

EXPOSURE DRAFT

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

<p>EXPOSURE DRAFT LEGISLATION Released for public comment January 2007</p>

Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2007

No. , 2007

(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 2007.*

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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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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 13	The day on which this Act receives the Royal Assent.	
3. Schedule 1, item 14	1 July 2003	1 July 2003
4. Schedule 1, items 15 to 22	The day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

3 Schedule(s)

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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

1
2 **Schedule 1—Amendments**

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
17 arrangement

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
24 your financial arrangements.

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

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Schedule 1 Amendments Part 1 Main amendments

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

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@230-5 Scope of this Division

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(1) You have a financial arrangement if you have one or more legal or equitable rights and/or obligations to receive or provide a financial benefit of a monetary nature.

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(2) This Division does not apply to all financial arrangements. The main exceptions are if:

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(a) you are an individual, or you are an entity whose annual turnover is less than \$20 million, and the financial arrangement is not a qualifying security; or

16
17

(b) the financial arrangement is an equity interest and none of the elective methods apply to the arrangement.

18
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Note: Section @230-310 provides for the exception referred to in paragraph (a).

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Subdivision 230-A—Core rules

21

Table of sections

22

Objects

23

@230-10 Objects of this Division

24

Tax treatment of gains and losses from financial arrangements

25

@230-15 Gains are assessable and losses deductible

26

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

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@230-25 Disregard some gains and losses

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Method to be applied to take account of gain or loss

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@230-30 Methods for taking gain or loss into account

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Financial arrangement concept

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- 1 @230-35 Financial arrangement (overview)
- 2 @230-40 Financial arrangement (primary test)
- 3 @230-45 Financial arrangement (secondary test)
- 4 @230-50 Financial arrangement (equity interest)
- 5 @230-55 Financial arrangement (general provisions)

6 **General rules**

- 7 @230-60 When financial benefit provided or received under financial arrangement
- 8 @230-65 Apportionment of financial benefits or received
- 9 @230-70 Consistency in working out gains or losses (integrity measure)
- 10 @230-75 Obligation or right ceasing

11 **Objects**

12 **@230-10 Objects of this Division**

13 The objects of this Division are:

- 14 (a) to minimise the extent to which the tax treatment of gains and
- 15 losses from your *financial arrangements distorts, by
- 16 providing inappropriate impediments and stimulation, your
- 17 trading, financing and investment decisions and your risk
- 18 taking and risk management; and
- 19 (b) to do so by aligning more closely the tax and commercial
- 20 recognition of gains and losses from your financial
- 21 arrangements in the following ways:
 - 22 (i) by allocating the gains and losses to income years
 - 23 throughout the life of your financial arrangements on a
 - 24 reasonable basis;
 - 25 (ii) by generally recognising gains and losses on revenue
 - 26 rather than capital account;
 - 27 (iii) by appropriately taking account of, and minimising,
 - 28 your compliance costs.

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

30 **@230-15 Gains are assessable and losses deductible**

31 *Gains*

- 32 (1) Your assessable income includes a gain you make from a *financial
- 33 arrangement.

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Schedule 1 Amendments

Part 1 Main amendments

1

Losses

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

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

5

or

6

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

7

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

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- (a) you are an *Australian entity; and

11

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

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13

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

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- (d) the loss is a cost in relation to a *debt interest issued by you that is covered by paragraph (a) of the definition of ***debt deduction*** in subsection 820-40(1).

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

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

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Purpose of this section

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- (1) The purpose of this section is to ensure that your gains that are assessable under this Division, and your losses that are deductible under this Division, are taken into account only once under this Act in working out your taxable income.

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Gain or loss

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- (2) If a gain or loss is, or is to be, included in your assessable income or allowable as a deduction to you for an income year under this Division, the gain or loss is not to be (to any extent):

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- (a) included in your assessable income; or

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- (b) allowable as a deduction to you; or

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

- 1 (c) taken into account in working out the amount of a *capital
2 gain or a *capital loss;
3 under any other provisions of this Act for the same or any other
4 income year.

5 *Associated financial benefits*

- 6 (3) If the amount or value of a *financial benefit is taken into account
7 in working out whether you have, or the amount of, a gain or loss
8 that is, or is to be, included in your assessable income or allowable
9 as a deduction for you for an income year under this Division, the
10 benefit is not to be (to any extent):
11 (a) included in your assessable income; or
12 (b) allowable as a deduction to you;
13 under any other provision of this Act for the same or any other
14 income year.

15 **@230-25 Disregard some gains and losses**

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

- 17 (1) A gain or loss you make from a *financial arrangement is
18 disregarded to the extent that you make it in gaining or producing
19 your *exempt income or your *non-assessable non-exempt income.
20 (2) Subsection (1) does not prevent you from deducting a loss under
21 subsection @230-15(3).

22 *Gain or loss of private or domestic nature*

- 23 (3) A gain or loss you make from a *financial arrangement is
24 disregarded:
25 (a) if you raise finance under the arrangement—to the extent that
26 the finance is used for a private or domestic purpose; or
27 (b) if you are an individual and the arrangement is a *derivative
28 financial arrangement—to the extent that the arrangement is
29 held or used for a private or domestic purpose.

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Schedule 1 Amendments

Part 1 Main amendments

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

2 **@230-30 Methods for taking gain or loss into account**

3 *Methods available*

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

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

20 *Elections override accruals and realisation methods*

- 21 (2) Subdivision 230-B (accruals and realisation method) does not
22 apply to a gain or loss you have from a *financial arrangement:
- 23 (a) if Subdivision 230-C (fair value method) applies to the
24 arrangement; or
 - 25 (b) to the extent that Subdivision 230-D (foreign exchange
26 retranslation method) applies to the gain or loss; or
 - 27 (c) to the extent that Subdivision 230-E (hedging financial
28 arrangements method) applies to the arrangement; or
 - 29 (d) if Subdivision 230-F (method of relying on financial report)
30 applies to the arrangement; or
 - 31 (e) if the arrangement is an *equity interest.

