

# EXPOSURE DRAFT

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (01/10/2008)
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## **Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008**

**No.     , 2008**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**

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1     **A Bill for an Act to amend the law relating to**  
2     **taxation, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Tax Laws Amendment (Taxation of*  
6                     *Financial Arrangements) Act 2008.*

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 21	The day on which this Act receives the Royal Assent.	
3. Schedule 1, item 22	1 July 2003.	1 July 2003
4. Schedule 1, items 23 to 103	The day on which this Act receives the Royal Assent.	
5. Schedule 1, items 104 and 105	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
6. Schedule 1, item 106	The day on which this Act receives the Royal Assent.	
7. Schedule 1, item 107	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
8. Schedule 1, item 108	The day on which this Act receives the Royal Assent.	
9. Schedule 1, item 109	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
10. Schedule 1, item 110	The day on which this Act receives the Royal Assent.	
11. Schedule 1, item 111	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
12. Schedule 1, items 112 to 115	The day on which this Act receives the Royal Assent.	
13. Schedule 1, item 116	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
14. Schedule 1, items 117 to 121	The day on which this Act receives the Royal Assent.	



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Schedule 1 Amendments

Part 1 Main amendments

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1

## Schedule 1—Amendments

2

3

### Part 1—Main amendments

4

#### *Income Tax Assessment Act 1997*

5

#### **1 Before Division 240**

6

Insert:

7

#### **Division 230—Taxation of financial arrangements**

8

##### **Table of Subdivisions**

9

Guide to Division 230

10

230-A Core rules

11

230-B The accruals/realisation methods

12

230-C Fair value method

13

230-D Foreign exchange retranslation method

14

230-E Hedging financial arrangements method

15

230-F Reliance on financial reports

16

230-G Balancing adjustment on ceasing to have a financial arrangement

17

18

230-H Exceptions

19

230-I Other provisions

20

230-J Additional operation of Division

21

##### **Guide to Division 230**

22

##### **230-1 What this Division is about**

23

This Division is about the tax treatment of gains and losses from your financial arrangements.

24

25

You recognise the gains and losses, as appropriate, over the life of a financial arrangement and ignore distinctions between income and capital unless specific rules apply.

26

27



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Amendments **Schedule 1**  
Main amendments **Part 1**

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1 If it is sufficiently certain that you will make a gain or loss, you use  
2 a compounding accruals method to recognise the gain or loss.  
3 Otherwise you use a realisation method. Instead of either, you may  
4 be able to choose to use a fair value or hedging method or to rely  
5 on your financial reports. You may also be able to choose to  
6 recognise foreign exchange gains and losses using a retranslation  
7 method.

## 8 **230-5 Scope of this Division**

- 9 (1) You have a financial arrangement if you have one or more cash  
10 settlable legal or equitable rights and/or obligations to receive or  
11 provide a financial benefit.
- 12 (2) This Division does not apply to all financial arrangements. The  
13 main exceptions are if:
- 14 (a) you are:
- 15 (i) an individual; or  
16 (ii) an ADI, securitisation vehicle or other financial sector  
17 entity with an aggregated turnover of less than \$20  
18 million; or  
19 (iii) another entity with an aggregated turnover of less than  
20 \$100 million;
- 21 and either:
- 22 (iv) the arrangement is to end not more than 12 months after  
23 you start to have it; or  
24 (v) the arrangement is not a qualifying security; or  
25 (b) the arrangement is a financial arrangement under  
26 section 230-55 (equity interests etc.) and neither a fair value  
27 election, a hedging financial arrangement election nor an  
28 election to rely on financial reports applies to the  
29 arrangement.

30 Note: Section 230-405 provides for the exception referred to in  
31 paragraph (a).

## 32 **Subdivision 230-A—Core rules**

### 33 **Table of sections**

#### 34 **Objects**

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## Schedule 1 Amendments

### Part 1 Main amendments

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1                   230-10   Objects of this Division

2                   **Tax treatment of gains and losses from financial arrangements**

3                   230-15   Gains are assessable and losses deductible

4                   230-20   Gain or loss to be taken into account only once under this Act

5                   230-25   Associated financial benefits to be taken into account only once under this  
6                   Act

7                   230-30   Disregard some gains and losses

8                   **Method to be applied to take account of gain or loss**

9                   230-45   Methods for taking gain or loss into account

10                  **Financial arrangement concept**

11                  230-50   Financial arrangement

12                  230-55   Financial arrangement (equity interest or right or obligation in relation to  
13                  equity interest)

14                  230-60   Rights, obligations and arrangements (grouping and disaggregation rules)

15                  **General rules**

16                  230-65   When financial benefit provided or received under financial arrangement

17                  230-67   Amount of financial benefit relating to more than one financial arrangement

18                  230-70   Amount of financial benefit where waiver

19                  230-75   Apportionment when financial benefit received or right ceases

20                  230-80   Apportionment when financial benefit provided or obligation ceases

21                  230-85   Consistency in working out gains or losses (integrity measure)

22                  230-90   Rights and obligations include contingent rights and obligations

23                  **Objects**

24                  **230-10 Objects of this Division**

25                         The objects of this Division are:

26                            (a) to minimise the extent to which the tax treatment of gains and  
27                                losses from your \*financial arrangements distorts, by  
28                                providing inappropriate impediments and stimulation, your  
29                                trading, financing and investment decisions and your risk  
30                                taking and risk management; and

31                            (b) to do so by aligning more closely the tax and commercial  
32                                recognition of gains and losses from your financial  
33                                arrangements in the following ways:

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Amendments **Schedule 1**  
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- 1 (i) by allocating the gains and losses to income years  
2 throughout the life of your financial arrangements on a  
3 reasonable basis;  
4 (ii) by generally recognising gains and losses on revenue  
5 rather than capital account; and  
6 (c) to appropriately take account of, and minimise, your  
7 compliance costs.

## 8 **Tax treatment of gains and losses from financial arrangements**

### 9 **230-15 Gains are assessable and losses deductible**

#### 10 *Gains*

- 11 (1) Your assessable income includes a gain you make from a \*financial  
12 arrangement.

13 Note: This Division does not apply to gains that are subject to exceptions  
14 under Subdivision 230-H.

#### 15 *Losses*

- 16 (2) You can deduct a loss you make from a \*financial arrangement, but  
17 only to the extent that:

18 (a) you make it in gaining or producing your assessable income;  
19 or

20 (b) you necessarily make it in carrying on a \*business for the  
21 purpose of gaining or producing your assessable income.

22 Note: This Division does not apply to losses that are subject to exceptions  
23 under Subdivision 230-H.

- 24 (3) You can also deduct a loss you make from a \*financial arrangement  
25 if:

26 (a) you are an \*Australian entity; and

27 (b) you make the loss in deriving income from a foreign source;  
28 and

29 (c) the income is \*non-assessable non-exempt income under  
30 section 23AI, 23AJ or 23AK of the *Income Tax Assessment*  
31 *Act 1936*; and

32 (d) the loss is, in whole or in part, a cost in relation to a \*debt  
33 interest you issue that is covered by paragraph 820-40(1)(a).

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## Schedule 1 Amendments

### Part 1 Main amendments

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1                   You can deduct the loss only to the extent to which it is a cost in  
2                   relation to a \*debt interest you issue that is covered by paragraph  
3                   820-40(1)(a).

4                   Note:        This Division does not apply to losses that are subject to exceptions  
5                   under Subdivision 230-H.

- 6                   (4) If the \*financial arrangement is a \*debt interest, the loss is not  
7                   prevented from being deductible for an income year under  
8                   subsection (2) merely because of either or both of the following:  
9                   (a) one or more of the \*financial benefits that are taken into  
10                  account in working out the amount of the loss are \*contingent  
11                  on the economic performance (whether past, current or  
12                  future) of:  
13                  (i) you or a part of your activities; or  
14                  (ii) a \*connected entity of yours or a part of the activities of  
15                  a connected entity of yours;  
16                  (b) one or more of the financial benefits that are taken into  
17                  account in working out the amount of the loss secure a  
18                  permanent or enduring benefit for you or a connected entity  
19                  of yours.

20                  (5) Subject to subsection (6), subsection (4) does not apply to the loss  
21                  to the extent to which the annually compounded internal rate of  
22                  return on the \*debt interest exceeds the \*benchmark rate of return  
23                  for the debt interest increased by 150 basis points.

- 24                  (6) If:  
25                  (a) regulations made for the purposes of subsection 25-85(6)  
26                  provide that a specified number of basis points is to apply for  
27                  the purposes of applying subsection 25-85(5) in particular  
28                  circumstances; and  
29                  (b) those circumstances exist in relation to the \*debt interest;  
30                  subsection (5) applies as if the reference in that subsection to 150  
31                  basis points were a reference to the number of basis points  
32                  specified in the regulations.

33                               *Section does not affect foreign residence rules*

34                  (7) Nothing in this Division affects the operation of the provisions of  
35                  Division 6 that provide for the significance of foreign residence for  
36                  the assessability of income.

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Amendments **Schedule 1**  
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- 1 Note 1: Gains that you make under this Division may be ordinary or statutory  
2 income for the purposes of Division 6.
- 3 Note 2: For the effect of a change of residence during an income year, see  
4 sections 230-429 and 230-430.

5 **230-20 Gain or loss to be taken into account only once under this**  
6 **Act**

7 *Application of section*

- 8 (1) This section applies to the following:
- 9 (a) a gain that is included in your assessable income for an  
10 income year under this Division;
- 11 (b) a loss that is allowable as a deduction to you for an income  
12 year under this Division;
- 13 (c) a gain or a loss that is dealt with in accordance with  
14 subsection 230-270(4) in relation to an income year.

15 *Purpose of this section*

- 16 (2) The purpose of this section is to ensure that your gains and losses,  
17 and \*financial benefits, to which this section applies are taken into  
18 account only once under this Act in working out your taxable  
19 income.

20 *Gain or loss to be taken into account only once*

- 21 (3) A gain or loss to which this section applies is not to be (to any  
22 extent):
- 23 (a) included in your assessable income; or  
24 (b) allowable as a deduction to you; or  
25 (c) dealt with in accordance with subsection 230-270(4);  
26 again under this Division for the same or any other income year.
- 27 (4) A gain or loss to which this section applies is not to be (to any  
28 extent):
- 29 (a) included in your assessable income; or  
30 (b) allowable as a deduction to you;  
31 under any provisions of this Act outside this Division for the same  
32 or any other income year.

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## Schedule 1 Amendments

### Part 1 Main amendments

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1 *Section does not give rise to exempt income*

2 (5) A gain is not to be treated as \*exempt income merely because it is  
3 not included in your assessable income under this section.

#### 4 **230-25 Associated financial benefits to be taken into account only** 5 **once under this Act**

6 *Application of section*

7 (1) This section applies to a \*financial benefit whose amount or value  
8 is taken into account in working out whether you make, or the  
9 amount of, a gain or loss to which paragraph 230-20(1)(a), (b) or  
10 (c) applies.

11 *Associated financial benefit to be taken into account only once*

12 (2) A \*financial benefit to which this section applies is not to be (to  
13 any extent):  
14 (a) included in your assessable income; or  
15 (b) allowable as a deduction to you;  
16 under any provision of this Act outside this Division for the same  
17 or any other income year.

18 *Exception for certain bad debts*

19 (5) If:  
20 (a) a \*financial benefit has been included in your assessable  
21 income under a provision of this Act outside this Division;  
22 and  
23 (b) a bad debt deduction would have been allowed under  
24 section 25-35 in relation to the financial benefit;  
25 subsection (2) does not prevent that bad debt deduction from being  
26 allowed under section 25-35 in relation to the financial benefit as if  
27 the debt were still outstanding.

28 *Section does not give rise to exempt income*

29 (6) A \*financial benefit is not to be treated as \*exempt income merely  
30 because it is not included in your assessable income under this  
31 section.

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Amendments **Schedule 1**  
Main amendments **Part 1**

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## 230-30 Disregard some gains and losses

### *Exempt or non-assessable non-exempt income*

(1A) A gain that you make from a \*financial arrangement is disregarded:

(a) to the extent that it reflects an amount that is treated, or is reasonably expected to be treated, as \*exempt income under a provision of this Act outside this Division; or

(b) to the extent that it reflects an amount that is treated or is reasonably expected to be treated, as \*non-assessable non-exempt income under a provision of this Act outside this Division; or

(c) for a gain that is covered by subsection (1B)—to the extent that the \*franked distribution mentioned in that subsection has a \*franked part.

(1B) This subsection covers a gain that is in the form of:

(a) a \*franked distribution (including a franked distribution that \*flows indirectly to you); or

(b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).

(1) A loss you make from a \*financial arrangement is disregarded to the extent that you make it in gaining or producing your \*exempt income or your \*non-assessable non-exempt income.

(2) Subsection (1) does not prevent you from deducting a loss under subsection 230-15(3).

### *Gain or loss of private or domestic nature*

(3) A gain or loss you make from a \*financial arrangement is disregarded:

(a) if a \*borrowing is made to you, or credit is provided to you, under the arrangement and you use some or all of the funds borrowed or the credit provided for a private or domestic purpose—to the extent that you use the funds raised or the credit provided for a private or domestic purpose; or

(b) if you are an individual, the arrangement is a \*derivative financial arrangement and the arrangement is held, wholly or in part, for a private or domestic purpose—to the extent that

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## Schedule 1 Amendments

### Part 1 Main amendments

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1 the arrangement is held or used for a private or domestic  
2 purpose.

### 3 **Method to be applied to take account of gain or loss**

#### 4 **230-45 Methods for taking gain or loss into account**

##### 5 *Methods available*

- 6 (1) The methods that can be applied to take account of a gain or loss  
7 you make from a \*financial arrangement are:
- 8 (a) the accruals and realisation methods provided for in  
9 Subdivision 230-B; or
  - 10 (b) the fair value method provided for in Subdivision 230-C; or
  - 11 (c) the foreign exchange retranslation method provided for in  
12 Subdivision 230-D; or
  - 13 (d) the hedging financial arrangement method provided for in  
14 Subdivision 230-E; or
  - 15 (e) the method of relying on your financial reports provided for  
16 in Subdivision 230-F; or
  - 17 (f) a balancing adjustment provided for in Subdivision 230-G.

18 Note: The methods referred to in paragraphs (b) to (e) only apply if you  
19 make an election under the relevant Subdivision and you must meet  
20 certain requirements before you can make such an election.

21 (1A) A gain or loss is not taken into account under any of the methods  
22 referred to in paragraphs (1)(a), (b), (c) and (e) to the extent to  
23 which it is taken into account under the method referred to in  
24 paragraph (1)(f) (balancing adjustment).

25 (1B) A gain or loss is not taken into account under the method referred  
26 to in paragraph (1)(f) (balancing adjustment) to the extent to which  
27 it is taken into account under the method referred to in  
28 paragraph (1)(d) (hedging financial arrangement method).

29 Note: The hedging financial arrangement method may take some account of  
30 the gain or loss by reference to the balancing adjustment method (see  
31 subsection 230-260(4)).

##### 32 *Elections override accruals and realisation methods*

33 (2) Subdivision 230-B (accruals and realisation method) does not  
34 apply to a gain or loss you make from a \*financial arrangement:

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Amendments **Schedule 1**  
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- 1 (a) if Subdivision 230-C (fair value method) applies to the  
2 arrangement; or  
3 (b) to the extent that Subdivision 230-D (foreign exchange  
4 retranslation method) applies to the gain or loss; or  
5 (c) to the extent that Subdivision 230-E (hedging financial  
6 arrangements method) applies to the arrangement; or  
7 (d) if Subdivision 230-F (method of relying on financial reports)  
8 applies to the arrangement; or  
9 (e) if the arrangement is a financial arrangement under  
10 section 230-55 (equity interests etc.).

11 *Priorities among election methods*

- 12 (3) Subdivision 230-C (fair value method) does not apply to a gain or  
13 loss you make from a \*financial arrangement:  
14 (a) to the extent that Subdivision 230-E (hedging financial  
15 arrangements method) applies to the arrangement; or  
16 (b) if Subdivision 230-F (method of relying on financial reports)  
17 applies to the arrangement.
- 18 (4) Subdivision 230-D (foreign exchange retranslation method) does  
19 not apply to a gain or loss you make from a \*financial arrangement:  
20 (a) if Subdivision 230-C (fair value method) applies to the  
21 arrangement; or  
22 (b) to the extent that Subdivision 230-E (hedging financial  
23 arrangements method) applies to the arrangement; or  
24 (c) if Subdivision 230-F (method of relying on financial reports)  
25 applies to the arrangement.
- 26 (5) Subdivision 230-F (method of relying on financial reports) does  
27 not apply to a gain or loss you make from a \*financial arrangement  
28 to the extent that Subdivision 230-E (hedging financial  
29 arrangements method) applies to the arrangement.

30 **Financial arrangement concept**

31 **230-50 Financial arrangement**

- 32 (1) You have a *financial arrangement* if you have, under an  
33 \*arrangement:

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## Schedule 1 Amendments

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- 1 (a) a \*cash settlable legal or equitable right to receive a \*financial  
2 benefit; or  
3 (b) a cash settlable legal or equitable obligation to provide a  
4 financial benefit; or  
5 (c) a combination of one or more such rights and/or one or more  
6 such obligations;  
7 unless:  
8 (d) you also have under the arrangement one or more legal or  
9 equitable rights to receive something and/or one or more  
10 legal or equitable obligations to provide something; and  
11 (e) for one or more of the rights and/or obligations covered by  
12 paragraph (d):  
13 (i) the thing that you have the right to receive, or the  
14 obligation to provide, is not a financial benefit; or  
15 (ii) the right or obligation is not cash settlable; and  
16 (f) the one or more rights and/or obligations covered by  
17 paragraph (e) are not insignificant in comparison with the  
18 right, obligation or combination covered by paragraph (a), (b)  
19 or (c).

20 The right, obligation or combination covered by paragraph (a), (b)  
21 or (c) constitutes the financial arrangement.

22 Note 1: Whether your rights and/or obligations under an arrangement  
23 constitute a financial arrangement can change over time depending on  
24 changes either to the terms of the arrangement or external  
25 circumstances (such as particular rights or obligations under the  
26 arrangement being satisfied by the parties). For example, a contract  
27 may provide for the transfer of a boat in 6 months time and payment  
28 of the contract price at the end of 2 years. Until the boat is delivered,  
29 there is no financial arrangement because of the operation of  
30 paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a  
31 financial arrangement because those paragraphs are no longer  
32 applicable.

33 Note 2: The operative provisions of this Division do not apply to all financial  
34 arrangements, and only apply partially to some: see the exceptions in  
35 Subdivision 230-H.

36 Note 3: There are some rules in this Division that tell you what happens if an  
37 arrangement ceases to be a financial arrangement (see  
38 Subdivision 230-G and section 230-440).

- 39 (2) A right you have to receive, or an obligation you have to provide, a  
40 \*financial benefit is *cash settlable* if, and only if:  
41 (a) the benefit is money or a \*money equivalent; or

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- 1 (b) in the case of a right—you intend to satisfy or settle it by  
2 receiving money or a money equivalent or by starting to  
3 have, or ceasing to have, another \*financial arrangement; or  
4 (c) in the case of an obligation—you intend to satisfy or settle it  
5 by providing money or a money equivalent or by starting to  
6 have, or ceasing to have, another financial arrangement; or  
7 (d) you have a practice of satisfying or settling similar rights or  
8 obligations as mentioned in paragraph (b) or (c) (whether or  
9 not you intend to satisfy or settle the right or obligation in  
10 that way); or  
11 (e) you deal with the right or obligation, or with similar rights or  
12 obligations, in order to generate a profit from short-term  
13 fluctuations in price, from a dealer’s margin, or from both; or  
14 (f) none of paragraphs (a) to (e) applies but you satisfy  
15 subsection (3); or  
16 (g) you are able to settle the right or obligation as mentioned in  
17 paragraph (b) or (c) (whether or not you intend to satisfy or  
18 settle the right or obligation in that way) and you do not have,  
19 as your sole or dominant purpose for entering into the  
20 arrangement under which you are to receive or provide the  
21 financial benefit, the purpose of receiving or delivering the  
22 financial benefit as part of your expected purchase, sale or  
23 usage requirements.

24 A reference in paragraph (b) or (c) to a financial arrangement does  
25 not include a reference to something that is a financial arrangement  
26 under section 230-55.

27 Note: Examples of dealing of the kind covered by paragraph (e) are:

- 28 (a) dealing with the right or obligation, or similar rights or  
29 obligations, on a frequent basis, a short-term basis or on a  
30 frequent and short-term basis; and  
31 (b) acquiring the right or obligation, or similar rights or obligations,  
32 and managing the resulting risk by entering into offsetting  
33 arrangements that provide a profit margin.

- 34 (3) You satisfy this subsection if:  
35 (a) the \*financial benefit is readily convertible into money or a  
36 \*money equivalent; and  
37 (b) there is a market for the financial benefit that has a high  
38 degree of liquidity; and  
39 (c) either:
-

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- 1 (i) the amount of the money or money equivalent referred  
2 to in paragraph (a) is not subject to a substantial risk of  
3 change in value; or
- 4 (ii) your purpose, or one of your purposes, for entering into  
5 the arrangement under which you are to receive or  
6 provide the financial benefit, is to receive or deliver the  
7 financial benefit so that it may be converted or  
8 liquidated into money or a money equivalent (other than  
9 in the ordinary course of business).

#### 10 **230-55 Financial arrangement (equity interest or right or obligation** 11 **in relation to equity interest)**

- 12 (1) You also have a *financial arrangement* if you have an \*equity  
13 interest. The equity interest constitutes the financial arrangement.
- 14 (2) You also have a *financial arrangement* if:
- 15 (a) you have, under an \*arrangement:
- 16 (i) a legal or equitable right to receive something that is a  
17 financial arrangement under this section; or
- 18 (ii) a legal or equitable obligation to provide something that  
19 is a financial arrangement under this section; or
- 20 (iii) a combination of one or more such rights and/or  
21 obligations; and
- 22 (b) the right, obligation or combination does not constitute, or  
23 form part of, a financial arrangement under subsection  
24 230-50(1).

25 The right, obligation or combination referred to in paragraph (a)  
26 constitutes the financial arrangement.

27 Note 1: Paragraph 230-45(2)(e) prevents the accruals method or the realisation  
28 method being applied to something that is a financial arrangement  
29 under this section.

30 Note 2: Subsection 230-230(1) prevents the retranslation method being  
31 applied to something that is a financial arrangement under this section.

32 Note 3: Subsection 230-285(1) prevents the hedging method being applied to  
33 something that is a financial arrangement under this section.

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1     **230-60 Rights, obligations and arrangements (grouping and**  
2             **disaggregation rules)**

3             *Single right or obligation or multiple rights or obligations?*

- 4             (1) If you have a right to receive 2 or more \*financial benefits, you are  
5             taken, for the purposes of this Division, to have a separate right to  
6             receive each of those financial benefits.
- 7             (2) If you have an obligation to provide 2 or more \*financial benefits,  
8             you are taken, for the purposes of this Division, to have a separate  
9             obligation to provide each of those financial benefits.
- 10            (3) Subsections (1) and (2) apply for the avoidance of doubt.

11            *Matters relevant to determining what rights and/or obligations*  
12            *constitute particular arrangements*

- 13            (4) For the purposes of this Division, whether a number of rights  
14            and/or obligations are themselves an \*arrangement or are 2 or more  
15            separate arrangements is a question of fact and degree that you  
16            determine having regard to the following:
- 17            (a) the nature of the rights and/or obligations;
  - 18            (b) their terms and conditions (including those relating to any  
19            payment or other consideration for them);
  - 20            (c) the circumstances surrounding their creation and their  
21            proposed exercise or performance (including what can  
22            reasonably be seen as the purposes of one or more of the  
23            entities involved);
  - 24            (d) whether they can be dealt with separately or must be dealt  
25            with together;
  - 26            (e) normal commercial understandings and practices in relation  
27            to them (including whether they are regarded commercially  
28            as separate things or as a group or series that forms a whole);
  - 29            (f) the objects of this Division.

30            In applying this subsection, have regard to the matters referred to  
31            in paragraphs (a) to (f) both in relation to the rights and/or  
32            obligations separately and in relation to the rights and/or  
33            obligations in combination with each other.

34            Example 1: Your rights and obligations under a typical convertible note, including  
35            the right to convert the note into a share or shares, would constitute  
36            one arrangement.

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- 1 Example 2: Your rights and obligations under a typical price-linked or  
2 index-linked bond would constitute one arrangement.
- 3 Note 1: If you raised funds by means of a contract that you would not have  
4 entered into without entering into another contract, and neither  
5 contract could be assigned to a third party without the other also being  
6 assigned, this would tend to indicate that your rights and obligations  
7 under the 2 contracts together constitute one arrangement.
- 8 Note 2: If the commercial effect of your individual rights and/or obligations in  
9 a group or series cannot be understood without reference to the group  
10 or series as a whole, this would tend to indicate that all of your rights  
11 and/or obligations in the group or series together constitute one  
12 arrangement.

## 13 General rules

### 14 **230-65 When financial benefit provided or received under financial** 15 **arrangement**

#### 16 *Financial benefit provided under financial arrangement*

- 17 (1) You are taken, for the purposes of this Division, to have (or to have  
18 had) an obligation to provide a \*financial benefit under a \*financial  
19 arrangement if:
- 20 (a) you have (or had) an obligation to provide the financial  
21 benefit in relation to the arrangement; and
  - 22 (b) the financial benefit would not otherwise be treated as one  
23 that you have (or had) an obligation to provide under the  
24 arrangement; and
  - 25 (c) the financial benefit plays an integral role in determining:
    - 26 (i) whether you make a gain or loss from the arrangement;  
27 or
    - 28 (ii) the amount of such a gain or loss.

29 Paragraph (a) applies even if the entity to which you provide the  
30 financial benefit is not a party to the arrangement.

31 Note: This means that the financial benefits you provide to acquire the  
32 financial arrangement (whether to the issuer, a previous holder or a  
33 third party) are taken to be financial benefits you provide under the  
34 arrangement. The financial benefits you provide may include, for  
35 example, fees paid or the forgoing of rights to receive a financial  
36 benefit.

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## *Financial benefit received under financial arrangement*

1  
2 (2) You are taken, for the purposes of this Division, to have (or to have  
3 had) a right to receive a \*financial benefit under a \*financial  
4 arrangement if:

5 (a) you have (or had) a right to receive the financial benefit in  
6 relation to the arrangement; and

7 (b) the financial benefit would not otherwise be treated as one  
8 that you have (or had) a right to receive under the  
9 arrangement; and

10 (c) the financial benefit plays an integral role in determining:

11 (i) whether you make a gain or loss from the arrangement;  
12 or

13 (ii) the amount of such a gain or loss.

14 Paragraph (a) applies even if the entity that provides the financial  
15 benefit is not a party to the arrangement.

16 Note: The financial benefits you receive may include, for example, the  
17 waiving of an obligation you have to provide a financial benefit.

## **230-67 Amount of financial benefit relating to more than one financial arrangement**

18  
19  
20 (1) This section applies if a \*financial benefit plays the integral role  
21 mentioned in paragraph 230-65(1)(c) or (2)(c) in relation to more  
22 than one \*financial arrangement.

23 (2) For the purposes of this Division, determine the amount of the  
24 financial benefit that plays that integral role in relation to a  
25 particular \*financial arrangement by apportioning the actual  
26 amount of the financial benefit, on a reasonable basis, between the  
27 financial arrangements mentioned in subsection (1).

## **230-70 Amount of financial benefit where waiver**

28  
29 If:

30 (a) providing a \*financial benefit takes the form of waiving a  
31 right to receive a financial benefit in the future; or

32 (b) receiving a financial benefit takes the form of having an  
33 obligation to provide a financial benefit in the future waived;

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1 the amount of the financial benefit is taken, for the purposes of this  
2 Division, to be its \*market value at the time it is waived (and not its  
3 nominal value).

#### 4 **230-75 Apportionment when financial benefit received or right** 5 **ceases**

- 6 (1) Apply subsection (2) in working out whether you make, or will  
7 make, a gain or loss (and the amount of the gain or loss) when:  
8 (a) you receive a particular \*financial benefit under a \*financial  
9 arrangement; or  
10 (b) one of your rights under a financial arrangement \*ceases.  
11 The gain or loss is to be calculated in nominal (and not \*present  
12 value) terms.
- 13 (2) You must have regard to the extent to which the \*financial benefits  
14 that you have provided, or are to provide, under the \*financial  
15 arrangement are reasonably attributable to the benefit or right  
16 referred to in paragraph (1)(a) or (b).
- 17 (3) Despite subsection (2), no \*financial benefit that you have  
18 provided, or are to provide, under the \*financial arrangement is to  
19 be attributed to the benefit or right referred to in paragraph (1)(a)  
20 or (b) if:  
21 (a) you are working out the amount of a gain or loss for the  
22 purposes of Subdivision 230-B; and  
23 (b) the gain or loss is not an overall gain or loss from the  
24 arrangement (within the meaning of that Subdivision) at the  
25 time when you start to have the arrangement; and  
26 (c) the benefit or right referred to in paragraph (1)(a) or (b) is an  
27 amount that represents, or is a right to an amount that  
28 represents:  
29 (i) interest; or  
30 (ia) a \*return paid or provided on a \*debt interest; or  
31 (ii) something that is in the nature of interest; or  
32 (iii) something that could reasonably be regarded as being a  
33 substitute for interest; or  
34 (iv) something prescribed by the regulations for the  
35 purposes of this paragraph.

