

Table of Subdivisions

Guide to Division 9

Subdivision 9-A—Objects of Division

Subdivision 9-B—Cost of an asset

Table of sections

9-20 General rule

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

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

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

____

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

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

Note: 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.

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

Note: 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.

(4) However, an amount is included in the ***first element*** or ***second element*** only to the extent that the amount is *reasonably attributable to the asset.

Note: 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, Division 11 treats you as having paid an amount.

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

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

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

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

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

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

Note: When you cease to hold the asset, the loss reduction amount gives rise to an upward adjustment under item 30 of the table in section 23-10.

9-25 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.

Note: An amount does not become included in the cost of an asset held by an individual or partnership if section 12-10 (payments of a private or domestic nature) has prevented some or all of the amount from being taken into account under step 2 of the method statement in section 5-55 for an earlier income year. See subsection 12-10(3). There is a similar rule for collectables held by an individual or partnership: see subsection 12A-7(5).

(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 9-20(5) provides.

9-30 Special rules

The rules in the table have effect despite sections 9-20 and 9-25[6]. If more than one item covers the asset, apply the first item that covers it.

[6] And other provisions?

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[7] [8]	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][9].
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.

[7] 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.

[8] Example to be included.

[9] 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.

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]	[10]

Subdivision 9-C—Proceeds of realising an asset

Table of sections

9-55 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 is *reasonably attributable 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), Division 11 treats you as receiving an amount.

9-60 Special rules

The rules in the table have effect despite section 9-55[11]. If more than one item covers the asset, apply the first item that covers it.

[10] Perhaps this item should be no more than a signpost to the provisions in Division 40?
[11] 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 9-D—Proceeds of incurring a liability

Table of sections

9-75 General rule

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

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

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

(2) If you start to have the liability because of receiving one or more amounts, each amount is included in the ***first element*** when you receive it or when you start to have the liability (if that happens later).

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

(3) If the liability *increases because of your receiving one or more amounts, each amount is included in the ***second element*** when you receive it or at the time of the increase (if that happens later).

(4) However, an amount is included in the ***first element*** or ***second element*** only to the extent that the amount is *reasonably attributable to the liability.

Note 1: If you started having a liability, or the amount of your liability has increased, because you got a non-cash benefit, Division 11 treats you as having received an amount.

Note 2: An amount does not become included in proceeds of incurring a liability of an individual or partnership if section 12-11 (receipts of a private or domestic nature) has prevented some or all of the amount from being taken into account under step 1 of the method statement in section 5-55 for an earlier income year. See subsection 12-11(3).

9-80 Special rules

The rules in the table have effect despite section 9-75[12]. If more than one item covers the asset, apply the first item that covers it.

Special rules about proceeds of incurring a liability

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

[12] And other provisions?

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

Subdivision 9-E—Cost of extinguishing a liability

Table of sections

9-100 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 is *reasonably attributable to the liability).

Note: If you give a non-cash benefit in order to stop having the liability, Division 11 treats you as paying an amount.

9-105 Special rules

The rules in the table have effect despite section 9-100[13]. If more than one item covers the liability, apply the first item that covers it.

Special rules about cost of extinguishing a liability

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

Subdivision 9-F—Apportionment rules

Table of sections

[13] And other provisions?

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

9-120 How much of an amount is reasonably attributable to something (such as an asset or liability)

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

(a) that thing; and

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

9-130 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:

  (i) 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); or

  (ii) your *cost of extinguishing a liability; 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 incurring a liability you have do not include an amount, to the extent that the amount is included in:

  (i) the proceeds of incurring 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 incurring); or

  (ii) your proceeds of realising an asset; and

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

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

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

Division 11—Notional receipts and payments relating to assets and liabilities

Table of Subdivisions

Guide to Division 11

11-1 What this Division is about

In various situations where:

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

this Division treats you as having received an amount and then paid it. This is necessary in order to work out:

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

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

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

Subdivision 11-A—Objects and common rules

Table of sections

11-5 Objects

The objects of this Division are:

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

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

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

11-10 Amounts you are taken to receive or pay

An amount that you are taken to receive or pay for something because of this Division is taken into account (for example, in working out the *cost of an asset under section 9-20) *in addition to*:

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

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

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

Example: If an asset is split into 2 or more assets under an arrangement that involves you giving or getting a non-cash benefit, you may be taken to receive or pay one amount because of Subdivision 11-E and another because of Subdivision 11-B.

Subdivision 11-B—Short-term trade credit

11-15 Treatment of debtor and creditor

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

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

(b) the financial liability is covered by item 5 of the table in subsection 7-75(1); and

Note: Item 5 covers a financial liability to pay an amount that:

- must be paid within 12 months after the liability comes into existence; and
- and is for getting a non-cash benefit (other than a financial asset).

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

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

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

(ii) amounts that the debtor pays.

Note: An arrangement not covered by this section may be covered by section 11-25 (about barter transactions).

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

(2) The amounts shown in the table are taken to have been received and paid when the debtor started to have the *financial liability.

Notional receipts and payments

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

Subdivision 11-C—Barter transactions

11-25 How a barter transaction is treated

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

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

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

(c) the arrangement is not covered by section 11-15 (about short-term trade credit).

Note: This section treats you as:

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

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

(2) For the one or more *non-cash benefits you **give* (together with any amount you actually pay under the arrangement), you are taken to *receive* an amount equal to the *market value, or the total of the market values, of the one or more non-cash benefits you *get*. (The

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

market value of each non-cash benefit you get is determined as at when you get it.)

Note: To work out how much of the amount you are taken to receive is reasonably attributable to each non-cash benefit you give (and to any amount you actually pay), see section 9-120.

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

Note: To work out how much of the amount you are taken to pay is reasonably attributable to each non-cash benefit you get, see section 9-120.

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

Setting off cash on both sides of the transaction

(5) This section applies differently if, at or soon after the time when the *arrangement begins to be carried out:

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

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

(6) The one or more amounts you actually *pay* are set off against the one or more amounts you actually *receive*. This section applies as if, to the extent of the set off, the amounts had been paid and received under a separate *arrangement, instead of under the arrangement referred to in subsection (1).

Work is continuing on the appropriate treatment of executory contracts. This work will result in changes to Subdivision 11-C, and perhaps also consequential changes to sections 6-45 and 6-47 about routine rights and liabilities.

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

Subdivision 11-D—One-sided non-cash transactions

Table of sections

11-55 Getting a non-cash benefit for nothing

If:

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

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

you are taken:

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

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

at the time when you get the benefit.

Note: If the non-cash benefit is an asset, the amount will form part of the asset's cost: see section 9-20.

11-57 Incurring or increasing a liability for nothing

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, from any entity at any time for the non-cash benefit;

you are taken:

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

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

at the time when you give the benefit.

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

Note: The amount will form part of your proceeds of incurring the liability. See section 9-75.

Non-cash benefits consisting of untraded contingent assets and liabilities will be excluded from the operation of Subdivision 11-D. 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.

11-61 Market value of a non-cash benefit

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

Subdivision 11-E—Splitting, merging, transforming and substituting assets or liabilities

Table of sections

11-130 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

*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 split; and

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

Note: Section 9-120 tells you how to apportion the amount in order to work out the cost of each of the new assets.

Example: Michael buys land on 1 July 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 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)[14]. Barry is taken to have split his interest in the land into 2 assets, and to have paid $150,000 for them. Because of section 9-120, that amount is reasonably attributable to each asset to the extent of its market value relative to the other.

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

(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.

[14] 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.

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.

11-133 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: Section 9-120 tells you how to apportion the amount in order to work out the proceeds of incurring 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.

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

11-135 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

(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: Section 9-120 tells you how to apportion the amount in order to work out the proceeds of realising each of the original assets, and the cost of each of the new assets.

Example: [to be drafted].

11-137 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: Section 9-120 tells you how to apportion the amount in order to work out the cost of extinguishing each of the original liabilities, and the proceeds of incurring each of the new liabilities.

Example: [to be drafted].

11-150 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

(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.

11-153 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].

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

11-161 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

(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;

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: Section 9-120 tells you how to apportion the amount in order to work out the proceeds of realising each of the original assets, and the cost of each of the new assets.

Example: [to be drafted].

11-163 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:

*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: Section 9-120 tells you how to apportion the amount in order to work out the cost of extinguishing each of the original liabilities, and the proceeds of incurring each of the new liabilities.

Example: [to be drafted].

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

Division 12—Excluding private items in working out an individual's taxable income[15]

Table of Subdivisions

Guide to Division 12

[To be drafted[16]]

Subdivision 12-A—Object and application

Table of sections

[15] This Division could be moved out of the core rules when the prototype legislation is restructured.
[16] Needs to include something about how these rules interact with non-cash transaction rules.

12-1 Object of this Division

The object of this Division is to exclude from the taxable income of:

(a) an individual; or

(b) a partnership (except a *limited partnership);

receipts, payments, liabilities, and most assets, to the extent that they are private or domestic in nature. In this way, those items are excluded from the income tax base.

Note: Some assets are *not* excluded even when they are private or domestic in nature:

- investment assets (for example, land and high-cost private-use collectables);
- rights to hold investment assets.

Treatment of companies and trusts in this area is still under consideration, pending any review of trusts issues. In principle, the approach that this draft takes to partnerships could also be applied to companies and trusts.

12-5 Application

Individuals

(1) This Division applies in working out an individual's taxable income.

Partnerships

(2) This Division also applies in working out the taxable income of a partnership (except a *limited partnership) for an income year if at any time during that year an individual was a member of the partnership.

Note: Different tests apply to a partnership in some areas. See Subdivision 12-G.

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

Subdivision 12-B—Payments excluded from net income

Table of sections

Table of sections

12-10 Payments

(1) The amount of a payment you make during the income year is *not* taken into account under step 2 of the method statement in section 5-55[17] to the extent that:

(a) the payment is a *payment of a private or domestic nature (see section 12-10A); or

(b) the amount becomes included during the income year in the *cost of a *private asset you hold; or

(c) the amount becomes included during the income year in the *cost of extinguishing[18] a liability that:

(i) you stop having during the income year; and

(ii) is a *private liability immediately before you stop having it.

Note 1: Here are some examples of payments of a private or domestic nature that are not taken into account in working out net income:

- Olga buys a monthly train pass to travel to and from work.
- Because Andrew and Sonja both work full-time, they pay for childcare for their children.

Note 2: To the extent that an amount you pay relates to a collectable, section 12A-7 may apply instead of paragraph (1)(a) of this section.

[17] We need a more natural term for this concept, like "deduct" or "allow". Similarly for receipts.
[18] What about decreasing a liability? Consider this when the issue of partial realisations is looked at.

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

(2) Paragraph (1)(a) does *not* apply to the extent that the amount becomes included during the income year in:

(a) the *cost of an asset that you hold that is *not* a *private asset; or

(b) the *cost of extinguishing a liability that:

(i) you stop having during the income year; and

(ii) is *not* a *private liability immediately before you stop having it.

Example: You pay council rates for land that you hold, and on which your holiday house is built. Even though it is a payment of a private or domestic nature, paragraph (1)(a) does not apply, because subsection 9-20(3) includes it in the second element of the cost of the land.

(3) However, to the extent that paragraph (1)(a) does apply, none of the amount becomes included in a *later* income year in the *cost of an asset that you hold.

12-10A Extended meaning of *payment of a private or domestic nature*

A ***payment of a private or domestic nature*** includes a payment you make, to the extent that it relates to one or more of these matters:

(a) your education or training;

(b) your travel;

(c) your accommodation;

(d) your sustenance;

(e) your health;

(f) your hobbies, amusements or *recreation;

but only to the extent that the one or more matters are for the purposes of:

(g) your employment that has not yet begun; or

(h) your business, investment or other commercial activities that have not yet begun.

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

Subdivision 12-C—Receipts excluded from net income

Table of sections

12-11 Receipts

(1) An amount you receive during the income year is *not* taken into account under step 1 of the method statement in section 5-55 to the extent that:

(a) it is a *receipt of a private or domestic nature (see section 12-11A); or

(b) it becomes included during the income year in the *proceeds of incurring a *private liability that you have; or

(c) it becomes included during the income year in the *proceeds of realising an asset that:

(i) you stop holding[19] during the income year; and

(ii) is a *private asset immediately before you stop holding it.

(2) Paragraph (1)(a) does *not* apply to the extent that the amount becomes included during the income year in:

(a) the *proceeds of incurring a liability that you have that is *not* a *private liability; or

(b) the *proceeds of realising an asset that:

(i) you stop holding[20] during the income year; and

(ii) is *not* a *private asset immediately before you stop holding it.

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[19] Should we mention other investment asset events? [Review this matter again when the list of events is complete.]

[20] Should we mention other investment asset events? [Review this matter again when the list of events is complete.]

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

(3) However, to the extent that paragraph (1)(a) does apply, none of the amount becomes included in a *later* income year in the *proceeds of incurring a liability that you have.

12-11A Extended meaning of *receipt of a private or domestic nature*

(1) A ***receipt of a private or domestic nature*** includes an amount you receive, to the extent that it:

(a) arises out of your hobbies, amusements or *recreation; or

(b) compensates you for personal injury or loss of income earning capacity; or

(c) is a gift, inheritance or windfall that does *not* arise out of your employment, or out of your business, investment or other commercial activities.

Note: If someone who suffers a loss of income earning capacity receives amounts to replace lost income (rather than to compensate him or her for the loss of income earning capacity), the amounts are *not* receipts of a private or domestic nature under paragraph (1)(b).

(2) Paragraph (1)(a) does not apply to the extent that the amount is for providing your efforts or skills.

Subdivision 12-D—Private assets

Table of sections

12-15 In working out net income, disregard private assets

(1) An asset that was a *private asset at the *end* of the income year is *not* taken into account under step 3 of the method statement in section 5-55.