32 *Priorities among election methods*

- 33 (3) Subdivision 230-C (fair value method) does not apply to a gain or a
34 loss from a *financial arrangement:

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Amendments **Schedule 1**
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- 1 (a) to the extent that Subdivision 230-E (hedging financial
2 arrangements method) applies to the arrangement; or
3 (b) if Subdivision 230-F (method of relying on financial reports)
4 applies to the arrangement.
- 5 (4) Subdivision 230-D (foreign exchange retranslation method) does
6 not apply to a gain or a loss from a *financial arrangement:
7 (a) if Subdivision 230-C (fair value method) applies to the
8 arrangement; or
9 (b) to the extent that Subdivision 230-E (hedging financial
10 arrangements method) applies to the arrangement; or
11 (c) if Subdivision 230-F (method of relying on financial reports)
12 applies to the arrangement.
- 13 (5) Subdivision 230-F (method of relying on financial reports) does
14 not apply to a gain or a loss from a *financial arrangement to the
15 extent that Subdivision 230-E (hedging financial arrangements
16 method) applies to the arrangement.

17 **Financial arrangement concept**

18 **@230-35 Financial arrangement (overview)**

19 You can have a *financial arrangement*:

- 20 (a) under section @230-40 (a primary test that focuses on the
21 nature of the rights and obligations under the arrangement
22 concerned); or
23 (b) under section @230-45 (a secondary test that focuses on the
24 practices, the intentions and the course of dealings of the
25 parties to the arrangement concerned); or
26 (c) under section @230-50 (equity interests).

27 Note: Whether an arrangement is a financial arrangement can change over
28 time depending on changes either to the terms of the arrangement or
29 external circumstances such as particular rights or obligations under
30 the arrangement being satisfied by the parties.

31 **@230-40 Financial arrangement (primary test)**

32 *Primary test*

- 33 (1) You have a *financial arrangement* if, under an *arrangement, you
34 have any of the following:

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- 1 (a) a right of a kind covered by subsection (2) or (4);
2 (b) an obligation of a kind covered by subsection (3) or (5);
3 (c) a combination of one or more such rights and/or one or more
4 such obligations.

5 That right or obligation, or that combination of rights and/or
6 obligations, constitutes the financial arrangement.

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

10 *Right to receive financial benefit of a monetary nature*

- 11 (2) This subsection covers a legal or equitable right to receive a
12 *financial benefit that has a *monetary nature.

13 *Obligation to provide financial benefit of a monetary nature*

- 14 (3) This subsection covers a legal or equitable obligation to provide a
15 *financial benefit that has a *monetary nature.

16 *Right to receive financial benefit that can be satisfied by money or* 17 *another financial arrangement*

- 18 (4) This subsection covers a legal or equitable right to receive a
19 *financial benefit that does not have a *monetary nature if the right
20 may, because of an *arrangement between the person who has the
21 right and the person with the obligation to satisfy the right, be
22 satisfied or settled by:

- 23 (a) paying money or providing a *money equivalent; or
24 (b) transferring, entering into or exchanging another *financial
25 arrangement.

26 *Obligation to provide financial benefit that can be satisfied by* 27 *money or another financial arrangement*

- 28 (5) This subsection covers a legal or equitable obligation to provide a
29 *financial benefit that does not have a *monetary nature if the
30 obligation may, because of an *arrangement between the person
31 who owes the obligation and the person to whom the obligation is
32 owed, be satisfied or settled by:

- 33 (a) paying money or providing a *money equivalent; or
-

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1 (b) transferring, entering into or exchanging another *financial
2 arrangement.

3 *Exception to primary test*

- 4 (6) You do not have a **financial arrangement** because of
5 subsection (2) or (3) because you have a right or obligation under
6 an *arrangement to receive or provide a *financial benefit of a
7 *monetary nature if:
- 8 (a) under the arrangement you also have a right or obligation to
9 receive or provide something that is not a financial benefit of
10 a monetary nature; and
- 11 (b) that right or obligation is not insignificant in comparison with
12 your rights and obligations under the arrangement to provide
13 financial benefits that are of a monetary nature.

14 Note: This subsection means that a derivative that can only be settled by
15 delivering something other than money or a money equivalent is not a
16 financial arrangement because of subsections (2) and (3).

17 *Meaning of financial benefit of a monetary nature*

- 18 (7) A right to receive (or an obligation to provide) a *financial benefit
19 of a **monetary nature** means a right to receive (or obligation to
20 provide):
- 21 (a) money; or
22 (b) a *money equivalent.
- 23 (8) To avoid doubt, a right to receive (or an obligation to provide) a
24 *financial benefit of a **monetary nature** does not include a right to
25 receive (or obligation to provide):
- 26 (a) property or goods (other than money or a *money
27 equivalent); or
28 (b) services that are not a monetary equivalent.

29 Note: This subsection means that making a prepayment for property or
30 goods (other than money or a money equivalent) or services does not
31 give rise to a financial arrangement.

32 @230-45 Financial arrangement (secondary test)

33 *Secondary test*

- 34 (1) You also have a **financial arrangement** if under an *arrangement:
-

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- 1 (a) you have any of the following:
2 (i) a legal or equitable right to receive a *financial benefit;
3 (ii) a legal or equitable obligation to provide a financial
4 benefit;
5 (iii) a combination of one or more such rights and/or one or
6 more such obligations; and
7 (b) a financial benefit referred to in subparagraph (a)(i) or (ii) is
8 not of a *monetary nature; and
9 (c) the right or obligation, or the combination of rights and/or
10 obligations, does not give rise to a *financial arrangement
11 under section @230-40 only because the benefit referred to
12 in paragraph (b) is not of a monetary nature; and
13 (d) subsection (2), (3), (4) or (6) is satisfied in relation to the
14 right or obligation in relation to that benefit.
15 That right or obligation, or that combination of rights and/or
16 obligations, constitutes the financial arrangement.