36 Note 1: An example of something in the nature of interest is a discount on a  
37 security.

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1 Note 2: An example of something that could reasonably be regarded as being a  
2 substitute for interest is a lump sum payment received instead of  
3 payments of interest.

- 4 (4) Any attribution made under subsection (2) must reflect appropriate  
5 and commercially accepted valuation principles that properly take  
6 into account:
- 7 (a) the nature of the rights and obligations under the \*financial  
8 arrangement; and
  - 9 (b) the risks associated with each \*financial benefit, right and  
10 obligation under the arrangement; and
  - 11 (c) the time value of money.

## 12 **230-80 Apportionment when financial benefit provided or obligation** 13 **ceases**

- 14 (1) Apply subsection (2) in working out whether you make, or will  
15 make, a gain or loss (and the amount of the gain or loss) when:
- 16 (a) you provide a particular \*financial benefit under the  
17 \*financial arrangement; or
  - 18 (b) one of your obligations under a financial arrangement  
19 \*ceases.

20 The gain or loss is to be calculated in nominal (and not \*present  
21 value) terms.

- 22 (2) You must have regard to the extent to which the \*financial benefits  
23 that you have received, or are to receive, under the \*financial  
24 arrangement are reasonably attributable to the benefit or obligation  
25 referred to in paragraph (1)(a) or (b).
- 26 (3) Despite subsection (2), no \*financial benefit that you have  
27 received, or are to receive, under the \*financial arrangement is to  
28 be attributed to the benefit or obligation referred to in  
29 paragraph (1)(a) or (b) if:
- 30 (a) you are working out the amount of a gain or loss for the  
31 purposes of Subdivision 230-B; and
  - 32 (b) the gain or loss is not an overall gain or loss from the  
33 arrangement (within the meaning of that Subdivision) at the  
34 time when you start to have the arrangement; and
  - 35 (c) the benefit or obligation referred to in paragraph (1)(a) or (b)  
36 is an amount that represents, or is an obligation to provide an  
37 amount that represents:

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- 1 (i) interest; or  
2 (ia) a \*return paid or provided on a \*debt interest; or  
3 (ii) something that is in the nature of interest; or  
4 (iii) something that could reasonably be regarded as being a  
5 substitute for interest; or  
6 (iv) something prescribed by the regulations for the  
7 purposes of this paragraph.
- 8 Note 1: An example of something in the nature of interest is a discount on a  
9 security.
- 10 Note 2: An example of something that could reasonably be regarded as being a  
11 substitute for interest is a lump sum payment made instead of  
12 payments of interest.
- 13 (4) Any attribution made under subsection (2) must reflect appropriate  
14 and commercially accepted valuation principles that properly take  
15 into account:
- 16 (a) the nature of the rights and obligations under the \*financial  
17 arrangement; and  
18 (b) the risks associated with each \*financial benefit, right and  
19 obligation under the arrangement; and  
20 (c) the time value of money.

## 21 **230-85 Consistency in working out gains or losses (integrity** 22 **measure)**

### 23 *Object of section*

- 24 (1) The object of this section is to stop you obtaining an inappropriate  
25 tax benefit from not working out your gains and losses in a  
26 consistent manner.

### 27 *Consistent treatment for particular financial arrangement*

- 28 (2) If:  
29 (a) this Division provides that a particular method applies to  
30 gains or losses you make from a \*financial arrangement; and  
31 (b) that method allows you to choose the particular manner in  
32 which you apply that method;  
33 you must use that manner consistently for the arrangement for all  
34 income years.

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1                    *Consistent treatment for financial arrangements of essentially the*  
2                    *same nature*

3                    (3) If:

4                    (a) this Division provides that a particular method applies to  
5                    gains or losses you make from 2 or more \*financial  
6                    arrangements; and

7                    (b) that method allows you to choose the particular manner in  
8                    which you apply that method;

9                    you must use that same manner consistently for all of those  
10                    financial arrangements that are essentially of the same nature.

## 11                    **230-90 Rights and obligations include contingent rights and** 12                    **obligations**

13                    To avoid doubt:

14                    (a) a right is treated as a right for the purposes of this Division  
15                    even it is subject to a contingency; and

16                    (b) an obligation is treated as an obligation for the purposes of  
17                    this Division even if it is subject to a contingency.

## 18                    **Subdivision 230-B—The accruals/realisation methods**

### 19                    **Table of sections**

#### 20                    **Guide to Subdivision 230-B**

21                    230-95    What this Subdivision is about

#### 22                    **Objects of Subdivision**

23                    230-100   Objects of this Subdivision

#### 24                    **When accruals method or realisation method applies**

25                    230-105   When accruals method or realisation method applies

26                    230-110   Sufficiently certain overall gain or loss

27                    230-115   Sufficiently certain gain or loss from particular event

28                    230-120   Sufficiently certain financial benefits

#### 29                    **The accruals method**

30                    230-125   Overview of the accruals method

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- 1                   230-130   Applying accruals method to work out period over which gain or loss is to  
2   be spread  
3                   230-135   How gain or loss is spread  
4                   230-137   Election for portfolio treatment of fees  
5                   230-138   Portfolio treatment of fees  
6                   230-140   Allocating gain or loss to income years  
7                   230-145   Running balancing adjustments

8                   **Realisation method**

- 9                   230-150   Realisation method

10                  **Reassessment and re-estimation**

- 11                  230-155   Reassessment  
12                  230-160   Re-estimation  
13                  230-165   Balancing adjustment if rate of return maintained on re-estimation  
14                  230-170   Re-estimation if balancing adjustment on partial disposal

15                  **Guide to Subdivision 230-B**

16                  **230-95 What this Subdivision is about**

17   This Subdivision applies the accruals method to determine the  
18   amount and timing of gains and losses from a financial  
19   arrangement if they are sufficiently certain for such accrual to be  
20   done.

21   This Subdivision applies the realisation method to determine the  
22   amount and timing of gains and losses if they are not sufficiently  
23   certain to be dealt with under the accruals method.

24   If the accruals method is applied to a gain or loss on the basis of an  
25   estimate of a financial benefit and the benefit when received or  
26   provided is more or less than the estimate, a balancing adjustment  
27   is made to correct for the underestimate or overestimate.

28   If the accruals method is being applied to gains and losses from the  
29   arrangement and there is a material change to the arrangement, or  
30   the circumstances in which it operates, a reassessment is made of  
31   whether the accruals method or the realisation method should  
32   apply to gains and losses from the arrangement.

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1 A change in circumstances may also cause a re-estimation of gains  
2 and losses that the accruals method is being applied to.

## 3 **Objects of Subdivision**

### 4 **230-100 Objects of this Subdivision**

5 The objects of this Subdivision are:

- 6 (a) to properly recognise gains and losses from \*financial  
7 arrangements by allocating them to appropriate periods of  
8 time; and  
9 (b) to reduce compliance costs by reflecting commercial  
10 accounting concepts where appropriate; and  
11 (c) to minimise tax deferral.

## 12 **When accruals method or realisation method applies**

### 13 **230-105 When accruals method or realisation method applies**

14 *When accruals method applies and when realisation method*  
15 *applies*

- 16 (1) This section tells you when to apply the accruals method and when  
17 to apply the realisation method if this Subdivision applies to gains  
18 and losses from a \*financial arrangement.

19 *Accruals method—sufficiently certain overall gain or loss at start*  
20 *time*

- 21 (2) The accruals method provided for in this Subdivision applies to a  
22 gain or loss you make from a \*financial arrangement if:  
23 (a) the gain or loss is an overall gain or loss from the  
24 arrangement; and  
25 (b) the gain or loss is sufficiently certain at the time when you  
26 start to have the arrangement.

27 Note: Subsection 230-110(1) tells you when you have a sufficiently certain  
28 overall gain or loss.

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- 1                                    *Accruals method—particular sufficiently certain gain or loss*
- 2                    (3) The accruals method provided for in this Subdivision also applies
- 3                    to a gain or loss you make from a \*financial arrangement if:
- 4                    (a) the gain or loss arises from a \*financial benefit that you are to
- 5                    receive or are to provide under the arrangement; and
- 6                    (b) the gain or loss:
- 7                    (i) is sufficiently certain at the time when you start to have
- 8                    the arrangement and before you are to receive or
- 9                    provide the benefit; or
- 10                    (ii) becomes sufficiently certain after the time when you
- 11                    start to have the arrangement and before you are to
- 12                    receive or provide the benefit; and
- 13                    (c) the benefit has not already been taken into account in
- 14                    applying:
- 15                    (i) the accrual method provided for in this Subdivision; or
- 16                    (ii) the realisation method provided for in this Subdivision;
- 17                    to another gain or loss from the arrangement.

18                    This subsection has effect subject to subsection (4).

19                    Note:        Subsection 230-115(1) tells you when you have a sufficiently certain

20                    gain or loss at a particular time.

- 21                    (4) Subsection (3) does not apply to a gain or loss that you make from
- 22                    a \*financial arrangement if:
- 23                    (a) you are:
- 24                    (i) an individual; or
- 25                    (ii) an entity (other than an individual) that satisfies
- 26                    subsection 230-405(2) or (3) for the income year in
- 27                    which you start to have the arrangement; and
- 28                    (b) the arrangement is a \*qualifying security; and
- 29                    (c) you have not made an election under subsection 230-405(5).

30                                    *Realisation method—gain or loss not sufficiently certain*

- 31                    (5) The realisation method provided for in this Subdivision applies to a
- 32                    gain or loss that you make from a \*financial arrangement if the
- 33                    accruals method provided for in this Subdivision does not apply to
- 34                    that gain or loss.

35                    Note:        Section 230-150 tells you how to apply the realisation method to the

36                    gain or loss.

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## 230-110 Sufficiently certain overall gain or loss

- (1) You have a sufficiently certain overall gain or loss from a \*financial arrangement at the time when you start to have the arrangement only if it is sufficiently certain at that time that you will make an overall gain or loss from the arrangement of:
- (a) a particular amount; or
  - (b) at least a particular amount.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

Note: Sections 230-75 and 230-80 (about apportionment of financial benefits) only apply in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) when particular events happen. They do not apply in working out, at the time when you start to have a financial arrangement, whether it is sufficiently certain that you will make an overall gain or loss from the arrangement.

- (2) In applying subsection (1), you must:
- (a) assume that you will continue to have the \*financial arrangement for the rest of its life; and
  - (b) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

## 230-115 Sufficiently certain gain or loss from particular event

- (1) You have a sufficiently certain gain or loss from a \*financial arrangement at a particular time if it is sufficiently certain at that time that you will make a gain or loss from the arrangement of:
- (a) a particular amount; or
  - (b) at least a particular amount;
- when one of the following occurs:
- (c) you receive a particular \*financial benefit under the arrangement or one of your rights under the arrangement \*ceases;
  - (d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

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- 1 (2) In applying subsection (1) to work out whether you have a  
2 sufficiently certain gain or loss at a particular time:
- 3 (a) have regard to the extent of the risk that a \*financial benefit  
4 that you are not sufficiently certain to provide or receive  
5 under the arrangement may reduce the amount of the gain or  
6 loss; and
- 7 (b) disregard any financial benefit that has already been taken  
8 into account in working out the amount of a sufficiently  
9 certain overall gain or loss from the \*financial arrangement  
10 under subsection 230-110(1) at the time when you started to  
11 have the arrangement; and
- 12 (c) disregard any financial benefit (or that part of any financial  
13 benefit) that has already been taken into account in working  
14 out the amount of a sufficiently certain gain or loss from the  
15 \*financial arrangement under subsection (1).
- 16 Note: Sections 230-75 and 230-80 allow you to apportion financial benefits  
17 provided and financial benefits received in working out the amount of  
18 a gain or loss.

#### 19 **230-120 Sufficiently certain financial benefits**

- 20 (1) In deciding for the purposes of this Subdivision whether it is  
21 sufficiently certain at a particular time that you will make a gain or  
22 loss from a \*financial arrangement, have regard only to:
- 23 (a) \*financial benefits that you are sufficiently certain to receive;  
24 and  
25 (b) financial benefits that you are sufficiently certain to provide.
- 26 (2) A \*financial benefit that you are to receive or provide is to be  
27 treated as one that you are sufficiently certain to receive or to  
28 provide only if:
- 29 (a) it is reasonably expected that you will receive or provide the  
30 financial benefit (assuming that you will continue to have the  
31 \*financial arrangement for the rest of its life); and  
32 (b) the amount or value of the benefit is, at that time, fixed or  
33 determinable with reasonable accuracy.
- 34 (3) In applying subsection (2) to the \*financial benefit:
- 35 (a) you must have regard to:
- 36 (i) the terms and conditions of the \*financial arrangement;  
37 and



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- 1 (ii) accepted pricing and valuation techniques; and  
2 (iii) the economic or commercial substance and effect of the  
3 arrangement; and  
4 (iv) the contingencies that attach to the other financial  
5 benefits that are to be provided or received under the  
6 arrangement; and  
7 (b) you must treat the financial benefit as if it were not  
8 contingent if it is appropriate to do so having regard to the  
9 contingencies that attach to the other financial benefits that  
10 are to be received or provided under the arrangement.
- 11 (4) In applying paragraph (2)(b) at a particular time (the *reference*  
12 *time*) to a \*financial benefit that depends on a variable that is based  
13 on:  
14 (a) an interest rate; or  
15 (b) a rate that solely or primarily reflects the time value of  
16 money; or  
17 (c) a rate that solely or primarily reflects a consumer price index;  
18 or  
19 (d) a rate that solely or primarily reflects an index prescribed by  
20 the regulations for the purposes of this paragraph;  
21 you must assume that that variable will continue to have the value  
22 it has at the reference time.
- 23 (5) Despite subsection (4), in applying paragraph (2)(b) at a particular  
24 time to a \*financial benefit that depends on a rate of change to a  
25 variable that is based on:  
26 (a) a rate that solely or primarily reflects a consumer price index;  
27 or  
28 (b) a rate that solely or primarily reflects an index prescribed by  
29 the regulations for the purposes of this paragraph;  
30 you must assume that the rate of change to that variable will  
31 continue to be the rate of change that is current at that time.
- 32 (6) If subsection (4) or (5) applies to a gain or loss and you are  
33 determining the amount of the gain or loss at a particular time, you  
34 must also assume that that variable will continue to have the value  
35 that it has at that time.
- 36 (7) Subsections (4) and (5) do not limit paragraph (2)(b).
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- 1 (8) If all of the \*financial benefits provided and received under the  
2 \*financial arrangement are denominated in a particular foreign  
3 currency, those financial benefits are not to be translated into your  
4 \*applicable functional currency for the purposes of applying  
5 subsection (2) to the arrangement.
- 6 (9) To avoid doubt:
- 7 (a) a \*financial benefit that you have already provided at a  
8 particular time is taken to be one that it is, at that time, a  
9 financial benefit that you are sufficiently certain to provide;  
10 and
- 11 (b) a financial benefit that you have already received at a  
12 particular time is taken to be one that it is, at that time, a  
13 financial benefit that you are sufficiently certain to receive.

## 14 The accruals method

### 15 230-125 Overview of the accruals method

16 If the accruals method applies to a gain or loss you make from a  
17 \*financial arrangement:

- 18 (a) you use section 230-130 to work out the period over which  
19 the gain or loss is to be spread; and
- 20 (b) you use section 230-135 to work out how to allocate the gain  
21 or loss to particular intervals within the period over which the  
22 gain or loss is to be spread; and
- 23 (c) if an interval to which part of the gain or loss is allocated  
24 straddles 2 income years, you use section 230-140 to work  
25 out how to allocate that part of the gain or loss allocated  
26 between those 2 income years.

### 27 230-130 Applying accruals method to work out period over which 28 gain or loss is to be spread

29 *Period over which overall gain or loss is to be spread*

- 30 (1) If you have a sufficiently certain overall gain or loss from a  
31 \*financial arrangement under subsection 230-110(1), the period  
32 over which the gain or loss is to be spread is the period that:
- 33 (a) starts when you start to have the arrangement; and  
34 (b) ends when you will cease to have the arrangement.
-

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1 In applying paragraph (b), you must assume that you will continue  
2 to have the arrangement for the rest of its life.

3 *Period over which particular gain or loss is to be spread*

4 (2) If you have a sufficiently certain gain or loss from a \*financial  
5 arrangement under subsection 230-115(1), the period over which  
6 the gain or loss is to be spread is the period to which the gain or  
7 loss relates. Have regard to the pricing, terms and conditions of the  
8 arrangement in working out the period to which the gain or loss  
9 relates. This subsection has effect subject to subsections (3) and  
10 (4).

11 (3) The start of the period over which a gain or loss to which  
12 subsection (2) applies is to be spread must:

13 (a) not start earlier than the time when you start to have the  
14 \*financial arrangement; and

15 (b) not start earlier than the start of the income year during which  
16 it becomes sufficiently certain that you will make the gain or  
17 loss.

18 (4) The end of the period over which a gain or loss to which  
19 subsection (2) applies is to be spread must:

20 (a) not end later than the time when you will cease to have the  
21 \*financial arrangement; and

22 (b) not end later than the end of the income year during which:

23 (i) the \*financial benefit that gives rise to the gain or loss is  
24 to be received or provided; or

25 (ii) the right or obligation whose \*ceasing gives rise to the  
26 gain or loss is to cease.

## 27 **230-135 How gain or loss is spread**

28 *How to spread gain or loss*

29 (1) This section tells you how to spread a gain or loss to which the  
30 accruals method applies.

31 *Compounding accruals or approximation*

32 (2) The gain or loss is to be spread using:

33 (a) compounding accruals; or

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1 (b) a method whose results approximate those obtained using the  
2 method referred to in paragraph (a) (having regard to the  
3 length of the period over which the gain or loss is to be  
4 spread).

5 (2A) The following subsections of this section clarify the way in which  
6 the gain or loss is to be spread in accordance with subsection (2).

7 *Intervals to which parts of gain or loss allocated*

8 (3) The intervals to which parts of the gain or loss are allocated must:

9 (a) not exceed 12 months; and

10 (b) all be of the same length.

11 Paragraph (b) does not apply to the first and last intervals. These  
12 may be shorter than the other intervals.

13 *Fixing of amount and rate for interval*

14 (3A) For each interval:

15 (a) determine a rate of return; and

16 (b) determine an amount to which you apply the rate of return.

17 (3B) For the purposes of paragraph (3A)(b), in determining the amount  
18 to which you apply the rate of return for an interval, have regard to:

19 (a) the amount or value; and

20 (b) the timing;

21 of \*financial benefits that are to be taken into account in working  
22 out the amount of the gain or loss, and were provided or received  
23 by you during the interval.

24 *Assumption of continuing to hold arrangement for rest of its life*

25 (4) The gain or loss is to be spread assuming that you will continue to  
26 have the \*financial arrangement for the rest of its life.

27 *Regard to be had to financial benefits provided or received in*  
28 *interval*

29 (5) In allocating the gain or loss to intervals, have regard to the  
30 \*financial benefits to be provided or received in each of those  
31 intervals.

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## 230-137 Election for portfolio treatment of fees

(1) You may make an election for an income year under this section if:

(a) you prepare a financial report for the income year in accordance with:

(i) the \*accounting standards; or

(ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and

(b) the financial report is audited in accordance with:

(i) the \*auditing standards; or

(ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a \*foreign law.

(2) An election under this section is irrevocable.

## 230-138 Portfolio treatment of fees

(1) This section applies in relation to a \*financial arrangement if:

(a) you have made an election under section 230-137 in an income year; and

(b) you start to have the financial arrangement in that income year or a later income year; and

(c) an overall gain or loss to which subsection 230-130(1) applies arises in part from fees in respect of the \*financial arrangement; and

(d) the net amount of the fees is not significant relative to the amount of the overall gain or loss; and

(e) the fees play an integral role in determining the amount of the overall gain or loss; and

(f) the financial arrangement is part of a portfolio of similar financial arrangements.

(2) For the purposes of this Division, split the overall gain or loss as follows:

(a) to the extent that it arises from the fees, treat it as an overall gain or loss from the \*financial arrangement (the *fees gain or loss*);

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- 1 (b) to the extent that it does *not* arise from the fees, treat it as a  
2 separate overall gain or loss from the financial arrangement.

3 *Determination of period for fees gain or loss*

- 4 (3) The period over which the fees gain or loss is to be spread is the  
5 period that you determine to be the average life of the portfolio, if:  
6 (a) the basis on which you determine the period accords with the  
7 spreading of the fees gain or loss for the purposes of the  
8 profit or loss statement of the financial report mentioned in  
9 paragraph 230-137(1)(a); and  
10 (b) the basis on which you determine the period is set and  
11 recorded before any fees in respect of the \*financial  
12 arrangement fall due; and  
13 (c) the period can be justified objectively; and  
14 (d) the period is reasonable in the circumstances.

15 *Spreading the fees gain or loss*

- 16 (4) The method by which the fees gain or loss is to be spread is the  
17 method that you determine, if:  
18 (a) the basis on which you determine the method accords with  
19 the spreading of the fees gain or loss for the purposes of the  
20 profit or loss statement of the financial report mentioned in  
21 paragraph 230-137(1)(a); and  
22 (b) the method is determined before any fees in respect of the  
23 \*financial arrangement fall due; and  
24 (c) the method can be justified objectively; and  
25 (d) the method is reasonable in the circumstances.
- 26 (5) To avoid doubt, subsections (3) and (4) apply despite  
27 sections 230-130 and 230-135.

28 **230-140 Allocating gain or loss to income years**

- 29 (1) You are taken, for the purposes of section 230-15, to make, for an  
30 income year, a gain or loss equal to a part of a gain or loss if:  
31 (a) that part of the gain or loss is allocated to an interval under  
32 section 230-135; and  
33 (b) that interval falls wholly within that income year.
- 34 (2) If:
-

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- 1 (a) a part of a gain or loss is allocated to an interval under  
2 section 230-135; and  
3 (b) that interval straddles 2 income years;  
4 you are taken, for purposes of section 230-15, to make a gain or  
5 loss equal to so much of that part of the gain or loss as is allocated  
6 between those income years on a reasonable basis.
- 7 (3) If:  
8 (a) a \*head company of a \*consolidated group or \*MEC group  
9 has a \*financial arrangement; and  
10 (b) a subsidiary member of the group ceases to be a member of  
11 the group at a particular time (the *leaving time*); and  
12 (c) immediately after the leaving time, the subsidiary member  
13 has the arrangement;  
14 an income year of the group is taken, for the purposes of applying  
15 this section to the group and the arrangement, to end at the leaving  
16 time.

## 17 **230-145 Running balancing adjustments**

### 18 *Overestimate of financial benefit to be received*

- 19 (1) You are taken for the purposes of this Division to make a loss from  
20 a \*financial arrangement if:  
21 (a) a provision of this Subdivision has applied on the basis that  
22 you were sufficiently certain, at a particular time, to receive a  
23 \*financial benefit of, or of at least, a particular amount under  
24 the arrangement; and  
25 (b) when you receive the benefit (or the time comes for you to  
26 receive the benefit), the amount you receive (or are to  
27 receive) is nil or is less than the amount estimated.

28 The amount of the loss is equal to the difference between the  
29 amount estimated and the amount you receive (or are to receive).  
30 You are taken to have made the loss for the income year in which  
31 you receive the benefit (or in which the time comes for you to  
32 receive the benefit).

### 33 *Underestimate of financial benefit to be received*

- 34 (2) You are taken for the purposes of this Division to make a gain  
35 from a \*financial arrangement if:
-

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- 1 (a) a provision of this Subdivision has applied on the basis that  
2 you were sufficiently certain at a particular time to receive a  
3 \*financial benefit of, or of at least, a particular amount under  
4 the arrangement; and  
5 (b) when you receive the benefit, or the time comes for you to  
6 receive the benefit, the amount you receive, or are to receive,  
7 is more than the amount estimated.

8 The amount of the gain is equal to the difference between the  
9 amount estimated and the amount you receive or are to receive.  
10 You are taken to have made that gain in the income year in which  
11 you receive the benefit or in which the time comes for you to  
12 receive the benefit.

#### 13 *Overestimate of financial benefit to be provided*

- 14 (3) You are taken for the purposes of this Division to make a gain  
15 from a \*financial arrangement if:  
16 (a) a provision of this Subdivision has applied on the basis that  
17 you were sufficiently certain at a particular time to provide a  
18 \*financial benefit of, or of at least, a particular amount under  
19 the arrangement; and  
20 (b) when you provide the benefit, or the time comes for you to  
21 provide the benefit, the amount you provide, or are to  
22 provide, is nil or is less than the amount estimated.

23 The amount of the gain is equal to the difference between the  
24 amount estimated and the amount you provide or are to provide.  
25 You are taken to have made that gain in the income year in which  
26 you provide the benefit or in which the time comes for you to  
27 provide the benefit.

#### 28 *Underestimate of financial benefit to be provided*

- 29 (4) You are taken for the purposes of this Division to make a loss from  
30 a \*financial arrangement if:  
31 (a) a provision of this Subdivision has applied on the basis that  
32 you were sufficiently certain at a particular time to provide a  
33 \*financial benefit of, or of at least, a particular amount under  
34 the arrangement; and  
35 (b) when you provide the benefit, or the time comes for you to  
36 provide the benefit, the amount you are to provide is more  
37 than the estimated amount referred to in paragraph (a).



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1           The amount of the loss is equal to the difference between the  
2           amount estimated and the amount you are to provide. You are  
3           taken to have made that loss in the income year in which you  
4           provide the benefit or in which the time comes for you to provide  
5           the benefit.

## 6           **Realisation method**

### 7           **230-150 Realisation method**

- 8           (1) If a gain or loss is to be taken into account using the realisation  
9           method, you are taken, for the purposes of section 230-15, to make  
10          the gain or loss for the income year in which the gain or loss  
11          occurs.

12          Note:       Sections 230-75 and 230-80 allow you to apportion financial benefits  
13                       provided and financial benefits received in working out the amount of  
14                       the gain or loss.

- 15          (2) For the purposes of subsection (1), a gain or loss from a \*financial  
16          arrangement is taken to occur at the time at which the last of the  
17          \*financial benefits taken into account in determining the amount of  
18          the gain or loss:

- 19               (a) is provided; or  
20               (b) if the financial benefit is not provided at the time when it is  
21               due to be provided under the arrangement and it is reasonable  
22               to expect that the financial benefit will be provided—is due  
23               to be provided.

24          This subsection has effect subject to subsection (3).

- 25          (3) For the purposes of subsection (1), you make a loss from a  
26          \*financial arrangement from writing off, as a bad debt, a right to a  
27          \*financial benefit (or a part of a financial benefit) if:

- 28               (a) the financial benefit was taken into account in working out  
29               the amount of a gain from the arrangement and the gain has  
30               been included in your assessable income under this Division;  
31               or  
32               (b) the right is one in respect of money that you lent in the  
33               ordinary course of your \*business of lending money; or  
34               (c) the right is one that you bought in the ordinary course of your  
35               business of lending money.

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1 (4) The loss referred to in subsection (3) occurs when you write off the  
2 right to the \*financial benefit (or the part of the financial benefit) as  
3 a bad debt.

4 (5) The amount of the loss referred to in subsection (3) is:  
5 (a) if paragraph (3)(a) applies—so much of the gain referred to  
6 in that paragraph as is reasonably attributable to the  
7 \*financial benefit (or the part of the financial benefit); or  
8 (b) if paragraph (3)(b) applies—the amount of the financial  
9 benefit (or the part of the financial benefit); or  
10 (c) if paragraph (3)(c) applies—the amount of the financial  
11 benefit (or the part of the financial benefit) but only up to the  
12 value of the financial benefit you provided to acquire the  
13 right to the financial benefit (or the part of the financial  
14 benefit).

15 (6) For the purposes of this Act, a deduction for the loss referred to in  
16 subsection (3) is to be treated as a deduction of a bad debt.

17 Note: Various provisions in this Act and the *Income Tax Assessment Act*  
18 *1936* restrict the availability of deductions for bad debts and make  
19 provision in relation to the recoupment of amounts in relation to bad  
20 debts that have been written off. These provisions are set out in  
21 subsection 25-35(5).