———————————

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

(2) An asset that was a *private asset at the *start* of the income year is *not* taken into account under step 4 of the method statement in section 5-55.

Note: If a depreciating asset is not a private asset but has a private percentage, there may be taxable income adjustments under Subdivision 12-F.

12-20 Meaning of *private asset*

(1) An asset that you hold is a ***private asset*** as shown in the table.

Meaning of *private asset*

Item	This kind of asset:	Is a *private asset*:
1	An asset not covered by a later item in this table[21]	If: (a) you intend to *use the asset solely for *private or domestic purposes (see section 12-25) so long as you hold it; or (b) the asset is for you essentially private or domestic in nature
2	An asset consisting of a right to hold another asset that: (a) is covered by item 1; and (b) you do not hold	If: (a) you intend to *use the *other* asset solely for *private or domestic purposes so long as you hold the other asset; or (b) the *other* asset is for you essentially private or domestic in nature
3	A *collectable, or an *interest in a *collectable	As set out in section 12A-10
4	An item of *trading stock	Never
5	A *financial asset	Never
6	An *investment asset not covered by item 3	Never[22]

[21] The Government has announced that further consideration is to be given to the tax implications of depreciating assets that are buildings or structures. For this reason, the draft does not deal with any aspect of private or domestic use of buildings or structures at this stage.

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

Example: Cogal buys a ride-on mower for use at her home. She also intends to allow her neighbour to use the mower occasionally as a favour. The neighbour's use also counts as use by Cogal for private or domestic purposes.

(2) For the purposes of item 2 of the table in subsection (1) (and of this subsection), if an asset consists of a right to hold another asset, each of the following is also treated as a right to hold the other asset:

(a) a right to hold the first asset;

(b) a right to hold an asset that, because of one or more other applications of this subsection, is treated as a right to hold the first asset.

12-25 Extended meaning of using an asset for *private or domestic purposes*

To the extent that:

(a) you use an asset for one or more of these purposes:

(i) your education or training;

(ii) your travel;

(iii) your accommodation;

(iv) your sustenance;

(v) your health;

(vi) your hobbies, amusements or *recreation; and

(b) that use is for the purposes of:

(i) your employment that has not yet begun; or

(ii) your business, investment or other commercial activities that have not yet begun; and

(c) apart from this section, that use is not for your private or domestic purposes;

the use is taken to be for your ***private or domestic purposes***.

[22] This is subject to preserving existing CGT exemptions under the TVM investment asset regime.

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

12-30 Effects when asset stops being private asset

(1) If an asset you already hold stops being a *private asset, you are treated as if:

(a) you had started to hold the asset at the time immediately after it stopped being a private asset; and

(b) in order to start holding it, you had paid at that time an amount equal to the asset's *market value[23] at that time.

(2) In working out the asset's *cost at a time after it stopped being a *private asset, disregard each amount that formed part of its cost when it was a private asset.

12-35 Effects when asset becomes private asset

(1) If an asset you already hold becomes a *private asset, you are treated as if:

(a) you had stopped holding the asset at the time immediately before it became a private asset; and

(b) because you stopped holding it, you had received at that time an amount equal to:

(i) its *market value at that time[24], unless subparagraph (ii) applies; or

(ii) its *cost at that time, if the asset was then an item of your *trading stock[25].

(2) Subsection (1) does not prevent section 12-30 applying to the asset after that time.

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[23] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

[24] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

[25] This preserves the current outcome under 70-110.

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

12-50 Special rules about other assets that have a private character

The table shows where to find special rules about how certain assets are treated.

Other assets having a private or domestic character

Item	For rules about this kind of asset:	See:
1	Your main residence	[*Main residence exemption*]
2	A decoration for valour or brave conduct[26]	[*Equivalent of section 118-5 in the Income Tax Assessment Act 1997*]
3	Collectables	Division 12A
4	[*Further cases to be added as required.*]	

Subdivision 12-E—Private liabilities

Table of sections

12-55 In working out net income, disregard private liabilities

(1) A liability that was a *private liability at the *end* of the income year is *not* taken into account under step 5 of the method statement in section 5-55.

(2) A liability that was a *private liability at the *start* of the income year is *not* taken into account under step 6 of the method statement in section 5-55.

Note: If a depreciating liability is not a private liability but has a private percentage, there may be taxable income adjustments under Subdivision 12-F.

[26] Would this be more neatly dealt with by an item in the private asset table?

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

12-60 Meaning of *private liability*

A liability that you have is a ***private liability*** as shown in the table.

Meaning of *private liability*

Item	This kind of liability:	Is a *private liability*:
1	A *financial liability	If it is for you solely a *liability of a private or domestic nature, having regard to: (a) how the *proceeds of incurring the liability are currently applied; and (b) the purposes for which, and the reasons why, you began to have the liability
2	A liability to provide an asset that you hold	If the asset is for you a *private asset
3	Any other liability	If it is for you solely a *liability of a private or domestic nature

Example: A liability to repay a personal loan is a private liability under item 1 if the loan was used to pay for a holiday.

12-63 Extended meaning of *liability of a private or domestic nature*

A ***liability of a private or domestic nature*** includes a liability you have, to the extent that it relates to one or more of these matters:

(a) your education or training;

(b) your travel;

(c) your accommodation;

(d) your sustenance;

(e) your health;

(f) your hobbies, amusements or *recreation;

but only to the extent that the one or more matters are for the purposes of:

(g) your employment that has not yet begun; or

(h) your business, investment or other commercial activities that have not yet begun.

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

12-65 Effects when liability stops being private liability

(1) If a liability you have stops being a *private liability, you are treated as if:

(a) you had started to have the liability at the time immediately after it stopped being a private liability; and

(b) you had received at that time an amount equal to the liability's *market value[27] at that time; and

(c) you had started to have the liability because of receiving that amount.

(2) In working out the *proceeds of incurring the liability, as at a time after it stopped being a *private liability, disregard each amount that formed part of those proceeds as at a time when it was a private liability.

12-70 Effects when liability becomes private liability

(1) If a liability you have becomes a *private liability, you are treated as if:

(a) you had stopped having the liability at the time immediately before it became a private liability; and

(b) in order to stop having it, you had paid at that time an amount equal to the liability's *market value[28] at that time.

(2) Subsection (1) does not prevent section 12-65 applying to the liability after that time.

[27] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

[28] This gives effect to Recommendation 4.9(a) of the Final Report of the Review of Business Taxation.

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

Subdivision 12-F—Taxable income adjustments for depreciating assets and liabilities that have a private percentage

Table of sections

Depreciating assets that are not private assets

12-90 Upward adjustment for private percentage of decline in tax value during income year

(1) You have an ***upward adjustment*** under this section for an income year if:

(a) you hold a *depreciating asset[29] for some or all of the income year; and

(b) there is a *decline in tax value for the asset for the income year; and

(c) the asset is a *private asset at no time during the period for which you hold it during the income year, but has a *private percentage for that period.

(2) The amount of the adjustment is the *decline in tax value multiplied by the *private percentage.

[29] Signpost from the depreciating asset provisions.

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

(3) If you stop holding an asset during an income year and later start holding it again during the same income year, this section applies separately to:

(a) the period ending when you stopped holding it; and

(b) the period starting when you started holding it again.

Example: On 2 July 2006 you start to hold a depreciating asset. On 10 September 2006 it becomes a private asset (so that section 12-35 treats you as if you had stopped holding it). On 5 January 2007 the asset stops being private (so that section 12-30 treats you as if you had started holding it) and you continue to hold it until the end of the 2006-07 income year.

This section applies separately to the period 2 July to 10 September 2006 and to the period 5 January 2007 to 30 June 2007.

12-95 Further adjustment if proceeds of realising asset differ from final tax value

(1) You have a *taxable income adjustment under this section for an income year (the ***current year***) if:

(a) you stop holding a *depreciating asset during the current year; and

(b) your *proceeds of realising the asset are different from the asset's tax value immediately before you stop holding it; and

(c) since you started holding the asset, you have had one or more *upward adjustments under section 12-90 for the asset.

(The adjustment under this section is additional to any adjustment under section 12-90 for the current year.)

(2) If the asset's tax value immediately before you stop holding it exceeds your *proceeds of realising the asset, you have an ***upward adjustment***. Otherwise, you have a ***downward adjustment***.

(3) The amount of the adjustment under this section is:

- the difference (expressed as a positive amount) between the asset's tax value immediately before you stop holding it and your *proceeds of realising the asset;

multiplied by:

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

- the total of the one or more *upward adjustments under section 12-90;

divided by:

- the total of each *decline in tax value used to work out the amount of any of the one or more upward adjustments.

12-100 Working out the *private percentage* for a period

(1) A *depreciating asset that you hold during a period has a ***private percentage*** for that period as shown in the table.

Working out a depreciating asset's *private percentage*

Item	**This kind of asset:**	**Has this *private percentage* for the period**:
1	An asset not covered by item 2	The percentage that fairly represents the extent to which your *use of the asset, during that period, was for *private or domestic purposes
2	An asset consisting of a right to hold another asset if: (a) the other asset is covered by item 1; and (b) you do not hold the other asset	The percentage that fairly represents the extent to which you intend to *use the other asset for *private or domestic purposes

(2) Subsection 12-20(2) (about rights to hold assets) also applies to item 2 in the table in subsection (1) of this section.

Depreciating liabilities that are not private liabilities[30]

12-110 Downward adjustment for private percentage of decline in tax value during income year

(1) You have a ***downward adjustment*** under this section for an income year if:

[30] There also need to be provisions about financial liabilities whose tax value is worked out on an accruals basis and that have a private percentage.

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

(a) you have a *depreciating liability[31] for some or all of the income year; and

(b) there is a *decline in tax value for the liability for the income year; and

(c) the liability is a *private liability at no time during the period for which you have it during the income year, but has a *private percentage for that period.

(2) The amount of the adjustment is the *decline in tax value multiplied by the *private percentage.

12-115 Further adjustment if cost of extinguishing liability differs from final tax value

(1) You have a *taxable income adjustment under this section for an income year (the ***current year***) if:

(a) you stop having a *depreciating liability during the current year; and

(b) your *cost of extinguishing the liability is different from the liability's tax value immediately before you stop having it; and

(c) you have had one or more *downward adjustments under section 12-110 for the liability.

(The adjustment under this section is additional to any adjustment under section 12-110 for the current year.)

(2) If your *cost of extinguishing the liability exceeds the liability's tax value immediately before you stop having it, you have an ***upward adjustment***. Otherwise, you have a ***downward adjustment***.

(3) The amount of the adjustment under this section is:

- the difference (expressed as a positive amount) between your *cost of extinguishing the liability and the liability's tax value immediately before you stop having it;

[31] Signpost from the depreciating liability provisions.

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

multiplied by:

- the total of the one or more *downward adjustments under section 12-110;

divided by:

- the total of each *decline in tax value used to work out the amount of any of the one or more downward adjustments.

12-120 Working out the *private percentage* for a period

A liability that you have during a period has a ***private percentage*** for that period as shown in the table.

Working out a liability's *private percentage*		
Item	**This kind of liability:**	**Has this *private percentage* for the period:**
1	A liability to provide an asset you hold	Nil
2	Any other liability	The percentage that fairly represents the extent to which the liability was, from time to time during that period, a *liability of a private or domestic nature

Subdivision 12-G—Special rules for partnerships

12-150 Meaning of terminology

(1) A payment by a partnership is a ***payment of a private or domestic nature*** for the partnership to the extent that:

(a) it is a *payment of a private or domestic nature for an individual who is a member of the partnership; or

(b) it would be a payment of a private or domestic nature for such an individual if he or she had made the payment instead of the partnership.

(2) An amount received by a partnership is a ***receipt of a private or domestic nature*** for the partnership to the extent that:

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

(a) it is a *receipt of a private or domestic nature for an individual who is a member of the partnership; or

(b) it would be a receipt of a private or domestic nature for such an individual if he or she had received the amount instead of the partnership.

(3) *Use of an asset is for ***private or domestic purposes*** of a partnership to the extent that it is for *private or domestic purposes of an individual who is a member of the partnership.

(4) A *liability that a partnership has is a ***liability of a private or domestic nature*** for the partnership to the extent that:

(a) it is a *liability of a private or domestic nature for an individual who is a member of the partnership; or

(b) it would be a liability of a private or domestic nature for such an individual if he or she had the liability instead of the partnership.

Division 12A—How collectables affect an individual's taxable income[32]

Table of Subdivisions

[32] This Division could be moved out of the core rules when the prototype legislation is restructured.

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

Guide to Division 12A

Subdivision 12A-A—Object and application

Table of sections

12A-1 Object of this Division

12A-5 Application

Individuals

(1) This Division applies in working out an individual's taxable income.

Partnerships

(2) This Division also applies in working out the taxable income of a partnership (except a *limited partnership) for an income year if at any time during that year an individual was a member of the partnership.

> *Treatment of companies and trusts in this area is still under consideration, pending any review of trusts issues. In principle, the approach that this draft takes to partnerships could also be applied to companies and trusts.*

12A-6 Meaning of *collectable* and *interest* in a collectable

(1) A ***collectable*** includes (but is not limited to) the following:

(a) *artwork, jewellery, an antique, a coin or a medallion; or

(b) a rare folio, manuscript or book; or

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

(c) a postage stamp or first day cover; or

(d) [other?].

However, to be a collectable under this subsection, an asset must be a tangible asset (other than *land).

(2) An ***interest*** in a *collectable includes (but is not limited to):

(a) an option or right to start to hold the collectable; or

(b) an option or right to start to hold something[33] that is an interest in the collectable because of one or more other applications of this paragraph.

12A-6A Meaning of *high-cost private-use collectable*

(1) A *collectable that you hold is a ***high-cost private-use collectable*** if:

(a) when you began to hold it, you intended to *use it at least partly for *private or domestic purposes; and

(b) the *first element of the collectable's *cost is more than $10,000.