17 *Practice in relation to satisfying or settling rights or obligations*

- 18 (2) This subsection is satisfied in relation to a right or obligation if you
19 have a practice of satisfying or settling similar rights or obligations
20 by:
21 (a) paying or receiving money; or
22 (b) providing or receiving a *money equivalent; or
23 (c) transferring, having transferred to you, entering into or
24 exchanging another *financial arrangement.

25 *Intention in relation to satisfying or settling rights or obligations*

- 26 (3) This subsection is satisfied in relation to a right or obligation if you
27 intend to satisfy or settle the right or obligation by:
28 (a) paying or receiving money; or
29 (b) providing or receiving a *money equivalent; or
30 (c) transferring, having transferred to you, entering into or
31 exchanging another *financial arrangement.

32 *Dealing in rights or obligations*

- 33 (4) This subsection is satisfied in relation to a right or obligation if you
34 deal with the right or obligation, or similar rights or obligations, for
35 either or both of the following purposes:
-

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- 1 (a) the purpose of generating a profit from short-term
2 fluctuations in price;
3 (b) the purpose of generating a profit from a dealer's margin.
- 4 (5) The ways in which the dealing referred to in subsection (4) may
5 occur include:
- 6 (a) your dealing with the right or obligation, or similar rights or
7 obligations, on a frequent basis, a short term basis or frequent
8 and short term basis; or
9 (b) your taking delivery of a thing (other than money or a
10 *money equivalent) and selling it within a relatively short
11 period; or
12 (c) your acquiring the right or obligation, or similar rights or
13 obligations, and managing the resulting risk by entering into
14 offsetting arrangements that provide you with a profit
15 margin.

16 *Financial benefits readily convertible into money or money*
17 *equivalent*

- 18 (6) This subsection is satisfied in relation to a right or obligation in
19 relation to a *financial benefit if:
- 20 (a) none of subsections (2), (3) and (4) apply; and
21 (b) the benefit is readily convertible into money or a *money
22 equivalent; and
23 (c) you do not have, as your sole or dominant purpose for
24 entering into the relevant *arrangement, receiving or
25 delivering the benefit as part of your expected purchase, sale
26 or usage requirements.

27 **@230-50 Financial arrangement (equity interest)**

28 An *equity interest is also a *financial arrangement*.

29 Note: Paragraph @230-30(2)(e) prevents the accruals method or the
30 realisation method being applied to an equity interest.

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Schedule 1 Amendments

Part 1 Main amendments

1 **@230-55 Financial arrangement (general provisions)**

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

3 (1) Subsection (2) applies if you are, under an *arrangement, entitled
4 to receive (or obliged to provide):

- 5 (a) a *financial benefit that is of a *monetary nature; and
6 (b) a financial benefit that is not of a monetary nature.

7 (2) To avoid doubt, you are taken, for the purposes of this Division, to
8 have:

- 9 (a) a right to receive (or obligation to provide) the *financial
10 benefit that is of a *monetary nature; and
11 (b) a separate right to receive (or obligation to provide) the
12 financial benefit that is not of a monetary nature.

13 *Matters relevant to determining what rights and/or obligations*
14 *comprise particular financial arrangements*

15 (3) Whether a number of rights and/or obligations are themselves a
16 *financial arrangement or are 2 or more separate financial
17 arrangements is a question of fact and degree that you determine
18 having regard to the following:

- 19 (a) the nature of the rights and/or obligations;
20 (b) their terms and conditions (including those relating to any
21 payment or other consideration for them);
22 (c) the circumstances surrounding their creation and their
23 proposed exercise or performance (including what can
24 reasonably be seen as the purposes of persons involved);
25 (d) normal commercial understandings and practices in relation
26 to them;
27 (e) the objects of this Division.

28 Example: Your rights and obligations under a typical convertible note, including
29 the right to convert the note into a share or shares, would comprise
30 one financial arrangement.

31 Note 1: If you raised funds by means of a contract that you would not have
32 entered into without entering into another contract, and neither
33 contract could be assigned to a third party without the other also being
34 assigned, this would tend to indicate that your rights and obligations
35 under the 2 contracts together comprise one financial arrangement.

36 Note 2: If the commercial effect of your individual rights and/or obligations in
37 a group or series cannot be understood without reference to the group

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1 or series as a whole, this would tend to indicate that all of your rights
2 and/or obligations in the group or series together comprise one
3 financial arrangement.

4 **General rules**

5 **@230-60 When financial benefit provided or received under** 6 **financial arrangement**

7 *Financial benefit provided under financial arrangement*

8 (1) A *financial benefit that you provide in relation to a *financial
9 arrangement to someone who is not a party to the arrangement is
10 taken, for the purposes of this Division, to be a financial benefit
11 that you provide under the arrangement but only if the benefit
12 plays an integral role in determining whether you have a gain or
13 loss from the arrangement.

14 Note: This means that the financial benefits you provide to acquire the
15 financial arrangement (whether to the issuer, a previous holder or a
16 third party) are taken to be financial benefits you provide under the
17 arrangement. The financial benefits you provide may include, for
18 example, fees paid or the forgoing of rights to receive a financial
19 benefit.

20 *Financial benefit received under financial arrangement*

21 (2) A *financial benefit that you receive in relation to a *financial
22 arrangement from someone who is not a party to the arrangement
23 is taken, for the purposes of this Division, to be a financial benefit
24 that you receive under the arrangement but only if the benefit plays
25 an integral role in determining whether you have a gain or loss
26 from the arrangement.