## 22 **Reassessment and re-estimation**

### 23 **230-155 Reassessment**

24 (1) You must make a fresh assessment of which gains and losses from  
25 a \*financial arrangement the accruals method should apply to, and  
26 which gains and losses from that arrangement the realisation  
27 method should apply to, if:

28 (a) the accruals method, or the realisation method, provided for  
29 in this Subdivision applies to gains and losses from the  
30 arrangement; and

31 (b) there is a material change to:

32 (i) the terms and conditions of the arrangement; or

33 (ii) circumstances that affect the arrangement.

34 (2) Without limiting subsection (1), the following changes are material  
35 changes to the terms and conditions of, or circumstances that  
36 affect, the \*financial arrangement:

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- 1 (a) a change to the terms or conditions of the arrangement in a  
2 way that alters the essential nature of the arrangement (for  
3 example, by altering it from a \*debt interest to an \*equity  
4 interest or from an equity interest to a debt interest);
- 5 (b) a change to the terms or conditions of the arrangement in a  
6 way that materially affects the contingencies on which  
7 significant obligations and rights under the arrangement are  
8 dependent (for example, by introducing such a contingency  
9 or removing such a contingency);
- 10 (c) a change in circumstances that makes something that:  
11 (i) materially affects significant obligations and rights  
12 under the arrangement; and  
13 (ii) was previously dependent on a contingency;  
14 no longer dependent on a contingency (because, for example,  
15 only one of a number of previously possible contingencies is  
16 realised);
- 17 (d) a change to:  
18 (i) the terms on which credit is to be provided to an entity  
19 that is not a party to the arrangement; or  
20 (ii) the credit rating of an entity that is not a party to the  
21 arrangement;  
22 if a significant obligation or right under the arrangement is  
23 dependent on that credit being provided or that rating being  
24 maintained;
- 25 (e) if the arrangement is, or includes, a financial asset or  
26 financial liability and you prepare your financial reports in  
27 accordance with:  
28 (i) the \*accounting standards; or  
29 (ii) if those standards do not apply to the preparation of the  
30 financial report—comparable accounting standards  
31 made under a \*foreign law that apply to the preparation  
32 of the financial report under a foreign law;  
33 a change to the terms or conditions of, or circumstances that  
34 affect, the arrangement that are sufficient for the financial  
35 asset or financial liability to be treated as impaired for the  
36 purposes of those standards.
- 37 (3) You do not need to make a reassessment under this section merely  
38 because of a change in the fair value of the \*financial arrangement.
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1       **230-160 Re-estimation**

2                               *When re-estimation necessary*

3               (1) You re-estimate a gain or loss from a \*financial arrangement under  
4               subsection (4) if:

- 5                       (a) the accruals method applies to the gain or loss; and  
6                       (b) circumstances arise that materially affect:  
7                               (i) the amount or value; or  
8                               (ii) the timing;  
9                       of \*financial benefits that were taken into account in working  
10                      out the amount of the gain or loss; and  
11                      (c) the circumstances do not give rise to a re-estimation under  
12                      section 230-170.

13               You must re-estimate the gain or loss as soon as reasonably  
14               practicable after you become aware of the circumstances referred  
15               to in paragraph (b).

16               (2) Without limiting subsection (1), the following are circumstances of  
17               the kind referred to in paragraph (1)(b):

- 18                       (a) a material change in market conditions that are relevant to the  
19                       amount or value of the \*financial benefits to be received or  
20                       provided under the \*financial arrangement;  
21                       (b) cash flows that were previously estimated becoming known  
22                       and the difference between the cash flows that become  
23                       known and the cash flows that were previously estimates is  
24                       not insignificant;  
25                       (c) a right to, or a part of a right to, a financial benefit under the  
26                       arrangement is written off as a bad debt;  
27                       (d) you have made a reassessment under section 230-155 in  
28                       relation to gains or losses under the arrangement and you  
29                       have determined on the reassessment under that section that  
30                       the accruals method should continue to apply to those gains  
31                       or losses.

32               (3) You do not re-estimate the gain or loss from a \*financial  
33               arrangement under subsection (4) merely because of a change in  
34               the credit rating, or the creditworthiness, of a party or parties to the  
35               arrangement.

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1                                    *Nature of re-estimation*

- 2                    (4) Making a re-estimation in relation to a gain or loss under this  
3                    subsection involves:  
4                    (a) a fresh determination of the amount of the gain or loss; and  
5                    (b) a reapplication of the accruals method to the redetermined  
6                    gain or loss to make a fresh allocation of the part of the  
7                    redetermined gain or loss that has not already been allocated  
8                    to intervals ending before the re-estimation is made to  
9                    intervals ending after the re-estimation is made.

10                                   *Basis for re-estimation*

- 11                    (5) You may make the fresh allocation of the gain or loss under  
12                    subsection (4) on either of the following bases:  
13                    (a) by maintaining the rate of return being used and adjusting the  
14                    amount to which you apply the rate of return to the present  
15                    value of the estimated future cash flows discounted at the  
16                    maintained rate of return;  
17                    (b) adjusting the rate of return and maintaining the amount to  
18                    which the adjusted rate of return is to be applied.

19                    The object to be achieved by both bases is to allow you to bring the  
20                    remainder of the gain or loss based on the new estimates properly  
21                    to account over the remainder of the period over which you spread  
22                    the gain or loss.

23                    Note:            The amount referred to in paragraph (b) is the amount to which the  
24                    previous rate of return was being applied immediately before the  
25                    re-estimation.

- 26                    (6) If you adopt a particular basis under subsection (5) for a gain or  
27                    loss from a \*financial arrangement, you must use the same basis for  
28                    all the re-estimations you make under this section in relation to  
29                    your gains and losses from all your financial arrangements.
- 30                    (7) The following subsections apply if the re-estimation arises because  
31                    of an impairment (within the meaning of the \*accounting  
32                    standards) of:  
33                    (a) the \*financial arrangement; or  
34                    (b) a financial asset or financial liability that forms part of the  
35                    arrangement.

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1 (8) You must make the fresh allocation in accordance with  
2 paragraph (5)(b).

3 (9) To the extent that the impairment results in you making a loss for  
4 an income year under section 230-15, you cannot deduct that loss  
5 for the income year.

#### 6 **230-165 Balancing adjustment if rate of return maintained on** 7 **re-estimation**

8 (1) If you make a fresh allocation of the gain or loss on the basis  
9 referred to in paragraph 230-160(5)(a), you must make the  
10 following balancing adjustment:

11 (a) if you re-estimate a gain and the amount to which you apply  
12 the rate of return increases—you make a gain from the  
13 \*financial arrangement, for the income year in which you  
14 make the re-estimation, equal to the amount of the increase;

15 (b) if you re-estimate a gain and the amount to which you apply  
16 the rate of return decreases—you make a loss from the  
17 arrangement, for the income year in which you make the  
18 re-estimation, equal to the amount of the decrease;

19 (c) if you re-estimate a loss and the amount to which you apply  
20 the rate of return increases—you make a loss from the  
21 arrangement, for the income year in which you make the  
22 re-estimation, equal to the amount of the increase;

23 (d) if you re-estimate a loss and the amount to which you apply  
24 the rate of return decreases—you make a gain from the  
25 arrangement, for the income year in which you make the  
26 re-estimation, equal to the amount of the decrease.

27 (2) Subsection (3) applies if:

28 (a) the re-estimation is made wholly or partly on the basis that  
29 you have written off, as a bad debt, a right to receive a  
30 \*financial benefit (or a part of a financial benefit); and

31 (b) the right:

32 (i) is not one in respect of money that you lent in the  
33 ordinary course of your \*business of lending money;  
34 and

35 (ii) is not one that you bought in the ordinary course of your  
36 business of lending money.

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- 1 (3) The balancing adjustment to be made under paragraph (1)(b), to  
2 the extent that it relates to the writing off of the bad debt, must not  
3 exceed so much of the gain in relation to the \*financial  
4 arrangement as:  
5 (a) has been assessed under this Division; and  
6 (b) is reasonably attributable to the \*financial benefit (or the part  
7 of the financial benefit).
- 8 (4) Subsection (5) applies if:  
9 (a) the re-estimation is made wholly or partly on the basis that  
10 you have written off, as a bad debt, a right to receive a  
11 \*financial benefit; and  
12 (b) the right is one that you bought in the ordinary course of your  
13 \*business of lending money.
- 14 (5) The balancing adjustment to be made under paragraph (1)(b), to  
15 the extent that it relates to the writing off of the bad debt, must not  
16 exceed the value of the \*financial benefit you provided to acquire  
17 the right to the financial benefit (or the part of the financial  
18 benefit).
- 19 (6) For the purposes of this Act, a deduction for the balancing  
20 adjustment referred to in subsection (3) is to be treated as a  
21 deduction of a bad debt.

22 Note: Various provisions in this Act and the *Income Tax Assessment Act*  
23 *1936* restrict the availability of deductions for bad debts and make  
24 provision in relation to the recoupment of amounts in relation to bad  
25 debts that have been written off. These provisions are set out in  
26 subsection 25-35(5).

## 27 **230-170 Re-estimation if balancing adjustment on partial disposal**

### 28 *Re-estimation if balancing adjustment on partial disposal*

- 29 (1) You also re-estimate a gain or loss from a \*financial arrangement  
30 under subsection (2) if:  
31 (a) the accruals method applies to the gain or loss; and  
32 (b) a balancing adjustment is made in relation to the arrangement  
33 under Subdivision 230-G because you transfer to another  
34 entity:  
35 (i) a proportionate share of all of your rights and/or  
36 obligations under the arrangement; or
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- 1 (ii) a right or obligation that you have under the  
2 arrangement to a specifically identified \*financial  
3 benefit; or  
4 (iii) a proportionate share of a right or obligation that you  
5 have under the arrangement to a specifically identified  
6 financial benefit.

7 You must re-estimate the gain or loss as soon as reasonably  
8 practicable after the transfer occurs.

#### 9 *Nature of re-estimation*

- 10 (2) Making a re-estimation in relation to a gain or loss under this  
11 subsection involves:  
12 (a) a fresh determination of the amount of the gain or loss  
13 disregarding:  
14 (i) \*financial benefits; and  
15 (ii) amounts of the gain or loss that have already been  
16 allocated to intervals ending before the re-estimation is  
17 made;  
18 to the extent to which they are reasonably attributable to the  
19 proportionate share, or the right or obligation, referred to in  
20 paragraph (1)(b); and  
21 (b) a reapplication of the accruals method to the redetermined  
22 gain or loss to make a fresh allocation of the part of that gain  
23 or loss that has not already been allocated to intervals ending  
24 before the re-estimation is made to intervals ending after the  
25 re-estimation is made.

26 In applying paragraph (a), disregard subsections 230-75(3) and  
27 230-80(3).

#### 28 *Basis for re-estimation*

- 29 (3) You make the fresh allocation of the gain or loss under  
30 subsection (2) by maintaining the rate of return being used and  
31 adjusting the amount to which you apply the rate of return to the  
32 present value of the estimated future cash flows discounted at the  
33 maintained rate of return. The object to be achieved by the fresh  
34 allocation is to allow you to bring the redetermined gain or loss  
35 properly to account over the remainder of the period over which  
36 you spread the gain or loss.



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5	230-185	Financial arrangements to which fair value election applies
6	230-190	Financial arrangements to which election does not apply
7	230-195	Applying fair value method to gains and losses
8	230-200	Splitting financial arrangements into 2 financial arrangements
9	230-205	When election ceases to apply
10	230-210	Balancing adjustment if election ceases to apply

### 11 **230-175 Objects of this Subdivision**

12 The objects of this Subdivision are:

- 13 (a) to allow you to align the tax treatment of gains and losses
- 14 from \*financial arrangements with the accounting treatment
- 15 that applies where assets and liabilities are classified or
- 16 designated as at fair value through profit or loss; and
- 17 (b) to facilitate efficient price-making; and
- 18 (c) to achieve the above objects without allowing you to obtain
- 19 an inappropriate tax benefit.

### 20 **230-180 Fair value election**

#### 21 *Election*

- 22 (1) You may make a *fair value election* under this section if you are
- 23 eligible under subsection (2) to make the election for the income
- 24 year in which you make the election.

#### 25 *Eligibility to make fair value election for an income year*

- 26 (2) You are eligible to make a *fair value election* for an income year
- 27 if:
- 28 (a) you prepare a financial report for that income year in
  - 29 accordance with:
  - 30 (i) the \*accounting standards; or
  - 31 (ii) if those standards do not apply to the preparation of the
  - 32 financial report—comparable accounting standards

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- 1                                   made under a \*foreign law that apply to the preparation  
2                                   of the financial report under a foreign law; and  
3                   (b) the financial report is audited in accordance with:  
4                         (i) the \*auditing standards; or  
5                         (ii) if the auditing standards do not apply to the auditing of  
6                           the financial report—comparable auditing standards  
7                           made under a \*foreign law.

8                   Note:        Section 230-435 allows regulations to be made specifying particular  
9                                   foreign accounting and auditing standards as ones that are to be treated  
10                                  as comparable with Australian accounting and auditing standards for  
11                                  the purposes of this Division.

- 12                   (2A) For the purposes of paragraph (2)(a), treat a financial report  
13                           prepared by another entity as being prepared by you if:  
14                         (a) the other entity is a \*connected entity of yours; and  
15                         (b) the report is a consolidated financial report that deals with  
16                           both your affairs and the affairs of the connected entity; and  
17                         (c) the report properly reflects your affairs.

#### 18                                   *Election irrevocable*

- 19                   (3) A \*fair value election is irrevocable.

20                   Note:        The election may cease to have effect, or cease to apply to a particular  
21                                   financial arrangement, under section 230-205.

### 22                   **230-185 Financial arrangements to which fair value election applies**

- 23                   (1) A \*fair value election applies in relation to \*financial arrangements  
24                           that:  
25                         (a) are \*Division 230 financial arrangements; and  
26                         (b) are recognised in financial reports of the kind referred to in  
27                           paragraph 230-180(2)(a) that are audited, or required to be  
28                           audited, as referred to in paragraph 230-180(2)(b); and  
29                         (c) are assets or liabilities that you are required (whether or not  
30                           as a result of a choice you make) by:  
31                                 (i) the \*accounting standards; or  
32                                 (ii) if those standards do not apply to the preparation of the  
33                                   financial report—comparable accounting standards that  
34                                   apply to the preparation of the financial report under a  
35                                   \*foreign law;

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1 to classify or designate, in the financial reports, as at fair  
2 value through profit or loss; and

3 (d) you start to have in the income year in which you make the  
4 election or in a later income year.

5 This subsection has effect subject to section 230-190.

6 (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be  
7 satisfied in relation to a \*financial arrangement because the  
8 arrangement is an intra-group transaction for the purposes of:

9 (a) \*accounting standard AASB 127 (or another accounting  
10 standard prescribed by the regulations for the purposes of this  
11 paragraph); or

12 (b) if that standard does not apply to the preparation of the  
13 financial report—a comparable accounting standard that  
14 applies to the preparation of the financial report under a  
15 \*foreign law;

16 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
17 arrangement.

18 Note: Financial arrangements between members of a consolidated group or  
19 MEC group are not covered by this subsection because the single  
20 entity rule in subsection 701-1(1) operates to treat them as not being  
21 financial arrangements for the purposes of this Division.

22 (3) If:

23 (a) the \*financial arrangement would not be a financial  
24 arrangement if the following provisions were disregarded:

25 (i) Division 9A of Part III of the *Income Tax Assessment*  
26 *Act 1936* (which deals with offshore banking units);

27 (ii) Part IIIB of that Act (which deals with Australian  
28 branches of foreign banks etc.); and

29 (b) paragraphs (1)(b) and (c) would be satisfied in relation to the  
30 financial arrangement if the arrangement had been between 2  
31 separate entities; and

32 (c) the \*fair value election is made by:

33 (i) if section 121EB of the *Income Tax Assessment Act*  
34 *1936* applies—the OBU mentioned in that section  
35 (disregarding the operation of that section); or

36 (ii) if section 160ZZW of that Act applies—the bank  
37 mentioned in that section (disregarding the operation of  
38 that section);

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1 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
2 arrangement.

#### 3 **230-190 Financial arrangements to which election does not apply**

4 (1) A \*fair value election does not apply to a \*financial arrangement if:  
5 (a) the arrangement is an \*equity interest; and  
6 (b) you are the issuer of the equity interest.

7 (2) A \*fair value election does not apply to a \*financial arrangement if:  
8 (a) you are:  
9 (i) an individual; or  
10 (ii) an entity (other than an individual) that satisfies  
11 subsection 230-405(2) or (3) for the income year in  
12 which you start to have the arrangement; and  
13 (b) the arrangement is a \*qualifying security; and  
14 (c) you have not made an election under subsection 230-405(5).

15 (3) A \*fair value election does not apply to a \*financial arrangement if:  
16 (a) the election is made by the \*head company of a \*consolidated  
17 group or a \*MEC group; and  
18 (b) the election specifies that the election is not to apply to  
19 financial arrangements in relation to \*life insurance business  
20 carried on by a member of the consolidated group or MEC  
21 group; and  
22 (c) the arrangement is one that relates to the life insurance  
23 business carried on by a member of the consolidated group or  
24 MEC group.

25 (4) A \*fair value election does not apply to a \*financial arrangement if  
26 the arrangement is associated with a business of a kind specified in  
27 regulations made for the purposes of this subsection.

#### 28 **230-195 Applying fair value method to gains and losses**

29 (1) If a \*fair value election applies to your \*financial arrangement, the  
30 gain or loss you make from the arrangement for an income year is:  
31 (a) the gain or loss that the standards referred to in paragraph  
32 230-180(2)(a) require you to recognise in profit or loss for  
33 the income year from the asset or liability mentioned in  
34 paragraph 230-185(1)(c); or

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- 1 (b) if subsection 230-185(2) applies to the arrangement—the  
2 gain or loss that the standards referred to in paragraph  
3 230-185(1)(c) would have required you to recognise in profit  
4 or loss for the year from the asset or liability mentioned in  
5 paragraph 230-185(1)(c) if the arrangement had not been an  
6 intra-group transaction for the purposes of the standards  
7 referred to in paragraph 230-185(2)(b); or  
8 (c) if subsection 230-185(3) applies to the arrangement—the  
9 gain or loss that the standards referred to in paragraph  
10 230-185(1)(c) would have required you to recognise in profit  
11 or loss for the year from the asset or liability mentioned in  
12 paragraph 230-185(1)(c) if the arrangement had been  
13 between 2 separate entities.

14 Note: Subsection 230-45(3) provides that an election under  
15 Subdivision 230-E (hedging financial arrangements method) or  
16 Subdivision 230-F (method of relying on financial reports) may  
17 override a fair value election.

- 18 (3) Subsection (4) applies if:  
19 (a) a \*head company of a \*consolidated group or \*MEC group  
20 has a \*financial arrangement; and  
21 (b) a \*fair value election applies to the arrangement; and  
22 (c) a subsidiary member of the group ceases to be a member of  
23 the group at a particular time (the *leaving time*); and  
24 (d) immediately after the leaving time, the subsidiary member  
25 has the arrangement.
- 26 (4) The gain or loss the group makes from the arrangement for the  
27 income year in which the leaving time occurs is taken to be the  
28 gain or loss that the standards referred to in paragraph  
29 230-180(2)(a) would require the group to recognise as at fair value  
30 through profit or loss for the income year from the asset or liability  
31 mentioned in paragraph 230-185(1)(c) if:  
32 (a) the circumstances that existed in relation to the arrangement  
33 (including its value) immediately before the leaving time had  
34 continued to exist until the end of the income year; and  
35 (b) any circumstances that arise in relation to the financial  
36 arrangement after the leaving time were disregarded.

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#### 230-200 Splitting financial arrangements into 2 financial arrangements

- (1) If:
- (a) a \*financial arrangement is constituted only in part by an asset or liability mentioned in paragraph 230-185(1)(c); and
  - (b) a \*fair value election would apply to the arrangement if it were constituted solely by that asset or liability;
- the provisions of this Division (other than this section) apply to the arrangement as if it were instead 2 separate financial arrangements.
- (2) The 2 separate \*financial arrangements are:
- (a) one consisting of the part referred to in paragraph (1)(a); and
  - (b) one consisting of the remaining part.

#### 230-205 When election ceases to apply

- (1) A \*fair value election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-180(2) to make the fair value election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*fair value election at a later time if you become, at that later time, eligible under subsection 230-180(2) to make a fair value election for an income year.
- Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.
- (3) A \*fair value election ceases to apply to a particular \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-185(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-185(1)(b) and (c) are satisfied once more in relation to the arrangement).

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## 230-210 Balancing adjustment if election ceases to apply

- (1) You must make balancing adjustments under subsection (2) if a \*fair value election ceases to have effect under subsection 230-205(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make a balancing adjustment under subsection (4) if a \*fair value election ceases to apply to a particular \*financial arrangement under subsection 230-205(3).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

## Subdivision 230-D—Foreign exchange retranslation method

### Table of sections

230-215	Objects of this Subdivision
230-220	Foreign exchange retranslation election
230-225	Financial arrangements to which general election applies
230-230	Financial arrangements to which general election does not apply
230-235	Balancing adjustment for election in relation to qualifying forex accounts
230-240	Applying foreign exchange retranslation method to gains and losses
230-245	When election ceases to apply
230-250	Balancing adjustment if election ceases to apply

### 230-215 Objects of this Subdivision

The objects of this Subdivision are:

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- 1 (a) to allow you to align the tax treatment of gains and losses  
2 from foreign exchange rate changes with the accounting  
3 treatment of profits and losses from such changes; and  
4 (b) to achieve this without allowing you to obtain an  
5 inappropriate tax benefit.

#### 6 **230-220 Foreign exchange retranslation election**

##### 7 *General election*

- 8 (1) You may make a *foreign exchange retranslation election* under  
9 this subsection if you are eligible under subsection (2) to make the  
10 election for the income year in which you make the election.

##### 11 *Eligibility to make election*

- 12 (2) You are eligible to make a \*foreign exchange retranslation election  
13 for an income year if:

- 14 (a) you prepare a financial report for that income year in  
15 accordance with:  
16 (i) the \*accounting standards; or  
17 (ii) if those standards do not apply to the preparation of the  
18 financial report—comparable accounting standards  
19 made under a \*foreign law that apply to the preparation  
20 of the financial report under a foreign law; and  
21 (b) the financial report is audited in accordance with:  
22 (i) the \*auditing standards; or  
23 (ii) if the auditing standards do not apply to the auditing of  
24 the financial report—comparable auditing standards  
25 made under a \*foreign law.

26 Note: Section 230-435 allows regulations to be made specifying particular  
27 foreign accounting and auditing standards as ones that are to be treated  
28 as comparable with Australian accounting and auditing standards for  
29 the purposes of this Division.

- 30 (2A) For the purposes of paragraph (2)(a), treat a financial report  
31 prepared by another entity as being prepared by you if:  
32 (a) the other entity is a \*connected entity of yours; and  
33 (b) the report is a consolidated financial report that deals with  
34 both your affairs and the affairs of the connected entity; and  
35 (c) the report properly reflects your affairs.



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## *Election in relation to qualifying forex accounts*

- 1
- 2 (3) You may make a **foreign exchange retranslation election** under  
3 this subsection in relation to a \*financial arrangement if:  
4 (a) the arrangement is a \*qualifying forex account; and  
5 (b) you have not made a \*foreign exchange retranslation election  
6 under subsection (1) that applies to the account.

7 You may make the election even if you start to have the  
8 arrangement before you make the election.

## *Financial arrangements to which election in relation to qualifying forex accounts applies*

- 9
- 10
- 11 (4) The election under subsection (3) applies to the \*financial  
12 arrangement:  
13 (a) from the time when you start to have the arrangement if the  
14 election is made before you start to have the arrangement; or  
15 (b) from the start of the income year in which the election is  
16 made if you make the election after you start to have the  
17 arrangement.

## *Election irrevocable*

- 18
- 19 (5) A \*foreign exchange retranslation election is irrevocable.

20 Note: The election may cease to apply under section 230-245.

## **230-225 Financial arrangements to which general election applies**

- 21
- 22 (1) A \*foreign exchange retranslation election under subsection  
23 230-220(1) applies to each of your \*financial arrangements:  
24 (a) that are \*Division 230 financial arrangements; and  
25 (b) that are recognised in financial reports of a kind referred to in  
26 paragraph 230-220(2)(a) that are audited, or required to be  
27 audited, as referred to in paragraph 230-220(2)(b); and  
28 (c) in relation to which you are required by:  
29 (i) \*accounting standard AASB 121 (or another accounting  
30 standard prescribed by the regulations for the purposes  
31 of this paragraph); or  
32 (ii) if that standard does not apply to the preparation of the  
33 financial report—a comparable accounting standard that
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- 1 applies to the preparation of the financial report under a  
2 \*foreign law;  
3 to recognise, in the financial reports, amounts in profit or loss  
4 (if any) that are attributable to changes in currency exchange  
5 rates; and  
6 (d) that you start to have in the income year in which you make  
7 the election or in a later income year.

8 This subsection has effect subject to section 230-230.

9 Note: The election also has consequences under Subdivision 775-F for  
10 arrangements that are not Division 230 financial arrangements.

- 11 (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be  
12 satisfied in relation to a \*financial arrangement because the  
13 arrangement is an intra-group transaction for the purposes of:  
14 (a) \*accounting standard AASB 127 (or another accounting  
15 standard prescribed by the regulations for the purposes of this  
16 paragraph); or  
17 (b) if that standard does not apply to the preparation of the  
18 financial report—a comparable accounting standard that  
19 applies to the preparation of the financial report under a  
20 \*foreign law;

21 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
22 arrangement.

23 Note: Financial arrangements between members of a consolidated group or  
24 MEC group are not covered by this subsection because the single  
25 entity rule in subsection 701-1(1) operates to treat them as not being  
26 financial arrangements for the purposes of this Division.

- 27 (3) If:  
28 (a) the \*financial arrangement would not be a financial  
29 arrangement if the following provisions were disregarded:  
30 (i) Division 9A of Part III of the *Income Tax Assessment*  
31 *Act 1936* (which deals with offshore banking units);  
32 (ii) Part IIIB of that Act (which deals with Australian  
33 branches of foreign banks etc.); and  
34 (b) paragraphs (1)(b) and (c) would be satisfied in relation to the  
35 financial arrangement if the arrangement had been between 2  
36 separate entities; and  
37 (c) the \*foreign exchange retranslation election under subsection  
38 230-220(1) is made by:

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- 1 (i) if section 121EB of the *Income Tax Assessment Act*  
2 *1936* applies—the OBU mentioned in that section  
3 (disregarding the operation of that section); or  
4 (ii) if section 160ZZW of that Act applies—the bank  
5 mentioned in that section (disregarding the operation of  
6 that section);  
7 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
8 arrangement.

## 9 **230-230 Financial arrangements to which general election does not** 10 **apply**

- 11 (1) For the purposes of this Division, a \*foreign exchange retranslation  
12 election under subsection 230-220(1) does not apply to a \*financial  
13 arrangement if the arrangement is a financial arrangement under  
14 section 230-55 (equity interests etc.).
- 15 (2) For the purposes of this Division, a \*foreign exchange retranslation  
16 election under subsection 230-220(1) does not apply to a \*financial  
17 arrangement if:  
18 (a) you are:  
19 (i) an individual; or  
20 (ii) an entity (other than an individual) that satisfies  
21 subsection 230-405(2) or (3) for the income year in  
22 which you start to have the arrangement; and  
23 (b) the arrangement is a \*qualifying security; and  
24 (c) you have not made an election under subsection 230-405(5).
- 25 (3) A \*foreign exchange retranslation election under subsection  
26 230-220(1) does not apply to a \*financial arrangement if:  
27 (a) the election is made by the \*head company of a \*consolidated  
28 group or a \*MEC group; and  
29 (b) the election specifies that the election is not to apply to  
30 financial arrangements in relation to \*life insurance business  
31 carried on by a member of the consolidated group or MEC  
32 group; and  
33 (c) the arrangement is one that relates to the life insurance  
34 business carried on by a member of the consolidated group or  
35 MEC group.

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- 1 (4) A \*foreign exchange retranslation election does not apply to a  
2 \*financial arrangement if the arrangement is associated with a  
3 business of a kind specified in regulations made for the purposes of  
4 this subsection.

#### 5 **230-235 Balancing adjustment for election in relation to qualifying** 6 **forex accounts**

- 7 (1) If you make a \*foreign exchange retranslation election under  
8 subsection 230-220(3) in relation to a \*financial arrangement after  
9 you start to have the arrangement, you must make a balancing  
10 adjustment under subsection (2).
- 11 (2) The balancing adjustment under this subsection is the balancing  
12 adjustment you would make under Subdivision 230-G if you  
13 ceased to have the arrangement for its fair value at the time when  
14 the election started to apply to the arrangement (but only to the  
15 extent to which the balancing adjustment is reasonably attributable  
16 to a \*currency exchange rate effect).