(2) An *interest that you hold in a *collectable is a ***high-cost private-use collectable*** if, when you began to hold the interest:

(a) you intended to *use the collectable at least partly for *private or domestic purposes; and

(b) the collectable's *market value was more than $10,000.

Subdivision 12A-B—Treatment of collectables in working out net income

Table of sections

[33] Should this be limited to assets? We are assuming that all the things we are covering are separate assets.

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

12A-7 Payments reasonably attributable to private use collectables but not part of their cost

[34] (1) If, when you began to hold a *collectable[35], you intended to *use it at least partly for *private or domestic purposes, this section applies to a payment that you make during an income year, to the extent that the amount of the payment:

(a) is *reasonably attributable to the *collectable; but

(b) does *not* become included during the income year in the collectable's *cost.

To that extent, this section applies instead of paragraph 12-10(1)(a) (about payments of a private or domestic nature).

Payment is excluded

(2) To the extent that this section applies to the payment, it is *not* taken into account under step 2 of the method statement in section 5-55, whether or not it is a *payment of a private or domestic nature.[36]

Note: Expenses such as insurance and interest are examples of amounts that this section prevents from being taken into account: they may be reasonably attributable to a collectable, but do not become included in its cost.

By contrast, this section does not apply to freight expenses that are reasonably attributable to a collectable and are paid to bring the collectable to its present condition and location. This is because they become included in the second element of cost: see subsection 9-20(3).

[34] Consider the order of these provisions.
[35] Should this section also deal with interests in collectables?
[36] This reflects Recommendation 4.13(f)(i) of the Final Report of the Review of Business Taxation.

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

Exception for payments up to total of non-private receipts from the collectable

(3) If the total (***total non-private receipts from the collectable***) of all amounts you receive during the income year, to the extent that they:

(a) are *reasonably attributable to the *collectable; and

(b) are *not* *receipts of a private or domestic nature; and

(c) do not become included during the income year in your *proceeds of realising the collectable;

is greater than or equal to the total (***total payments***) of all payments (whether or not *payments of a private or domestic nature) you make during the income year, to the extent that their amounts:

(d) are reasonably attributable to the collectable; but

(e) do not become included during the income year in the collectable's *cost;

subsection (2) does not prevent the total payments from being taken into account.

(4) However, if the total payments exceed the total non-private receipts, only the excess is *not* taken into account under step 2 of the method statement in section 5-55.

Excluded payment also excluded from cost in later income year

(5) If this section prevents some or all of a payment from being taken into account for the income year in which you make it, none of the amount becomes included during a *later* income year in the *cost of an asset that you hold.[37]

12A-10 Which collectables are private assets

A *collectable that you hold is a ***private asset*** as shown in the table.

[37] Signpost from cost of asset rules. Should there be a similar rule for cost of extinguishing?

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

Meaning of *private asset*

Item	This kind of asset:	Is a *private asset*:
1	A *collectable (except a *high-cost private-use collectable)	If: (a) the collectable is not *trading stock; and (b) when you began to hold the collectable, you intended to *use it at least partly for *private or domestic purposes[38]
2	An *interest in a *collectable (except an interest that is a *high-cost private-use collectable)	If: (a) neither the interest nor the collectable is *trading stock;[39] and (b) when you began to hold the interest, you intended to *use the collectable at least partly for *private or domestic purposes[40]
3	A *high-cost private-use collectable	Never

12A-15 Which collectables, and interests in collectables, are not depreciating assets

(1) A *collectable that you hold is *not* a *depreciating asset if:

(a) when you began to hold it, you intended to *use it at least partly for *private or domestic purposes; or[41]

[38] This reflects Recommendation 4.13(f)(ii) of the Final Report of the Review of Business Taxation.
The effect of existing section 108-15 will be preserved by an asset identification rule that a set is a single asset, so that if the first element of cost of the set is more than $10,000, the set won't qualify as a private asset. If an item in the set is disposed of separately, there would be splitting of the asset (see 11-130). There would need to be an exemption if the tax value of the separated item was $10,000 or less, unless the partial realisation was for the purpose of getting the private asset exemption.

[39] This limb may not be needed, depending on the final form of the definition of ***trading stock*** after implementing recommendations of the Final Report of the Review of Business Taxation

[40] This reflects Recommendation 4.13(f)(ii) of the Final Report of the Review of Business Taxation.

[41] Note that this "or" distinguishes this provision from the definition of ***high-cost private-use collectable***.

(b) the *first element of the collectable's *cost is more than $10,000.

(2) An *interest that you hold in a *collectable is *not* a *depreciating asset if, when you began to hold the interest:

(a) you intended to *use the collectable at least partly for *private or domestic purposes; or

(b) the collectable's *market value was more than $10,000.

Subdivision 12A-C—Quarantining investment asset losses from high-cost private-use collectables

Table of sections

12A-150 How investment asset gains and losses from high-cost private-use collectables are treated

If during the income year you made one or more *investment asset gains or *investment asset losses (or both) from *high-cost private-use collectables:

(a) the losses *cannot* be used to reduce investment asset gains in working out your *taxable income adjustments under section 100-75; and

(b) the gains are *not* taken into account in working out those adjustments, except as provided in section 12A-155; and

(c) you may have a taxable income adjustment under section 12A-155.

12A-155 Working out your taxable income adjustments for high-cost private-use collectables

(1) Compare:

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

- the total of the *investment asset gains you made from *high-cost private-use collectables during the income year; with
- the total of the *investment asset losses you made from high-cost private-use collectables during the income year.

Gains exceed losses

(2) If the total of the gains exceeds the total of the losses, the consequences are worked out under this method statement.

Method statement

Step 1. Reduce the gains (in whichever order you choose) by the losses.

Step 2. Reduce any remaining amounts of the gains (in whichever order you choose) by applying any previously unapplied *carry forward investment asset losses from high-cost private-use collectables from earlier income years (in the order in which you made them). You have a ***downward adjustment*** equal to the total of the carry forward investment asset losses so applied.

Step 3. Each remaining gain is taken into account in working out your *taxable income adjustments under section 100-75 (in the same way as an investment asset gain that is *not* from a high-cost private-use collectable).

Note: One effect of Step 3 is that a remaining investment asset gain from a high-cost private-use collectable can be further reduced by an investment asset loss, or a carry forward investment asset loss, that is *not* from a high-cost private-use collectable: see Steps 1 and 2 of the method statement in subsection 100-75(2). If any of the gain remains after that, it may be a discountable gain: see Subdivision 100-E.

Losses exceed gains

(3) If the total of the losses exceeds the total of the gains:

(a) you have an ***upward adjustment*** equal to that excess; and

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

(b) the excess is your ***carry forward investment asset loss from high-cost private-use collectables*** for the income year.

Example: For the income year, you have an investment asset gain of $200 from a high-cost private-use collectable and an investment asset loss of $600 from another high-cost private-use collectable.

Your loss from the one collectable reduces your gain from the other to nil. Because of subsection 12A-150(1), you cannot apply the remaining $400 of the loss in this income year, but you can apply it in a later income year under step 2 of the method statement in subsection (2) of this section.

(4) A *taxable income adjustment or *carry forward investment asset loss under this section is additional to a taxable income adjustment or carry forward investment asset loss under section 100-75.

Subdivision 12A-D—Special investment asset loss from high-cost collectable

12A-170 Special collectable loss on ceasing to hold shares or trust interest

(1) The purpose of this section[42] is to ensure that the tax consequences of a fall in the *market value of a high-cost collectable that a company or trust holds for your (or your *associate's) personal use or enjoyment:

(a) are similar to what they would have been if you had held the collectable yourself; and

(b) take effect when you cease to hold *shares in the company (or in a company that is a member of the same *wholly-owned group) or an interest in a trust.

Note: This is achieved by in effect converting the impact of the collectable's fall in market value into an investment asset loss from a collectable. You make the loss when you cease to hold the shares or interest. See subsection (4).

[42] This replaces Event K5.

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

The loss is offset by reversing, to the extent of the impact of the fall in market value, what would otherwise have been the outcome of your ceasing to hold the shares or interest. See subsections (2) and (3).

(2) This section changes the way you work out your *investment asset gain or *investment asset loss under section 100-45 if:

(a) the *investment asset you cease to hold is *shares in a company or an interest in a trust, and no roll-over applies to your ceasing to hold it; and

(b) there has been a fall in the *market value of a *collectable[43]:

(i) held by the company (or by a company that is a member of the same *wholly-owned group) or by the trust; and

(ii) *used or kept mainly for your (or your *associate's) personal use or enjoyment; and

(c) the *first element of the collectable's *cost is more than $10,000; and

(d) the *market value of the investment asset when you stopped holding it (worked out as if the fall in market value of the *collectable had not happened) exceeds your *proceeds of realising the investment asset.

(3) In working out under section 100-45 whether you have made an *investment asset gain or *investment asset loss from ceasing to hold the *investment asset:

- the *market value of the investment asset when you stopped holding it (worked out as if the fall in market value of the *collectable had not happened);

is treated as being:

- your *proceeds of realising the asset.

Note: This effectively increases your proceeds of realising the investment asset by the amount attributable to the fall in market value of the collectable. The effect is either to reduce your investment asset loss from ceasing to hold the asset, to turn the loss into a gain, or to increase your investment asset gain from ceasing to hold the asset.

(4) In addition to the *investment asset gain or *investment asset loss worked out under section 100-45, you make an ***investment asset***

[43] Consider also interests in collectables.

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

loss (from ceasing to hold the *investment asset) equal to the excess referred to in paragraph (2)(d). That investment asset loss is treated as being from a *high-cost private-use collectable.

Note: The investment asset loss can be applied only against investment asset gains you made from high-cost private-use collectables during the income year. Any of the loss that remains will result in an upward adjustment. See section 12A-155.

Example: You own 50% of the shares in a company. You bought them for $60,000. The company owns a painting worth $100,000 and another asset worth $20,000. The painting falls in value to $40,000.

You sell your shares for $30,000 (the actual proceeds of realising them). Apart from this section, you would make an investment asset loss of $30,000 under section 100-45.

However, under this section the actual proceeds of realising the shares are replaced with $60,000 (the market value of the shares if the painting had not fallen in value). As a result, you do not make an investment asset loss under section 100-45.

Instead, you make an investment asset loss under this section from a high-cost private-use collectable. The loss is equal to:

$60,000 - $30,000=$30,000.

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

Chapter 2—Rules of general application

Part 2-1—Taxable income adjustments

Division 23—Upwards and downwards adjustments

Table of sections

23-10 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:
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).

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

Adjustments

Item	If this happens:	There is this adjustment:
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*].
Adjustment for gain reduction amount or loss reduction amount		
20	During the income year you make an *investment asset gain from ceasing to hold an *investment asset at a time when there is a *gain reduction amount[44] for the asset	A ***downward adjustment*** equal to the lesser of: (a) the investment asset gain; and (b) the gain reduction amount. (The adjustment is specific to the gain.)

[44] We need to consider whether the adjustment for a gain reduction amount or loss reduction amount for an investment asset should also be triggered for an investment asset event other than ceasing to hold.

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

Section 23-10

Adjustments

Item	If this happens:	There is this adjustment:
25	During the income year you cease to hold an asset (except an *investment asset) at a time when there is a *gain reduction amount for the asset, and your *proceeds of realising the asset exceed by an amount (the ***gain***) the asset's tax value immediately before you ceased to hold it	A ***downward adjustment*** equal to the lesser of: (a) the gain reduction amount; and (b) the gain. (The adjustment is specific to the gain.)
30	During the income year you make an *investment asset loss from ceasing to hold an *investment asset at a time when there is a *loss reduction amount for the asset	An ***upward adjustment*** equal to the lesser of: (a) the investment asset loss; and (b) the loss reduction amount. (The adjustment is specific to the gain.)
35	During the income year you cease to hold an asset (except an *investment asset) at a time when there is a *loss reduction amount for the asset, and the asset's tax value immediately before you ceased to hold it exceeds by an amount (the ***loss***) your *proceeds of realising the asset	An ***upward adjustment*** equal to the lesser of: (a) the loss reduction amount; and (b) the loss. (The adjustment is specific to the loss.)

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 23-10.

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

23-20 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	An individual (or a partnership to which Division 12 applies) holds a depreciating asset, or has a depreciating liability, whose tax value declines during the income year and that has a private percentage	Subdivision 12-E
2	An individual (or a partnership to which Division 12 applies) stops holding a depreciating asset, or stops having a depreciating liability, that has a private percentage	Subdivision 12-E
3	Expenditure on research and development	[*provisions to be developed*]
4	Depreciating asset used for private or domestic purposes	Section 12-90
5	You stop holding a depreciating asset that you have used for private or domestic purposes	Section 12-95
6	Depreciating liability that is partly of a private or domestic nature	Sections 12-110 and 12-115
7	Electricity supply or telephone line to which an amortisable payment relates is used otherwise than for specified purposes	Section 40-550
8	You stop holding land to which an amortisable payment for electricity supply or telephone line relates	Section 40-555
9	Luxury car limit applies	Section 40-630

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

Adjustments under other provisions of this Act		
Item	**In this case:**	**See:**
10	Entertainment expenditure	[*provisions corresponding to Division 32 of the Income Tax Assessment Act 1997*]
11	General anti-avoidance rules	[*provisions being developed*]

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

Part 2-5—Unused tax losses

Division 36—Tax losses of earlier income years

Table of sections

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).

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

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

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:

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

(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.

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.

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

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.

Table of sections

[This is the end of the Guide.]

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

Depreciating assets and their tax value

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) To ***use*** an asset means to consume economic benefits from the asset, or receive economic benefits in respect of the asset.[45]

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

(a) an item of *trading stock;

(b) a *financial asset;

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

(d) a *collectable that section 12A-15 prevents from being a depreciating asset;

(e) an *interest in a collectable if section 12A-15 prevents the interest from being a depreciating asset;

(#) [46].