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

29 **@230-65 Apportionment of financial benefits or received**

30 *Apportionment when financial benefit received or right ceases*

31 (1) Apply subsection (2) in working out whether you have, or will
32 have, a gain or loss (and the amount of the gain or loss) when:
33 (a) you receive a particular *financial benefit under a *financial
34 arrangement; or

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1 (b) one of your rights under a financial arrangement *ceases.
2 The gain or loss is to be calculated in nominal (and not *present
3 value) terms.

4 (2) You must have regard to the extent to which the *financial benefits
5 that you have provided, or are to provide, under the *financial
6 arrangement are reasonably attributable to the benefit or right
7 referred to in paragraph (1)(a) or (b).

8 *Apportionment when financial benefit provided or obligation*
9 *ceases*

10 (3) Apply subsection (4) in working out whether you have, or will
11 have, a gain or loss (and the amount of the gain or loss) when:

12 (a) you provide a particular *financial benefit under the
13 *financial arrangement; or

14 (b) one of your obligations under a financial arrangement
15 *ceases.

16 The gain or loss is to be calculated in nominal (and not *present
17 value) terms.

18 (4) You must have regard to the extent to which the *financial benefits
19 that you have received, or are to receive, under the *financial
20 arrangement are reasonably attributable to the benefit or obligation
21 referred to in paragraph (3)(a) or (b).

22 *Apportionment must reflect appropriate and commercially*
23 *accepted valuation principles*

24 (5) Any attribution made under subsection (2) or (4) must reflect
25 appropriate and commercially accepted valuation principles that
26 properly take into account:

27 (a) the nature of the rights and obligations under the *financial
28 arrangement; and

29 (b) the risks associated with each *financial benefit, right and
30 obligation under the arrangement; and

31 (c) the time value of money.

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1 **@230-70 Consistency in working out gains or losses (integrity**
2 **measure)**

3 *Object of section*

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

7 *Consistent treatment for particular financial arrangement*

8 (2) If:

9 (a) this Division provides that a particular method applies to
10 gains or losses you make from a *financial arrangement; and

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

13 you must use that manner consistently for the arrangement for all
14 income years.

15 *Consistent treatment for financial arrangements of essentially the*
16 *same nature*

17 (3) If:

18 (a) this Division provides that a particular method applies to
19 gains or losses you make from 2 or more *financial
20 arrangements; and

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

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

25 **@230-75 Obligation or right ceasing**

26 (1) For the purposes of this Division, an obligation or right of yours
27 under a *financial arrangement *ceases* if your obligation or right
28 comes to an end.

29 (2) Subsection (1) applies whether your obligation or right comes to an
30 end:

31 (a) because the obligation or right is satisfied; or

32 (b) because the obligation or right expires with the passage of
33 time; or

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- 1 (c) because the parties to the arrangement take action to bring
2 the obligation or right to an end; or
3 (d) because you transfer the obligation or right to another person;
4 or
5 (e) for some other reason.

6 **Subdivision 230-B—The accruals/realisation methods**

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19 be spread

20 @230-115 How gain or loss is spread

21 @230-120 Allocating gain or loss to income years

22 @230-125 Running balancing adjustments

23 **Realisation method**

24 @230-130 Realisation method

25 **Reassessment and re-estimation**

26 @230-135 When to reassess

27 @230-140 When to re-estimate

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

1 **Guide to Subdivision 230-B**

2 **@230-80 What this Subdivision is about**

3 This Subdivision applies the accruals method to determine the
4 amount and timing of gains and losses from a financial
5 arrangement if they are sufficiently certain for such accrual to be
6 done.

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

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

14 If the accruals method is being applied to gains and losses from the
15 financial arrangement and there is a material change to the
16 financial arrangement, or the circumstances in which it operates, a
17 reassessment is made of whether the accruals method or the
18 realisation method should apply to gains and losses from the
19 arrangement.

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

22 **Objects of Subdivision**

23 **@230-85 Objects of this Subdivision**

24 The objects of this Subdivision are:

- 25 (a) to properly recognise gains and losses from *financial
26 arrangements by allocating them to appropriate periods of
27 time; and
28 (b) to reduce compliance costs by reflecting commercial
29 accounting concepts where appropriate; and
30 (c) to minimise tax deferral.

EXPOSURE DRAFT

Schedule 1 Amendments
Part 1 Main amendments

1 **When accruals method or realisation method applies**

2 **@230-90 When accruals or realisation method applies**

3 *When accruals method applies and when realisation method*
4 *applies*

5 (1) This section tells you when to apply the accruals method and when
6 to apply the realisation method if this Subdivision applies to gains
7 and losses from a *financial arrangement.

8 *Accruals method—sufficiently certain overall gain or loss at start*
9 *time*

10 (2) The accruals method provided for in this Subdivision applies to a
11 gain or loss you have from a *financial arrangement if:

12 (a) the gain or loss is an overall gain or loss from the
13 arrangement; and

14 (b) the gain or loss is sufficiently certain at the time when you
15 start to have the arrangement.

16 Note: Subsection @230-95(1) tells you when you have a sufficiently certain
17 overall gain or loss.

18 *Accruals method—particular sufficiently certain gain or loss*

19 (3) The accruals method provided for in this Subdivision also applies
20 to a gain or loss you have from a *financial arrangement if:

21 (a) the gain or loss arises from a *financial benefit that you are to
22 receive or are to provide under the arrangement; and

23 (b) the gain or loss:

24 (i) is sufficiently certain at the time when you start to have
25 the arrangement and before you are to receive or
26 provide the benefit; or

27 (ii) becomes sufficiently certain after the time when you
28 start to have the arrangement and before you are to
29 receive or provide the benefit; and

30 (c) the benefit has not already been taken into account in
31 applying:

32 (i) the accrual method provided for in this Subdivision; or

33 (ii) the realisation method provided for in this Subdivision;
34 to another gain or loss from the arrangement.