#### 17 **230-240 Applying foreign exchange retranslation method to gains** 18 **and losses**

##### 19 *General election*

- 20 (1) You make a gain or loss from a \*financial arrangement for an  
21 income year if:
- 22 (a) a \*foreign exchange retranslation election under subsection  
23 230-220(1) applies to the arrangement; and
- 24 (b) any of the following subparagraphs apply:
- 25 (i) the standard referred to in paragraph 230-225(1)(c)  
26 requires you to recognise a particular amount in profit  
27 or loss in relation to that arrangement for that income  
28 year;
- 29 (ii) if subsection 230-225(2) applies to the arrangement—  
30 the standards referred to in paragraph 230-225(1)(c)  
31 would have required you to recognise a particular  
32 amount in profit or loss in relation to that arrangement  
33 for that income year if the arrangement had not been an  
34 intra-group transaction for the purposes of the standards  
35 referred to in paragraph 230-225(2)(b);

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- 1 (iii) if subsection 230-225(3) applies to the arrangement—  
2 the standards referred to in paragraph 230-225(1)(c)  
3 would have required you to recognise a particular  
4 amount in profit or loss for the year from the asset or  
5 liability mentioned in paragraph 230-225(1)(c) if the  
6 arrangement had been between 2 separate entities.

7 The amount of the gain or loss is the amount the standard requires,  
8 or would have required, you to recognise.

9 Note: See subsection 230-45(4).

## 10 *Election in relation to qualifying forex accounts*

- 11 (2) You make a gain or loss from a \*financial arrangement for an  
12 income year if:  
13 (a) a \*foreign exchange retranslation election under subsection  
14 230-220(3) applies to the arrangement; and  
15 (b) the standard referred to in paragraph 230-225(1)(c):  
16 (i) requires you to recognise a particular amount in profit  
17 or loss in relation to that arrangement for that income  
18 year; or  
19 (ii) would require you to recognise a particular amount in  
20 profit or loss in relation to that arrangement for that  
21 income year if that standard applied to the arrangement;  
22 or  
23 (iii) would require you to recognise a particular amount in  
24 profit or loss in relation to that arrangement for that  
25 income year if the arrangement had not been an  
26 intra-group transaction for the purposes of the standards  
27 referred to in paragraph 230-225(2)(b); or  
28 (iv) would require you to recognise a particular amount in  
29 profit or loss in relation to that arrangement for that  
30 income year if the arrangement had not been an  
31 intra-group transaction for the purposes of the standards  
32 referred to in paragraph 230-225(2)(b) and if that  
33 standard applied to the arrangement.

34 The amount of the gain or loss is the amount the standard requires,  
35 or would require, you to recognise.

## 36 *Subsidiary leaving group*

- 37 (3) Subsection (4) applies if:
-

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- 1 (a) a \*head company of a \*consolidated group or \*MEC group  
2 has a \*financial arrangement; and  
3 (b) a \*foreign exchange retranslation election under subsection  
4 230-220(1) or (3) applies to the arrangement; and  
5 (c) a subsidiary member of the group ceases to be a member of  
6 the group at a particular time (the *leaving time*); and  
7 (d) immediately after the leaving time, the subsidiary member  
8 has the arrangement.
- 9 (4) The gain or loss the group makes from the arrangement for the  
10 income year in which the leaving time occurs is taken to be the  
11 gain or loss that the standard referred to in paragraph 230-225(1)(c)  
12 would require the group to recognise in profit or loss in relation to  
13 the arrangement for that income year if:  
14 (a) the circumstances that existed in relation to the arrangement  
15 (including its value) immediately before the leaving time had  
16 continued to exist until the end of the income year; and  
17 (b) any circumstances that arise in relation to the arrangement  
18 after the leaving time were disregarded.

#### 19 **230-245 When election ceases to apply**

##### 20 *General election*

- 21 (1) A \*foreign exchange retranslation election under subsection  
22 230-220(1) ceases to have effect from the start of an income year if  
23 you cease to be eligible under subsection 230-220(2) to make a  
24 foreign exchange retranslation under subsection 230-220(1) for  
25 that income year.
- 26 (2) Subsection (1) does not prevent you from making a new \*foreign  
27 exchange retranslation election at a later time if you become, at  
28 that later time, eligible under subsection 230-220(2), to make a  
29 foreign exchange retranslation election under subsection  
30 230-220(1) for that income year.
- 31 Note: The new election will only apply to financial arrangements you start to  
32 have after the start of the income year in which the new election is  
33 made.
- 34 (3) A \*foreign exchange retranslation election under subsection  
35 230-220(1) ceases to apply to a \*financial arrangement from the  
36 start of an income year if the arrangement ceases to satisfy a

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1 requirement of paragraph 230-225(1)(b) or (c) during that income  
2 year.

3 (4) If the election ceases to apply to a particular \*financial arrangement  
4 under subsection (3), the election cannot subsequently reapply to  
5 that arrangement (even if the requirements of paragraphs  
6 230-225(1)(b) and (c) are satisfied once more in relation to the  
7 arrangement).

8 *Election in relation to qualifying forex accounts*

9 (5) A \*foreign exchange retranslation election under subsection  
10 230-220(3) ceases to apply to a \*financial arrangement from the  
11 start of an income year if the arrangement ceases to satisfy a  
12 requirement of subsection 230-220(3) during that income year.

13 (6) If the election ceases to apply to a particular \*financial arrangement  
14 under subsection (5), the election cannot subsequently reapply to  
15 that arrangement (even if the requirements of subsection  
16 230-220(3) are satisfied once more in relation to the arrangement).

## 17 **230-250 Balancing adjustment if election ceases to apply**

18 (1) You must make balancing adjustments under subsection (2) if a  
19 \*foreign currency retranslation election ceases to have effect under  
20 subsection 230-245(1).

21 (2) The balancing adjustments under this subsection are the balancing  
22 adjustments you would make under Subdivision 230-G for each of  
23 the \*financial arrangements to which the election applied if you  
24 disposed of the arrangement for its fair value when the election  
25 ceases to have effect (but only to the extent to which the balancing  
26 adjustment is reasonably attributable to a \*currency exchange rate  
27 effect).

28 (3) You must make a balancing adjustment under this section if a  
29 \*foreign currency retranslation election ceases to apply to a  
30 particular \*financial arrangement under subsection 230-245(3) or  
31 (5).

32 (4) The balancing adjustment under this subsection is the balancing  
33 adjustment you would make under Subdivision 230-G if you  
34 disposed of the \*financial arrangement for its fair value when the  
35 election ceases to apply to the arrangement (but only to the extent

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1 to which the balancing adjustment is reasonably attributable to a  
2 \*currency exchange rate effect).

3 (5) If a balancing adjustment is made under subsection (2) or (4) in  
4 relation to a \*financial arrangement, you are taken, for the purposes  
5 of this Division, to have reacquired the arrangement at its fair value  
6 immediately after the election ceased to have effect or ceased to  
7 apply to the arrangement.

## 8 **Subdivision 230-E—Hedging financial arrangements method**

### 9 **Table of sections**

10	230-255	Objects of this Subdivision
11	230-260	Applying hedging financial arrangement method to gains and losses
12	230-265	Table of events and allocation rules
13	230-270	Aligning tax classification of gain or loss from hedging financial 14 arrangement with tax classification of hedged item
15	230-275	Hedging financial arrangement election
16	230-280	Hedging financial arrangements to which election applies
17	230-285	Hedging financial arrangements to which election does not apply
18	230-290	<b>Hedging financial arrangement</b> and <b>hedged item</b>
19	230-295	Generally whole arrangement must be financial hedging arrangement
20	230-300	Requirements not satisfied because of honest mistake or inadvertence
21	230-305	<b>Derivative financial arrangement</b> and <b>foreign currency hedge</b>
22	230-310	Recording requirements
23	230-315	Determining basis for allocating gain or loss
24	230-320	Effectiveness of the hedge
25	230-325	When election ceases to apply
26	230-330	Balancing adjustment if election ceases to apply
27	230-335	Where requirements not met
28	230-340	You may be excluded from this Subdivision for deliberate failures to 29 comply with requirements

### 30 **230-255 Objects of this Subdivision**

31 The objects of this Subdivision are:

- 32 (a) to facilitate the efficient management of financial risk by  
33 reducing after-tax mismatches and better aligning tax  
34 treatment where hedging takes place; and  
35 (b) to minimise tax deferral and tax motivated practices  
36 (including tax deferral arising from such practices as tax



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1                                    advantaged selection from among possible hedges and  
2                                    inappropriate selection of tax treatment).

3       **230-260 Applying hedging financial arrangement method to gains**  
4                                    **and losses**

5                                    (1) If you have a \*hedging financial arrangement to which a \*hedging  
6                                    financial arrangement election applies, the gain or loss you make  
7                                    for an income year from the arrangement is worked out under this  
8                                    section and section 230-270 instead of under Subdivision 230-B,  
9                                    230-C, 230-D, 230-F or 230-G.

10                                   (2) Except where subsection (3), (4) or (6) applies, the gain or loss you  
11                                   make from the \*hedging financial arrangement is equal to the  
12                                   overall gain or loss you make from the arrangement, and is  
13                                   allocated over income years according to the determination  
14                                   referred to in subsection 230-315(1).

15                                   Note 1:     The allocation is capable of extending to income years after you cease  
16   to have the hedging financial arrangement (see subsection  
17   230-315(3)).

18                                   Note 2:     The determination must be included in the record made under  
19   section 230-310.

20                                   (3) If the \*hedging financial arrangement is a \*foreign currency hedge  
21                                   and is a \*debt interest:  
22   (a) this section applies to a gain or loss you make from the  
23   arrangement to the extent to which the gain or loss represents  
24   a \*currency exchange rate effect attributable to the  
25   outstanding balance in relation to the debt interest; and  
26   (b) the remainder (if any) of the gain or loss is allocated under  
27   Subdivision 230-B, 230-F or 230-G.

28                                   This subsection has effect despite subsections (1) and (2).

29                                   (4) If an event listed in the table in section 230-265 occurs:  
30   (a) the gain or loss you make from the \*hedging financial  
31   arrangement is equal to any gain or loss that you would have  
32   made:  
33   (i) while the arrangement was hedging the \*hedged item or  
34   items; and  
35   (ii) on ceasing to have the arrangement;  
36   if you ceased to have the arrangement for its fair value at the  
37   time of the event; and

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1 (b) this Division further applies as if, just after the event, you had  
2 acquired the arrangement for its fair value at the time of the  
3 event.

4 The gain or loss referred to in paragraph (a) is allocated over  
5 income years according to the table.

6 (5) The regulations may apply subsection (4) and section 230-265  
7 (with the modifications that are provided for in the regulations) to  
8 the situation in which you cease to have one or more, but not all, of  
9 the \*hedged items.

10 (6) If the \*hedging financial arrangement:

11 (a) is a \*financial arrangement under section 230-55 (equity  
12 interests etc.); and

13 (b) is a \*foreign currency hedge; and

14 (c) is one that you issue;

15 this section applies to the gain or loss that you make from the  
16 arrangement only to the extent to which the gain or loss represents  
17 a \*currency exchange rate effect.

18 (7) Subsection (6) has effect despite subsections (1) and (2).

### 19 **230-265 Table of events and allocation rules**

20 For the purposes of paragraph 230-260(4)(a), the following table  
21 lists events and their consequences:  
22

<b>Table of events and allocation rules</b>		
<b>Item</b>	<b>If this event occurs ...</b>	<b>Your gain or loss is allocated ...</b>
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-320 in relation to your hedging financial arrangement	over income years according to the basis determined under subsection 230-315(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the	to the income year in which the event occurs.

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**Table of events and allocation rules**

---

<b>Item</b>	<b>If this event occurs ...</b>	<b>Your gain or loss is allocated ...</b>
	hedged item or items will come into existence; or (c) you cease to expect that you will have the hedged item or items	
3	a risk being hedged by your *hedging financial arrangement ceases to exist	to the income year in which the risk ceases to exist.

---

1

2 **230-270 Aligning tax classification of gain or loss from hedging**  
3 **financial arrangement with tax classification of hedged**  
4 **item**

5 (1) The object of this section is to better align, in particular  
6 circumstances, the tax classification of a gain or loss you make  
7 from a \*hedging financial arrangement with the tax classification of  
8 the \*hedged item.

9 (2) This section applies if:

10 (a) you make a gain or loss from a \*hedging financial  
11 arrangement for an income year; and

12 (b) a \*hedging financial arrangement election applies to the  
13 arrangement.

14 (3) Subject to subsection (4):

15 (a) if you make a gain from the arrangement—your assessable  
16 income includes the gain in accordance with subsection  
17 230-15(1); and

18 (b) if you make a loss from the arrangement—you may deduct  
19 the loss in accordance with subsections 230-15(2) and (3).

20 Note: Subsections 230-260(2) to (7) tell you how to allocate the gain or loss  
21 to an income year or years.

22 (4) A gain or loss you make from a \*hedging financial arrangement, to  
23 the extent to which it is reasonably attributable to a \*hedged item  
24 referred to in the following table, is dealt with in the way indicated  
25 in that item:  
26

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<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
1	a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the <i>hedged item CGT event</i> ) occurs	is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event)	is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event)
2	a *CGT asset that is *taxable Australian property	is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property	is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property
3	a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced by a particular percentage, under Division 855	is disregarded or reduced by the same percentage	is disregarded or reduced by the same percentage
4	*exempt income	is treated as exempt income	is not deductible
5	*non-assessable non-exempt income of an Australian resident	is treated as non-assessable non-exempt income	is not deductible
6	a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under Subdivision 768-G	is treated as a *capital gain from a CGT event that is reduced by the same percentage	is treated as a *capital loss from a CGT event that is reduced by the same percentage
7	*ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an	is treated as a loss incurred in gaining or producing ordinary

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<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
		Australian source	income or statutory income from an Australian source
8	*ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
9	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
10	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source
11	a loss or outgoing that is not allowed as a deduction	is treated as *non-assessable non-exempt income	is treated as a loss that is not allowed as a deduction
12	a net investment in a foreign operation (within the meaning of the *accounting standards) that is not carried on through: (a) a company in which you hold shares; or (b) a company that is a subsidiary of yours (within the meaning of the <i>Corporations Act 2001</i> ).	(a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is treated as non-assessable non-exempt income; and (b) otherwise—is treated in	(a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is not deductible; and (b) otherwise—is treated in accordance with the item or items in this

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#### Special tax classification for gains and losses

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Item	For a hedged item that is or produces ...	the gain ...	the loss ...
		accordance with the item or items in this table that are applicable to the gain.	table that are applicable to the loss.

---

- 1 (5) If:
- 2 (a) a \*hedged item is your net investment in a foreign operation
- 3 (within the meaning of the \*accounting standards); and
- 4 (b) the foreign operation is carried on through:
- 5 (i) a company in which you hold shares; or
- 6 (ii) a company that is a subsidiary of yours (within the
- 7 meaning of the *Corporations Act 2001*);
- 8 the hedged item is taken, for the purposes of applying the table in
- 9 subsection (4), to be the interest you have in the shares of the
- 10 company.

#### 230-275 Hedging financial arrangement election

##### *Election*

- 12
- 13 (1) You can make a **hedging financial arrangement election** if you
- 14 are eligible under subsection (2) to make the election for the
- 15 income year in which you make the election.

##### *Eligibility to make hedging financial arrangement election for an income year*

- 16
- 17
- 18 (2) You are eligible to make a **hedging financial arrangement**
- 19 **election** for an income year if:
- 20 (a) you prepare a financial report for that income year in
- 21 accordance with:
- 22 (i) the \*accounting standards; or
- 23 (ii) if those standards do not apply to the preparation of the
- 24 financial report—comparable accounting standards
- 25 made under a \*foreign law that apply to the preparation
- 26 of the financial report under a foreign law; and
- 27 (b) the financial report is audited in accordance with:

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- 1 (i) the \*auditing standards; or  
2 (ii) if the auditing standards do not apply to the auditing of  
3 the financial report—comparable auditing standards  
4 made under a \*foreign law.

5 Note: Section 230-435 allows regulations to be made specifying particular  
6 foreign accounting and auditing standards as ones that are to be treated  
7 as comparable with Australian accounting and auditing standards for  
8 the purposes of this Division.

- 9 (2A) For the purposes of paragraph (2)(a), treat a financial report  
10 prepared by another entity as being prepared by you if:  
11 (a) the other entity is a \*connected entity of yours; and  
12 (b) the report is a consolidated financial report that deals with  
13 both your affairs and the affairs of the connected entity; and  
14 (c) the report properly reflects your affairs.

15 *Election irrevocable*

- 16 (3) The \*hedging financial arrangement election is irrevocable.

17 Note: The election may cease to apply under section 230-340.

## 18 **230-280 Hedging financial arrangements to which election applies**

19 A \*hedging financial arrangement election applies to a \*hedging  
20 financial arrangement if:

- 21 (a) you start to have the arrangement in the income year in which  
22 you make the election or in a later income year; and  
23 (b) the requirements in sections 230-310 to 230-320 are met in  
24 relation to the arrangement.

25 This section has effect subject to section 230-285.

26 Note: Paragraph (b)—see section 230-335 for the Commissioner's discretion  
27 in relation to failures to meet the requirements of sections 230-310 to  
28 230-320.

## 29 **230-285 Hedging financial arrangements to which election does not 30 apply**

- 31 (1) A \*hedging financial arrangement election does not apply to a  
32 \*financial arrangement if the arrangement is a financial  
33 arrangement under section 230-55 (equity interests etc.).

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- 1 (2) Subsection (1) does not apply to a \*hedging financial arrangement  
2 if:
- 3 (a) the hedging financial arrangement is a \*foreign currency  
4 hedge; and  
5 (b) you issue the hedging financial arrangement.
- 6 (3) A \*hedging financial arrangement election does not apply to a  
7 \*financial arrangement if:
- 8 (a) you are:
- 9 (i) an individual; or  
10 (ii) an entity (other than an individual) that satisfies  
11 subsection 230-405(2) or (3) for the income year in  
12 which you start to have the arrangement; and  
13 (b) the arrangement is a \*qualifying security; and  
14 (c) you have not made an election under subsection 230-405(5).
- 15 (4) A \*hedging financial arrangement election does not apply to a  
16 \*financial arrangement if:
- 17 (a) the election is made by the \*head company of a \*consolidated  
18 group or a \*MEC group; and  
19 (b) the election specifies that the election is not to apply to  
20 financial arrangements in relation to \*life insurance business  
21 carried on by a member of the consolidated group or MEC  
22 group; and  
23 (c) the arrangement is one that relates to the life insurance  
24 business carried on by a member of the consolidated group or  
25 MEC group.
- 26 (5) A \*hedging financial arrangement election does not apply to a  
27 \*financial arrangement if the arrangement is associated with a  
28 business of a kind specified in regulations made for the purposes of  
29 this subsection.

### 30 **230-290 Hedging financial arrangement and hedged item**

#### 31 *Hedging financial arrangement*

- 32 (1) A \*financial arrangement that you have that is a \*derivative  
33 financial arrangement, or is not a derivative financial arrangement  
34 but is a \*foreign currency hedge, is a ***hedging financial***  
35 ***arrangement*** if:
-



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- 1 (a) you create, acquire or apply the arrangement for the purpose  
2 of hedging a risk or risks in relation to a \*hedged item; and  
3 (b) at the time you create, acquire or apply the arrangement, the  
4 arrangement satisfies the requirements of the standards  
5 referred to in paragraph 230-275(2)(a) to be a hedging  
6 instrument; and  
7 (c) the arrangement is recorded as a hedging instrument in:  
8 (i) your financial report (including all documents and  
9 records on which the report is based); or  
10 (ii) if the arrangement hedges a risk in relation to foreign  
11 currency—the financial report of a consolidated entity  
12 in which you are included (including all documents and  
13 records on which the report is based);  
14 for the income year in which the rights and/or obligations are  
15 created, acquired or applied.

16 Note: For *document* and *record*, see section 25 of the *Acts*  
17 *Interpretation Act 1901*.

- 18 (2) A \*financial arrangement that is a \*derivative financial  
19 arrangement, or is not a derivative financial arrangement but is a  
20 \*foreign currency hedge, is a **hedging financial arrangement** if:  
21 (a) you create, acquire or apply the arrangement for the purpose  
22 of hedging a risk or risks in relation to something; and  
23 (b) one or more of subsections (3), (4), (5) or (6) is satisfied; and  
24 (c) the requirements of paragraphs (1)(b) or (c) are not able to be  
25 satisfied:  
26 (i) because of the requirements of the standards referred to  
27 in paragraph 230-275(2)(a); and  
28 (ii) not because of any act or omission on your part to  
29 deliberately fail to satisfy those requirements; and  
30 (d) you satisfy the additional recording requirements of  
31 subsection 230-310(5); and  
32 (e) you satisfy the requirements (if any) prescribed by the  
33 regulations for the purposes of this paragraph.
- 34 (3) This subsection is satisfied if:  
35 (a) the \*financial arrangement hedges a foreign currency risk in  
36 relation to an anticipated dividend from a \*connected entity;  
37 and

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- 1 (b) the dividend is \*non-assessable non-exempt income under  
2 section 23AJ of the *Income Tax Assessment Act 1936*.
- 3 (4) This subsection is satisfied if:  
4 (a) you enter into a \*financial arrangement with a \*connected  
5 entity; and  
6 (b) the standards referred to in paragraph 230-275(2)(a) require  
7 that a consolidated financial report be prepared that deals  
8 with both your affairs and the affairs of the connected entity;  
9 and  
10 (ba) the report properly reflects your affairs; and  
11 (c) the arrangement satisfies the requirements of  
12 paragraph (1)(a); and  
13 (d) the arrangement would satisfy the requirements of  
14 paragraph (1)(b) or (c) but for the fact that the consolidated  
15 report disregards the arrangement.
- 16 (5) This subsection is satisfied if:  
17 (a) the period for which the risk or risks are hedged does not  
18 straddle 2 or more income years; and  
19 (b) the \*financial arrangement satisfies the requirements of  
20 paragraph (1)(a); and  
21 (c) the arrangement would satisfy the requirements of  
22 paragraph (1)(c) if the period for which the risk or risks that  
23 are hedged did straddle 2 or more income years.
- 24 (6) This subsection is satisfied if the requirements prescribed by the  
25 regulations for the purposes of this subparagraph are satisfied.
- 26 *Financial arrangement hedging more than one type of risk*
- 27 (7) A \*financial arrangement that hedges more than one type of risk  
28 may only be a **hedging financial arrangement** if the standards  
29 referred to in paragraph (1)(b) allow the arrangement to be  
30 designated as a hedge of those risks.
- 31 *More than one financial arrangement hedging the same risk or*  
32 *risks*
- 33 (8) If 2 or more \*financial arrangements hedge the same risk or risks,  
34 each of the arrangements may only be a **hedging financial**  
35 **arrangement** if the standards referred to in paragraph (1)(b) allow
-

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1 those arrangements to be viewed in combination and jointly  
2 designated as hedging that risk or those risks.

3 *Hedged item*

4 (9) If a \*financial arrangement that you have hedges a risk in relation  
5 to:

6 (a) an asset or a part of an asset; or

7 (b) a liability or a part of a liability; or

8 (c) a firm commitment (within the meaning of the \*accounting  
9 standards) or a part of such a commitment; or

10 (d) a highly probable forecast transaction (within the meaning of  
11 the accounting standards) or a part of such a transaction; or

12 (e) a net investment in a foreign operation (within the meaning  
13 of the \*accounting standards) or a part of such an investment;  
14 or

15 (f) something prescribed by the regulations for the purposes of  
16 this paragraph;

17 the asset (or that part of the asset), the liability (or that part of the  
18 liability), the commitment (or that part of the commitment), the  
19 transaction (or that part of the transaction) or the investment (or  
20 that part of the investment) is a **hedged item** for the arrangement.

21 (10) If a \*financial arrangement is a \*hedging financial arrangement  
22 because of paragraph (3)(a), the anticipated dividend referred to in  
23 that subparagraph is a **hedged item** for the arrangement even if  
24 subsection (9) is not satisfied in relation to the anticipated  
25 dividend.

## 26 **230-295 Generally whole arrangement must be financial hedging** 27 **arrangement**

28 (1) Subject to subsections (2), (3) and (4), the whole of a \*financial  
29 arrangement must satisfy the requirements of subsection  
30 230-290(1) or (2) for the arrangement to be a **hedging financial**  
31 **arrangement**.

32 *Partial hedges*

33 (2) If a \*financial arrangement:

34 (a) is an options contract; and

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1 (b) hedges risk only in part by reference to changes in the  
2 intrinsic value of the options contract;  
3 the arrangement may be treated as a *hedging financial*  
4 *arrangement* to the extent to which the part of the arrangement  
5 referred to in paragraph (b) satisfies the requirements of subsection  
6 230-290(1) or (2).

7 (3) If a \*financial arrangement:  
8 (a) is a forward contract; and  
9 (b) has a spot price element and an interest element;  
10 the arrangement may be treated as a *hedging financial*  
11 *arrangement* to the extent to which the spot price element satisfies  
12 the requirements of subsection 230-290(1) or (2).

#### 13 *Proportionate hedges*

14 (4) A specified proportion of a \*financial arrangement may be treated  
15 as a *hedging financial arrangement* to the extent to which that  
16 proportion of the arrangement satisfies the requirements of  
17 subsection 230-290(1) or (2).

#### 18 *Separate financial arrangements if partial or proportionate hedge*

19 (5) If a part (or parts), or a proportion (or proportions), of a \*financial  
20 arrangement is (or are) treated as a \*hedging financial arrangement  
21 under subsection (2), (3) or (4):  
22 (a) the part (or each of the parts), or the proportion (or each of  
23 the proportions), of the arrangement that is (or are) treated as  
24 a hedging financial arrangement is taken to be a separate  
25 financial arrangement for the purposes of this Division; and  
26 (b) the remaining part or proportion (if any) of the arrangement  
27 is taken to be a separate financial arrangement for the  
28 purposes of this Division.

29 (6) Subsection (5) has effect even if there would not be separate  
30 \*arrangements under subsection 230-60(4).

### 31 **230-300 Requirements not satisfied because of honest mistake or** 32 **inadvertence**

33 If a \*derivative financial arrangement, or a \*foreign currency  
34 hedge, that you have would not be a \*hedging financial

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1 arrangement only because the requirements of paragraph  
2 230-290(1)(b) or (c), or both, are not satisfied because of an honest  
3 mistake or inadvertence, it is nevertheless a **hedging financial**  
4 **arrangement** if the Commissioner considers this appropriate  
5 having regard to:

- 6 (a) your documented risk management practices and policies;  
7 and  
8 (b) your record keeping practices; and  
9 (c) your accounting systems and controls; and  
10 (d) your internal governance processes; and  
11 (e) the circumstances surrounding the mistake or inadvertence  
12 (including the steps (if any) taken to correct or address the  
13 mistake or inadvertence and the steps (if any) taken to  
14 prevent a recurrence); and  
15 (f) the extent to which the requirements of paragraphs  
16 230-290(1)(b) and (c) have been met; and  
17 (g) the objects of this Subdivision.

## 18 **230-305 Derivative financial arrangement and foreign currency hedge**

### 19 *Derivative financial arrangement*

- 20 (1) A **derivative financial arrangement** is a \*financial arrangement  
21 that you have where:  
22 (a) its value changes in response to changes in a specified  
23 variable or variables; and  
24 (b) there is no requirement for a net investment, or there is such a  
25 requirement but the net investment is smaller than would be  
26 required for other types of financial arrangement that would  
27 be expected to have a similar response to changes in market  
28 factors.

29 Note: Paragraph (a)—A specified variable includes an interest rate,  
30 foreign exchange rate, credit rating, index or commodity or  
31 financial instrument price.

### 32 *Foreign currency hedge*

- 33 (2) A **foreign currency hedge** is a \*financial arrangement that you  
34 have if:  
35 (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and

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- 1 (b) the arrangement hedges a risk in relation to movements in  
2 currency exchange rates.