Note 1: 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.

Note 2: [Signpost to collectables rules.]

40-35 *Tax value* of depreciating asset

(1) The ***tax value***, at the end of an income year[47], of a *depreciating asset you hold is:

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

[46] Other exceptions?

[47] Compare existing Division 40, which relates tax value to a particular time.

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*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.

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

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

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

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) a *mining, quarrying or prospecting right; or (c) an *IRU; or (d) an interest as co-owner of an asset covered by an earlier paragraph of this item	Worked out applying the *diminishing value method or the *straight line method, according to the rules in sections 40-65, 40-70 and 40-75
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))[48]	Worked out applying the *straight line method (see section 40-75)

[48] 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

*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:
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.*]	
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.

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.

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

(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

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

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;

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

(#) [49].

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 incurring the liability (as at the end of the current year).

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

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

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

[49] Other exceptions?

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

(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 incurring the liability.

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

Example 1: In Example 2 in subsection 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.

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 the start of an income year is its *opening tax value for that income year.

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

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***).

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

[50] 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.

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 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:

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

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

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[51] 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.

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.

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

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

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

Exception: sale and lease back, and similar cases

(4) If:

(a) just before you started to hold the asset, it was held by an entity (the ***former holder***) that has already chosen a method

[51] 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.

to work out the *decline in tax value of the asset for an income year; and

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

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

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

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

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

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

Exception: assets in pools

(6) The ***decline in tax value*** of a *depreciating asset in a low-value pool is worked out under Subdivision 40-E instead of this Subdivision. The ***decline in tax value*** of a depreciating asset in a *general STS pool or *long life STS pool is worked out under Subdivision 328-D instead of this Subdivision.

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

———————————

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

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

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

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

You can choose to recalculate effective life because of changed circumstances: see section 40-110. That section also requires you to recalculate effective life in some cases.

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—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:

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

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

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.

Subdivision 40-C—How to determine effective life

Table of sections

Depreciating assets

40-95 Methods for determining effective life

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

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

(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[52]

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

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:

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

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

(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.

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

*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:**
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	$2\frac{1}{2}$ years from when the item starts to exist
8	A *datacasting transmitter licence	15 years from when the licence starts to exist
9	An *IRU	The *effective life of the international telecommunications submarine cable over which the IRU is granted

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.

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

(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.

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

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

(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%.[53]

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

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

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

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

(a) you are applying an effective life because of subsection 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:

[53] 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.

(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.

(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;[54] 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.)

[54] 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.

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 life was last calculated (subsection 7-22(5) treats the extension or renewal as a continuation of the original liability).

Increase in proceeds of incurring liability

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

(a) you:

(i) worked out its effective life yourself under section 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 incurring it increased in that year by at least 10%.[55]

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).

[55] 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.

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.

(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

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

(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

Table of sections

40-130 Choices

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

(a) by the day you lodge your *income tax return for the first income year to which the choice relates; or

(b) within a further time allowed by the Commissioner.

(2) Your choice, once made, applies to that income year and all later income years.

Exception: recalculating effective life

(3) However, subsection (2) does not prevent you choosing to recalculate the *effective life of a *depreciating asset under section 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) Act 2001 modifies the application of:

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

> - *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.*

40-140 Getting tax information from associates[56]

(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.

[56] 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.

Giving the notice to a partnership

(4) If the *associate is a partnership:

(a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and

(b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

(5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

(6) Only one notice can be given in relation to the same *depreciating asset.

> *The Criminal Code will be applied to offences under this Division.*

Subdivision 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.*

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

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) Act 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.

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

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

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

Division 44—Tax value of shares in a company and interests in a trust

44-50 Tax value of a share

(1) The ***tax value*** at a particular time of a *share in a company that you hold is the *cost of the share as at that time, reduced by the *non-dividend part of each amount you receive from the company in respect of the share at or before that time.

(2) The ***non-dividend part*** of an amount that you receive from a company:

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

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

is so much of the amount (which may be all of it) as:

(c) is not a *dividend; and

(d) is not taken to be a dividend under [equivalent of section 47 of the *Income Tax Assessment Act 1936*].

(3) In working out the *non-dividend part of an amount you receive, disregard:

(a) any of the amount you repay; and

(b) any compensation you pay that can reasonably be regarded as a repayment of all or part of the amount.

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

Division 45—Financial assets and liabilities

Table of Subdivisions

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

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

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 incurring the liability (as at that time) reduced by the total of each amount you pay in respect of the liability at or before that time; or If that time is later—the amount worked out under Subdivision 45-C
2	Any other *financial liability	The *proceeds of incurring the liability (as at that time) reduced by the total of each amount you pay in respect of the liability at or before that time, to the extent that the amount represents repayment of those proceeds

Note: 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.

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

(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.

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:

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

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 Division) 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:

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

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

(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;[57] or

(b) in the case of a liability:

(i) an amount received by you, at that time, equal to the *proceeds of incurring 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).

[57] 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 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 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.

Part 2-20—Investment asset treatment

Division 100—Discounting gains, and quarantining losses, on investment assets

Table of Subdivisions

Guide to Division 100

100-1 What this Division is about

Under the core rules, your gains and losses from investment assets are automatically taken into account in working out your net income.

Note: The tax value of an investment asset is worked out primarily by reference to the asset's cost, so a gain or loss occurs only on realisation. See items 8, 8A and 9 in the table of tax values in subsection 6-40(1).

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

However, investment asset gains and losses are subject to special treatment of 2 kinds. Both are achieved by taxable income adjustments.

First, there are concessions for investment asset gains:

- Some gains are wholly or partly exempted by excluding them from taxable income. (Losses of the same kind are excluded to the same extent.)

  Note: See, for example, Division 118.

- Some gains are rolled over. (Losses of the same kind are also rolled over.)

  Note: See, for example, Divisions 124 and 126.

- Gains by individuals (and by some other entities) on investment assets held for at least 12 months are discounted (after reduction by available investment asset losses) by excluding a percentage of the gain from taxable income.

Secondly, investment asset *losses* are quarantined, and can only be offset against investment asset gains.

Subdivision 100-A—Objects

100-3 Objects of this Division

(1) The main objects of this Division are:

(a) to reduce the income tax payable by individuals (and some other entities) on certain *investment asset gains; and

(b) to ensure that *investment asset losses are quarantined so that they reduce taxable income from investment asset gains made in the same or a later income year, and do not reduce other taxable income.

Note: Without the quarantining mentioned in paragraph (1)(b), entities that have unrealised losses on investment assets could selectively realise those losses in order to reduce their income tax.

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

(2) These objects are achieved by *taxable income adjustments that modify the effect that gains and losses from realising *investment assets would otherwise have on taxable income.

> *Exemptions and roll-overs are not dealt with in this Division, but will be preserved in other Divisions, for example, Division 152 dealing with small business relief. Some roll-overs extend beyond investment assets to include, for example, some depreciating assets.*

Subdivision 100-B—Identifying your investment asset gains and losses

Table of sections

100-25 Investment asset gains and losses

(1) You may have one or more *taxable income adjustments under this Division if, during the income year, you made one or more *investment asset gains or *investment asset losses.

(2) You can make an *investment asset gain or *investment asset loss only from an *investment asset event.

(3) The main ***investment asset event*** happens when you cease to hold an *investment asset. These are the other ***investment asset events***:

(a) a *non-dividend payment for shares event[58];

(b) a *trust capital distribution event[59].

Note: The other events are set out in Subdivision 100-D.

[58] This is the existing G1.
[59] This is the existing E4.

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

100-35 Investment assets

(1) An asset is an ***investment asset*** of an entity if the asset's tax value at a particular time when held by the entity is worked out under:

(a) item 8 (which deals with goodwill); or

(b) item 8A (which deals with shares in companies and interests in trusts); or

(c) item 9 (under which the tax value is the asset's cost at that time);

of the table in subsection 6-40(1).

Note: Examples of assets that can be investment assets are:

- land;
- shares in a company or units in a unit trust;
- a perpetual option;
- foreign currency;
- a high-cost private-use collectable.

Listed zero tax value assets, trading stock, depreciating assets[60] and financial assets cannot be investment assets.

Exclusions

(2) However, none of these is an ***investment asset*** of an entity:

(a) an asset covered by item 3 of the table in section 6-20 (about purchased information that is not generally available);

(b) a *pre-CGT asset;

(c) a *private asset held by an individual, or by a partnership covered by Division 12;

(d) Australian currency (except a *collectable);

(#) [others?].

[60] The implications for buildings and structures of the uniform capital allowances system will be subject to further consultation: see Treasurer's Press Release no 74 dated 11 November 1999.

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

> *Recommendation 4.10(b)(i) in the Final Report of the Review of Business Taxation provides that a share in a company (or an interest in a trust) that an entity last began to hold before the transition to the tax value method should not have investment asset treatment if it was a revenue asset of the entity immediately before the transition.*

100-45 Working out your investment asset gain or loss

(1) You work out as follows whether you have made an ***investment asset gain*** or an ***investment asset loss*** from ceasing to hold an *investment asset. The gain or loss is made when you cease to hold the asset.

> *Working out your investment asset gain or loss*
>
> *Step 1.* Work out your *proceeds of realising the asset.
>
> *Step 2.* Subtract from the step 1 result:
>
> (a) the asset's tax value immediately before you ceased to hold it; and
>
> (b) each amount you paid in order to cease to hold the asset, except so far as it has become part of that tax value.
>
> *Step 3.* If the step 2 result is a positive amount, it is your ***investment asset gain*** from ceasing to hold the asset. If it is a negative amount, your ***investment asset loss*** from ceasing to hold the asset is that amount expressed as a positive amount.
>
> Note: If the result is nil, you have neither an investment asset gain nor an investment asset loss.

Note 1: Under the core rules, your investment asset gains and losses are automatically taken into account in working out your net income. The

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

purpose of identifying them separately is to work out whether you have taxable income adjustments.

Note 2: If:

- the investment asset is shares in a company or an interest in a trust; and
- there has been a fall in the market value of a high cost collectable held by the company (or a member of the same wholly-owned group)[61] or trust mainly for your (or your associate's) personal use or enjoyment;

section 12A-170 changes how this section applies.

(2) You work out as provided in Subdivision 100-D (other investment asset events) whether you have made an ***investment asset gain*** or an ***investment asset loss*** from any other *investment asset event.

100-65 Effect of exemptions, roll-overs and gain or loss reduction amounts

(1) The amount of an *investment asset gain you make during the income year is reduced (but not below nil) by the amount of each *downward adjustment that you have for the income year and that is specific to that gain.

Note: A downward adjustment that exempts all or part of a gain from income tax, or rolls it over, is specific to the gain. The adjustment reverses the effect the gain would otherwise have on net income. For examples of exemptions and roll-overs, see Divisions 118, 124 and 126.

A downward adjustment because of a gain reduction amount is also specific to the gain. See item 20 in the table in section 23-10 (taxable income adjustments).

(2) The amount of an *investment asset loss you make during the income year is reduced (but not below nil) by the amount of each *upward adjustment that you have for the income year and that is specific to that loss.

Note: An upward adjustment that reverses the effect a loss would otherwise have on net income is specific to that loss. For examples, see Divisions 118, 124 and 126.

[61] Check effects of consolidation on this.

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

An upward adjustment because of a loss reduction amount is also specific to the gain. See item 30 in the table in section 23-10 (taxable income adjustments).

Subdivision 100-C—Adjustments giving effect to discounting and quarantining

Table of sections

100-75 Working out your adjustments

(1) Compare:

- the total of the *investment asset gains you made during the income year; with
- the total of the *investment asset losses you made during the income year.

Note: If you are an individual:

- your investment asset gains from high-cost private-use collectables are taken into account under this section only to the extent provided in section 12A-155; and
- your investment asset losses from high-cost private-use collectables are not taken into account under this section: see section 12A-150.

Gains exceed losses

(2) If the total of the gains exceeds the total of the losses, you have ***downward adjustments*** as worked out under this method statement.

Downward adjustments

Step 1. Reduce the gains (in whichever order you choose) by the losses.

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

Step 2.	Reduce any remaining amounts of the gains (in whichever order you choose) by applying any previously unapplied *carry forward investment asset losses from earlier income years (in the order in which you made them). You have a ***downward adjustment*** equal to the total of the carry forward losses so applied.
Step 3.	For each remaining gain that is a *discountable gain (see Subdivision 100-F), you have a ***downward adjustment*** equal to the *discount percentage multiplied by the remaining amount of the gain.

Example: For the 2006-07 income year, Camille has $10,000 of investment asset gains, all of which are discountable gains. She also has $6,000 of investment asset losses for that income year. She has no other net income for the income year, so her net income is:

$10,000 - $6,000=$4,000

She also has an unapplied carry forward investment asset loss of $1,000 for an earlier income year.

She works out downward adjustments as follows:

Step 1: The investment asset gains are reduced by the investment asset losses:

$10,000 - $6,000=$4,000

Step 2: The remaining amounts of investment asset gains are reduced by the unapplied carry forward investment asset loss:

$4,000 - $1,000=$3,000

She has a downward adjustment for the $1,000.

Step 3: She also has a downward adjustment worked out by multiplying the discount percentage by the remaining amounts of investment asset gains:

50% x $3,000=$1,500.

So the $4,000 of her net income is reduced by $1,000+$1,500=$2,500 of downward adjustments, resulting in $1,500 of taxable income.

Losses exceed gains

(3) If the total of the losses exceeds the total of the gains:

(a) you have an ***upward adjustment*** equal to that excess; and

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

(b) the excess is your ***carry forward investment asset loss*** for the income year.

Note: The upward adjustment quarantines the excess losses by reversing their effect on net income. When the carry forward investment asset loss is applied in a later income year, it gives rise to a downward adjustment under Step 2 of the method statement in subsection (2).