EXPOSURE DRAFT

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

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

2 Note: Subsection @230-95(3) tells you when you have a sufficiently certain
3 gain or loss at a particular time.

4 (4) Subsection (3) does not apply to a gain or loss that you make from
5 a *financial arrangement if:

6 (a) you are:

7 (i) an individual; or

8 (ii) an entity (other than an individual) that satisfies
9 subsection @230-310(2) for the income year in which
10 you start to have the arrangement; and

11 (b) the arrangement is a qualifying security (within the meaning
12 of Division 16E of Part III of the *Income Tax Assessment Act*
13 *1936*); and

14 (c) you have not made an election under subsection
15 @230-310(4).

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

17 (5) The realisation method provided for in this Subdivision applies to a
18 gain or loss that you make from a *financial arrangement if the
19 accruals method provided for in that Subdivision does not apply to
20 that gain or loss.

21 Note: Section @230-130 tells you how to apply the realisation method to the
22 gain or loss.

23 **@230-95 Sufficiently certain gains and losses**

24 *Overall gain or loss*

25 (1) You have a sufficiently certain overall gain or loss from a
26 *financial arrangement at the time when you start to have the
27 arrangement only if it is sufficiently certain at that time that you
28 will have an overall gain or loss from the arrangement of:

29 (a) a particular amount; or

30 (b) at least a particular amount.

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

33 (2) In applying subsection (1), you must assume that you will continue
34 to have the *financial arrangement until maturity.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

1

Gain or loss from particular event

2

- (3) 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 have a gain or loss from the arrangement of:

3

4

5

(a) a particular amount; or

6

(b) at least a particular amount;

7

when one of the following occurs:

8

(c) you receive a particular *financial benefit under the arrangement or one of your rights under the arrangement *ceases;

9

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11

(d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

12

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

15

16

- (4) In applying subsection (3) to work out whether you have a sufficiently certain gain or loss at a particular time:

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(a) 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; and

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(b) disregard any financial benefit that has already been taken into account in working out whether you have, or the amount of, a sufficiently certain overall gain or loss from the *financial arrangement under subsection (1) at the time when you started to have the arrangement.

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Note: Section @230-65 allows you to apportion financial benefits provided and financial benefits received in working out the amount of a gain or loss.

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@230-100 Sufficiently certain financial benefits

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- (1) In deciding for the purposes of this Division whether it is sufficiently certain at a particular time that you will have a gain or loss from a *financial arrangement, a *financial benefit that you are to receive or provide is to be treated as one that you are sufficiently certain to receive or to provide only if:

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(a) the right to receive, or the obligation to provide, the benefit is, at that time, effectively non-contingent; and

37

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

- 1 (b) the amount or value of the benefit is, at that time, fixed or
2 determinable with reasonable accuracy.
- 3 (2) You must have regard to the pricing, terms and conditions of the
4 *financial arrangement in applying paragraph (1)(a).
- 5 (3) In applying paragraph (1)(b) at a particular time to a *financial
6 benefit that depends on a variable that:
- 7 (a) is based on:
- 8 (i) an interest rate; or
9 (ii) a rate that solely or primarily reflects the time value of
10 money; or
11 (iii) a rate that solely or primarily reflects a consumer price
12 index; or
13 (iv) a rate that solely or primarily reflects an index
14 prescribed by the regulations for the purposes of this
15 paragraph; and
- 16 (b) has a particular value at that time;
17 you must assume that that variable will continue to have that value.

18 **The accruals method**

19 **@230-105 Overview of the accruals method**

- 20 If the accruals method applies to a gain or loss you make from a
21 *financial arrangement:
- 22 (a) you use section @230-110 to work out the period over which
23 the gain or loss is to be spread; and
- 24 (b) you use section @230-115 to work out how to allocate the
25 gain or loss to particular intervals within the period over
26 which the gain or loss is to be spread; and
- 27 (c) if an interval to which part of the gain or loss is allocated
28 straddles 2 income years, you use section @230-120 to work
29 out how to allocate that part of the gain or loss allocated
30 between those 2 income years.

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Schedule 1 Amendments
Part 1 Main amendments

1 **@230-110 Applying accruals method to work out period over which**
2 **gain or loss is to be spread**

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

4 (1) If you have a sufficiently certain overall gain or loss from a
5 *financial arrangement under subsection @230-95(1), the period
6 over which the gain or loss is to be spread is the period that:

- 7 (a) starts when you start to have the arrangement; and
8 (b) ends when you will cease to have the arrangement.

9 In applying paragraph (b), you must assume that you will continue
10 to have the arrangement until maturity.

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

12 (2) If you have a sufficiently certain gain or loss from a *financial
13 arrangement under subsection @230-95(3), the period over which
14 the gain or loss is to be spread is the period to which the gain or
15 loss relates. Have regard to the pricing, terms and conditions of the
16 arrangement in working out the period to which the gain or loss
17 relates. This subsection has effect subject to subsections (3) and
18 (4).

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

- 21 (a) not start earlier than the time when you start to have the
22 *financial arrangement; and
23 (b) not start earlier than the start of the income year during which
24 it becomes sufficiently certain that you will have the gain or
25 loss.

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

- 28 (a) not end later than the time when you will cease to have the
29 *financial arrangement; and
30 (b) not end later than the end of the income year during which:
31 (i) the *financial benefit that gives rise to the gain or loss is
32 to be received or provided; or
33 (ii) the right or obligation whose *ceasing gives rise to the
34 gain or loss is to cease.