### 3 **230-310 Recording requirements**

- 4 (1) The requirement of this section is that you must make, or have in  
5 place, a record that:
- 6 (a) contains a description of the following:
- 7 (i) the \*hedging financial arrangement in relation to which  
8 the election is made;
- 9 (ii) the nature of the risk or risks being hedged;
- 10 (iii) the \*hedged item or items;
- 11 (iv) how you will assess the effectiveness of hedging the  
12 risk in reducing your exposure to changes in the fair  
13 value of the hedged item or items or cash flows or  
14 foreign currency exposure attributable to them;
- 15 (v) the risk management objective for, and the risk  
16 management strategy to be followed in, acquiring,  
17 creating or applying the arrangement; and
- 18 (b) contains any further details that the \*accounting standards  
19 require, by way of documentation, for an arrangement to be  
20 recorded in a financial report as a hedging instrument; and
- 21 (c) sets out the terms of the determinations you make under  
22 section 230-315.
- 23 To avoid doubt, paragraph (b) applies even if the arrangement is  
24 not recorded in your financial report as a hedging instrument.
- 25 (2) The record may consist of a single document or 2 or more  
26 documents.
- 27 (3) The record must be made or in place:
- 28 (a) at, or soon after, the time when you create, acquire or apply  
29 the \*hedging financial arrangement; or
- 30 (b) at such other time as is provided for in the regulations for the  
31 purposes of this paragraph.
- 32 (4) The description must be sufficiently precise and detailed that the  
33 following are clear:
- 34 (a) that the risk in respect of the particular \*hedged item or items  
35 was the one hedged by the \*hedging financial arrangement;
- 36 (b) the extent to which the risk was hedged;
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- 1 (c) that the rights and/or obligations comprising the hedging  
2 financial arrangement were in fact those created, acquired or  
3 applied for the purpose of hedging the risk.
- 4 (5) If a \*financial arrangement is a \*hedging financial arrangement  
5 under subsection 230-290(2), the following requirements must be  
6 met in addition to the requirements of subsections (1), (3) and (4):
- 7 (a) you must make or have in place, at, or soon before or soon  
8 after, the time when you create, acquire or apply the  
9 arrangement, a record that sets out:
- 10 (i) a statement of why, and the way in which, the  
11 arrangement operates commercially or economically as  
12 a hedge of the \*hedged item or items; and
- 13 (ii) the reasons why the arrangement does not satisfy the  
14 requirements of the standards referred to in paragraph  
15 230-275(2)(a) to be a hedging instrument;
- 16 (b) you must, at the end of each income year during which you  
17 have the arrangement, make a record of the accumulated  
18 gains and/or losses (whether realised or unrealised) as at the  
19 end of that income year from the arrangement or  
20 arrangements relating to the hedged item or items that are yet  
21 to be included in your assessable income or allowed to you as  
22 deductions;
- 23 (c) you must have, at the time when you create, acquire or apply  
24 the arrangement, a record that sets out your risk management  
25 policies and practices;
- 26 (d) you must have in place, at the time when you create, acquire  
27 or apply the arrangement, internal risk management systems  
28 and controls that record the arrangement and the hedged item  
29 or items.
- 30 (6) For the purposes of paragraph (5)(b), you must assume that:
- 31 (a) all the gains from the \*financial arrangement would be  
32 assessable income; and
- 33 (b) all the losses from the financial arrangement would be  
34 allowed to you as deductions.

## 230-315 Determining basis for allocating gain or loss

- 35
- 36 (1) A requirement of this section is that you must determine the basis  
37 on which your gain or loss from the \*hedging financial
-

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1 arrangement is to be allocated to an income year, or over 2 or more  
2 income years, for the purposes of this Division.

3 (2) It is also a requirement of this section that the basis that you  
4 determine must:

5 (a) fairly and reasonably correspond with the basis on which  
6 gains, losses or other amounts in relation to the \*hedged item  
7 or items are recognised or allocated under this Act; and

8 (b) be objective; and

9 (c) be sufficiently precise and detailed that, when your gain, loss  
10 or other amount from the \*hedged item or items is taken into  
11 account for the purposes of this Act, the following will be  
12 clear from the record made under section 230-310:

13 (i) the time at which the gain or loss from the \*hedging  
14 financial arrangement is to be taken into account for the  
15 purposes of this Division;

16 (ii) the way in which that gain or loss will be dealt with  
17 under section 230-270.

18 Note: Paragraph (a) refers to an amount in relation to the hedged item or  
19 items being recognised or allocated under this Act. This would include  
20 an amount being allowed as a deduction or an amount being included  
21 in assessable income. If the hedged item were an asset, an amount  
22 referable to a part of the cost of the asset might, for example, be  
23 allowed as a deduction for a particular income year.

24 (3) To avoid doubt, the income years over which your gain or loss is to  
25 be allocated may include an income year that starts after you cease  
26 to have the \*hedging financial arrangement.

### 27 **230-320 Effectiveness of the hedge**

28 The requirement of this section is that:

29 (a) hedging the risk must be expected to be highly effective  
30 (within the meaning of the standards referred to in paragraph  
31 230-275(2)(a)), for the period for which you expect to have  
32 the \*hedging financial arrangement, in reducing your  
33 exposure to changes in the fair value of the \*hedged item or  
34 items or cash flows attributable to your hedged risk; and

35 (b) the fair value of the hedged item or items or cash flows  
36 relating to them and the fair value of the arrangement must be  
37 able to be reliably measured; and

38 (c) you must assess the hedging of the risk by the arrangement:

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- 1 (i) on a regular basis in accordance with the \*accounting  
2 standards; and  
3 (ii) at least once in each 12 month period;  
4 and your assessment must be that it will be highly effective  
5 (within the meaning of the standards referred to in paragraph  
6 230-275(2)(a)) in reducing your exposure to changes in the  
7 fair value of the hedged item or items or cash flows  
8 attributable to the hedged risk throughout the remainder of  
9 the period for which you expect to have the arrangement.

## 10 **230-325 When election ceases to apply**

- 11 (1) A \*hedging financial arrangement election ceases to have effect  
12 from the start of an income year if you cease to be eligible under  
13 subsection 230-275(2) to make the hedging financial arrangement  
14 election for that income year.
- 15 (2) Subsection (1) does not prevent you from making a new \*hedging  
16 financial arrangement election at a later time if you become, at that  
17 later time, eligible under subsection 230-275(2) to make a hedging  
18 financial arrangement election for an income year.

19 Note: The new election will only apply to financial arrangements you start to  
20 have after the start of the income year in which the new election is  
21 made.

## 22 **230-330 Balancing adjustment if election ceases to apply**

- 23 (1) This section applies if a \*hedging financial arrangement election  
24 ceases to have effect under subsection 230-325(1).
- 25 (2) You are taken, for the purposes of this Division, to have:  
26 (a) disposed of each \*hedging financial arrangement to which the  
27 election applies for its fair value immediately before the  
28 election ceases to have effect; and  
29 (b) reacquired the arrangement at its fair value immediately after  
30 the election ceases to have effect.
- 31 (3) To avoid doubt, this Subdivision applies, for the purposes of  
32 working out the consequences of the disposal referred to in  
33 paragraph (2)(a), as if the \*hedging financial arrangement were one  
34 to which the \*hedging financial arrangement election applied at the  
35 time of the disposal.

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1       **230-335 Where requirements not met**

2                               *Commissioner may determine that requirement met*

- 3               (1) If a \*hedging financial arrangement that you have would not meet  
4               the requirements of sections 230-310 to 230-320, it nevertheless  
5               meets the requirements if the Commissioner considers this  
6               appropriate having regard to:
- 7                       (a) the respects in which it would not do so; and
  - 8                       (b) the extent to which it would not do so; and
  - 9                       (c) the reasons why it would not do so; and
  - 10                      (d) if the Commissioner is considering whether to impose  
11                      conditions under subsection (2)—the likelihood that you will  
12                      comply with those conditions; and
  - 13                      (e) the objects of this Subdivision.

14                               *Commissioner may impose additional record keeping requirements*

- 15               (2) The Commissioner may make a determination under subsection (1)  
16               conditional on your keeping records in addition to those required  
17               by section 230-310.
- 18               (3) A determination under subsection (1) ceases to have effect if you  
19               breach a condition imposed under subsection (2).
- 20               (4) Subsection (3) ceases to apply to you if the Commissioner  
21               determines that that subsection ceases to apply to you. The  
22               determination takes effect from the date specified in the  
23               determination.
- 24               (5) In deciding whether to make the determination under  
25               subsection (4), the Commissioner must have regard to:
- 26                       (a) your record keeping practices; and
  - 27                       (b) your compliance history; and
  - 28                       (c) any changes that have been made to:
    - 29                               (i) your accounting systems and controls; and
    - 30                               (ii) your internal governance processes;
  - 31                       to ensure that breaches of the kind referred to in  
32                       subsection (3) do not happen again; and
  - 33                       (d) any other relevant matter.

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1 *Commissioner may determine matter under section 230-315*

2 (6) If:

3 (a) the Commissioner makes a determination under  
4 subsection (1) in relation to a \*hedging financial  
5 arrangement; and

6 (b) either or both of the following applies:

7 (i) you fail to determine a matter in relation to the  
8 arrangement under section 230-315;

9 (ii) you determine a matter in relation to the arrangement  
10 under section 230-315 but the determination does not  
11 satisfy the requirements of subsection 230-315(2);

12 the Commissioner may determine that matter and the  
13 Commissioner's determination has effect as if you had made the  
14 determination and recorded it under that section.

## 15 **230-340 You may be excluded from this Subdivision for deliberate** 16 **failures to comply with requirements**

17 *When section applies*

18 (1) This section applies if:

19 (a) you start to have a \*hedging financial arrangement to which  
20 your \*hedging financial arrangement election applies; and

21 (b) you do not meet a requirement of section 230-310 or 230-315  
22 in relation to the arrangement; and

23 (c) you deliberately fail to meet that requirement in order to have  
24 this Subdivision not apply to the arrangement.

25 *Hedging financial arrangement election ceases to apply*

26 (2) The \*hedging financial arrangement election does not apply to a  
27 \*hedging financial arrangement you start to have after you fail to  
28 meet the requirement referred to in paragraph (1)(b).

29 *Commissioner may determine that hedging financial arrangement*  
30 *is to reapply*

31 (3) Subsection (2) ceases to apply to you if the Commissioner  
32 determines that that subsection ceases to apply to you. The  
33 determination takes effect from the date specified in the  
34 determination.

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- 1 (4) The Commissioner may make the determination under  
2 subsection (3) only if satisfied that you are unlikely to deliberately  
3 fail again to meet a requirement of section 230-310 or 230-315 in  
4 order to have this Subdivision not apply to a \*hedging financial  
5 arrangement.
- 6 (5) In deciding whether to make the determination under  
7 subsection (3), the Commissioner must have regard to:  
8 (a) your record keeping practices; and  
9 (b) your compliance history; and  
10 (c) any changes that have been made to:  
11 (i) your accounting systems and controls; and  
12 (ii) your internal governance processes;  
13 to ensure that failures of the kind referred to in  
14 paragraph (1)(c) do not happen again; and  
15 (d) any other relevant matter.
- 16 (6) If the Commissioner makes a determination under subsection (3),  
17 the \*hedging financial arrangement election applies to a \*hedging  
18 financial arrangement only if you start to have the arrangement  
19 after the determination takes effect.

20 *Commissioner may still exercise powers under section 230-335*

- 21 (7) This section does not prevent the Commissioner from exercising  
22 the Commissioner's powers under section 230-335 in relation to  
23 the \*hedging financial arrangement referred to in paragraph (1)(a).

## 24 **Subdivision 230-F—Reliance on financial reports**

### 25 **Table of sections**

26	230-345	Objects of this Subdivision
27	230-350	Election to rely on financial reports
28	230-355	Commissioner discretion to waive requirements in paragraphs
29		230-350(2)(c) and (e)
30	230-360	Financial arrangements to which the election applies
31	230-365	Financial arrangements not covered by election
32	230-370	Effect of election to rely on financial reports
33	230-375	When election ceases to apply
34	230-380	Balancing adjustment if election ceases to apply

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## 230-345 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to reduce administration and compliance costs by allowing you to align the tax treatment of your gains and losses from a \*financial arrangement with the accounting treatment that applies to the arrangement; and
- (b) to achieve those objects without your obtaining inappropriate tax benefits.

## 230-350 Election to rely on financial reports

### *Election*

- (1) You may make an *election to rely on financial reports* if you are eligible under subsection (2) to make the election for the income year in which you make the election.

### *Eligibility to make election*

- (2) You are eligible to make an election to rely on financial reports for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a \*foreign law; and
  - (c) your auditor has not qualified the auditor's report on your financial report for that income year or any of the last 4 financial years in a respect that is relevant to the taxation treatment of \*financial arrangements; and
  - (d) your accounting systems and controls and your internal governance processes are reliable; and

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1 (e) no report of an audit or review conducted in the income year,  
2 or any of the preceding 4 income years, has included an  
3 adverse assessment of your accounting systems in a respect  
4 that is relevant to the taxation treatment of financial  
5 arrangements.

6 Note 1: Paragraph (b)—Section 230-435 allows regulations to be made  
7 specifying particular foreign accounting and auditing standards as  
8 ones that are to be treated as comparable with Australian accounting  
9 and auditing standards for the purposes of this Division.

10 Note 2: For the purposes of paragraphs (c) and (e), a qualification or  
11 assessment may be relevant to the taxation treatment of financial  
12 arrangements even though it does not deal with the amount or timing  
13 of recognition of gains or losses (but relates, for example, to the  
14 reliability of the accounting systems through which information about  
15 financial arrangements is recorded).

16 (2A) For the purposes of paragraph (2)(a), treat a financial report  
17 prepared by another entity as being prepared by you if:

- 18 (a) the other entity is a \*connected entity of yours; and  
19 (b) the report is a consolidated financial report that deals with  
20 both your affairs and the affairs of the connected entity; and  
21 (c) the report properly reflects your affairs.

22 (3) Paragraph (e) does not apply to a report of:

- 23 (a) an internal audit or review that you conduct; or  
24 (b) an audit or review of a kind prescribed by the regulations for  
25 the purposes of this paragraph.

#### 26 *Election irrevocable*

27 (4) An election under subsection (1) is irrevocable.

28 Note: The election may cease to apply under section 230-375.

### 29 **230-355 Commissioner discretion to waive requirements in** 30 **paragraphs 230-350(2)(c) and (e)**

31 (1) Paragraph 230-350(2)(c) or (e) does not apply in relation to your  
32 \*election to rely on financial reports for a particular income year or  
33 income years if the Commissioner determines that the paragraph  
34 does not apply to the election for that income year or those income  
35 years.

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- 1 (2) In deciding whether to make the determination under  
2 subsection (1), the Commissioner must have regard to:
- 3 (a) the reasons for the non-compliance with the standards  
4 concerned; and
- 5 (b) the remedial action (if any) that you have undertaken to  
6 ensure that non-compliance with those standards does not  
7 occur in future (such as changes to your accounting systems  
8 and controls or to your internal governance structures); and
- 9 (c) if you, or your activities, are subject to regulatory oversight  
10 or review—any opinions expressed by the regulator about the  
11 adequacy of remedial action of the kind referred to in  
12 paragraph (b); and
- 13 (d) any other relevant matter.

## 14 **230-360 Financial arrangements to which the election applies**

- 15 (1) An \*election to rely on financial reports applies in relation to a  
16 \*financial arrangement that you have if:
- 17 (a) the arrangement is a \*Division 230 financial arrangement;  
18 and
- 19 (b) you start to have the arrangement in the income year in which  
20 you make the election or in a later income year; and
- 21 (c) the arrangement is recognised in financial reports of the kind  
22 referred to in paragraph 230-350(2)(a) that are audited as  
23 referred to in paragraph 230-350(2)(b); and
- 24 (d) if the arrangement is a financial arrangement under  
25 section 230-55—the arrangement is an asset or liability that  
26 you are required (whether or not as a result of a choice you  
27 make) by:
- 28 (i) the \*accounting standards; or
- 29 (ii) if those standards do not apply to the preparation of the  
30 financial report—comparable accounting standards that  
31 apply to the preparation of the financial report under a  
32 \*foreign law;
- 33 to classify or designate, in the financial reports, as at fair  
34 value through profit or loss; and
- 35 (e) it is reasonably expected that the following is, or will be, the  
36 same:

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- 1 (i) the amount of the overall gain or loss you make from  
2 the arrangement (as determined in accordance with the  
3 financial reports);
- 4 (ii) the amount of the overall gain or loss you make from  
5 the arrangement (as determined in accordance with the  
6 provisions of this Division if the election under  
7 subsection (1) did not apply to the arrangement); and
- 8 (f) the differences between the results of the following methods  
9 would reasonably be expected not to be substantial:
- 10 (i) the method used in your financial reports to work out  
11 the amounts of the gain or loss you make from the  
12 arrangement for each income year;
- 13 (ii) the method that would be applied by this Division to  
14 work out the amounts of those gains or losses if the  
15 election did not apply to the arrangement.

16 This subsection has effect subject to section 230-365.

- 17 (2) In applying paragraph (1)(f) at the time when you start to have the  
18 \*financial arrangement, disregard any differences between the  
19 results of the methods referred to in subparagraphs (1)(f)(i) and (ii)  
20 that are attributable solely to the provision for the possible  
21 impairment of debts required by the standards referred to in  
22 paragraph 230-350(2)(a).
- 23 (3) Subsections (4), (5) and (6) apply if, but for this subsection,  
24 paragraphs (1)(c) and (d) would not be satisfied in relation to a  
25 \*financial arrangement because the arrangement is an intra-group  
26 transaction for the purposes of:
- 27 (a) \*accounting standard AASB 127 (or another accounting  
28 standard prescribed by the regulations for the purposes of this  
29 paragraph); or
- 30 (b) if that standard does not apply to the preparation of the  
31 financial report—a comparable accounting standard that  
32 applies to the preparation of the financial report under a  
33 \*foreign law.

34 Note: Financial arrangements between members of a consolidated group or  
35 MEC group are not covered by this subsection because the single  
36 entity rule in subsection 701-1(1) operates to treat them as not being  
37 financial arrangements for the purposes of this Division.

- 38 (4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the  
39 \*financial arrangement.
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- 1 (5) Paragraph (1)(e) applies as if the reference in  
2 subparagraph (1)(e)(i) to the amount of the overall gain or loss you  
3 make from the \*financial arrangement (as determined in  
4 accordance with the financial reports) were a reference to the  
5 amount of that overall gain or loss (as would be determined in  
6 accordance with the financial reports if the arrangement had not  
7 been an intra-group transaction for the purposes of the standards  
8 referred to in paragraph (3)(b)).
- 9 (6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i)  
10 to the method used in your financial reports to work out the  
11 amounts of the gain or loss you make from the arrangement for  
12 each income year were a reference to the method that would be  
13 used in your financial reports to work out those amounts if the  
14 arrangement had not been an intra-group transaction for the  
15 purposes of the standards referred to in paragraph (3)(b).
- 16 (7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to  
17 a \*financial arrangement, assume that you had made any election  
18 that:  
19 (a) you could make under Subdivision 230-C or 230-D; and  
20 (b) could apply to the arrangement.
- 21 (8) If:  
22 (a) the \*financial arrangement would not be a financial  
23 arrangement if the following provisions were disregarded:  
24 (i) Division 9A of Part III of the *Income Tax Assessment*  
25 *Act 1936* (which deals with offshore banking units);  
26 (ii) Part IIIB of that Act (which deals with Australian  
27 branches of foreign banks etc.); and  
28 (b) paragraphs (1)(c) and (d) would be satisfied in relation to the  
29 financial arrangement if the arrangement had been between 2  
30 separate entities; and  
31 (c) the \*election to rely on financial reports is made by:  
32 (i) if section 121EB of the *Income Tax Assessment Act*  
33 *1936* applies—the OBU mentioned in that section  
34 (disregarding the operation of that section); or  
35 (ii) if section 160ZZW of that Act applies—the bank  
36 mentioned in that section (disregarding the operation of  
37 that section);
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1 paragraphs (1)(c) and (d) are taken to be satisfied in relation to the  
2 arrangement.

### 3 **230-365 Financial arrangements not covered by election**

4 (1) An \*election to rely on financial reports does not apply to a  
5 \*financial arrangement if:

- 6 (a) the arrangement is an \*equity interest; and  
7 (b) you are the issuer of the equity interest.

8 (2) An \*election to rely on financial reports does not apply to a  
9 \*financial arrangement if:

- 10 (a) you are:  
11 (i) an individual; or  
12 (ii) an entity (other than an individual) that satisfies  
13 subsection 230-405(2) or (3) for the income year in  
14 which you start to have the arrangement; and  
15 (b) the arrangement is a \*qualifying security; and  
16 (c) you have not made an election under subsection 230-405(5).

17 (3) An \*election to rely on financial reports does not apply to a  
18 \*financial arrangement if:

- 19 (a) the election is made by the \*head company of a \*consolidated  
20 group or \*MEC group; and  
21 (b) the election specifies that the election is not to apply to  
22 financial arrangements in relation to \*life insurance business  
23 carried on by a \*member of the consolidated group or MEC  
24 group; and  
25 (c) the arrangement is one that relates to the life insurance  
26 business carried on by a member of the consolidated group or  
27 MEC group.

28 (4) An \*election to rely on financial reports does not apply to a  
29 \*financial arrangement if the arrangement is associated with a  
30 business of a kind specified in regulations made for the purposes of  
31 this subsection.

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## 230-370 Effect of election to rely on financial reports

- 1  
2 (1) If an \*election to rely on financial reports applies to a \*financial  
3 arrangement, the gain or loss you make from the arrangement for  
4 an income year is:
- 5 (a) the gain or loss that the standards referred to in paragraph  
6 230-350(2)(a) require you to recognise in profit or loss from  
7 that arrangement for that income year; or
- 8 (b) if subsection 230-360(3) applies to the arrangement—the  
9 gain or loss that the standards referred to in paragraph  
10 230-350(2)(a) would have required you to recognise in profit  
11 or loss from that arrangement for that income year if the  
12 arrangement had not been an intra-group transaction for the  
13 purposes of the standards referred to in paragraph  
14 230-360(3)(b); or
- 15 (c) if subsection 230-360(8) applies to the arrangement—the  
16 gain or loss that the standards referred to in paragraph  
17 230-360(1)(d) would have required you to recognise in profit  
18 or loss for the year from the asset or liability mentioned in  
19 paragraph 230-360(1)(d) if the arrangement had been  
20 between 2 separate entities.

21 Note: Subsection 230-45(5) provides that this Subdivision does not apply to  
22 a gain or loss from a financial arrangement to the extent to which  
23 Subdivision 230-E (hedging financial arrangements method) applies to  
24 the arrangement.

- 25 (3) Subsection (4) applies if:
- 26 (a) a \*head company of a \*consolidated group or \*MEC group  
27 has a \*financial arrangement; and
- 28 (b) an \*election to rely on financial reports applies to the  
29 arrangement; and
- 30 (c) a subsidiary member of the group ceases to be a member of  
31 the group at a particular time (the *leaving time*); and
- 32 (d) immediately after the leaving time, the subsidiary member  
33 has the arrangement.
- 34 (4) The gain or loss the group makes from the arrangement for the  
35 income year in which the leaving time occurs is taken to be the  
36 gain or loss that the standards referred to in paragraph  
37 230-350(2)(a) would require the group to recognise in profit or loss  
38 from the arrangement for that income year if:

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- 1 (a) the circumstances that existed in relation to the arrangement  
2 (including its value) immediately before the leaving time had  
3 continued to exist until the end of the income year; and  
4 (b) any circumstances that arise in relation to the arrangement  
5 after the leaving time were disregarded.

#### 6 **230-375 When election ceases to apply**

7 (1) An election under subsection 230-350(1) ceases to have effect  
8 from the start of an income year if you cease to be eligible to make  
9 an \*election to rely on financial reports for that income year.

10 (2) Subsection (1) does not prevent you from making a new election  
11 under subsection 230-350(1) at a later time if you become, at that  
12 later time, eligible to make an \*election to rely on financial reports  
13 for an income year.

14 Note: The new election will only apply to financial arrangements you start to  
15 have after the start of the income year in which the new election is  
16 made.

17 (3) An election under subsection 230-350(1) ceases to apply to a  
18 \*financial arrangement from the start of an income year if the  
19 arrangement ceases to satisfy a requirement of paragraph  
20 230-360(1)(c), (d), (e) or (f) during that income year.

21 (4) If the election ceases to apply to a particular \*financial arrangement  
22 under subsection (3), the election cannot subsequently apply to that  
23 arrangement (even if the requirements of paragraphs  
24 230-360(1)(c), (d), (e) and (f) are satisfied once more in relation to  
25 the arrangement).

#### 26 **230-380 Balancing adjustment if election ceases to apply**

27 (1) You must make balancing adjustments under subsection (2) if an  
28 election under subsection 230-350(1) ceases to have effect under  
29 subsection 230-375(1).

30 (2) The balancing adjustments under this subsection are the balancing  
31 adjustments you would make under Subdivision 230-G in relation  
32 to each of the \*financial arrangements to which the election applied  
33 if you disposed of the arrangement for its fair value when the  
34 election ceases to have effect.

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- 1 (3) You must make balancing adjustments under subsection (5) if an  
2 election under subsection 230-350(1) ceases to apply to a particular  
3 \*financial arrangement under subsection 230-375(3).
- 4 (4) Subsection (3) does not apply to a \*financial arrangement if:  
5 (a) the arrangement is not one that you are required (whether or  
6 not as a result of a choice you make) by the standards  
7 referred to in paragraph 230-350(2)(a) to classify or  
8 designate, in your financial reports, as at fair value through  
9 profit or loss; and  
10 (b) the election under subsection 230-350(1) ceases to apply to  
11 the arrangement because the arrangement fails to satisfy the  
12 requirements of paragraph 230-360(1)(e) or (f); and  
13 (c) the arrangement ceases to satisfy the requirements of that  
14 paragraph because the arrangement becomes impaired for the  
15 purposes of those standards.
- 16 (5) The balancing adjustment under this subsection is the balancing  
17 adjustment you would make under Subdivision 230-G if you  
18 disposed of the \*financial arrangement for its fair value when the  
19 election ceases to apply to the arrangement.
- 20 (6) If a balancing adjustment is made under subsection (2) or (5) in  
21 relation to a \*financial arrangement, you are taken, for the purposes  
22 of this Division, to have reacquired the arrangement at its fair value  
23 immediately after the election ceased to have effect or ceased to  
24 apply to the arrangement.

## 25 **Subdivision 230-G—Balancing adjustment on ceasing to have a** 26 **financial arrangement**

### 27 **Table of sections**

28	230-385	When balancing adjustment made
29	230-390	Exceptions
30	230-395	Balancing adjustment

### 31 **230-385 When balancing adjustment made**

32 *When balancing adjustment made*

- 33 (1) A balancing adjustment is made under this Subdivision if:
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- 1 (a) you transfer to another entity all of your rights and/or  
2 obligations under a \*financial arrangement; or  
3 (b) all of your rights and/or obligations under a financial  
4 arrangement otherwise cease; or  
5 (c) you transfer to another entity:  
6 (i) a proportionate share of all of your rights and/or  
7 obligations under a financial arrangement; or  
8 (ii) a right or obligation that you have under a financial  
9 arrangement to a specifically identified \*financial  
10 benefit; or  
11 (iii) a proportionate share of a right or obligation that you  
12 have under a financial arrangement to a specifically  
13 identified financial benefit; or  
14 (d) an \*arrangement that is a \*Division 230 financial arrangement  
15 ceases to be a financial arrangement.

- 16 (2) Paragraphs (1)(a), (b) and (c) do not apply to a right or obligation  
17 under a \*financial arrangement unless that right or obligation is one  
18 of the rights or obligations that constitute the financial  
19 arrangement.

20 Note: See subsections 230-50(1) and 230-55(1) and (2) for the rights and/or  
21 obligations that constitute a financial arrangement.

#### 22 *Modifications for arrangements that are assets*

- 23 (3) If the \*financial arrangement is an asset of yours at the time the  
24 event referred to in subsection (1) occurs, paragraphs (1)(a) and (c)  
25 do not apply unless the effect of the transfer is to transfer to the  
26 other entity substantially all the risks and rewards of ownership of  
27 the interest transferred.

- 28 (3A) If a \*financial arrangement is an asset of yours, for the purposes of  
29 applying this Subdivision to the arrangement, you are treated as  
30 transferring a right under the arrangement to another entity if:  
31 (a) you retain the right but assume a new obligation; and  
32 (b) your assumption of the new obligation has the same effect, in  
33 substance, as transferring the right to another entity; and  
34 (c) the new obligation arises only to the extent to which the right  
35 to \*financial benefits under the arrangement is satisfied; and  
36 (d) you cannot sell or pledge the right (other than as security in  
37 relation to the new obligation); and

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- 1 (e) you must, under the new obligation, provide financial  
2 benefits you receive in relation to the right to the entity to  
3 which you owe the new obligation without delay.

4 *Historic rate rollover of derivative financial arrangement*

- 5 (4) For the purposes of paragraph (1)(b), all of your rights and/or  
6 obligations under a \*financial arrangement that is a \*derivative  
7 financial arrangement are taken to \*cease if there is an historic rate  
8 rollover of the arrangement.

9 **230-390 Exceptions**

10 *Equity interests etc.*

- 11 (1) Balancing adjustments are not made under this Subdivision in  
12 relation to a \*financial arrangement if:  
13 (a) the arrangement is a financial arrangement under  
14 section 230-55 (equity interests etc.); and  
15 (b) neither Subdivision 230-C nor Subdivision 230-F apply to  
16 the arrangement immediately before the balancing  
17 adjustment is made.