100-80 What is the *discount percentage* for a discountable gain?

The ***discount percentage*** for an amount of a *discountable gain is:

(a) 50% if the gain is made:

(i) by an individual; or

(ii) by a trust (other than a trust that is a *complying superannuation entity); or

(b) $33^1/_3$% if the gain is made:

(i) by a complying superannuation entity; or

(ii) by a *life insurance company from an *investment asset that is a *virtual PST asset.

Rules about bankrupts to be included later. These will be generic, based on existing Subdivision 36-B and subsections 102-5(2) and (3).

Subdivision 100-D—Other investment asset events

Table of sections

100-85 Non-dividend payment for shares event

(1) A ***non-dividend payment for shares event***[62] happens at the time when you receive one or more amounts from a company:

[62] This is the existing G1.

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

(a) in respect of a *share in the company that is an *investment asset that you hold; and

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

if:

(c) at least one amount has a *non-dividend part (see section 44-50); and

(d) the total of the one or more non-dividend parts of the one or more amounts exceeds the share's tax value immediately before that time.

(2) You make an ***investment asset gain*** from the event equal to the amount of the excess. The gain is made at the time of the event.[63 i]

Note 1: You cannot make an investment asset loss from the event.

Note 2: The share's tax value is also reduced to nil: see section 44-50 (about the tax value of assets) and subsection 6-40(2).

100-95 Trust capital distribution event

(1) A ***trust capital distribution event***[64] happens at the time when….:

The gain is made at the time of the event.

> *This event is the trust analogy of the non-dividend payment for shares event. Its specific details depend on what happens with trusts issues.*

Subdivision 100-E—Discountable gains

Table of sections

What is a discountable gain?

[63] See endnote i.
[64] This is the existing E4.

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

What investment asset gains are *not* discountable gains?

What is a discountable gain?

100-155 Conditions to be met

A ***discountable gain*** is an *investment asset gain that:

(a) meets the requirements of sections 100-160, 100-170 and 100-185; and

(b) is *not* prevented by section 100-205 from being a discountable gain.

Note: The gain is not a discountable gain if a gain reduction amount arises because of indexation of the investment asset's cost base before the [transition year], and you choose to have that gain reduction amount give rise to a downward adjustment under item 20 of the table in section 23-10. See section 100-65 of the *Income Tax (Transitional Provisions Act).*[65]

100-160 Who can make a discountable gain?

To be a *discountable gain, the gain must be made by:

(a) an individual; or

(b) a *complying superannuation entity; or

(c) a trust; or

(d) a *life insurance company in relation to a *discountable gain from an *investment asset event in respect of an *investment asset that is a *virtual PST asset.

[65] See extracts at the end of this document (before the endnotes).

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

100-185 You must have held the asset for at least 12 months

(1) To be a *discountable gain, the gain must result from an *investment asset event happening after the period of 12 months beginning on the day you last started to hold the asset.

(2) Also, the event must not happen under an agreement you made before the end of that period of 12 months.

What investment asset gains are *not* discountable gains?

100-205 Investment asset gain from equity in an entity with newly acquired assets

Purpose of this section

(1) The purpose of this section is to deny you a *discountable gain on your *share in a company or interest in a trust if you would *not* have had *discountable gains on the majority of *investment assets (by *cost and by *market value) underlying the share or interest if:

- (a) you had held them for the same period as the company or trust did; and
- (b) *investment asset events had happened to them when the investment asset event happened to your share or interest.

When an investment asset gain is not a discountable gain

(2) Your *investment asset gain from an *investment asset event happening to:

- (a) your *share in a company; or
- (b) your *trust voting interest, unit or other fixed interest in a trust;

is *not* a discountable gain if the 3 conditions in subsections (3), (4) and (5) are met. This section has effect despite section 100-155.

Note: This section does not prevent an investment asset gain from being a discountable gain if:

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

(a) there are at least 300 members or beneficiaries of the company or trust and control of the company or trust is not and cannot be concentrated (see section 100-210); or

(b) the investment asset gain is from a trust capital distribution event due to payments from the discounted parts of the trust's discountable gains (see section 100-220).

You had at least 10% of the equity in the entity before the event

(3) The first condition is that, just before the *investment asset event, you and your *associates beneficially owned:

(a) at least 10% by *market value of the *shares in the company (except shares that carried a right only to participate in a distribution of profits or capital to a limited extent); or

(b) at least 10% of the *trust voting interests, issued units or other fixed interests (as appropriate) in the trust.

Tax values of new assets are more than 50% of all tax values of entity's assets

(4) The second condition is that:

- the total of the tax values of *investment assets that the company or trust had, at the time of the *investment asset event, held for *less* than 12 months;

is *more* than half of:

- the total of the tax values of the *investment assets the company or trust held at that time.

Net gain on entity's new investment assets would be more than 50% of net gain on all the entity's investment assets

(5) The third condition is that the amount worked out under subsection (6) is *more* than half of the amount worked out under subsection (7).

(6) Work out the amount by which the total of the *investment asset gains made by the company or trust during the income year would

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

exceed the total of the *investment asset losses it made during that year if:

(a) just before the *investment asset event, the company or trust had ceased to hold all the *investment assets that it had held for less than 12 months at the time of the event; and

(b) it had received the *market value of those assets as the *proceeds of realising them; and

(c) it had made no other investment asset gains or investment asset losses during that year; and

(d) it had not had a *carry forward investment asset loss for an earlier income year.

(7) Work out the amount by which the total of the *investment asset gains made by the company or trust during the income year would exceed the total of the *investment asset losses it made during that year if:

(a) just before the *investment asset event, the company or trust had ceased to hold all the *investment assets that it then held; and

(b) it had received the *market value of those assets as the *proceeds of realising them; and

(c) these provisions were disregarded in working out the amounts of those gains and losses:

(i) section 100-65 (about the effect of exemptions and roll-overs); and

(ii) paragraph 100-35(2)(b) (which prevents *pre-CGT assets from being investment assets); and[66]

(d) the company or trust had made no other investment asset gains or investment asset losses during that year; and

(e) the company or trust had not had a *carry forward investment asset loss for an earlier income year.

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[66] Check whether this gives full effect to the equivalent in the current Division 115, in particular concerning pre-CGT assets.

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

100-210 Discountable gain from equity in certain entities

Investment asset gain from share in company with 300 members

(1) Section 100-205 does not prevent an *investment asset gain from an *investment asset event happening to a *share in a company with at least 300 *members from being a *discountable gain, unless subsection (3) or (6) applies in relation to the company.

Investment asset gain from interest in fixed trust with 300 beneficiaries

(2) Section 100-205 does not prevent an *investment asset gain from an *investment asset event happening to an interest in a trust from being a *discountable gain if:

- (a) entities have fixed entitlements to all of the income and capital of the trust; and
- (b) the trust has at least 300 beneficiaries; and
- (c) neither subsection (4) nor subsection (6) applies in relation to the trust.

No discountable gain if ownership is concentrated

(3) Section 100-205 may prevent an *investment asset gain from a *share in a company from being a *discountable gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, *shares in the company:

- (a) carrying fixed entitlements to:
  - (i) at least 75% of the company's income; or
  - (ii) at least 75% of the company's capital; or
- (b) carrying at least 75% of the voting rights in the company.

(4) Section 100-205 may prevent an *investment asset gain from an interest in a trust from being a *discountable gain if an individual owns, or up to 20 individuals own between them, directly or

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

indirectly (through one or more interposed entities) and for their own benefit, interests in the trust:

(a) carrying fixed entitlements to:

(i) at least 75% of the trust's income; or

(ii) at least 75% of the trust's capital; or

(b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

(5) Subsections (3) and (4) operate as if all of these were a single individual:

(a) an individual, whether or not the individual holds *shares in the company or interests in the trust (as appropriate);

(b) the individual's *associates;

(c) for any *shares or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

No discountable gain if rights can be varied to concentrate ownership

(6) Section 100-205 may prevent an *investment asset gain from a *share in a company, or from an interest in a trust, from being a *discountable gain if, because of anything listed in subsection (7), it is reasonable to conclude that the rights attaching to any of the *shares in the company or interests in the trust (as appropriate) *can be* varied or abrogated in such a way that subsection (3) or (4) would be satisfied.

(7) These are the things:

(a) any provision in the constituent document of the company or trust, or in any contract, agreement or instrument:

(i) authorising the variation or abrogation of rights attaching to any of the *shares in the company or interests in the trust (as appropriate); or

(ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or interests;

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

(b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those shares or interests;

(c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or interests.

(8) It does not matter for the purposes of subsection (6) whether or not the rights attaching to any of the *shares or interests *are* varied or abrogated in the way described in that subsection.

100-220 Discountable gain from trust capital distribution event[67]

To be included, taking account of how this event develops.

Subdivision 100-F—Other special rules

100-300 Exceptions and modifications

Special rules affecting investment asset gains and investment asset losses

Item	For this kind of entity:	There are these special rules:	See:
1			
2			

[67] This is the existing E4.

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

Section

Chapter 3—[Specialist liability rules]

Part 3-45—[Rules for particular industries and occupations]

Division 328—STS taxpayers

Table of Subdivisions

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

Guide to Subdivision 328-G
Operative provisions

Guide to Division 328

328-5 What this Division is about

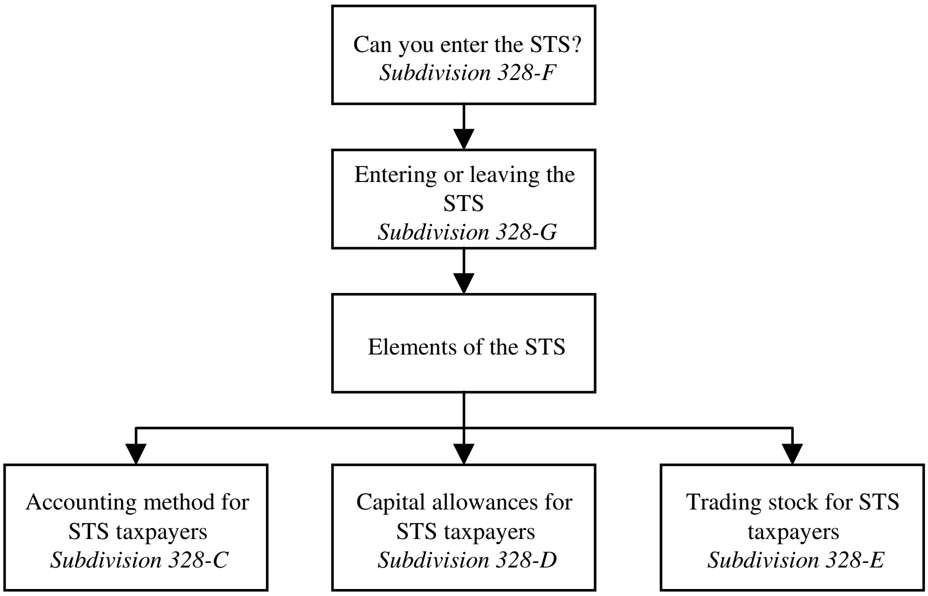
> [68]This Division gives you a choice to change the way the income tax law applies to you in these 3 ways if you are carrying on a business with a small turnover, and you pass certain other criteria:
>
> - you use a cash accounting system; and
> - you only account for annual changes in trading stock value that are more than $5,000; and
> - you put your depreciating assets (of certain kinds) into either a long life pool or a general pool and treat each pool as a single asset.
>
> In usual circumstances, these changes will simplify the working out of your taxable income, and so reduce your compliance costs.

328-10 Map of this Division

[69]The following map shows the elements of the simplified tax system and how they relate to each other:

[68] To be revised.
[69] To be revised.

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



Subdivision 328-B—Objects of this Division

328-50 Objects of this Division

(1) The main object of this Division is to offer eligible small businesses the choice of a new platform to deal with their tax. The platform is designed to benefit those businesses in one or more of these ways:

- reducing their tax;
- providing simpler rules for determining their income and deductions;
- providing simpler capital allowances and trading stock requirements;
- reducing their compliance costs.

(2) This Division also provides rules that are intended to prevent other businesses from taking advantage of those benefits.

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

Subdivision 328-C—Accounting method for STS taxpayers

Guide to Subdivision 328-C

328-100 What this Subdivision is about

[to be drafted].

Table of sections

[This is the end of the Guide.]

Accounting for amounts you have the right to receive

328-105 Most receivables not taken into account until received

(1) The *closing tax value of a *financial asset covered by item 6 of the table in subsection 6-40(1) is *not* taken into account under step 3 of the method statement in section 5-55 in working out your net income for an income year for which you are an *STS taxpayer.

Note 1: This has the effect that, while you are in the STS, you are not taxed on an amount you have the right to receive until you receive it, if the amount:

- is payable within 12 months after the right comes into existence; and
- is for giving a non-cash benefit (other than a financial asset).

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

However, you are taken to have received an amount when it is applied or dealt with on your behalf or as you direct: see section 5-65.

Note 2: A further effect is that the asset's opening tax value for the next income year will be nil: see subsection 5-70(2). This is so even if you have left the STS.

Note 3: This subsection does not affect the opening tax value of an asset for an income year when you join or rejoin the STS. It will be the same as the asset's closing tax value for the previous year (when you were not in the STS).

Exception

(2) However, subsection (1) does not exclude the *closing tax value of a *financial asset consisting of your right to receive an amount to the extent that, supposing you had received the amount instead of starting to hold the asset, it would have formed some or all of your *proceeds of realising a *depreciating asset or an *investment asset.

Example: [to be drafted].

328-106 Liabilities excluded because of excluding financial assets

(1) If:

(a) section 328-105 excludes for an income year some or all of the *closing tax value of a *financial asset; and

(b) had you received the excluded amount instead of starting to hold the asset, some or all of it would have formed some or all of your *proceeds of incurring a liability;

a proportion of the closing tax value of the liability is *not* taken into account under step 5 of the method statement in section 5-55 in working out your net income for the income year.