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Amendments **Schedule 1**
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1 **@230-115 How gain or loss is spread**

2 *How to spread gain or loss*

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

5 *Compounding accruals or approximation*

- 6 (2) The gain or loss is to be spread using:
7 (a) compounding accruals (with the intervals to which parts of
8 the gain or loss are allocated complying with subsection (3));
9 or
10 (b) a method whose results approximate those obtained using the
11 method referred to in paragraph (a) (having regard to the
12 length of the period over which the gain or loss is to be
13 spread).

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

- 15 (3) The intervals to which parts of the gain or loss are allocated must:
16 (a) be less than 12 months; and
17 (b) all be of the same length.
18 Paragraph (b) does not apply to the first and last intervals. These
19 may be shorter than the other intervals.

20 *Assumption of continuing hold until maturity*

- 21 (4) The gain or loss is to be spread assuming that you will continue to
22 have the *financial arrangement until maturity.

23 **@230-120 Allocating gain or loss to income years**

- 24 (1) You are taken, for the purposes of section @230-15, to have, for an
25 income year, a gain or loss equal to a part of a gain or loss if:
26 (a) that part of the gain or loss is allocated to an interval under
27 section @230-115; and
28 (b) that interval falls wholly within that income year.
- 29 (2) If:
30 (a) a part of a gain or loss is allocated to an interval under
31 section @230-115; and

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- 1 (b) that interval straddles 2 income years;
2 you are taken, for purposes of section @230-15, to have a gain or
3 loss equal to so much of that part of the gain or loss as is allocated
4 between those income years on a reasonable basis.

5 **@230-125 Running balancing adjustments**

6 *Overestimate of financial benefit to be received*

- 7 (1) You are taken for the purposes of this Division to have a loss from
8 a *financial arrangement if:
9 (a) a provision of this Subdivision has applied on the basis that
10 you were sufficiently certain, at a particular time, to receive a
11 *financial benefit of, or of at least, a particular amount under
12 the arrangement; and
13 (b) when the time comes for you to receive the benefit, the
14 amount you are to receive is nil or is less than the amount
15 estimated.

16 The amount of the loss is equal to the difference between the
17 amount estimated and the amount you are to receive. You are taken
18 to have made the loss for the income year in which the time comes
19 for you to receive the benefit.

20 *Underestimate of financial benefit to be received*

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

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

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Overestimate of financial benefit to be provided

- 1
- 2 (3) You are taken for the purposes of this Division to have a gain from
- 3 a *financial arrangement if:
- 4 (a) a provision of this Subdivision has applied on the basis that
- 5 you were sufficiently certain at a particular time to provide a
- 6 *financial benefit of, or of at least, a particular amount under
- 7 the arrangement; and
- 8 (b) when the time comes for you to provide the benefit the
- 9 amount you are to provide is nil or is less than the amount
- 10 estimated.

11 The amount of the gain is equal to the difference between the

12 amount estimated and the amount you are to provide. You are

13 taken to have made that gain in the income year in which the time

14 comes for you to provide the benefit.

Underestimate of financial benefit to be provided

- 15
- 16 (4) You are taken for the purposes of this Division to have a loss from
- 17 a *financial arrangement if:
- 18 (a) a provision of this Subdivision has applied on the basis that
- 19 you were sufficiently certain at a particular time to provide a
- 20 *financial benefit of, or of at least, a particular amount under
- 21 the arrangement; and
- 22 (b) when the time comes for you to provide the benefit the
- 23 amount you are to provide is more than the estimated amount
- 24 referred to in paragraph (a).

25 The amount of the loss is equal to the difference between the

26 amount estimated and the amount you are to provide. You are

27 taken to have made that loss in the income year in which the time

28 comes for you to provide the benefit.

Realisation method

@230-130 Realisation method

29

30

31 If a gain or loss is to be taken into account using the realisation

32 method, you are taken, for the purposes of section @230-15, to

33 make the gain or loss for the income year in which the gain or loss

34 occurs.

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1 Note: Section @230-65 allows you to apportion financial benefits provided
2 and financial benefits received in working out the amount of the gain
3 or loss.

4 **Reassessment and re-estimation**

5 **@230-135 When to reassess**

- 6 (1) You must make a fresh assessment of which gains and losses from
7 a *financial arrangement the accruals method should apply to, and
8 which gains and losses from that arrangement the realisation
9 method should apply to, if:
- 10 (a) the accruals method, or the realisation method, provided for
11 in this Subdivision applies to gains and losses from the
12 arrangement; and
 - 13 (b) there is a material change to:
 - 14 (i) the terms and conditions of the arrangement; or
 - 15 (ii) circumstances that affect the arrangement.
- 16 (2) Without limiting subsection (1), the following changes are material
17 changes to the terms and conditions of, or circumstances that
18 affect, the *financial arrangement:
- 19 (a) a change to the terms or conditions of the arrangement in a
20 way that alters the essential nature of the arrangement (for
21 example, by altering it from a *debt interest to an *equity
22 interest or from an equity interest to a debt interest);
 - 23 (b) a change to the terms or conditions of the arrangement in a
24 way that materially affects the contingencies on which
25 significant obligations and rights under the arrangement are
26 dependant (for example, by introducing such a contingency
27 or removing such a contingency);
 - 28 (c) a change in circumstances that makes something that:
 - 29 (i) materially affects significant obligations and rights
30 under the arrangement; and
 - 31 (ii) was previously dependant on a contingency;
32 no longer dependant on a contingency (because, for example,
33 only one of a number of previously possible contingencies is
34 realised);
 - 35 (d) a change to:
 - 36 (i) the terms on which credit is to be provided to a person
37 who is not a party to the arrangement; or
-

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- 1 (ii) the credit rating of a person who is not a party to the
2 arrangement;
3 if a significant obligation or right under the arrangement is
4 dependant on that credit being provided or that rating being
5 maintained;
6 (e) if the arrangement is, or includes, a loan and you prepare
7 your financial reports in accordance with:
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
11 made under a *foreign law that apply to the preparation
12 of the financial report under a foreign law;
13 a change to the terms or conditions of, or circumstances that
14 affect, the arrangement that are sufficient for the loan to be
15 treated as impaired for the purposes of those standards.
- 16 (3) You do not need to make a reassessment under this section merely
17 because of a change in the fair value of the *financial arrangement.