18 *Financial arrangements to which hedging financial arrangement*  
19 *elections apply*

- 20 (2) Balancing adjustments are not made under this Subdivision in  
21 relation to a \*financial arrangement in relation to which a \*hedging  
22 financial arrangement election applies.

23 *Bad debts, margining and conversion into, or exchange for,*  
24 *ordinary shares*

- 25 (3) A balancing adjustment is not made under this Subdivision in  
26 relation to the following events:  
27 (a) a \*financial arrangement being written off in whole or part as  
28 a bad debt;  
29 (b) a financial arrangement that is a \*derivative financial  
30 arrangement being settled or closed out for margining  
31 purposes;  
32 (c) the ceasing of obligations or rights under a financial  
33 arrangement that is a \*traditional security if:
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## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 (i) the ceasing occurs because the traditional security is  
2 converted into ordinary shares in, or transferred to, a  
3 company that is the issuer of the traditional security or a  
4 \*connected entity; and
- 5 (ii) the traditional security was issued on the basis that it  
6 will or may convert into ordinary shares in, or be  
7 transferred to, the issuer of the traditional security or the  
8 connected entity;
- 9 (d) the ceasing of obligations or rights under a financial  
10 arrangement that is a traditional security if:
- 11 (i) the ceasing occurs because the traditional security is  
12 exchanged for ordinary shares in a company that is  
13 neither the issuer of the traditional security nor a  
14 connected entity; and
- 15 (ii) if the ceasing of the obligations or rights occurs because  
16 of a disposal—the disposal is to the issuer of the  
17 traditional security or a connected entity; and
- 18 (iii) the traditional security was issued on the basis that it  
19 will or may be exchanged for ordinary shares in the  
20 company.

21 Note: Paragraph (a)—For the treatment of bad debts, see paragraph  
22 230-160(2)(c).

#### 23 *Subsidiary member leaving consolidated group or MEC group*

- 24 (4) A balancing adjustment is not made under this Subdivision in  
25 relation to a subsidiary member of a \*consolidated group or a  
26 \*MEC group that has a \*financial arrangement ceasing to be a  
27 member of the group.

### 28 **230-395 Balancing adjustment**

#### 29 *Complete cessation or transfer*

- 30 (1) Use the following method statement to make the balancing  
31 adjustment if paragraph 230-385(1)(a), (b) or (d) applies:

32 *Method statement for balancing adjustment*

33 *Step 1. Add up the following:*



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(a) the total of all the \*financial benefits you have received under the \*financial arrangement;

Note: This would include financial benefits you receive in relation to the transfer or cessation (see paragraph 230-65(2)(c)).

(b) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;

(c) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions;

Note: The losses from the arrangement here include losses made in gaining or producing exempt income or non-assessable non-exempt income.

(d) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of a balancing adjustment under subitems 121(9) to (15) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2008* to the extent to which those amounts are attributable to the arrangement.

*Step 2.* Add up the following:

(a) the total of all the \*financial benefits you have provided under the \*financial arrangement;

Note: This would include financial benefits you provide in relation to the transfer or cessation (see paragraph 230-65(1)(c)).

(b) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;

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(c) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable;

Note: The gains from the arrangement here include amounts of exempt income or non-assessable non-exempt income.

(d) the total of the amounts that will be included in your assessable income after the transfer or cessation because of a balancing adjustment under subitems 121(9) to (15) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2007* to the extent to which those amounts are attributable to the arrangement.

*Step 3.* Compare the amount obtained under step 1 (the *step 1 amount*) with the amount obtained under step 2 (the *step 2 amount*). If the step 1 amount exceeds the step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the \*financial arrangement for the purposes of this Division. If the step 2 amount exceeds the step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the step 1 amount and the step 2 amount are equal, no balancing adjustment is made.

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*Proportionate transfer of all rights and/or obligations under financial arrangement*

- (2) If subparagraph 230-385(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
- (a) the amounts referred to in step 1; and
  - (b) the amounts referred to in step 2;
- by applying the proportion referred to in subparagraph 230-385(1)(c)(i) to them.

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Amendments **Schedule 1**  
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1                    *Transfer of specifically identified right or obligation under*  
2                    *financial arrangement*

- 3                    (3) If subparagraph 230-385(1)(c)(ii) applies, you make the balancing  
4                    adjustment by applying the method statement in subsection (1) as if  
5                    the references to:  
6                        (a) the amounts referred to in step 1; and  
7                        (b) the amounts referred to in step 2;  
8                    were references to those amounts to the extent to which they are  
9                    reasonably attributable to the right or obligation referred to in  
10                    subparagraph 230-385(1)(c)(ii).

11                    *Proportionate transfer of specifically identified right or obligation*  
12                    *under financial arrangement*

- 13                    (4) If subparagraph 230-385(1)(c)(iii) applies, you make the balancing  
14                    adjustment by applying the method statement:  
15                        (a) as if the references to:  
16                            (i) the amounts referred to in step 1; and  
17                            (ii) the amounts referred to in step 2;  
18                    were references to those amounts to the extent to which they  
19                    are reasonably attributable to the right or obligation referred  
20                    to in subparagraph 230-385(1)(c)(iii); and  
21                        (b) by reducing those amounts by applying the proportion  
22                    referred to in subparagraph 230-385(1)(c)(iii) to them.

23                    *Attribution must reflect appropriate and commercially accepted*  
24                    *valuation principles*

- 25                    (5) Any attribution made under subsection (3) or paragraph (4)(a) must  
26                    reflect appropriate and commercially accepted valuation principles  
27                    that properly take into account:  
28                        (a) the nature of the rights and obligations under the \*financial  
29                            arrangement; and  
30                        (b) the risks associated with each \*financial benefit, right and  
31                            obligation under the arrangement; and  
32                        (c) the time value of money.

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## Schedule 1 Amendments

### Part 1 Main amendments

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1 *Income year for which gain or loss is made*

2 (6) The gain or loss you are taken to make under subsection (1), (2),  
3 (3) or (4) is a gain or loss for the income year in which the event  
4 referred to in subsection 230-385(1) occurs.

5 *Treatment of bad debts in relation to financial arrangements*

6 (7) For the purposes of applying paragraph (b) of step 1 of the method  
7 statement in subsection (1) to a \*financial arrangement, a bad debt  
8 deduction in relation to the arrangement to which subsection  
9 230-25(5) applies is taken to be a deduction for a loss from the  
10 arrangement.

## 11 **Subdivision 230-H—Exceptions**

### 12 **Table of sections**

13	230-400	Short-term arrangements where non-money amount involved
14	230-405	Certain taxpayers where no significant deferral
15	230-410	Various rights and/or obligations
16	230-415	Ceasing to have a financial arrangement in certain circumstances
17	230-420	Forgiveness of commercial debts
18	230-425	Clarifying exceptions
19	230-427	Disregard gains or losses covered by value shifting regime

### 20 **230-400 Short-term arrangements where non-money amount** 21 **involved**

22 This Division does not apply in relation to your gains and losses  
23 from a \*financial arrangement if:

- 24 (a) the arrangement is a financial arrangement under  
25 section 230-50; and  
26 (b) either:  
27 (i) you acquired goods or other property (other than goods  
28 that are, or property that is, money or a \*money  
29 equivalent) or services (other than services that are a  
30 money equivalent) from another entity and the  
31 \*financial benefits you are to provide under the  
32 arrangement are consideration for those goods, that  
33 property or those services; or

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- 1 (ii) you provided goods or other property (other than goods  
2 that are, or other property that is, money or a money  
3 equivalent) or services (other than services that are a  
4 money equivalent) to another entity and the financial  
5 benefits you are to receive under the arrangement are  
6 consideration for those goods, that property or those  
7 services; and
- 8 (c) the period between the following is not more than 12 months:  
9 (i) the time when you are to provide or receive the  
10 consideration (or a substantial proportion of it);  
11 (ii) the time when you acquired or provided the property,  
12 goods or services (or a substantial proportion of them);  
13 and
- 14 (d) the arrangement is not a \*derivative financial arrangement for  
15 any income year; and
- 16 (e) a \*fair value election does not apply to the arrangement.

## 17 **230-405 Certain taxpayers where no significant deferral**

- 18 (1) This Division does not apply in relation to your gains or losses  
19 from a \*financial arrangement for any income year if:  
20 (a) you are:  
21 (i) an individual; or  
22 (ii) an entity (other than an individual) that satisfies  
23 subsection (2) or (3) for the income year in which you  
24 start to have the arrangement; and
- 25 (b) either:  
26 (i) the arrangement is to end not more than 12 months after  
27 you start to have it; or  
28 (ii) the arrangement is not a \*qualifying security.
- 29 (2) An entity satisfies this subsection for an income year if:  
30 (a) the entity is:  
31 (i) an \*ADI; or  
32 (ii) a \*securitisation vehicle; or  
33 (iii) an entity that is required to register under the *Financial*  
34 *Sector (Collection of Data) Act 2001*; or  
35 (iv) an entity that would be required to register under that  
36 Act if it were a corporation; and

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- 1 (b) either:
- 2 (i) the entity's \*aggregated turnover for the income year
- 3 (worked out at the end of the income year) is less than
- 4 \$20 million if the income year is the one in which the
- 5 entity comes into existence; or
- 6 (ii) the entity's aggregated turnover for the immediately
- 7 preceding income year (worked out at the end of that
- 8 immediately preceding income year) is less than \$20
- 9 million if the income year is an income year after the
- 10 one in which the entity comes into existence.
- 11 (3) An entity satisfies this subsection for an income year if:
- 12 (a) the entity is not an entity to which paragraph (2)(a) applies;
- 13 and
- 14 (b) either:
- 15 (i) the entity's \*aggregated turnover for the income year
- 16 (worked out at the end of the income year) is less than
- 17 \$100 million if the income year is the one in which the
- 18 entity comes into existence; or
- 19 (ii) the entity's aggregated turnover for the immediately
- 20 preceding income year (worked out at the end of that
- 21 immediately preceding income year) is less than \$100
- 22 million if the income year is an income year after the
- 23 one in which the entity comes into existence.
- 24 (4) Subsection (1) does not apply to your gains or losses from a
- 25 \*financial arrangement for an income year if:
- 26 (a) you have made an election under subsection (5) in that
- 27 income year or an earlier income year; and
- 28 (b) you start to have the arrangement after the beginning of the
- 29 income year in which you make the election.
- 30 (5) An election under this subsection is an election to have this
- 31 Division apply to all of the \*financial arrangements that you start to
- 32 have in the income year in which the election is made or a later
- 33 income year.
- 34 (6) An election under subsection (5) is irrevocable.

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1     **230-410 Various rights and/or obligations**

2                     *Rights and/or obligations subject to an exception*

- 3             (1) This Division does not apply to your gains and losses from a  
4                 \*financial arrangement for any income year to the extent that your  
5                 rights and/or obligations under the arrangement are the subject of  
6                 an exception under any of the following subsections.

7             Note:         Further exceptions are also provided for in section 230-425.

8                     *Leasing or property arrangement*

- 9             (2) A right or obligation arising under:
- 10                 (a) an \*arrangement to which Division 42A (about leases of  
11                     luxury cars) of Schedule 2E to the *Income Tax Assessment*  
12                     *Act 1936* applies; or
- 13                 (b) an arrangement to which Division 240 of this Act (about  
14                     arrangements treated as a sale and loan) applies; or
- 15                 (ba) an arrangement that is an asset to which Division 250 of this  
16                     Act (about assets put to tax preferred use) applies; or
- 17                 (c) an arrangement that, in substance or effect, depends on the  
18                     use of a specific asset that is:
- 19                     (i) real property; or
- 20                     (ii) goods or a personal chattel (other than money or a  
21                         \*money equivalent); or
- 22                     (iii) intellectual property;
- 23                     and gives a right to control the use of the asset; or
- 24                 (d) an arrangement that is a licence to use:
- 25                     (i) real property; or
- 26                     (ii) goods or a personal chattel (other than money or a  
27                         \*money equivalent); or
- 28                     (iii) intellectual property;
- 29             is the subject of an exception.

30                     *Interest in partnership or trust*

- 31             (3) A right carried by an interest in a partnership or a trust, or an  
32             obligation that corresponds to such a right, if:
- 33                 (a) there is only one class of interest in the partnership or trust;  
34                 or

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- 1 (b) the interest is an \*equity interest in the partnership or trust; or  
2 (c) for a right or obligation relating to a trust—the trust is  
3 managed by a funds manager or custodian, or a responsible  
4 entity (as defined in the *Corporations Act 2001*) of a  
5 registered scheme (as so defined).

- 6 (4) Subsection (3) does not apply if a \*fair value election, or an  
7 \*election to rely on financial reports, applies to the \*financial  
8 arrangement.

#### 9 *Certain insurance policies*

- 10 (5) A right or obligation under a \*life insurance policy is the subject of  
11 an exception unless:

- 12 (a) you are not a \*life insurance company that is the insurer  
13 under the policy; and  
14 (b) the policy is an annuity that is a \*qualifying security.

- 15 (6) A right or obligation under a \*general insurance policy is the  
16 subject of an exception unless:

- 17 (a) you are not a \*general insurance company; and  
18 (b) the policy is a \*derivative financial arrangement.

#### 19 *Certain workers' compensation arrangements*

- 20 (7) A right or obligation in relation to a liability for workers'  
21 compensation claims to which Division 323 of Schedule J to the  
22 *Income Tax Assessment Act 1936* applies is the subject of an  
23 exception.

#### 24 *Certain guarantees and indemnities*

- 25 (8) A right or obligation under a guarantee or indemnity is the subject  
26 of an exception unless:

- 27 (a) the \*financial arrangement is the subject of a \*fair value  
28 election or an \*election to rely on financial reports; or  
29 (b) the financial arrangement is a \*derivative financial  
30 arrangement; or  
31 (c) the guarantee or indemnity is given in relation to a financial  
32 arrangement.



# EXPOSURE DRAFT

Amendments **Schedule 1**  
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## *Personal arrangements and personal injury*

- 1
- 2 (9) The following rights and obligations are the subject of an  
3 exception:
- 4 (a) a right to receive, or an obligation to provide, consideration  
5 for providing personal services;
- 6 (b) a right, or obligation, arising from the administration of a  
7 deceased person's estate;
- 8 (c) a right to receive, or an obligation to provide, a gift under a  
9 deed;
- 10 (d) a right to receive, or an obligation to provide, a \*financial  
11 benefit by way of maintenance:
- 12 (i) to an individual who is or has been the \*spouse of the  
13 person liable to provide the benefit; or
- 14 (ii) to or for the benefit of an individual who is or has been  
15 a child of the person liable to provide the benefit; or
- 16 (iii) to or for the benefit of an individual who is or has been  
17 a child of an individual who is or has been a spouse of  
18 the person liable to provide the benefit;
- 19 (e) a right to receive, or an obligation to provide, a financial  
20 benefit in relation to personal injury to an individual;
- 21 (f) a right to receive, or an obligation to provide, a financial  
22 benefit in relation to an injury to an individual's reputation.
- 23 (10) Without limiting paragraph (9)(e), that paragraph applies:
- 24 (a) even if the person to whom the \*financial benefit is to be  
25 provided is not the individual who was injured; and
- 26 (b) even if the personal injury to the individual takes the form of:
- 27 (i) a wrong to the individual; or
- 28 (ii) illness of the individual.
- 29 Note: The person referred to in paragraph (a) may, for example, be a relative  
30 of the individual who was injured.

## *Superannuation and pension income*

- 31
- 32 (11) A right to receive, or an obligation to provide, \*financial benefits is  
33 the subject of an exception if the right or obligation arises from a  
34 person's membership of a superannuation or pension scheme,  
35 including:
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- 1 (a) a right of a dependant of a member to receive financial  
2 benefits or an obligation to provide financial benefits to a  
3 dependant of a member; and  
4 (b) a right or obligation arising from an interest in:  
5 (i) a \*complying superannuation fund or \*non-complying  
6 superannuation fund; or  
7 (ii) a \*pooled superannuation trust; or  
8 (iii) an \*approved deposit fund.

9 *Interest in certain foreign companies, foreign trusts and FLPs*

- 10 (12) A right or obligation that arises under an interest (within the  
11 meaning of Part XI of the *Income Tax Assessment Act 1936*) in a  
12 \*FIF or \*FLP is the subject of an exception.

13 *Proceeds from certain business sales*

- 14 (13) A right to receive, or an obligation to provide, \*financial benefits  
15 arising from the sale of:  
16 (a) a business; or  
17 (b) shares in a company that operates a business; or  
18 (c) interests in a trust that operates a business;  
19 is the subject of an exception if the amounts, or the values, of those  
20 benefits are contingent only on the economic performance of the  
21 business after the sale.

22 *Infrastructure borrowings*

- 23 (14) A right to receive, or an obligation to provide, \*financial benefits is  
24 the subject of an exception if the right or obligation arises under an  
25 \*arrangement to which Division 16L of the *Income Tax Assessment*  
26 *Act 1936* applies.

27 *Farm Management Deposits*

- 28 (15) A right to receive, or an obligation to provide, \*financial benefits is  
29 the subject of an exception if the right or obligation is the right or  
30 obligation of an owner of a \*farm management deposit.

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1 *Rights and obligations to which section 121EK of the Income Tax*  
2 *Assessment Act 1936 applies*

3 (16) A right or obligation that arises because of a payment of an amount  
4 to which section 121EK of the *Income Tax Assessment Act 1936*  
5 applies is the subject of an exception.

6 *Forestry managed investment scheme interests*

7 (17) A right or obligation under a \*forestry interest in a \*forestry  
8 managed investment scheme in relation to which you can claim  
9 deductions under Division 394 is the subject of an exception.

10 *Regulations may provide for exceptions*

11 (18) A right or obligation of a kind specified in the regulations for the  
12 purposes of this subsection is the subject of an exception.

## 13 **230-415 Ceasing to have a financial arrangement in certain** 14 **circumstances**

15 (1) This section applies if:

- 16 (a) you cease to have a \*financial arrangement (or part of a  
17 financial arrangement); and  
18 (b) you make a loss from ceasing to have the arrangement (or  
19 that part of the arrangement); and  
20 (c) if the arrangement is a marketable security (within the  
21 meaning of section 70B of the *Income Tax Assessment Act*  
22 *1936*):  
23 (i) you did not acquire the arrangement in the ordinary  
24 course of trading on a securities market (within the  
25 meaning of that section); and  
26 (ii) at the time you acquired the arrangement, it was not  
27 open to you to acquire an identical financial  
28 arrangement in the ordinary course of trading on a  
29 securities market; and  
30 (d) if the arrangement is a marketable security—you did not  
31 dispose of the arrangement in the course of trading on a  
32 securities market; and  
33 (e) it would be concluded that you ceased to have the  
34 arrangement wholly or partly because there was an  
35 apprehension or belief that the other party or other parties to
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1 the arrangement were, or would be likely to be, unable or  
2 unwilling to discharge all their liabilities to pay amounts  
3 under the arrangement.

4 (2) The amount of the loss is reduced by so much of that amount as is  
5 a loss of capital or a loss of a capital nature.

6 Note: However, the amount by which the loss is reduced is a capital loss.

7 (3) In applying paragraph (1)(e), you must have regard to:

8 (a) the financial position of the other party or parties to the  
9 \*financial arrangement; and

10 (b) the perceptions of the financial position of the other party or  
11 parties to the arrangement; and

12 (c) other relevant matters.

### 13 **230-420 Forgiveness of commercial debts**

14 If a gain that you make from a \*financial arrangement arises from  
15 the forgiveness of a debt (as defined in Subdivision 245-B of  
16 Schedule 2C to the *Income Tax Assessment Act 1936*), the gain is  
17 reduced by:

18 (a) if section 245-90 (about agreements to forgo capital losses or  
19 revenue reductions) of that Schedule does not apply—the  
20 debt's net forgiven amount as defined in paragraph  
21 245-85(2)(a) of that Schedule; or

22 (b) if that section does apply—the debt's provisional net  
23 forgiven amount as defined in paragraph 245-85(2)(b) of that  
24 Schedule.

25 Note: Section 51AAA (about a net capital gains limit) of the *Income Tax*  
26 *Assessment Act 1936* also has the effect of preventing you from  
27 deducting losses.

### 28 **230-425 Clarifying exceptions**

#### 29 *Exceptions*

30 (1) To avoid doubt, this Division does not apply to your gains and  
31 losses from a \*financial arrangement for any income year to the  
32 extent that your rights and/or obligations are the subject of an  
33 exception under any of the following subsections.

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- 1 (2) This section is not intended to limit, expand or otherwise affect the  
2 operation of sections 230-50 to 230-60 (which tell you what is  
3 covered by the concept of *financial arrangement*) in relation to  
4 rights and/or obligations other than those dealt with in this section.

5 *Retirement village arrangements*

- 6 (3) The following rights and obligations are the subject of an  
7 exception:  
8 (a) a right or obligation arising under a \*retirement village  
9 residence contract;  
10 (b) a right or obligation arising under a \*retirement village  
11 services contract;  
12 (c) a right or obligation arising under an \*arrangement under  
13 which \*residential care or \*flexible care is provided.
- 14 (4) For the purposes of subsection (3):  
15 (a) a *retirement village residence contract* is a contract that  
16 gives rise to a right to occupy \*residential premises in a  
17 \*retirement village; and  
18 (b) a *retirement village services contract* is a contract under  
19 which a resident of a retirement village is provided with  
20 general or personal services in the retirement village.

21 **230-427 Disregard gains or losses covered by value shifting regime**

- 22 (1) Disregard a gain or loss under this Division from a \*financial  
23 arrangement to the extent that it is attributable to:  
24 (a) a shifting of value that has consequences under Division 723;  
25 or  
26 (b) a \*value shift that has consequences under Division 725; or  
27 (c) an \*indirect value shift that has consequences under  
28 Division 727; or  
29 (d) a shifting of value that has consequences analogous to those  
30 under Division 723, 725 or 727 under a repealed provision of  
31 this Act or of the *Income Tax Assessment Act 1936*.
- 32 (2) Determine whether a shift of value has the consequences  
33 mentioned in paragraph (1)(a) or (d) on the assumption that a  
34 \*realisation event in respect of all or part of the \*financial  
35 arrangement happens in the income year for the gain or loss.

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### 1 Subdivision 230-I—Other provisions

#### 2 Table of sections

3	230-429	Effect of change of residence—rules for particular methods
4	230-430	Effect of change of residence—disposal and reacquisition etc. after ceasing
5		to be Australian resident where no further recognised gains or losses from
6		arrangement
7	230-431	Effect of change of accounting standards
8	230-435	Comparable foreign accounting and auditing standards
9	230-440	Financial arrangement as consideration for provision or acquisition of a
10		thing
11	230-441	Non-arm's length dealings in relation to financial arrangement
12	230-442	Arm's length dealings in relation to financial arrangement—adjustment to
13		gain or loss in certain situations

#### 14 **230-429 Effect of change of residence—rules for particular methods**

- 15 (1) The object of this section is to deal with your gains and losses for  
16 an income year in which you change residence by:
- 17 (a) allocating the gains and losses to your periods of Australian  
18 and foreign residence in that income year; and
- 19 (b) determining the assessability of the gains and the  
20 deductibility of the losses according to your residency in each  
21 period, the sources of the gains and the connection of the  
22 losses with your assessable income.

- 23 (2) This section applies if:
- 24 (a) disregarding this section and subsection 230-45(1A):
- 25 (i) a gain is included in your assessable income under  
26 section 230-15 for an income year; or
- 27 (ii) you can deduct a loss under section 230-15 for the  
28 income year; and
- 29 (b) you are a foreign resident for part of the income year (the  
30 *foreign residency period*) and an Australian resident for the  
31 other part of the income year (the *Australian residency*  
32 *period*); and
- 33 (c) section 230-430 does not apply in respect of the change of  
34 residence.

35 Note: See section 230-430 if you change residence, and after the change the  
36 gains and losses you make from the arrangement are not assessable or  
37 deductible under this Division.

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1                                    *Accruals and hedging financial arrangement methods*

- 2                    (3) If (disregarding this section) you apply the accruals or hedging  
3                    financial arrangement method to determine the amount of the gain  
4                    or loss mentioned in paragraph (2)(a), apply that method by  
5                    apportioning the gain or loss on a reasonable basis between those  
6                    periods so as to work out:  
7                        (a) a gain or loss from the arrangement for the foreign residency  
8                                period; and  
9                        (b) a gain or loss from the arrangement for the Australian  
10                                residency period.

11                                    *Fair value, foreign exchange retranslation and financial reports*  
12                                    *methods*

- 13                    (4) If (disregarding this section) you apply the fair value or foreign  
14                    exchange retranslation method or the method of relying on your  
15                    financial reports to determine the amount of the gain or loss  
16                    mentioned in paragraph (2)(a), apply that method to work out:  
17                        (a) a gain or loss from the arrangement for the foreign residency  
18                                period; and  
19                        (b) a gain or loss from the arrangement for the Australian  
20                                residency period.

21                                    *Realisation method*

- 22                    (5) Subsection (6) applies if:  
23                        (a) you have a \*financial arrangement at the time (the **residence**  
24                                **change time**):  
25                                (i) you cease to be an Australian resident; or  
26                                (ii) you become an Australian resident; and  
27                        (b) you apply the realisation method to determine the amount of  
28                                gains or losses you make from the arrangement.
- 29                    (6) You are taken for the purposes of this Division:  
30                        (a) to have disposed of the arrangement just before the residence  
31                                change time for its fair value just before that time; and  
32                        (b) to have acquired the arrangement again at the residence  
33                                change time for its fair value at that time.

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1     **230-430 Effect of change of residence—disposal and reacquisition**  
2                   **etc. after ceasing to be Australian resident where no**  
3                   **further recognised gains or losses from arrangement**

4             (1) This section applies if:

- 5                   (a) you cease to be an Australian resident at a particular time (the  
6                           *residence change time*); and  
7                   (b) you have a \*financial arrangement at the residence change  
8                           time; and  
9                   (c) at the residence change time you expect that any gains and  
10                           losses you make from the arrangement after that time will not  
11                           be assessable or deductible under this Division.

12             (2) You are taken for the purposes of this Division:

- 13                   (a) to have disposed of the arrangement just before that time for  
14                           its fair value just before that time; and  
15                   (b) to have acquired the arrangement again at the residence  
16                           change time for its fair value at that time.

17     **230-431 Effect of change of accounting standards**

18             (1) This section applies if:

- 19                   (a) one of these methods apply to take account of a gain or loss  
20                           you make from a \*financial arrangement:  
21                           (i) the fair value method provided for in  
22                                   Subdivision 230-C; or  
23                           (ii) the foreign exchange retranslation method provided for  
24                                   in Subdivision 230-D; or  
25                           (iii) the method of relying on your financial reports provided  
26                                   for in Subdivision 230-F; and  
27                   (b) there is a change in, or in the application of, the relevant  
28                           standards (as mentioned in section 230-195 (fair value  
29                           method), 230-240 (foreign exchange retranslation method) or  
30                           230-370 (method of relying on financial reports)) that apply  
31                           in relation to the arrangement; and  
32                   (c) that change applies to a particular income year and later  
33                           years; and  
34                   (d) as a result of the change, those standards require you to  
35                           recognise in your statement of financial position an amount  
36                           (the *equity amount*), in order to avoid the need to increase or
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1 decrease gains or losses recognised in profit or loss from the  
2 financial arrangement in respect of previous income years.

3 (2) If the equity amount is positive, include in your assessable income  
4 for the particular income year mentioned in paragraph (1)(c) so  
5 much of it as relates to the \*financial arrangement mentioned in  
6 paragraph (1)(a).

7 (3) If the equity amount is negative, you are entitled to a deduction for  
8 the particular income year mentioned in paragraph (1)(c) equal to  
9 so much of it as relates to the \*financial arrangement mentioned in  
10 paragraph (1)(a).

## 11 **230-435 Comparable foreign accounting and auditing standards**

12 The regulations may:

13 (a) specify that particular standards that apply under a \*foreign  
14 law are to be taken for the purposes of this Division to be  
15 comparable to the \*accounting standards; and

16 (b) specify that particular standards that apply under a foreign  
17 law are to be taken for the purposes of this Division to be  
18 comparable to the \*auditing standards.

## 19 **230-440 Financial arrangement as consideration for provision or** 20 **acquisition of a thing**

21 (1) This section applies if you start or cease to have a \*Division 230  
22 financial arrangement as consideration for the provision or  
23 acquisition of a thing.

24 (2) For the purposes of applying this Act to you, treat the amount that:

25 (a) you obtain for providing the thing; or

26 (b) you provide for acquiring the thing;

27 as the \*market value of the thing at the time at which you (in fact)  
28 provide or acquire it.

29 Note 1: The amount may be relevant, for example, for the purposes of  
30 applying the provisions of this Act dealing with capital gains, capital  
31 allowances or trading stock to the thing.