(2) The proportion is:

- the excluded amount, to the extent that it would have formed some or all of those proceeds;

divided by:

- those proceeds as at the end of the income year.

Example: [to be drafted].

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

Accounting for amounts you are liable to pay

328-110 Most trade debts not taken into account until paid

(1) The *closing tax value of a *financial liability covered by item 5 of the table in subsection 7-75(1) is *not* taken into account under step 5 of the method statement in section 5-55 in working out your net income for an income year for which you are an *STS taxpayer.

Note: This has the effect that you do not get tax relief for an amount you are liable to pay until you pay it, if the amount:

- is payable within 12 months after the liability comes into existence; and
- is for getting a non-cash benefit (other than a financial asset).

Note 2: A further effect is that the liability's opening tax value for the next income year will be nil: see subsection 5-70(2). This is so even if you have left the STS.

Note 3: This subsection does not affect the opening tax value of a liability for an income year when you join or rejoin the STS. It will be the same as the liability's closing tax value for the previous year (when you were not in the STS).

Exception

(2) However, subsection (1) does not exclude the *closing tax value of a *financial liability to pay an amount to the extent that, supposing you had paid the amount instead of starting to have the liability, it would have formed some or all of your *cost of:

(a) a *depreciating asset (except one that consists of one or more rights to have things done[70]); or

(b) an *investment asset.

Example: [to be drafted].

[70] This expression is given an extended meaning by the prepayment rules. Do we need to pick this up here?

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

328-111 Assets excluded because of excluding financial liabilities

(1) If:

(a) section 328-110 excludes for an income year some or all of the *closing tax value of a *financial liability; and

(b) had you paid the excluded amount instead of starting to have the liability, some or all of it would have formed some or all of your *cost of an asset;

a proportion of the closing tax value of the asset is *not* taken into account under step 3 of the method statement in section 5-55 in working out your net income for the income year.

(2) The proportion is:

- the excluded amount, to the extent that it would have formed some or all of the *cost of the asset;

divided by:

- that cost as at the end of the income year.

Example: [to be drafted].

Subdivision 328-D—Tax value of depreciating assets held by STS taxpayer

Guide to Subdivision 328-D

328-170 What this Subdivision is about

> STS taxpayers write off their depreciating assets on a diminishing value basis using a pool that is treated as a single depreciating asset.
>
> Broadly, a pool is made up of the costs of the depreciating assets that are allocated to it or, in some cases, a proportion of those costs.
>
> The pool rate is 30% for most depreciating assets, and 5% for depreciating assets that have an effective life of 25 years or more.

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

> There is an immediate write off for low-cost assets.
>
> This Subdivision sets out how to calculate the tax value of a pool, and also sets out the consequences of:
>
> (a) ceasing to hold depreciating assets; and
>
> (b) ceasing to be an STS taxpayer; and
>
> (c) changing the extent of private use of depreciating assets.

Table of sections

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

Private use of assets in STS pools held by individuals

Personal services income

[This is the end of the Guide.]

Assets covered by this Subdivision

328-175 STS depreciating assets

(1) The ***tax value***, at a time when you are an *STS taxpayer, of a *depreciating asset you hold is worked out under this Subdivision if the asset is any of these:

(a) a tangible asset;

(b) an intangible asset of any of these kinds:

(i) a *mining, quarrying or prospecting right;

(ii) an item of *intellectual property;

(iii) an item of *in-house software;

(iv) an *IRU;

(v) a *spectrum licence;

(vi) a *datacasting transmitter licence;

(c) an interest as co-owner of an asset covered by paragraph (a) or (b);

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

unless any of the exclusions in sections 328-176 to 328-179 applies.

(2) An asset whose tax value is worked out under this Subdivision is an ***STS depreciating asset***.

Assets excluded from this Subdivision

328-176 Assets used in primary production can be excluded

(1) You can choose *not* to have the tax value of an asset worked out under this Subdivision if:

(a) you *use the asset to carry on a *primary production business; and

(b) apart from this Subdivision, the asset's tax value would be worked out under:

(i) [Subdivision 40-F (about primary production depreciating assets)]; or

(ii) [Subdivision 40-G (about capital expenditure of primary producers and other landholders)].

(2) You must make the choice for the later of:

(a) the first income year for which you are, or last became, an *STS taxpayer; or

(b) the income year in which the asset *starts to decline in tax value.

(3) Once you have made the choice for an asset, you cannot change it.

328-177A Horticultural plants are excluded

The tax value of a *horticultural plant (including a grapevine) is not worked out under this Subdivision.

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

328-177 Asset let on depreciating asset lease is excluded

The tax value of an asset is not worked out under this Subdivision if the asset is being let, or is intended to be let, predominantly on a *depreciating asset lease.

328-178 Asset in a software development pool or low-value pool is excluded

The tax value of an asset is not worked out under this Subdivision if:

(a) the asset is *in-house software, and expenditure on the asset has been allocated to a software development pool under Subdivision [?]; or

(b) the asset has been allocated to a low-value pool under Subdivision [?].

328-179 Long life asset that started to decline in tax value before 1 July 2001 can be excluded

(1) You can choose *not* to have the tax value of an asset worked out under this Subdivision if:

(a) the asset *started to decline in tax value before 1 July 2001; and

(b) the asset's *effective life at the start of the first income year for which you are an *STS taxpayer is 25 years or more.

Note: If you make this choice, the tax value of the asset would continue to be worked out under Division 40.

(2) You must make that choice for that first income year. Once you have made the choice for an asset, you cannot change it.

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

STS depreciating assets *not* allocated to pools

328-180 Low cost assets

(1) At the end of an income year (the ***current year***) for which you are an *STS taxpayer, the ***tax value*** of an *STS depreciating asset you hold that is also a *low-cost asset is nil, unless:

(a) the asset *started to decline in tax value during an earlier income year for which you were *not* an STS taxpayer; or

(b) the total of the amounts included during the current year in the *second element of the asset's *cost is $1,000 or more.

Note: If paragraph (1)(a) applies, the asset is allocated to a pool under subsection 328-186(2).

If paragraph (1)(b) applies, the asset is allocated to a pool under subsection 328-186(4).

An asset is *not* allocated to a pool if its tax value is worked out under this section. See paragraph 328-186(3)(b).

(2) A ***low-cost asset*** is a *depreciating asset that:

(a) has *started to decline in tax value; and

(b) whose *cost was less than $1,000 as at the end of the income year in which that happened.

However, a *horticultural plant (including a grapevine) cannot be a ***low-cost asset***.

Upward adjustment for expected private use

(3) You have an ***upward adjustment*** for an income year if:

(a) Division 12 (about excluding private items in working out taxable income) applies to you; and

(b) at the end of the income year, the tax value of an asset you hold is nil because of subsection (1) of this section; and

(c) at the end of the income year, it was reasonable to expect that the asset would have a *private percentage for its *effective life (including any of its effective life that has already elapsed).

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

(4) The amount of the adjustment equals that percentage of:

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

(b) otherwise—the total of the amounts (if any) included in that income year in the *second element of the asset's *cost.

328-183 STS depreciating assets that have not yet started to decline in tax value

At the end of an income year for which you are an *STS taxpayer, the ***tax value*** of an *STS depreciating asset you hold that has not yet *started to decline in tax value is the asset's *cost at that time.

Pools for STS depreciating assets

328-185 Creation of STS pools

(1) At the start of the first income year for which you are an *STS taxpayer, you start to ***hold***:

(a) a ***general STS pool*** for *STS depreciating assets having *effective lives of *less than* 25 years; and

(b) a ***long life STS pool*** for STS depreciating assets having effective lives of 25 years or more.

(2) Each of those pools is treated as a *depreciating asset:

(a) that you continue to ***hold***, even after you stop being an *STS taxpayer; and

(b) whose tax value is worked out under this Subdivision (instead of Division 40); and

(c) whose *private percentage for any period is nil.

328-186 Allocating assets to a pool; effect on the cost of the pool

(1) An *STS depreciating asset that you hold is automatically allocated to your *general STS pool or *long life STS pool (according to the asset's *effective life) as provided in this section. When that

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

happens, this section includes an amount in the *first element or *second element of the *cost of the pool.

Note: For an individual, or a partnership to which Division 12 applies, sections 328-196 and 328-198 affect how much is included in the cost of the pool for an asset that is used partly for private or domestic purposes.

If the asset had already started to decline in tax value when you join (or rejoin) STS

(2) The asset is allocated at the *start* of an income year if:

(a) you are an *STS taxpayer for the income year, but you were not one for the previous income year; and

(b) at the end of the previous income year, you held the asset and it had *started to decline in tax value; and

(c) the asset is not already in your *general STS pool or *long life STS pool.

An amount equal to the *opening tax value of the asset for the income year is included in the ***first element*** of the ***cost*** of the pool when the asset is allocated.

If the asset starts to decline in tax value while you are an STS taxpayer

(3) The asset is allocated when it *starts to decline in tax value if:

(a) you are an *STS taxpayer for the income year in which that happens; and

(b) the asset is *not* a *low-cost asset.

The asset's *cost at that time is included in the ***second element*** of the ***cost*** of the pool.

Note: It follows that an asset is not allocated to an STS pool if you are not an STS taxpayer for the income year in which it starts to decline in value. If you still hold the asset when you again become an STS taxpayer, it is allocated under subsection (2).

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

If the second element of the cost of a low-cost asset increases by more than $1,000 in an income year

(4) If the asset is a *low-cost asset (except one allocated under subsection (2)):

(a) it is allocated the first time the total of the amounts included in the *second element of the asset's *cost during an income year for which you are an *STS taxpayer is $1,000 or more; and

(b) at that time, there is included in the ***second element*** of the ***cost*** of the pool the total of the amounts included in the *second element of the asset's *cost:

(i) during the income year in which it is allocated; and

(ii) before or at that time.

Addition to cost of asset already in pool

(5) When an amount becomes included in the *second element of the *cost of the asset after it is allocated, the amount is also included in the ***second element*** of the ***cost*** of the pool. (This happens even if you are *not* an *STS taxpayer for the income year in which that happens.)

Asset in pool not separately taken into account in working out net income

(6) If the asset is allocated under this section, its *closing tax value is *not* taken into account under step 3 of the method statement in section 5-55 in working out your net income for that income year or for a later income year in which you continue to hold it, even after you stop being an *STS taxpayer.

Note 1: This has the effect that the asset's opening tax value for each later income year will be nil: see subsection 5-70(2). This is so even if you have left the STS.

Note 2: This subsection does not affect the opening tax value of an asset for an income year when you join or rejoin the STS. It will be the same as the asset's closing tax value for the previous year (when you were not in the STS).

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

Asset leaves pool when you cease to hold the asset

(7) An asset stops being in your *general STS pool or *long life STS pool when you stop holding the asset.

Working out the tax value of an STS pool

328-186A *Tax value* of an STS pool

(1) The ***tax value***, at the end of an income year, of your *general STS pool or *long life STS pool is worked out as follows:

Method statement

Step 1. Subtract from the pool's *base value for the income year its *decline in tax value for the income year.

Step 2. Add to the step 1 result:

(a) in the case of your *general STS pool—15%; or

(b) in the case of your *long life STS pool—2.5%;

of each amount that was included during the income year in the *second element of the *cost of the pool.

Note: This halves the decline in tax value for new assets, and additions to cost, in their first year in the pool.

Step 3. Subtract from the step 2 result the *proceeds of realising each asset that:

(a) you stopped holding during the income year; and

(b) was in the pool immediately before you stopped holding it.

Note: Subsection 6-40(2) prevents the tax value from being reduced below nil. If the proceeds of realising assets during the income year exceed the tax value of the pool,

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

the excess will increase your net income and so be taxable for the income year.

Note: The tax value of the pool is nil if its base value, minus the proceeds of realising pool assets, is less than $1,000. See section 328-194.

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

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

328-187 *Base value* of an STS pool

The ***base value*** of your *general STS pool or *long life STS pool for an income year is the total of:

(a) the pool's *opening tax value for the income year; and

(b) if you are an *STS taxpayer for the income year, but you were not one for the previous income year—each amount that subsection 328-186(2) includes at the start of the income year in the *first element of the pool's *cost; and

(c) each amount included during the income year in the *second element of the pool's *cost.

328-190 How to measure the annual *decline in tax value* of an STS pool

(1) The ***decline in tax value*** of your *general STS pool for an income year equals 30% of the pool's *base value for the income year.

(2) The ***decline in tax value*** of your *long life STS pool for an income year equals 5% of the pool's *base value for the income year.

328-194 Closing tax value reduced to nil if otherwise less than $1,000

The tax value of your *general STS pool or *long life STS pool at the end of an income year is nil if the pool's *base value for the income year, minus the *proceeds of realising each asset that:

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

(a) you stopped holding during the income year; and

(b) was in the pool immediately before you stopped holding it;

is less than $1,000.

Private use of assets in STS pools held by individuals

328-195 Application of sections 328-196 to 328-199

Sections 328-196 to 328-199 apply to an individual, and to a partnership to which Division 12 (about excluding private items in working out taxable income) applies.

328-196 Effect of private use in year asset allocated to pool

(1) If:

(a) an asset has a *private percentage for the income year in which it is allocated to your *general STS pool or *long life STS pool; and

(b) section 328-186 includes an amount in the *first element or *second element of the *cost of the pool in respect of the asset;

that percentage of the amount is taken *not* to have been so included.

Note: This subsection also affects the amount (if any) by which step 2 of the method statement in subsection 328-186A(1) increases the closing tax value of the pool in order to halve the decline in tax value for the asset in its first year in the pool.

Example: [to be drafted].