18 @230-140 When to re-estimate

19 *When re-estimation necessary*

- 20 (1) You re-estimate a gain or loss from a *financial arrangement under
21 subsection (3) if:
22 (a) the accruals method applies to the gain or loss; and
23 (b) circumstances arise that materially affect:
24 (i) the amount or value; or
25 (ii) the timing;
26 of *financial benefits that were taken into account in working
27 out the amount of the gain or loss.
28 You must re-estimate the gain or loss as soon as reasonably
29 practicable after you become aware of the circumstances referred
30 to in paragraph (b).
- 31 (2) Without limiting subsection (1), the following are circumstances of
32 the kind referred to in paragraph (1)(b):
33 (a) a material change in market conditions that are relevant to the
34 amount or value of the *financial benefits to be received or
35 provided under the *financial arrangement;

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- 1 (b) cash flows that were previously estimated becoming known;
2 (c) a right to, or a part of a right to, a financial benefit under the
3 arrangement is written off as a bad debt;
4 (d) you have made a reassessment under section @230-135 in
5 relation to gains or losses under the arrangement and you
6 have determined on the reassessment under that section that
7 the accruals method should continue to apply to those gains
8 or losses.

9 *Nature of re-estimation*

- 10 (3) 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; and
13 (b) a reapplication of the accruals method to the gain or loss to
14 make a fresh allocation of the gain or loss to an income year
15 or income years.

16 *Basis for re-estimation*

- 17 (4) You may make the fresh allocation of the gain or loss under
18 subsection (3) to an income year or income years on either of the
19 following bases:
20 (a) by maintaining the rate of return being used and adjusting the
21 amount to which you apply the rate of return;
22 (b) adjusting the rate of return and maintaining the amount to
23 which you apply the rate of return.

24 The object to be achieved by both bases is allow you to bring the
25 gain or loss based on the new estimates properly to account over
26 the whole period over which you spread the gain or loss.

- 27 (5) If you adopt a particular basis under subsection (4) for a gain or
28 loss from a *financial arrangement, you must use the same basis for
29 all the re-estimations you make under this section in relation to
30 your gains and losses from all your financial arrangements.

31 *Balancing adjustment if rate of return maintained*

- 32 (6) If you make a fresh allocation of the gain or loss on the basis
33 referred to in paragraph (4)(a), you must make the following
34 balancing adjustment:

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- 1 (a) if you re-estimate a gain and the amount to which you apply
2 the rate of return increases—you have a gain from the
3 *financial arrangement, for the income year in which you
4 make the re-estimation, equal to the amount of the increase;
5 (b) if you re-estimate a gain and the amount to which you apply
6 the rate of return decreases—you have a loss from the
7 arrangement, for the income year in which you make the
8 re-estimation, equal to the amount of the decrease;
9 (c) if you re-estimate a loss and the amount to which you apply
10 the rate of return increases—you have a loss from the
11 arrangement, for the income year in which you make the
12 re-estimation, equal to the amount of the increase;
13 (d) if you re-estimate a loss and the amount to which you apply
14 the rate of return decreases—you have a gain from the
15 arrangement, the income year in which you make the
16 re-estimation, equal to the amount of the decrease.

17 **Subdivision 230-C—Fair value method**

18 **Table of sections**

- 19 @230-145 Objects of this Subdivision
20 @230-150 Fair value election
21 @230-155 Applying fair value method to gains and losses
22 @230-160 Splitting financial arrangements into 2 financial arrangements
23 @230-165 When election ceases to apply
24 @230-170 Balancing adjustment if election ceases to apply

25 **@230-145 Objects of this Subdivision**

26 The objects of this Subdivision are:

- 27 (a) to allow you to align the tax treatment of gains and losses
28 from *financial arrangements with the accounting treatment
29 that applies where financial assets and liabilities are
30 classified as at fair value through profit and loss; and
31 (b) to facilitate efficient price-making; and
32 (c) to achieve the above objects without allowing you to obtain
33 an inappropriate tax benefit.

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Schedule 1 Amendments
Part 1 Main amendments

1 **@230-150 Fair value election**

2 *Election*

- 3 (1) You may make a *fair value election* if:
- 4 (a) you prepare financial reports in accordance with:
- 5 (i) the *accounting standards; or
- 6 (ii) if those standards do not apply to the preparation of the
- 7 financial report—comparable accounting standards
- 8 made under a *foreign law that apply to the preparation
- 9 of the financial report under a foreign law; and
- 10 (b) the financial reports:
- 11 (i) are required by a law of the Commonwealth, or of a
- 12 State or Territory, to be audited in accordance with the
- 13 *auditing standards; or
- 14 (ii) if those standards do not apply to the auditing of those
- 15 reports—are required by a foreign law to be audited in
- 16 accordance with comparable auditing standards made
- 17 under a foreign law that apply to the auditing of those
- 18 reports.