32 Note 2: This subsection does not affect the financial benefits received or  
33 provided under the financial arrangement from you starting or ceasing  
34 to have it (except in the circumstances described in Note 3). However:

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- 1 (a) the market value of the thing will be, or form part of, those  
2 financial benefits for the purposes of section 230-395; and
- 3 (b) in the case of a non arm's length transaction, the amount of those  
4 financial benefits may be affected by section 230-441.

5 Note 3: If the thing is itself a Division 230 financial arrangement and  
6 subsection (3) does not apply, this subsection will determine the  
7 financial benefits received or provided under the financial  
8 arrangement from you starting or ceasing to have it.

9 (3) Subsection (2) does not apply if:

- 10 (a) you start or cease to have the financial arrangement as  
11 mentioned in subsection (1) under an arrangement (the  
12 ***starting or ceasing arrangement***); and
- 13 (b) the thing is itself a \*Division 230 financial arrangement; and
- 14 (c) the starting or ceasing arrangement is *not* itself a  
15 \*Division 230 financial arrangement.

16 Example: An arrangement for exchanging a share subject to Subdivision 230-C  
17 for another share subject to Subdivision 230-C, where the arrangement  
18 itself is not a Division 230 financial arrangement.

19 (4) For the purposes of this section:

- 20 (a) treat yourself as providing a thing to another entity if:
- 21 (i) you have provided, or are to provide, the thing to the  
22 other entity; or
- 23 (ii) you cease to have, have ceased to have or are to cease to  
24 have, the thing; or
- 25 (iii) the other entity starts to have, has started having or is to  
26 start to have, the thing; and
- 27 (b) treat yourself as acquiring a thing if:
- 28 (i) another entity has provided, or is to provide, the thing to  
29 you; or
- 30 (ii) another entity ceases to have, has ceased to have or is to  
31 cease to have, the thing; or
- 32 (iii) you start to have, have started to have or are to start to  
33 have, the thing.

34 (5) For the purposes of this section, treat part of a \*Division 230  
35 financial arrangement as a Division 230 financial arrangement.

36 (6) Without limiting subsection (1), the thing provided, or the thing  
37 acquired, need not be a tangible thing and may take the form of

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1 services, conferring a right, incurring an obligation or  
2 extinguishing or varying a right or obligation.

3 (7) To avoid doubt, this section applies even if your starting or ceasing  
4 to have the financial arrangement mentioned in subsection (1) is  
5 only part of the consideration for the provision or acquisition of the  
6 thing.

7 (8) For the purposes of this section, treat your starting or ceasing to  
8 have the financial arrangement mentioned in subsection (1) as  
9 consideration for the provision or acquisition of the thing if that  
10 starting or ceasing is, in substance or effect, done for the provision  
11 or acquisition of the thing.

12 Example: Starting to have a financial arrangement in satisfaction of an  
13 obligation, where the obligation itself was incurred as consideration  
14 for the thing.

## 15 **230-441 Non-arm's length dealings in relation to financial** 16 **arrangement**

- 17 (1) This section applies if:
- 18 (a) a balancing adjustment is made under Subdivision 230-G in  
19 relation to a \*Division 230 financial arrangement you have;  
20 and
  - 21 (b) if the balancing adjustment was made because of paragraph  
22 230-385(1)(b) or (d) (cessations without transfer)—the  
23 arrangement is not a \*debt interest or loan.

24 *Non-arm's length transaction resulting in you starting to have the*  
25 *arrangement*

26 (2) Subsection (3) applies if the parties to the dealing that resulted in  
27 you starting to have the arrangement were not dealing at \*arm's  
28 length in relation to the dealing.

- 29 (3) For the purposes of this Division:
- 30 (a) disregard the amount of the \*financial benefit (if any) that  
31 you provided or received in relation to you starting to have  
32 the arrangement; and
  - 33 (b) instead, treat yourself as having provided or received a  
34 financial benefit in relation to you starting to have the  
35 arrangement that is equal to the amount of the financial  
36 benefit that you would have provided or received if the
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1 parties to the dealing mentioned in subsection (2) were  
2 dealing at \*arm's length in relation to the dealing.

3 *Non-arm's length transaction resulting in change of an amount of*  
4 *a financial benefit that you provided or received under the*  
5 *financial arrangement*

6 (4) Subsection (5) applies if the parties to a dealing that resulted in a  
7 change of an amount of a \*financial benefit that you provide or  
8 receive under the financial arrangement were not dealing at \*arm's  
9 length in relation to the dealing.

10 (5) For the purposes of this Division:

11 (a) disregard the amount of the \*financial benefit (if any) that  
12 you provide or receive under the financial arrangement as a  
13 result of the dealing; and

14 (b) instead, treat yourself as providing or receiving a financial  
15 benefit under the financial arrangement as a result of the  
16 dealing that is equal to the amount of the financial benefit  
17 that you would have provided or received if the parties to the  
18 dealing were dealing at \*arm's length in relation to the  
19 dealing.

20 *Non-arm's length transaction resulting in balancing adjustment*

21 (6) Subsection (7) applies if the parties to the dealing that resulted in  
22 the balancing adjustment mentioned in subsection (1) being made  
23 were not dealing at \*arm's length in relation to the dealing.

24 (7) For the purposes of this Division:

25 (a) disregard the amount of the \*financial benefit (if any) that  
26 you provide or receive in relation to the balancing  
27 adjustment; and

28 (b) instead, treat yourself as providing or receiving a financial  
29 benefit in relation to the balancing adjustment that is equal to  
30 the amount of the financial benefit that you would have  
31 provided or received if the parties to the dealing mentioned in  
32 subsection (6) were dealing at \*arm's length in relation to the  
33 dealing.

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1 **230-442 Arm's length dealings in relation to financial**  
2 **arrangement—adjustment to gain or loss in certain**  
3 **situations**

- 4 (1) This section applies if:
- 5 (a) disregarding this Division, a provision mentioned in  
6 subsection (2) makes an adjustment to an amount (the  
7 *relevant amount*); and
- 8 (b) the relevant amount is relevant in determining the amount of  
9 a gain or loss you make from a \*Division 230 financial  
10 arrangement.
- 11 (2) The provisions are as follows:
- 12 (a) section 52A of the *Income Tax Assessment Act 1936*;  
13 (b) section 73B of the *Income Tax Assessment Act 1936*;  
14 (c) Division 16K of Part III of the *Income Tax Assessment Act*  
15 *1936*;  
16 (d) subsection 245-65(2) of the *Income Tax Assessment Act*  
17 *1997*;  
18 (e) section 775-40 of the *Income Tax Assessment Act 1997*.
- 19 (3) In determining the amount of the gain or loss, treat the relevant  
20 amount as having been adjusted by the provision mentioned in  
21 subsection (2).
- 22 (4) However, if the circumstances that give rise to the adjustment  
23 result in section 230-441 having the effect of altering the amount  
24 of the gain or loss, do not treat the relevant amount as having been  
25 adjusted under subsection (3) to the extent of that alteration.

26 **Subdivision 230-J—Additional operation of Division**

27 **Table of sections**

28 230-445 Additional operation of Division

29 **230-445 Additional operation of Division**

30 *Foreign currency*

- 31 (1) This Division also applies to foreign currency as if the currency  
32 were a right that constituted a \*financial arrangement.

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1 *Non-equity shares*

- 2 (2) This Division also applies to a \*non-equity share in a company as if  
3 the share were a right that constituted a \*financial arrangement.

4 *Commodities held by traders*

- 5 (3) This Division also applies to a commodity that you hold as if the  
6 commodity were a right that constituted a \*financial arrangement  
7 if:

- 8 (a) you are an entity that trades or deals both in:  
9 (i) that commodity; and  
10 (ii) financial arrangements whose values change in response  
11 to changes in the price or value of that commodity; and  
12 (b) you hold that commodity for the purposes of dealing in the  
13 commodity; and  
14 (c) a \*fair value election or an \*election to rely on financial  
15 reports applies to financial arrangements that you start to  
16 have when you start to have the commodity; and  
17 (d) the commodity is an asset that you are required (whether or  
18 not as a result of a choice you make) by:  
19 (i) the \*accounting standards; or  
20 (ii) if those standards do not apply to the preparation of the  
21 financial report—comparable accounting standards that  
22 apply to the preparation of the financial report under a  
23 \*foreign law;  
24 to classify or designate, in your financial reports, as at fair  
25 value through profit or loss.

26 *Offsetting commodity contracts held by traders*

- 27 (4) This Division also applies to a contract to which you are a party as  
28 if the contract were a \*financial arrangement if:  
29 (a) you have a right to receive or an obligation to provide a  
30 commodity under the contract; and  
31 (b) you have a practice of dealing in the commodity through the  
32 performance of offsetting contracts to receive and provide the  
33 commodity; and  
34 (c) you do not have, as your sole or dominant purpose for  
35 entering into the contract, the purpose of receiving or

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- 1 delivering the commodity as part of your expected purchase,  
2 sale or usage requirements; and
- 3 (d) a \*fair value election or an \*election to rely on financial  
4 reports applies to financial arrangements that you start to  
5 have when you enter into the contract; and
- 6 (e) the contract is an asset or liability that you are required  
7 (whether or not as a result of a choice you make) by:
- 8 (i) the \*accounting standards; or  
9 (ii) if those standards do not apply to the preparation of the  
10 financial report—comparable accounting standards that  
11 apply to the preparation of the financial report under a  
12 \*foreign law;
- 13 to classify or designate, in your financial reports, as at fair  
14 value through profit or loss.

## 2 At the end of subsection 775-15(4)

15 Add:

16 Note: Under section 230-20 foreign exchange gains from a Division 230  
17 financial arrangement are dealt with under Division 230 and not under  
18 this Division.  
19

## 3 At the end of subsection 775-30(4)

20 Add:

21 Note: Under section 230-20 foreign exchange losses from a Division 230  
22 financial arrangement are dealt with under Division 230 and not under  
23 this Division.  
24

## 4 Section 775-200

25 After “4”, insert “or 9”.

## 5 After subsection 775-270(1)

26 Insert:

27 (1A) A choice under subsection (1) does not apply to a \*qualifying forex  
28 account held by you if a \*foreign exchange retranslation election  
29 by you is in effect in relation to the account under  
30 Subdivision 230-D.  
31  
32

## 6 At the end of Division 775

33 Add:  
34

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1 **Subdivision 775-F—Retranslation under foreign exchange**  
2 **retranslation election under Subdivision 230-D**

3 **Guide to Subdivision 775-F**

4 **775-290 What this Subdivision is about**

5 If you have made a foreign exchange retranslation election under  
6 Subdivision 230-D:

- 7 (a) a forex realisation gain or a forex realisation loss  
8 you make in relation to an arrangement that is not a  
9 Division 230 financial arrangement as a result of  
10 forex realisation event 1 to 5 or 8 is disregarded;  
11 and  
12 (b) forex realisation event 9 enables any gains or  
13 losses to be worked out on a retranslation basis.

14 **Table of sections**

15	775-295	When this Subdivision applies
16	775-300	Tax consequences of choosing retranslation for arrangement
17	775-305	Retranslation of gains and losses relating to arrangement to which foreign 18 exchange retranslation election applies—forex realisation event 9
19	775-310	When election ceases to apply to arrangement
20	775-315	Balancing adjustment when election ceases to apply to arrangement

21 **775-295 When this Subdivision applies**

- 22 (1) A \*foreign exchange retranslation election applies to an  
23 \*arrangement for the purposes of this Subdivision if:  
24 (a) you start to have the arrangement after the start of the income  
25 year in which the election is made; and  
26 (b) the arrangement is recognised in financial reports of a kind  
27 referred to in paragraph 230-220(2)(a) that are audited, or  
28 required to be audited, as referred to in paragraph  
29 230-220(2)(b); and  
30 (c) the arrangement is one in relation to which you are required  
31 by:



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- 1 (i) \*accounting standard AASB 121 (or another accounting  
2 standard prescribed for the purposes of paragraph  
3 230-225(1)(c)); or  
4 (ii) if that standard does not apply to the preparation of the  
5 financial report—a comparable accounting standard that  
6 applies to the preparation of the financial report under a  
7 \*foreign law;  
8 to recognise, in the financial reports referred to in paragraph  
9 230-220(1)(a), amounts in profit or loss (if any) that are  
10 attributable to changes in currency exchange rates.
- 11 (2) The \*foreign exchange retranslation election does not apply to an  
12 \*arrangement for the purposes of this Subdivision if:  
13 (a) the election is made by the \*head company of a \*consolidated  
14 group or a \*MEC group; and  
15 (b) the election specifies that the election is not to apply to  
16 \*financial arrangements in relation to \*life insurance business  
17 carried on by a member of the consolidated group or MEC  
18 group; and  
19 (c) the arrangement is one that relates to the life insurance  
20 business carried on by a member of the consolidated group or  
21 MEC group.
- 22 (3) The \*foreign exchange retranslation election does not apply to an  
23 \*arrangement for the purposes of this Subdivision if the  
24 arrangement is associated with a business of a kind specified in  
25 regulations made for the purposes of subsection 230-230(5).

## 775-300 Tax consequences of choosing retranslation for arrangement

- 26  
27
- 28 (1) A \*forex realisation gain or \*forex realisation loss you make as a  
29 result of forex realisation event 1, 2, 3, 4, 5 or 8 is disregarded if:  
30 (a) the event happens in relation to an \*arrangement that you  
31 hold; and  
32 (b) you have made a \*foreign exchange retranslation election that  
33 applies to the arrangement; and  
34 (c) the election is in effect when the event happens.
- 35 (2) If:
-

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## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 (a) CGT event C1 or C2 happens in relation to an \*arrangement  
2 that you hold at the time of the event; and  
3 (b) you have made a \*foreign exchange retranslation election that  
4 applies to the arrangement; and  
5 (c) the election is in effect when the event happens;  
6 disregard so much of any \*capital gain or \*capital loss you make as  
7 a result of the event as is attributable to a \*currency exchange rate  
8 effect.

9 Note: For *currency exchange rate effect*, see section 775-105.

### 10 **775-305 Retranslation of gains and losses relating to arrangement to** 11 **which foreign exchange retranslation election applies—** 12 **forex realisation event 9**

#### 13 *Forex realisation event 9*

- 14 (1) ***Forex realisation event 9*** happens in relation to an \*arrangement  
15 during an income year if:  
16 (a) you have made a \*foreign exchange retranslation election that  
17 applies to the arrangement; and  
18 (b) you are required by:  
19 (i) \*accounting standard AASB 121 (or another accounting  
20 standard prescribed for the purposes of paragraph  
21 230-225(1)(c)); or  
22 (ii) if that standard does not apply to the preparation of the  
23 financial report—a comparable accounting standard that  
24 applies to the preparation of the financial report under a  
25 \*foreign law;  
26 to recognise, in the financial report referred to in paragraph  
27 230-220(1)(a) for that income year, amounts in profit or loss  
28 (if any) in relation to the arrangement that are attributable to  
29 changes in currency exchange rates.

30 The ***forex realisation event 9*** is taken to have happened in the  
31 income year.

#### 32 *Forex realisation gain*

- 33 (2) You make a ***forex realisation gain*** if the standard referred to in  
34 paragraph (1)(b) requires you to recognise an amount in profit in

# EXPOSURE DRAFT

Amendments **Schedule 1**  
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---

1 relation to the arrangement. That amount of the *forex realisation*  
2 *gain* is the amount the standard requires you to recognise.

3 *Forex realisation loss*

4 (3) You make a *forex realisation loss* if the \*accounting standard  
5 referred to in paragraph (1)(c) requires you to recognise an amount  
6 in loss in relation to the arrangement. That amount of the *forex*  
7 *realisation loss* is the amount that the accounting standard requires  
8 you to recognise.

9 *Section does not apply to amounts previously recognised in equity*

10 (4) Subsections (1), (2) and (3) do not apply to amounts that have  
11 previously been required by the standards referred to in paragraph  
12 230-220(1)(a) to be recognised in equity.

## 13 **775-310 When election ceases to apply to arrangement**

14 (1) For the purposes of this Division, a \*foreign exchange retranslation  
15 election under subsection 230-220(1) ceases to apply to an  
16 \*arrangement from the start of an income year if the arrangement  
17 ceases to satisfy a requirement of paragraph 775-295(1)(b) or (c)  
18 during that income year.

19 (2) If the election ceases to apply to an \*arrangement under  
20 subsection (1), the election cannot subsequently reapply to that  
21 arrangement (even if the requirements of paragraphs 775-295(1)(b)  
22 and (c) are satisfied once more in relation to the arrangement).

## 23 **775-315 Balancing adjustment when election ceases to apply to** 24 **arrangement**

25 (1) This section applies if:  
26 (a) you make a \*foreign exchange retranslation election; and  
27 (b) the election ceases to have effect or ceases to apply to an  
28 \*arrangement.

29 (2) You are taken, for the purposes of this Division, to have:  
30 (a) disposed of the \*arrangement for its fair value immediately  
31 before the election ceases to have effect or ceases to apply to  
32 the arrangement; and

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

---

1 (b) reacquired the arrangement at its fair value immediately after  
2 the election ceases to have effect or ceases to apply to the  
3 arrangement.

4 Note: Paragraph (a) means that there would be a forex realisation event 9 in  
5 relation to the arrangement.

#### 6 **7 Subsection 820-930(1)**

7 After “this Division”, insert “and Division 230”.

#### 8 **8 Subsection 995-1(1)**

9 Insert:

10 *auditing standard* has the same meaning as in the *Corporations*  
11 *Act 2001*.

#### 12 **9 Subsection 995-1(1) (definition of *cash settlable*)**

13 Omit “250-165(2)”, substitute “230-50(2)”.

#### 14 **10 Subsection 995-1(1)**

15 Insert:

16 *derivative financial arrangement* has the meaning given by  
17 subsection 230-305(1).

#### 18 **11 Subsection 995-1(1)**

19 Insert:

20 *Division 230 financial arrangement*: a \*financial arrangement is a  
21 *Division 230 financial arrangement* if Division 230 applies in  
22 relation to your gains and losses from the arrangement.

#### 23 **12 At the end of subsection 995-1(1)**

24 Add:

25 *election to rely on financial reports* has the meaning given by  
26 section 230-350.

#### 27 **13 Subsection 995-1(1)**

28 Insert:

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Amendments **Schedule 1**  
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---

1                    *fair value election* has the meaning given by subsection  
2                    230-180(1).

3                    **14 Subsection 995-1(1) (definition of *financial arrangement*)**

4                    Omit “sections 250-165 to 250-175”, substitute “sections 230-50 to  
5                    230-60”.

6                    **15 Subsection 995-1(1)**

7                    Insert:

8                    *flexible care* has the same meaning as in the *Aged Care Act 1997*.

9                    **16 Subsection 995-1(1)**

10                  Insert:

11                  *foreign currency hedge* has the meaning given by subsection  
12                  230-305(2).

13                  **17 Subsection 995-1(1)**

14                  Insert:

15                  *foreign exchange retranslation election* has the meaning given by  
16                  subsections 230-220(1) and (3).

17                  **18 Subsection 995-1(1)**

18                  Insert:

19                  *hedged item* has the meaning given by subsections 230-290(9) and  
20                  (10).

21                  **19 Subsection 995-1(1)**

22                  Insert:

23                  *hedging financial arrangement* has the meaning given by  
24                  subsections 230-290(1) to (8) and sections 230-295 and 230-300.

25                  **20 Subsection 995-1(1)**

26                  Insert:

27                  *hedging financial arrangement election* has the meaning given by  
28                  section 230-275.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

---

1     **21 Subsection 995-1(1) (definition of *money equivalent*)**

2             Repeal the definition, substitute:

3                     *money equivalent* means:

4                             (a) a right to receive money or something that is a \*money  
5                                     equivalent under this definition; or

6                             (b) a \*financial arrangement (within the meaning of  
7                                     section 230-50).

8     **22 Subsection 995-1(1) (paragraph (b) of the definition of**  
9             ***qualifying forex account*)**

10             Repeal the paragraph.

11     **23 Subsection 995-1(1)**

12             Insert:

13                     *qualifying security* has the same meaning as in Division 16E of  
14                     Part III of the *Income Tax Assessment Act 1936*.

15     **24 Subsection 995-1(1)**

16             Insert:

17                     *residential care* has the same meaning as in the *Aged Care Act*  
18                     1997.

19     **25 Subsection 995-1(1)**

20             Insert:

21                     *residential premises* has the same meaning as in the *A New Tax*  
22                     *System (Goods and Services Tax) Act 1999*.

23     **26 Subsection 995-1(1)**

24             Insert:

25                     *retirement village* has the same meaning as in the *A New Tax*  
26                     *System (Goods and Services Tax) Act 1999*.

27     **27 Subsection 995-1(1)**

28             Insert:

# EXPOSURE DRAFT

Amendments **Schedule 1**  
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---

1                    *retirement village residence contract* has the meaning given by  
2                    paragraph 230-425(4)(a).

## 3                    **28 Subsection 995-1(1)**

4                    Insert:

5                    *retirement village services contract* has the meaning given by  
6                    paragraph 230-425(4)(b).

## 7                    **29 Subsection 995-1(1) (paragraph (aa) of the definition of** 8                    ***special accrual amount*)**

9                    Repeal the paragraph, substitute:

- 10                    (aa) Subdivision 230-A of this Act (which deals with gains and  
11                    losses from financial arrangements) if:
- 12                    (i) the accruals method provided for in Subdivision 230-B  
13                    of this Act is applied to take account of the gain or loss  
14                    concerned; and
  - 15                    (ii) all the \*financial benefits provided and received under  
16                    the \*financial arrangement concerned are denominated  
17                    in a particular foreign currency;

## 18                    **30 Subsection 995-1(1)**

19                    Insert:

20                    *Subdivision 230-G assessable gain* from a \*financial arrangement  
21                    means an amount that is taken, as a balancing adjustment under  
22                    Subdivision 230-G, to be a gain you make from the arrangement  
23                    for the purposes of Division 230.

## 24                    **31 Subsection 995-1(1)**

25                    Insert:

26                    *Subdivision 230-G loss* from a \*financial arrangement means an  
27                    amount that is taken, as a balancing adjustment under  
28                    Subdivision 230-G, to be a loss you make from the arrangement for  
29                    the purposes of Division 230.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1

## 2 **Part 2—Consequential amendments**

### 3 *Income Tax Assessment Act 1936*

#### 4 **32 Subsection 6(1)**

5 Insert:

6 *Division 230 financial arrangement* has the same meaning as in  
7 the *Income Tax Assessment Act 1997*.

#### 8 **33 Subsection 51AAA(2) (at the end of the table)**

9 Add:

10

14 Division 230 Financial arrangements

11

#### 12 **34 Paragraph 82KZLA(a)**

13 Repeal the paragraph, substitute:

14 (a) a Division 230 financial arrangement (within the meaning of  
15 the *Income Tax Assessment Act 1997*); or

#### 16 **35 Before paragraph 96C(5A)(a)**

17 Insert:

18 (aa) Division 230 of the *Income Tax Assessment Act 1997*; and

#### 19 **36 At the end of subsection 102CA(2)**

20 Add:

21 ; or (c) the right is, or is part of, a Division 230 financial  
22 arrangement (within the meaning of the *Income Tax*  
23 *Assessment Act 1997*).

#### 24 **37 Subsection 121D(8)**

25 Omit “contract”, substitute “financial arrangement (within the meaning  
26 of the *Income Tax Assessment Act 1997*)”.

#### 27 **38 At the end of section 121EB**

28 Add:

---



# EXPOSURE DRAFT

Amendments **Schedule 1**  
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---

1 (3) To avoid doubt, this section applies for the purposes of applying  
2 Subdivision 230-A of the *Income Tax Assessment Act 1997* to a  
3 financial arrangement (within the meaning of that Act).

4 Note: This means that it is possible for financial arrangements to be entered  
5 into between the bank and the branch and for the bank or the branch to  
6 have a gain or loss from such an arrangement dealt with under  
7 Division 230 of the *Income Tax Assessment Act 1997*.

## 8 **39 Section 160ZZV (definition of *derivative transaction*)**

9 Omit “means a transaction”, substitute “means a Division 230 financial  
10 arrangement (within the meaning of the *Income Tax Assessment Act*  
11 *1997*) that is”.

## 12 **40 Section 160ZZV (definition of *derivative transaction*)**

13 After “does not include a transaction”, insert “entered into”.

## 14 **41 After subsection 160ZZW(1)**

15 Insert:

16 (1A) To avoid doubt, subsection (2) applies for the purposes of applying  
17 Subdivision 230-A of the *Income Tax Assessment Act 1997* to a  
18 financial arrangement (within the meaning of that Act).

19 Note: This means that it is possible for financial arrangements to be entered  
20 into between the bank and the branch and for the bank or the branch to  
21 have a gain or loss from such an arrangement dealt with under  
22 Division 230 of the *Income Tax Assessment Act 1997*.

## 23 **42 Section 160ZZX**

24 Before “All”, insert “(1)”.

## 25 **43 At the end of section 160ZZX**

26 Add:

27 (2) All gains from a Divisions 230 financial arrangement (within the  
28 meaning of the *Income Tax Assessment Act 1997*) made by a  
29 foreign bank through its Australian branch is taken, for the  
30 purposes of this Act, to be from an \*Australian source.

## 31 **44 Section 128NBA**

32 Omit “net Division 16E amount” (wherever occurring), substitute “net  
33 financial arrangement amount”.

---

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1 Note: The heading to section 128NBA is replaced by the heading “Credits in respect of  
2 amounts assessed in relation to certain financial arrangements”.

#### 3 **45 Paragraph 128NBA(1)(a)**

4 After “a qualifying security”, insert “or a Division 230 financial  
5 arrangement”.

#### 6 **46 Subsection 128NBA(5)**

7 Repeal the subsection, substitute:

8 *Net financial arrangement amount*

9 (5) For the purposes of this section, if:

10 (a) in the case of a qualifying security—the sum of all amounts  
11 (if any) included in the assessable income of the taxpayer of  
12 any years of income in relation to the qualifying security,  
13 attributable agreement payment or payment of interest under  
14 section 159GQ; or

15 (b) in the case of a Division 230 financial arrangement—the sum  
16 of all amounts (if any) included in the assessable income of  
17 the taxpayer of any years of income in relation to the  
18 arrangement under Division 230 of the *Income Tax*  
19 *Assessment Act 1997*;

20 exceeds:

21 (c) in the case of a qualifying security—the sum of all amounts  
22 (if any) allowable as deductions from the assessable income  
23 of the taxpayer of any years of income in relation to the  
24 security or the payment, as the case may be, under that  
25 section; or

26 (d) in the case of a Division 230 financial arrangement—the sum  
27 of:

28 (i) all amounts (if any) allowable as deductions from the  
29 assessable income of the taxpayer of any years of  
30 income in relation to the arrangement under  
31 Division 230 of the *Income Tax Assessment Act 1997*;  
32 and

33 (ii) all amounts (if any) of interest paid under the  
34 arrangement before the year of income in which the  
35 interest mentioned in paragraph (1)(a) is paid;

36 there is a net financial arrangement amount equal to the excess.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

---

1 **47 After subsection 262A(2AAC)**

2 Insert:

3 (2AAD) Subsection (1) applies to a person who has a Division 230 financial  
4 arrangement even if the person is not carrying on a business in  
5 relation to the arrangement.

6 (2AAE) To avoid doubt, for the purposes of subsection (4), if the records  
7 mentioned in that subsection relate to a Division 230 financial  
8 arrangement that a person has, the transactions or acts mentioned  
9 in that subsection are taken to be completed at:

10 (a) the end of the year of income in which the person ceases to  
11 have the arrangement; or

12 (b) if:

13 (i) the person applies the hedging financial arrangement  
14 method in Subdivision 230-E of the *Income Tax*  
15 *Assessment Act 1997* to determine the amount of one or  
16 more gains or losses the person makes from the  
17 arrangement; and

18 (ii) determining the way in which those gains or losses are  
19 dealt with in accordance with subsection 230-270(4) of  
20 that Act is possible only at a time after the end of the  
21 income year mentioned in paragraph (a);

22 the end of the year of income in which that time occurs.

23 **48 After paragraph 262A(3)(c)**

24 Insert:

25 (ca) for records required to be kept under section 230-310 of the  
26 *Income Tax Assessment Act 1997*—comply with the  
27 applicable provisions of that section; and

28 **49 Subsection 317(1) (paragraph (b) of the definition of**  
29 ***tainted interest income*)**

30 After “Part III”, insert “(or would be so included if Division 230 of the  
31 *Income Tax Assessment Act 1997* did not apply)”.