Upward adjustment for private percentage

(2) Also, you have for that income year an ***upward adjustment*** equal to the amount that subsection (1) treats as not having been included in the *cost of the pool.

Note: [Explain about how this section would otherwise give rise to a deduction of the percentage. Use an example to illustrate this?]

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

328-198 Effect of private use on treatment of amount included in second element of pooled asset's cost

(1) If an amount (the ***cost addition***) becomes included during an income year in the *second element of the *cost of an asset that is already in your *general STS pool or *long life STS pool, this section may treat a percentage of the cost addition as *not* having been included under subsection 328-186(5) in the *cost of the pool.

Note: This section also affects the amount by which step 2 of the method statement in subsection 328-186A(1) increases the closing tax value of the pool in order to halve the decline in tax value for the cost addition in its first year in the pool.

(2) It does so if:

(a) subsection 328-196(1) treats a percentage of an amount in respect of the asset as not having been included in the *cost of the pool; or

(b) an adjustment has had to be made for the asset under section 328-201 for at least one earlier income year since the asset was allocated to the pool.

(3) The percentage of the cost addition that is taken *not* to have been included in the *cost of the pool under subsection 328-186(5) is the same as:

(a) the percentage referred to in paragraph (2)(a), unless paragraph (2)(b) applies; or

(b) if paragraph (2)(b) applies—the asset's *private percentage for the income year for which the last such adjustment had to be made.

Upward adjustment for private percentage

(4) Also, you have for the income year referred to in subsection (1) an ***upward adjustment*** equal to the amount that subsection (3) treats as *not* having been included under subsection 328-186(5) in the *cost of the pool.

Note: [to be drafted].

———————————————

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

328-199 Combined effect of private percentage, and proceeds of realising an asset, on closing tax value of an STS pool

(1) In applying:

(a) step 3 of the method statement in subsection 328-186A(1); or

(b) section 328-194;

to work out the tax value of your *general STS pool or *long life STS pool, a percentage of your *proceeds of realising an asset is disregarded if:

(c) subsection 328-196(1) prevented a percentage of an amount in respect of the asset from being included in the *cost of the pool; or

(d) an adjustment has had to be made for the asset under section 328-201 (because its private percentage changes by more than 10%) since it was allocated to the pool.

(2) If paragraph (1)(c) applies but not paragraph (1)(d), the percentage of the proceeds to be disregarded is the same as the percentage referred to in paragraph (1)(c).

(3) If paragraph (1)(d) applies, the percentage of the proceeds to be disregarded is the average of the percentage applicable to the asset, under the table below, for each income year from (and including) the income year in which the asset was allocated to the pool, to (and including):

(a) if the income year in which you stop holding the asset is at least 3 income years after the one in which the asset was allocated to your *general STS pool—the third income year after the one in which it was allocated; or

(b) if the income year in which you stop holding the asset is at least 20 income years after the one in which the asset was allocated to your *long life STS pool—the 20th income year after the one in which it was allocated; or

(c) otherwise—the one in which you stopped holding the asset.

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

Percentage applicable to an asset for an income year		
Item	**For this income year:**	**The percentage applicable to the asset is:**
1	The income year in which the asset was allocated to the pool, if subsection 328-196(1) prevented a percentage of an amount in respect of the asset from being included in the *cost of the pool	That percentage
2	The income year in which the asset was allocated to the pool, if item 1 does not apply	0%
3	An income year for which an adjustment has had to be made for the asset under section 328-201 since it was allocated to the pool	The asset's *private percentage for the income year
4	Any other income year	The percentage applicable to the asset under this table for the previous income year

Example:

(4) In either case, you have a ***downward adjustment*** for the income year equal to the amount to be disregarded under subsection (2) or (3).

Note: [Explain about how (2) would otherwise wrongly assess the private component of the receipt. Use an example to illustrate this?]

328-201 Base value of STS pool is adjusted if asset's private percentage changes by more than 10%

(1) The *base value of your *general STS pool or *long life STS pool for an income year is adjusted for each asset in the pool:

(a) that was allocated to the pool in an earlier income year; and

(b) whose *private percentage (the ***new percentage***) for the income year differs by more than 10 percentage points from the percentage (the ***old percentage***) set out in the table;

but not for any other asset.

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

Old percentage for asset in an STS pool

Item	In this case:	The *old percentage* is:
1	Subsection 328-196(1) prevented a percentage of an amount in respect of the asset from being included in the *cost of the pool, and item 2 does not apply	That percentage
2	An adjustment has had to be made for the asset under this section for at least one income year since the asset was allocated to the pool	The asset's *private percentage for the income year for which the last such adjustment had to be made
3	In any other case	0%

(2) However, an adjustment must *not* be made under this section for an asset if the income year is:

(a) at least 3 income years after the one in which the asset was allocated to your *general STS pool; or

(b) at least 20 income years after the one in which the asset was allocated to your *long life STS pool;

as appropriate.

(3) The adjustment for an asset is worked out using the formula:

$$\text{NTV} \times \left[\frac{\text{Old percentage - New percentage}}{100\% \text{ - Old percentage}}\right]$$

where:

NTV means the amount that would have been the *opening tax value of the pool for the income year if the asset had been the only asset ever allocated to the pool.

Example:

Effect of increase in private percentage

(4) If the result of the formula is a negative amount:

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

(a) the *base value of the pool is reduced by that amount (expressed as a positive amount); and

(b) you also have an ***upward adjustment*** for the income year equal to that amount (expressed as a positive amount).

Effect of decrease in private percentage

(5) If the result of the formula is a positive amount:

(a) the *base value of the pool is increased by that amount; and

(b) you also have a ***downward adjustment*** for the income year equal to that amount.

Personal services income

328-235 Interaction with Divisions 85 and 86[71]

Subdivision 328-E—Trading stock for STS taxpayers

328-285 Closing tax value of your trading stock equals opening tax value if difference would otherwise be $5,000 or less

(1) The ***tax value***, at the end of an income year for which you are an *STS taxpayer, of an item of *trading stock you hold is worked out under subsection (2) if the difference between these totals is $5,000 or less:

(a) the total of the opening tax value of each item of trading stock you held at the start of the income year; and

(b) the total you reasonably estimate of what, apart from this section, would be the tax value at the end of the income year of each item of trading stock you hold at the end of the income year.

Note: In applying paragraph (1)(b) special valuation rules may be used, for example, about obsolete stock, natural increase of livestock, horse breeding stock.

[71] Would these provisions be more comprehensible if moved to Divisions 85 and 86 and signposted from the STS rules?

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

(2) The ***tax value*** of the item at the end of the income year is worked out on the basis that:

- the total of the tax value at the end of the income year of each item of trading stock you hold at the end of the income year;

is equal to:

- the total of the opening tax value of each item of trading stock you held at the start of the income year;

and on the basis of the item's *cost at the end of the income year as a proportion of the total of the cost at that time of each item of trading stock you hold at that time.

Example: [to be drafted].

Exception: choice to account for trading stock

(3) However, you can choose not to have this section apply to you for an income year.

Note: If you make this choice, you will have to do a stocktake and account for the change in the value of all your trading stock: see Subdivision 70-C.

Subdivision 328-F—Entities eligible to be STS taxpayers

Guide to Subdivision 328-F

328-360 What this Subdivision is about

> This Subdivision explains that you can choose to be an STS taxpayer only if you are carrying on a business. In addition, you (together with any others who can be expected to act in concert with you in your business) must have:
>
> - an average annual business turnover of less than $1m; and
>
> - depreciating assets whose total closing tax value is below $3m.

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

> You normally work out your average turnover using any 3 of the last 4 years, but there are special rules for some other cases.

Table of sections

Operative provisions

[This is the end of the Guide.]

Operative provisions

328-365 Eligibility to be an STS taxpayer

(1) You are eligible to be an *STS taxpayer for an income year if:

(a) you carry on a *business in that year; and

(b) your *STS average turnover for that year is less than $1,000,000 (ignoring any *input tax credits to which you are entitled and *decreasing adjustments that you have); and

(c) the sum of the *closing tax values of the *depreciating assets that:

(i) are covered by paragraph 328-175(1)(a), (b) or (c) (about the kinds of assets that can be STS depreciating assets); and

(ii) you, and entities (the ***grouped entities***) whose value of business supplies is grouped with yours in accordance with section 328-380, held at the end of that year;

is less than $3,000,000.

Note: If you are eligible to be an STS taxpayer, you can choose to become one: see section 328-435.

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

(2) In working out whether paragraph (1)(c) applies to you, use the *closing tax value of a *general STS pool, *long life STS pool or low-value pool instead of the closing tax values of the *depreciating assets allocated to the pool.

(3) This Subdivision applies to you as if you carried on a *business in an income year if:

(a) in that year you were winding up a business you previously carried on; and

(b) you were an *STS taxpayer for the income year in which you stopped carrying on that business.

328-370 Meaning of STS average turnover

(1) Your ***STS average turnover*** for an income year (the ***present year***) is:

$$\frac{\text{Sum of relevant STS group turnovers}}{\text{Number of averaging years}}$$

where:

number of averaging years is:

(a) 3; or

(b) the number of years you take into account under paragraph (b) of the definition of ***sum of relevant STS group turnovers***.

sum of relevant STS group turnovers is:

(a) the sum of your *STS group turnovers for any 3 of the previous 4 income years; or

(b) if you did not carry on a *business in each of those last 4 years—the sum of your STS group turnovers for each of those years in which you carried on a business.

(2) For the purpose of working out your *STS average turnover under subsection (1) where you or a grouped entity carried on a *business for part only of one or more of those years, use a reasonable

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

estimate of what your *STS group turnover would have been for that year or those years if you and the grouped entity had carried on a business throughout those years.

(3) You work out your ***STS average turnover*** for an income year (also the ***present year***) in this way if you are not eligible to be an *STS taxpayer for that year using subsection (1):

(a) work out your *STS group turnover for the present year or a reasonable estimate of it and a reasonable estimate of it for each of the 2 following income years (ignoring any of those years if you do not expect to be carrying on a *business at any time in that year); and

(b) work out the average of your *STS group turnovers for those years.

(4) For the purpose of working out your *STS average turnover under subsection (3) where you or a grouped entity carried on a *business for part only of the present year, use a reasonable estimate of what your *STS group turnover would have been for that year if you and the grouped entity had carried on a business throughout that year.

Example: Kevin starts his locksmith business on 1 January 2002. He decides that he would like to enter the STS. He works out his STS average turnover for the income year as $420,000, calculated as follows:

- Kevin's estimated turnover for the period 1 January 2002 to 30 June 2002 is $200,000; and
- he estimates that, if he had been in business for the period 1 July 2001 to 31 December 2001, his turnover would have been $190,000, making a total of $390,000 for the year; and
- his estimated turnover for the 2002-03 year is $420,000, and the estimate for the 2003-04 year is $450,000.

The total STS turnover for the 3 years is $1,260,000, and the average for those years is $420,000. The value of Kevin's depreciating assets is $120,000. He is therefore eligible to be an STS taxpayer.

328-375 Meaning of STS group turnover

(1) Your ***STS group turnover*** for an income year is the sum of:

(a) the *value of the business supplies you made in the income year; and

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

(b) the value of the business supplies made in the income year by grouped entities while they were grouped with you;

reduced by:

(c) the value of the business supplies you made in the income year to entities grouped with you while they were grouped with you; and

(d) the value of the business supplies entities grouped with you made in the income year to you while you were grouped with them; and

(e) the value of the business supplies another entity made in the income year to a third entity while the other entity and the third entity were grouped with you.

(2) To the extent that the *taxable supplies an entity makes in an income year include *gambling supplies, use an amount equal to 11 times the entity's *global GST amount for those supplies rather than the *value of the business supplies in working out the entity's *STS group turnover.

(3) In working out the *value of the business supplies made by an entity, disregard:

(a) any *supply made to the extent that the consideration for the supply is a payment or a supply by an insurer in settlement of a claim under an insurance policy; and

(b) to the extent that a supply is constituted by a loan—any repayment of principal, and any obligation to repay principal.

(4) The regulations may provide that *STS group turnover is to be calculated in a different way, but only so that it would be less than the amount worked out under this section.

328-380 Grouped entities

(1) The *value of the business supplies made in an income year by an entity is grouped with another entity's if:

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

(a) either entity controls the other entity in the way described in this section; or

(b) both entities are controlled in that way by the same third entity; or

(c) the entities are *STS affiliates of each other.

(2) This section applies to an entity that directly controls a second entity as if the first entity also controlled any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.

Individuals, companies and fixed trusts

(3) An entity controls another entity if the first entity, its *STS affiliates or the first entity together with its STS affiliates:

(a) legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the other entity that carry between them the right to receive at least 40% of any distribution of income or capital by the other entity; or

(b) if the other entity is a company—legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the company that carry between them the right to exercise, or control the exercise of, at least 40% of the voting power in the company.

Non-fixed trusts

(4) An entity controls a trust that is not a *fixed trust if:

(a) the trustee has made a distribution, in any of the last 4 income years (except the present year) of $100,000 or more to the entity, its *STS affiliates or the entity together with its STS affiliates; or

(b) the entity, its *STS affiliates or the entity together with its STS affiliates:

(i) have the power, directly or indirectly, to obtain the beneficial enjoyment of any of the capital or income of the trust; or

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

(ii) are capable of gaining that enjoyment under a *scheme; or

(c) a trustee of the trust is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity, its STS affiliates or the entity together with its STS affiliates.

Partnerships

(5) An entity controls a partnership if the entity, its *STS affiliates or the entity together with its STS affiliates have the right to at least 40% of the partnership net income, or have at least a 40% interest in assets used in the partnership *business (except assets that are leased to the partnership).