32 **50 After paragraph 389(b)**

33 Insert:

34 (ba) Division 230 of the *Income Tax Assessment Act 1997*;

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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

---

1 **51 At the end of section 557A**

2 Add:  
3 ; and (c) Division 230 of the *Income Tax Assessment Act 1997*.

4 **52 Subsection 57-25(6) of Schedule 2D (after table item 6)**

5 Insert:  
6A Division 230

---

6 ***Income Tax Assessment Act 1997***

7 **53 Section 10-5 (after table item headed “films”)**

8 Insert:  
9 **financial arrangements**  
10 gains from ..... 230-15(1)

9 **54 Section 12-5 (table item headed “financial arrangements”)**

10 Repeal the item, substitute:  
11 **financial arrangements**  
12 losses from ..... 230-15(2) and (3)  
13 see also *borrowing expenses, infrastructure borrowings,*  
14 *interest, leases and securities*

11 **55 At the end of subsection 25-35(5)**

12 Add:  
13 Note: Subsections 230-150(3), (5) and (6) and 230-165(3), (5) and (6)  
14 provide that in certain circumstances a deduction for a loss in relation  
15 to a financial arrangement is to be treated, for the purposes of this Act,  
16 as a deduction of a bad debt. The rules referred to in this subsection  
17 apply to that deduction.

18 **56 After subsection 25-85(4)**

19 Insert:  
20 (4A) Subsections (2) and (3) do not apply to a \*return on a \*debt interest  
21 that is a \*Division 230 financial arrangement.

22 **57 At the end of section 25-90**

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

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# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

---

1 **58 Subsection 40-180(1) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **59 At the end of subsection 40-180(1)**

4 Add:

5 Note 2: Section 230-440 provides special rules for working out the amount of  
6 consideration for an asset if the asset is a Division 230 financial  
7 arrangement or a Division 230 financial arrangement is involved in  
8 that consideration.

9 **60 Subsection 40-185(1) (note)**

10 Omit “Note”, substitute “Note 1”.

11 **61 At the end of subsection 40-185(1)**

12 Add:

13 Note 2: Section 230-440 provides special rules for working out the amount of  
14 consideration for an asset if the asset is a Division 230 financial  
15 arrangement or a Division 230 financial arrangement is involved in  
16 that consideration.

17 **62 At the end of subsection 40-300(1)**

18 Add:

19 Note: Section 230-440 provides special rules for working out the amount of  
20 consideration for an asset if the asset is a Division 230 financial  
21 arrangement or a Division 230 financial arrangement is involved in  
22 that consideration.

23 **63 Subsection 40-305(1) (note)**

24 Omit “Note”, substitute “Note 1”.

25 **64 At the end of subsection 40-305(1)**

26 Add:

27 Note 2: Section 230-440 provides special rules for working out the amount of  
28 consideration for an asset if the asset is a Division 230 financial  
29 arrangement or a Division 230 financial arrangement is involved in  
30 that consideration.

31 **65 Section 70-10**

32 Repeal the section, substitute:

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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

---

1     **70-10 Meaning of *trading stock***

2                     *Trading stock* includes:

3                     (a) anything produced, manufactured or acquired that is held for  
4                         purposes of manufacture, sale or exchange in the ordinary  
5                         course of a \*business; and

6                     (b) \*live stock;

7                     but does not include a \*Division 230 financial arrangement.

8                     Note 1:     Shares in a PDF are not trading stock. See section 124ZO of the  
9                         *Income Tax Assessment Act 1936*.

10                    Note 2:     If a company becomes a PDF, its shares are taken not to have been  
11                         trading stock before it became a PDF. See section 124ZQ of the  
12                         *Income Tax Assessment Act 1936*.

13     **66 At the end of section 102-20**

14                     Add:

15                     Note 5:     Under subsection 230-270(4) gains and losses are taken to arise from a  
16                         CGT event in particular circumstances.

17     **67 At the end of section 104-5**

18                     Add:

19                     Note:        Subsection 230-270(4) (which deals with hedging financial  
20                         arrangements) provides that in certain circumstances a CGT event is  
21                         taken to have occurred in relation to a hedging financial arrangement  
22                         at the same time as a CGT event actually occurs in relation to a  
23                         hedged item covered by the arrangement.

24     **68 At the end of subsection 110-25(1)**

25                     Add:

26                     Note 3:     The amount of a benefit that makes up all or part of an element of cost  
27                         base of an asset may be determined under section 230-440, if the  
28                         benefit is provided for acquiring a thing, and you start or cease to have  
29                         a Division 230 financial arrangement as consideration for the  
30                         acquisition of the thing.

31     **69 Section 112-97 (after table item 22A)**

32                     Insert:

22B	You start or cease to have a	All elements of cost base	section 230-440
	*Division 230 financial	and reduced cost base	
	arrangement as consideration		
	for the provision or		
	acquisition of a thing		

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# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

---

1 **70 Subsection 116-10(7) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **71 At the end of subsection 116-10(7)**

4 Add:

5 Note 2: Section 230-440 of this Act (Division 230 financial arrangement as  
6 consideration for provision or acquisition of a thing) also modifies  
7 capital proceeds.

8 **72 At the end of section 112-5**

9 Add:

10 (7) Section 230-440 provides special rules for working out the amount  
11 of consideration for an asset if the asset is a \*Division 230 financial  
12 arrangement or a Division 230 financial arrangement is involved in  
13 that consideration.

14 **73 Section 118-27**

15 Repeal the section, substitute:

16 **118-27 Division 230 financial arrangements**

17 (1) A \*capital gain or \*capital loss you make:

18 (a) from a \*CGT asset; or

19 (b) in creating a CGT asset; or

20 (c) from the discharge of a liability;

21 is disregarded if, at the time of the \*CGT event, the asset or  
22 liability is, or is part of, a \*Division 230 financial arrangement.

23 Note 1: Paragraph (b) is relevant for CGT event D1.

24 Note 2: Paragraph (c) is relevant for CGT event L7.

25 (2) Subsection (1) does not apply to the following:

26 (a) a gain or loss that subsection 230-270(4) (which deals with  
27 hedging financial arrangements) provides is to be treated as a  
28 \*capital gain or \*capital loss;

29 (b) a loss that is reduced under subsection 230-415(2), to the  
30 extent of that reduction (this is the extent to which the loss is  
31 of a capital nature).

32 **74 Section 130-100**

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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

---

1 After “a \*traditional security”, insert “or \*qualifying security”.

#### 2 **75 Paragraph 130-100(a)**

3 After “the traditional security” (wherever occurring), insert “or the  
4 qualifying security”.

#### 5 **76 Section 250-1**

6 Omit “Subdivision 250-E”, substitute “Division 230”.

#### 7 **77 Subsection 250-155(1) (note)**

8 Omit “Subdivision 250-E”, substitute “Division 230”.

#### 9 **78 Subsection 250-155(8) (heading)**

10 Omit “*Subdivision 250-E*”, substitute “*Division 230*”.

#### 11 **79 Subsection 250-155(8)**

12 Omit “Subdivision 250-E”, substitute “Division 230”.

#### 13 **80 Before paragraph 250-155(8)(a)**

14 Insert:

- 15 (aa) the loan is taken to be a \*Subdivision 250 financial  
16 arrangement; and  
17 (ab) the obligations to provide the \*financial benefits that are  
18 subject to deemed loan treatment are taken to be \*cash  
19 settlable; and  
20 (ac) the financial benefits that are subject to deemed loan  
21 treatment are taken to be sufficiently certain at the start of the  
22 \*arrangement period; and

#### 23 **81 Paragraph 250-155(8)(c)**

24 Omit “\*arrangement period”, substitute “arrangement period”.

#### 25 **82 After paragraph 250-155(8)(g)**

26 Insert:

- 27 (ga) subject to paragraphs (i) and (j), the gains and losses in  
28 relation to the loan during the arrangement period are to be  
29 worked out using the accruals method provided for in  
30 Subdivision 230-B; and  
31 (gb) without limiting paragraph (ga):
-



# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

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- 1 (i) sections 230-160, 230-165 and 230-170 (re-estimation  
2 of gain or loss) apply to the loan; and  
3 (ii) Subdivision 230-G (balancing adjustment when you  
4 cease to have financial arrangement) applies to the loan  
5 at the end of the arrangement period; and

6 **83 Paragraph 250-155(8)(h)**

7 Omit “sections 250-265 to 250-275”, substitute “Subdivision 230-G”.

8 **84 At the end of subsection 250-155(8)**

9 Add:

- 10 ; and (i) the realisation method provided for in Subdivision 230-B  
11 does not apply to a gain or loss you have from the loan; and  
12 (j) sections 230-145 and 230-155 do not apply to the loan.

13 **85 Sections 250-165 to 250-175**

14 Repeal the sections.

15 **86 Subdivision 250-E**

16 Repeal the Subdivision.

17 **87 Paragraph 250-285(2)(c)**

18 Omit “Subdivision 250-E”, substitute “Division 230”.

19 **88 Paragraph 250-285(3)(c)**

20 Omit “Subdivision 250-E”, substitute “Division 230”.

21 **89 Paragraph 250-285(4)(c)**

22 Omit “Subdivision 250-E”, substitute “Division 230”.

23 **90 Paragraph 250-285(5)(c)**

24 Omit “Subdivision 250-E”, substitute “Division 230”.

25 **91 After paragraph 295-85(2)(a)**

26 Insert:

- 27 (aa) section 230-15 (about financial arrangements);

28 **92 Section 320-45**

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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1 Before “If”, insert “(1)”.

#### 2 **93 At the end of section 320-45**

3 Add:

4 (2) Subsection (1) has effect despite anything in Division 230.

#### 5 **94 After paragraph 396-30(1)(b)**

6 Insert:

7 ; or (c) an amount allowable as a deduction to the borrower under  
8 Division 230, to the extent that, if that Division did not apply,  
9 the amount would be allowable as a deduction to the  
10 borrower in the circumstances mentioned in paragraph (b).

#### 11 **95 After paragraph 396-30(2)(b)**

12 Insert:

13 ; or (c) an amount included in the assessable income of the lender  
14 under Division 230, to the extent that, if that Division did not  
15 apply, the amount would be included in the assessable  
16 income of the lender in the circumstances mentioned in  
17 paragraph (b).

#### 18 **96 After subsection 701-55(5)**

19 Insert:

20 *Division 230 (financial arrangements)*

21 (5A) If Division 230 is to apply in relation to the asset, the expression  
22 means that the Division applies as if the asset were acquired at the  
23 particular time for a payment equal to:

24 (a) unless paragraph (b) applies—the asset’s \*tax cost setting  
25 amount; or

26 (b) if the asset’s tax cost is set because an entity becomes a  
27 \*subsidiary member of a \*consolidated group, and  
28 Subdivision 230-C (fair value method), Subdivision 230-D  
29 (foreign exchange retranslation method) or  
30 Subdivision 230-F (reliance on financial reports method) is to  
31 apply in relation to the asset—the asset’s \*Division 230  
32 starting value.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

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1 (5B) To avoid doubt, for the purposes of paragraph (5A)(b), determine  
2 the asset's \*Division 230 starting value by reference to the relevant  
3 standards that apply in relation to the head company's financial  
4 report for the income year in which the entity becomes a subsidiary  
5 member of the group.

## 6 **97 Subsection 701-58(2)**

7 Omit "subsections 701-55(2), (3), (4), (5) and (6)", substitute  
8 "subsections 701-55(2), (3), (4), (5), (5A) and (6)".

## 9 **98 After section 701-60**

10 Insert:

### 11 **701-61 Assets in relation to Division 230 financial arrangement—** 12 **head company's assessable income or deduction**

13 (1) This section applies if:

14 (a) an entity (the *joining entity*) becomes a \*subsidiary member  
15 of a \*consolidated group; and

16 (b) paragraph 701-55(5A)(b) applies in relation to one or more  
17 assets of the joining entity.

18 (2) Work out if the total of the \*Division 230 starting values for those  
19 assets exceeds or falls short of the total of their \*tax cost setting  
20 amounts.

21 (3) If there is an excess, an amount equal to 25% of that excess is  
22 included in the \*head company's assessable income for:

23 (a) the income year in which the particular time occurs; and

24 (b) each of the 3 subsequent income years.

25 (4) If there is a shortfall, the \*head company is entitled to a deduction  
26 equal to 25% of that shortfall for:

27 (a) the income year in which the particular time occurs; and

28 (b) each of the 3 subsequent income years.

## 29 **99 After subsection 705-30(3A)**

30 Insert:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1 *Division 230 financial arrangements*

2 (3B) If an asset of the joining entity is or is part of a \*Division 230  
3 financial arrangement, the joining entity's terminating value for the  
4 asset is equal to the amount of consideration that the joining entity  
5 would need to receive, if it were to dispose of the asset just before  
6 the joining time, without an amount being assessable income of, or  
7 deductible to, the joining entity under Division 230.

#### 8 **100 After Subdivision 715-D**

9 Insert:

#### 10 **Subdivision 715-F—Interactions with Division 230 (financial** 11 **arrangements)**

#### 12 **Table of sections**

13 715-380 Exit history rule not to affect transitional balancing adjustment

#### 14 **715-380 Exit history rule not to affect transitional balancing** 15 **adjustment**

16 (1) Subsection (2) applies if:

- 17 (a) an entity (the *leaving entity*) ceases to be a \*subsidiary  
18 member of a \*consolidated group at a time (the *leaving time*);  
19 and  
20 (b) but for the cessation of membership and section 701-40 (the  
21 exit history rule), the \*head company of the group would be  
22 subject to a balancing adjustment under item 121 of  
23 Schedule 1 to the *Tax Laws Amendment (Taxation of*  
24 *Financial Arrangements) Act 2008* for an income year ending  
25 after the leaving time.

26 (2) Despite section 701-40 (the exit history rule), the \*head company  
27 of the \*consolidated group continues to be subject to the balancing  
28 adjustment for income years ending after the leaving time.

#### 29 **101 Subsection 715-660(1) (after table item 3)**

30 Insert:

31 3A section 230-180, 230-220, 230-275 Choice about treatment of gains and

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# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

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or 230-350

losses from \*Division 230 financial arrangement

1 **102 Subsection 715-665(1) (after table item 1)**

2 Insert:

3

1A section 230-180, 230-220, 230-275 or 230-350 Choice about treatment of gains and losses from \*Division 230 financial arrangement

4 **103 At the end of Division 719**

5 Add:

6 **How Division 230 applies to a MEC group**

7 **719-850 Election of head company of MEC group of method to**  
8 **calculate gains and losses from Division 230 financial**  
9 **arrangement—requirements for financial report**

- 10 (1) This section applies for the purposes of determining whether the  
11 financial report for an income year of the \*head company of a  
12 \*MEC group satisfies the requirements for making an election  
13 under any of these provisions:
- 14 (a) section 230-180 (fair value method);
  - 15 (b) section 230-220 (foreign exchange retranslation method);
  - 16 (c) section 230-275 (hedging financial arrangements method);
  - 17 (d) section 230-350 (reliance on financial reports method).
- 18 (2) Treat the \*head company's financial report for that year as  
19 satisfying those requirements if:
- 20 (a) to the extent that the financial arrangements of the group for  
21 that year are taken into account and properly reflected in the  
22 head company's financial report for that year—the financial  
23 report for that year of the head company of the group satisfies  
24 those requirements; and
  - 25 (b) to the extent that the financial arrangements of the group for  
26 that year are *not* taken into account and properly reflected in  
27 the head company's financial report for that year—the  
28 financial report for that year of the \*top company of the  
29 group satisfies those requirements.
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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1 **104 Section 775-170**

2 Before “This”, insert “(1)”.

3 **105 At the end of section 775-170**

4 Add:

5 (2) This Division does not apply to a \*forex realisation gain or a \*forex  
6 realisation loss made by:

7 (a) a \*securitisation vehicle; or

8 (b) an entity that satisfies the requirements of subsection  
9 820-39(3).

10 **106 Section 775-170**

11 Repeal the section.

12 **107 At the end of section 775-195**

13 Add:

14 (9) The following are not entitled to make a choice under this section:

15 (a) a \*securitisation vehicle;

16 (b) an entity that satisfies the requirements of subsection  
17 820-39(3).

18 **108 Subsections 775-195(8) and (9)**

19 Repeal the subsections.

20 **109 At the end of section 960-55**

21 Add:

22 (4) Despite subsection (1), section 960-50 does not apply for the  
23 purposes of working out the assessable income, deductions or tax  
24 offsets of:

25 (a) a \*securitisation vehicle; or

26 (b) an entity that satisfies the requirements of subsection  
27 820-39(3).

28 **110 Subsections 960-55(3) and (4)**

29 Repeal the subsections.

30 **111 At the end of section 960-60**

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# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

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1 Add:

2 (6) The following are not entitled to make a choice under this section:

3 (a) a \*securitisation vehicle;

4 (b) an entity that satisfies the requirements of subsection  
5 820-39(3).

## 6 **112 Subsections 960-60(5) and (6)**

7 Repeal the subsections.

## 8 **113 Subsection 995-1(1)**

9 Insert:

10 *Division 230 starting value:* the *Division 230 starting value* of an  
11 asset that is or is part of a \*Division 230 financial arrangement  
12 (other than an arrangement to which Subdivision 230-B (accruals  
13 and realisation methods) or Subdivision 230-E (hedging financial  
14 arrangements method) applies) is:

15 (a) if Subdivision 230-C (fair value method) applies in relation  
16 to the arrangement—the value of the asset according to the  
17 relevant standards mentioned in section 230-195 that apply in  
18 relation to the arrangement; or

19 (b) if Subdivision 230-D (foreign exchange retranslation  
20 method) applies in relation to the arrangement—the value of  
21 the asset according to the relevant standards mentioned in  
22 section 230-240 that apply in relation to the arrangement; or

23 (c) if Subdivision 230-F (reliance on financial reports method)  
24 applies in relation to the arrangement—the value of the asset  
25 according to the relevant standards mentioned in  
26 section 230-370 that apply in relation to the arrangement.

## 27 **114 Subsection 995-1(1) (after paragraph (b) of the definition 28 of *special accrual amount*)**

29 Insert:

30 (ba) Division 230 (other than Subdivision 230-B) of this Act;

## 31 *Income Tax (Transitional Provisions) Act 1997*

## 32 **115 Subsection 295-390(5) (subparagraph (a)(iii) of the 33 definition of *fixed interest complying ADF*)**

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1           After “*Income Tax Assessment Act 1936*”, insert “(or would be so  
2           included if Division 230 of the *Income Tax Assessment Act 1997* did not  
3           apply)”.

#### 4           ***New Business Tax System (Taxation of Financial*** 5           ***Arrangements) Act (No. 1) 2003***

#### 6           **116 Paragraph 77(1)(b) of Schedule 4**

7           Repeal the paragraph, substitute:

- 8                   (b) for the purposes of working out the assessable income or  
9                   allowable deductions of:
- 10                      (i) an ADI or a non-ADI financial institution (within the  
11                      meaning of the *Income Tax Assessment Act 1997*); or
  - 12                      (ii) a securitisation vehicle (within the meaning of that Act);  
13                      or
  - 14                      (iii) an entity that satisfies the requirements of subsection  
15                      820-39(3) of that Act;

#### 16           **117 Paragraph 77(1)(b) of Schedule 4**

17           Repeal the paragraph.

#### 18           ***Taxation Administration Act 1953***

#### 19           **118 Subsection 45-120(2B) in Schedule 1**

20           Repeal the subsection (including the heading), substitute:

21                   *Net gains under Division 230 included in instalment income*

22           (2B) Your ***instalment income*** for a period also includes the difference  
23           between:

- 24                   (a) a gain (or gains) you make from a \*financial arrangement to  
25                   the extent to which it is (or they are):
  - 26                      (i) assessable under Division 230; and
  - 27                      (ii) reasonably attributable to that period; and
- 28                   (b) a loss (or losses) you make from a \*financial arrangement to  
29                   the extent to which it is (or they are):
  - 30                      (i) allowable to you as a deduction under Division 230; and
  - 31                      (ii) reasonably attributable to that period.



# EXPOSURE DRAFT

Amendments **Schedule 1**  
Consequential amendments **Part 2**

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- 1                    This is so only if the gain (or gains) referred to in paragraph (a)  
2                    exceeds the loss (or losses) referred to in paragraph (b).

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 3 Application and transitional provisions

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## 2 **Part 3—Application and transitional provisions**

### 3 **119 Definitions**

4 In this Part:

5 *financial arrangement amendments* means the amendments made by  
6 Parts 1 and 2 of this Schedule.

7 *first applicable income year* means the first income year for which the  
8 financial arrangement amendments apply to you under item 98.

9 *lodgment date* means the due date for you to lodge an income tax  
10 return.

### 11 **120 Application of financial arrangement amendments** 12 **(income years)**

13 (1) Subject to subitem (2), the financial arrangement amendments  
14 apply to you for income years commencing on or after 1 July 2010.

15 (2) The financial arrangement amendments apply to you for income  
16 years commencing on or after 1 July 2009 if you elect to have this  
17 subitem apply to you.

18 Note: For a consolidated group, it is the head entity that would make the  
19 election.

20 (3) An election under subitem (2) must be made on or before the first  
21 lodgment date that occurs on or after the start of the first income  
22 year commencing on or after 1 July 2009.

### 23 **121 Application of financial arrangement amendments** 24 **(financial arrangements)**

#### 25 *Future financial arrangements*

26 (1) The financial arrangement amendments apply to financial arrangements  
27 that you start to have in the first applicable income year or a later  
28 income year.

#### 29 *Existing financial arrangements*

30 (2) The financial arrangement amendments apply to all financial  
31 arrangements that:

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Application and transitional provisions **Part 3**

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- 1 (a) you started to have before the start of the first applicable  
2 income year; and  
3 (b) you have at the start of that income year;  
4 only if you elect to have this subitem apply to you.
- 5 (3) The financial arrangement amendments do not apply under subitem (2)  
6 to a financial arrangement that arose from a disposal of property  
7 (including a disposal of a capital asset, a revenue asset, a depreciating  
8 asset or trading stock).
- 9 (4) An election under subitem (2) must:  
10 (a) be made on or before the first lodgment date that occurs on or  
11 after the start of the first applicable income year; and  
12 (b) be notified to the Commissioner on or before the lodgment  
13 date referred to in paragraph (a).
- 14 (4A) If you make an election under subitem (2), treat subsection 230-405(5)  
15 of the *Income Tax Assessment Act 1997* as allowing you to make an  
16 election under that subsection that applies to:  
17 (a) in any case—all of the financial arrangements that you start  
18 to have in the income year in which the election is made or a  
19 later income year; or  
20 (b) if you make the election at the same time as you make the  
21 election under subitem (2)—all of your financial  
22 arrangements to which the financial arrangements  
23 amendments apply.
- 24 (4B) If you make an election under subitem (2), treat section 230-137 of the  
25 *Income Tax Assessment Act 1997* as allowing you to make an election  
26 under that section that, despite paragraph 230-138(1)(b), applies to a  
27 financial arrangement that:  
28 (a) you started to have before the start of the first applicable  
29 income year; and  
30 (b) you have at the start of that income year.
- 31 (5) An election that you make under Subdivision 230-C, 230-D or 230-F of  
32 the *Income Tax Assessment Act 1997* extends to financial arrangements  
33 referred to in subitem (2) only if that election is made on or before the  
34 first lodgment date that occurs after the start of the first applicable  
35 income year.
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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 3 Application and transitional provisions

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- 1 (6) An election that you make under Subdivision 230-E of the *Income Tax*  
2 *Assessment Act 1997* extends to a financial arrangement referred to in  
3 subitem (2) only if:
- 4 (a) that election is made on or before the first lodgment date that  
5 occurs after the start of the first applicable income year; and
- 6 (b) the requirements of section 230-290 were satisfied in relation  
7 to the arrangement at the time the arrangement was created,  
8 acquired or applied; and
- 9 (c) at, or soon after, the time you make the election, you have in  
10 place records in relation to the arrangement that satisfy the  
11 requirements of section 230-310 and section 230-315 (other  
12 than subparagraph 230-315(2)(c)(ii)); and
- 13 (d) the requirements of section 230-320 have been satisfied at all  
14 times since the arrangement was created, acquired or applied  
15 for the purpose of hedging a risk in relation to a hedged item.
- 16 (7) To avoid doubt, subsection 230-270(4) does not apply to a financial  
17 arrangement that you started to have before the start of the first  
18 applicable income year and that you have at the start of that income  
19 year.
- 20 (8) To avoid doubt, the election referred to in subitem (5) or (6) applies to  
21 the financial arrangements referred to in subitem (2) even though you  
22 started to have the arrangements before the election is made.
- 23 (9) If you make an election under subitem (2), balancing adjustments must  
24 be made under subitem (10).
- 25 (10) Use the following method statement to make the balancing adjustments  
26 under this subitem:

27 *Balancing adjustment method statement*

28 *Step 1.* Work out the total of all the amounts that relate to the  
29 financial arrangements and that would have been  
30 included in your assessable income if Division 230 of the  
31 *Income Tax Assessment Act 1997* had applied to gains  
32 and losses from the arrangements from the time when  
33 you started to have them: the result is the ***notional***  
34 ***assessable amount***.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
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*Step 2.* Work out the total of all the amounts that relate to the financial arrangements and that would have been allowable to you as deductions if that Division had applied to gains and losses from the arrangements from the time when you started to have them: the result is the ***notional deductible amount***.

*Step 3.* Work out the total of all the amounts that relate to the financial arrangements and have been included in your assessable income from the time when you started to have them: the result is the ***actual assessed amount***.

*Step 4.* Work out the total of all the amounts that relate to the financial arrangements and that have been allowable as deductions for you from the time when you started to have them: the result is the ***actual deducted amount***.

*Step 5.* Add the notional assessable amount to the actual deducted amount: the result is the ***step 5 amount***.

*Step 6.* Add the actual assessed amount to the notional deductible amount: the result is the ***step 6 amount***.

*Step 7.* Compare the step 5 amount with the step 6 amount. If the step 5 amount exceeds the step 6 amount, the excess is included in your assessable income as a balancing adjustment. If the step 6 amount exceeds the step 5 amount, the excess is allowable as a deduction as a balancing adjustment. If the step 5 amount and the step 6 amount are equal there is no balancing adjustment.

26 (11) If:

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- (a) an amount is recorded in a deferred tax asset account in accordance with:
  - (i) accounting standard AASB 112 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (ii) if that standard does not apply to the preparation of your financial reports—a comparable accounting standard that applies to the preparation of your financial reports under a foreign law;

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 3 Application and transitional provisions

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- 1 immediately before the start of the first applicable income  
2 year; and
- 3 (b) the whole or a part of that amount (the *attributable*  
4 *assessable amount*) is attributable to a financial arrangement  
5 referred to in subitem (2); and
- 6 (ba) the method of relying on financial reports provided for in  
7 Subdivision 230-F applies to take account of a gain or loss  
8 you make from the financial arrangement;
- 9 the following provisions have effect:
- 10 (c) the financial arrangement is to be disregarded for the  
11 purposes of steps 1 to 4 of the method statement in  
12 subitem (10); and
- 13 (d) the attributable assessable amount is to be reduced to the  
14 extent to which it represents unused tax credits and then  
15 grossed up under subitem (13); and
- 16 (e) the step 6 amount is to be increased by the amount obtained  
17 under paragraph (d).
- 18 (12) If:
- 19 (a) an amount is recorded in a deferred tax liability account in  
20 accordance with:
- 21 (i) accounting standard AASB 112 (or another accounting  
22 standard prescribed by the regulations for the purposes  
23 of this paragraph); or
- 24 (ii) if that standard does not apply to the preparation of your  
25 financial reports—a comparable accounting standard  
26 that applies to the preparation of your financial reports  
27 under a foreign law;
- 28 immediately before the start of the first applicable income  
29 year; and
- 30 (b) the whole or a part of that amount (the *attributable*  
31 *deductible amount*) is attributable to a financial arrangement  
32 referred to in subitem (2); and
- 33 (ba) the method of relying on financial reports provided for in  
34 Subdivision 230-F applies to take account of a gain or loss  
35 you make from the financial arrangement;
- 36 the following provisions have effect:
- 37 (c) the financial arrangement is to be disregarded for the  
38 purposes of steps 1 to 4 of the method statement in  
39 subitem (10);
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# EXPOSURE DRAFT

Amendments **Schedule 1**  
Application and transitional provisions **Part 3**

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- 1 (d) the attributable deductible amount is to be reduced to the  
2 extent to which it represents unused tax credits and then  
3 grossed up under subitem (13);  
4 (e) the step 5 amount is to be increased by the amount obtained  
5 under paragraph (d).
- 6 (13) An amount is to be grossed up for the purposes of subitems (11) and  
7 (12) by multiplying the amount by:
- 8 
$$\frac{1}{\text{Tax rate taken into account in working out the attributable assessable amount or attributable deductible amount}}$$
- 9 (14) A balancing adjustment under subitem (10) is to be spread evenly over  
10 the first applicable income year and the next 3 income years.
- 11 (15) In applying steps 1 and 2 in the method statement in subitem (10) to  
12 financial arrangements, assume that any election that extends to the  
13 arrangements under subitem (5) had applied to those financial  
14 arrangements from the time when you started to have them.
- 15 (16) In applying section 121EH of the *Income Tax Assessment Act 1936*,  
16 disregard any balancing adjustment under subitem (10).