(6) A partnership (the ***first entity***) controls another entity if a partner in the first entity, or 2 or more partners in the first entity, have the right to receive at least 40% of the partnership net income, or have at least a 40% interest in assets used in the partnership *business, and:

(a) if the other entity is a company—the same partner, or the same 2 or more partners, have the right to receive at least 40% of any distribution of income or capital by the other entity, or to exercise, or to control the exercise of, at least 40% of the voting power in the company; or

(b) if the other entity is a *fixed trust—the same partner, or the same 2 or more partners, have the right to receive at least 40% of any distribution of income or capital by the other entity; or

(c) if the other entity is a trust that is not a fixed trust—a condition in a paragraph of subsection (4) is satisfied for the same partner, or the same 2 or more partners in relation to the trust; or

(d) if the other entity is a partnership—the same partner, or the same 2 or more partners, have the right to receive at least

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

40% of the partnership net income, or have at least a 40% interest in assets used in the partnership business, of the other entity.

(7) If the control percentage mentioned in this section is at least 40%, but less than 50%, then the Commissioner may determine that the first entity does not control the other entity if the Commissioner is satisfied, or thinks it reasonable to assume, that the other entity is controlled by an entity other than, or by entities that do not include, the first entity or any of its *STS affiliates.

(8) An entity is an ***STS affiliate*** of yours if the entity acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you, in relation to the affairs of the entity's *business.

(9) Another partner in a partnership in which you are a partner is not your ***STS affiliate*** only because the partner acts, or could reasonably be expected to act, in concert with you in relation to the affairs of the partnership.

Subdivision 328-G—Entering and leaving the STS

Guide to Subdivision 328-G

328-430 What this Subdivision is about

Eligible taxpayers have a choice as to whether to enter the STS.

The rules for entering and leaving the STS are set out in this Subdivision.

Table of sections

Operative provisions

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

[This is the end of the Guide.]

Operative provisions

328-435 Entering the STS

You are an ***STS taxpayer*** for an income year if:

(a) you are eligible to be an *STS taxpayer for that year (see Subdivision 328-F); and

(b) you notify the Commissioner, in the *approved form, of your choice to become such a taxpayer for that year.

328-440 Leaving the STS

(1) You continue to be an ***STS taxpayer*** for each later income year unless:

(a) you notify the Commissioner, in the *approved form, of your choice to stop being an STS taxpayer; or

(b) you are not eligible to be an STS taxpayer for that later year (see Subdivision 328-F).

(2) If you are not eligible to be an STS taxpayer for that later year, you must notify the Commissioner, in the *approved form, of that fact.

Restriction on re-entry

(3) If you *choose* to stop being an *STS taxpayer, you cannot again become an STS taxpayer until at least 5 years after the income year that you left the STS.

Note: If you stop being an STS taxpayer because of increased turnover or because of the value of your depreciating assets, you can become an STS taxpayer for an income year again as soon as you are eligible.

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

Chapter 4—The Dictionary

Part 4-5—Dictionary definitions

Division 960—General

960-50 Non-cash benefits

(1) The table sets out what is a ***non-cash benefit*** that an entity ***gives*** to another entity, and that the other entity ***gets*** from the first entity.

Non-cash benefits

Item	In this case:	The *non-cash benefit* is:
1	The first entity provides to the other entity an asset or services in any form except *money	the asset or services
2	The first entity starts to have a liability to the other entity	the liability
3	There is an *increase in a liability that the first entity has to the other entity	the increase
4	A liability that the other entity has to the first entity *decreases or ends (otherwise than by the other entity providing economic benefits pursuant to the liability)	the decrease or ending

Constructive giving and getting of non-cash benefits

(2) If a *non-cash benefit is applied or dealt with on behalf of an entity, or as an entity directs, the benefit is taken to be ***given*** to the entity, and the entity is taken to ***get*** the benefit. (This does not affect the treatment of another entity to which the benefit is given, or that gets the benefit, as mentioned in subsection (1).)

> *Work is continuing on how to analyse correctly tri-partite non-cash transactions, including the kind of case that subsection (2) contemplates.*

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

> *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.*

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.

artwork means:
- (a) a painting, sculpture, drawing, engraving or photograph; or
- (b) a reproduction of such a thing; or
- (c) property of a similar description or use.

assessment has the meaning given by [equivalent of 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 [equivalent of section 318 of the *Income Tax Assessment Act 1936*].

Australian resident means [to be defined based on the meaning in the *Income Tax Assessment Act 1936*].

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

base value:

(a) ***base value*** of a *depreciating asset has the meaning given by subsection 40-35(2); and

(b) ***base value*** of a *depreciating liability has the meaning given by subsection 40-50(2); and

(c) ***base value*** of a *general STS pool or *long life STS pool has the meaning given by section 328-187.

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

C

carry forward investment asset loss has the meaning given by section 100-75.

carry forward investment asset loss from high-cost private-use collectables has the meaning given by section 12A-155.

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

collectable has the meaning given by section 12A-6.

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 of an asset has the meaning given by Subdivision 9-B.

cost of extinguishing a liability has the meaning given by Subdivision 9-E.

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

cost base of an *investment asset means the cost base of the asset as a CGT asset, worked out under Subdivision 110-A of the *Income Tax Assessment Act 1997*.

D

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

decline in tax value:

(a) ***decline in tax value*** of a *depreciating asset has the meaning given by sections 40-40 and 40-65 to 40-75; and
(b) ***decline in tax value*** of a *depreciating liability has the meaning given by section 40-55; and
(c) ***decline in tax value*** of a *general STS pool or *long life STS pool has the meaning given by section 328-190.

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.

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

discountable gain has the meaning given by Subdivision 100-E.

discount percentage for an amount of a *discountable gain has the meaning given by section 100-80.

downward adjustment has the meaning given by section 23-10 and the provisions listed in the table in section 23-20.

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

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

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 9-20; and

(b) ***first element*** of the *proceeds of incurring a liability has the meaning given by section 9-75.

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

G

gain reduction amount: the table lists provisions under which a ***gain reduction amount*** arises for an asset that you hold. The gain reduction amount continues while you hold the asset.[72]

Note: When you cease to hold the asset, the gain reduction amount gives rise to a downward adjustment under item 20 or 25 of the table in section 23-10.

[72] If the amount can be modified, list the provisions under which this can happen.

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

Gain reduction amounts

Item	In this case:	See:
1	You hold an investment asset at the start of the [transition year] and, immediately before that time: (a) you held the asset; and (b) its *cost base *including* indexation exceeded its *cost base worked out *without* indexation. A gain reduction amount arises equal to the excess, but only gives rise to a *downward adjustment if you so choose.	Section 100-65 of the *Income Tax (Transitional Provisions Act)*
2		
3		

get a *non-cash benefit has the meaning given by section 960-50.

general STS pool has the meaning given by section 328-185.

give a *non-cash benefit has the meaning given by section 960-50.

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.

high-cost private-use collectable has the meaning given by section 12A-6A.

hold an asset has the meaning given by sections 6-20, 6-21, 6-22 and 328-185.

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

I

income tax means income tax imposed by any of these:

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

(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 [equivalent of 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.

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.

interest in a *collectable has the meaning given by subsection 12A-6(2).

investment asset has the meaning given by section 100-35.

investment asset event has the meaning given by section 100-25.

investment asset gain has the meaning given by section 100-45.

investment asset loss has the meaning given by section 100-45.

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

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.

long life STS pool has the meaning given by section 328-185.

loss reduction amount: the table lists provisions under which a ***loss reduction amount*** arises for an asset that you hold. The loss reduction amount continues while you hold the asset.[73]

Note: When you cease to hold the asset, the loss reduction amount gives rise to an upward adjustment under item 30 or 35 of the table in section 23-10.

[73] If the amount can be modified, list the provisions under which this can happen.

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

Loss reduction amounts

Item	In this case:	See:
1	You hold an *investment asset at the start of the [transition year] and, immediately before that time: (a) you held the asset; and (b) its *cost base exceeded its *reduced cost base. A loss reduction amount arises equals the excess.	Section 100-65 of the *Income Tax (Transitional Provisions Act)*
2		
3		

low-cost asset has the meaning given by section 328-180.

luxury car [to be defined based on the meaning in Division 42A in Schedule 2E to the *Income Tax Assessment Act 1936*].

M

market value:

(a) the ***market value*** of 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 money in hand.

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 960-50.

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

non-dividend payment for shares event has the meaning given by section 100-85.

O

opening tax value of an asset or liability for an income year has the meaning given by section 5-70. For the [transition year], the ***opening tax value*** is worked out under section 5-70 of the *Income Tax (Transitional Provisions) Act*.

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.[74]

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 section 5-65.

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

person includes a company.

pre-CGT asset has the meaning given by section 149-10.

private asset has the meaning given by sections 12-20 and 12A-10.

private liability has the meaning given by section 12-60.

private or domestic nature has the additional meaning given by sections 12-10A, 12-11A, 12-63 and 12-150.

private or domestic purposes has the additional meaning given by section 12-25 and 12-150.

private percentage:

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

(a) for a *depreciating asset, has the meaning given by section 12-100; and

(b) for a *depreciating liability, has the meaning given by section 12-120.

proceeds of realising an asset has the meaning given by Subdivision 9-C.

proceeds of incurring a liability has the meaning given by Subdivision 9-D.

R

reasonably attributable: section 9-120 sets out rules affecting how to work out how much of an amount is ***reasonably attributable*** to something (for example, an asset or liability).

receive has a meaning affected by section 5-65.

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

reduced cost base of an *investment asset means the cost base of the asset as a CGT asset, worked out under Subdivision 110-B of the *Income Tax Assessment Act 1997*.

remaining effective life has the meaning given by section 40-75.

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

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

S

second element:

(a) ***second element*** of the *cost of an asset has the meaning given by section 9-20; and

(b) ***second element*** of the *proceeds of incurring a liability has the meaning given by section 9-75.

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.

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

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

STS affiliate has the meaning given by subsections 328-380(8) and (9).

STS average turnover has the meaning given by section 328-370.

STS depreciating asset has the meaning given by section 328-175.

STS group turnover has the meaning given by section 328-375.

STS taxpayer has the meaning given by sections 328-435 and 328-440.

T

tax means:

(a) income tax imposed by the *Income Tax Act 1986*, as assessed under this Act; or

(b) income tax imposed as such by any other Act, as assessed under this Act.

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

taxable income adjustment:

(a) your ***taxable income adjustment*** for an income year is worked out under section 5-90; and

(b) a ***taxable income adjustment*** is a *downward adjustment or an *upward adjustment.

tax offset has the meaning given by section 5-10.

tax value of an asset or liability at a particular time has the meaning given by Divisions 6 and 7. However, the ***tax value*** at the start of the [transition year] is worked out under section 5-70 of the *Income Tax (Transitional Provisions) Act*.

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

trading stock means [*to be defined*].

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

trust capital distribution event has the meaning given by section 100-95.

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

upward adjustment has the meaning given by section 23-10 and the provisions listed in the table in section 23-20.

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.

Income Tax (Transitional Provisions) Act

5-70 Opening tax values for the [transition year]

[75] *Assets*

(1) The ***opening tax value*** of an asset that:

(a) you hold at the start of the [transition year]; and

(b) you held immediately before that time;

is the asset's tax value at that time. That ***tax value*** is worked out under the table.

Tax value of an asset at the start of the [transition year]

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	[to be drafted]
3	A depreciating asset (see Note 2)	[to be drafted]
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

[75] Consider the interactions between this section and the sections in the core rules about tax value. What about provisions in the TVM law that refer to cost? Related questions arise for liabilities.

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

Tax value of an asset at the start of the [transition year]

Item	For this kind of asset:	The tax value at that time is:
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)	[to be drafted]
8	Goodwill	[to be drafted]
8A	A share in a company or an [interest in a trust]	[to be drafted]
9	Any other asset that you hold	The cost base of the asset immediately before that time, worked out *without* indexation

Note: For an investment asset covered by this subsection:

- a gain reduction amount arises if, immediately before the start of the [transition year], the asset's cost base *including* indexation exceeded its cost base worked out *without* indexation; or
- a loss reduction amount arises if, immediately before that time, the asset's cost base exceeded its reduced cost base.

See section 100-65.

Liabilities

(2) The ***opening tax value*** of a liability that:

(a) you have at the start of the [transition income year]; and

(b) you had immediately before that time;

is the liability's tax value at that time. That ***tax value*** is worked out under the table.

*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:**
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	[to be drafted]
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.*]	[to be drafted]
8	A financial liability (except one covered by another item in this table)	The amount worked out under Division 45
9	Any other liability	[to be drafted]

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

100-65 Transitional gain reduction amount or loss reduction amount for an investment asset

Indexation of cost base generates gain reduction amount

(1) A ***gain reduction amount*** arises at the start of the [transition year] for an investment asset that you hold at that time if, immediately before that time:

(a) you held the asset; and

(b) its cost base *including* indexation exceeded its cost base worked out *without* indexation.

The gain reduction amount equals the excess.

(2) To the extent that a gain reduction amount arises under subsection (1) of this section, it gives rise to a downward adjustment under item 20 of the table in section 23-10 of the *Income Tax Assessment Act* only if you so choose. In that case, your investment asset gain from ceasing to hold the asset is *not* a discountable gain.

Note: This means you must choose between:

- the decreasing adjustment under item 20 (to replicate the effect of indexation); and
- a downward adjustment under section 100-75 of the *Income Tax Assessment Act* based on the investment asset discount.

Reduced cost base generates loss reduction amount

(3) A ***loss reduction amount*** arises at the start of the [transition year] for an investment asset that you hold at that time if, immediately before that time:

(a) you held the asset; and

(b) its cost base exceeded its reduced cost base.

The loss reduction amount equals the excess.

Note: When you cease to hold the asset, the loss reduction amount gives rise to an upward adjustment under item 30 or 35 of the table in section 23-10 of the *Income Tax Assessment Act*.

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

1 **Do *not* delete the above section break**

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