19 Note: Subparagraphs (a)(ii) and (b)(ii)—section @230-340 allows

20 regulations to be made specifying particular foreign accounting and

21 auditing standards as ones that are to be treated as comparable with

22 Australian accounting and auditing standards for the purposes of this

23 Division.

24 *Financial arrangements election applies to*

- 25 (2) The election under subsection (1) applies in relation to *financial
- 26 arrangements that:
- 27 (a) are financial arrangements to which this Division applies;
- 28 and
- 29 (b) are recognised in financial reports referred to in
- 30 paragraph (1)(a); and
- 31 (c) are assets or liabilities that you are required (whether or not
- 32 as a result of a choice you make) by:
- 33 (i) the *accounting standards; or
- 34 (ii) if those standards do not apply to the preparation of the
- 35 financial report—comparable accounting standards that
- 36 apply to the preparation of the financial report under a
- 37 *foreign law;

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- 1 to classify, in the financial reports, as at fair value through
2 profit and 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 *Financial arrangements election does not apply to*

- 6 (3) The *fair value election does not apply to a *financial arrangement
7 if:
8 (a) the arrangement is an *equity interest; and
9 (b) you are the issuer of the equity interest.
- 10 (4) The *fair value election does not apply to a *financial arrangement
11 if:
12 (a) you are:
13 (i) an individual; or
14 (ii) an entity (other than an individual) that satisfies
15 subsection @230-310(2) for the income year in which
16 you start to have the arrangement; and
17 (b) the arrangement is a qualifying security (within the meaning
18 of Division 16E of Part III of the *Income Tax Assessment Act*
19 *1936*); and
20 (c) you have not made an election under subsection
21 @230-310(4).

22 *Election irrevocable*

- 23 (5) A *fair value election is irrevocable.

24 Note: The election may cease to apply under section @230-165.

25 **@230-155 Applying fair value method to gains and losses**

26 If a *fair value election applies to your *financial arrangement,
27 your gain or loss from the arrangement for an income year is the
28 gain or loss that the standards referred to in paragraph
29 @230-150(1)(a) require you to recognise for the income year on
30 the financial asset or liability mentioned in that paragraph.

31 Note: Subsection @230-30(3) provides that an election under
32 Subdivision 230-E (hedging financial arrangements method) or
33 Subdivision 230-F (method of relying on financial reports) may
34 override a fair value election.

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Schedule 1 Amendments
Part 1 Main amendments

1 **@230-160 Splitting financial arrangements into 2 financial**
2 **arrangements**

- 3 (1) The other provisions of this Division apply to a *financial
4 arrangement as if it were instead 2 separate financial arrangements
5 if:
6 (a) a *fair value election applies to the financial arrangement;
7 and
8 (b) the asset or liability mentioned in paragraph @230-150(2)(c)
9 comprises only part of the financial arrangement.
- 10 (2) The 2 separate *financial arrangements are:
11 (a) one consisting of the part referred to in paragraph (1)(b); and
12 (b) one consisting of the remaining part.

13 **@230-165 When election ceases to apply**

- 14 A *fair value election ceases to apply to a *financial arrangement
15 from the start of an income year during which:
16 (a) you cease to satisfy a requirement of subsection
17 @230-150(1); or
18 (b) the arrangement ceases to satisfy a requirement of paragraph
19 @230-150(2)(b) or (c).

20 The election cannot subsequently reapply to that arrangement
21 (even if those requirements are satisfied once more in relation to
22 the arrangement).

23 Note: You will be able to make a new election under subsection
24 @230-150(1) if those requirements are satisfied once more but the
25 new election will only apply to financial arrangements you start to
26 have after the start of the income year in which the new election is
27 made.

28 **@230-170 Balancing adjustment if election ceases to apply**

- 29 (1) You must make a balancing adjustment under this section if a *fair
30 value election ceases to apply to a *financial arrangement.
- 31 (2) The balancing adjustment is the balancing adjustment you would
32 make under Subdivision 230-G if:
33 (a) you disposed of the *financial arrangement for its fair value
34 when the election ceases to apply; and
35 (b) you immediately reacquired it for that value.

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1 **Subdivision 230-D—Foreign exchange retranslation method**

2 **Table of sections**

- 3 @230-175 Objects of this Subdivision
- 4 @230-180 Foreign exchange retranslation election
- 5 @230-185 Applying foreign exchange retranslation method to gains and losses
- 6 @230-190 When election ceases to apply
- 7 @230-195 Balancing adjustment if election ceases to apply

8 **@230-175 Objects of this Subdivision**

9 The objects of this Subdivision are:

- 10 (a) to allow you to align the tax treatment of gains and losses
- 11 from foreign exchange rate changes with the accounting
- 12 treatment of profits and losses from such changes; and
- 13 (b) to achieve this without allowing you to obtain an
- 14 inappropriate tax benefit.

15 **@230-180 Foreign exchange retranslation election**

16 *General election*

- 17 (1) You may make a *foreign exchange retranslation election* under
- 18 this subsection if:
 - 19 (a) you prepare financial reports in accordance with:
 - 20 (i) the *accounting standards; or
 - 21 (ii) if those standards do not apply to the preparation of the
 - 22 financial report—comparable accounting standards
 - 23 made under a *foreign law that apply to the preparation
 - 24 of the financial report under a foreign law; and
 - 25 (b) the financial reports:
 - 26 (i) are required by a law of the Commonwealth, or of a
 - 27 State or Territory, to be audited in accordance with the
 - 28 *auditing standards; or
 - 29 (ii) if those standards do not apply to the auditing of those
 - 30 reports—are required by a foreign law to be audited in
 - 31 accordance with comparable auditing standards made
 - 32 under a foreign law that apply to the auditing of those
 - 33 reports.

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1 Note: Subparagraphs (a)(ii) and (b)(ii)—Section @230-340 allows
2 regulations to be made specifying particular foreign accounting and
3 auditing standards as ones that are to be treated as comparable with
4 Australian accounting and auditing standards for the purposes of this
5 Division.

6 *Financial arrangements general election applies to*

- 7 (2) The election made under subsection (1) applies to each of your
8 *financial arrangements:
9 (a) that are financial arrangements to which this Division
10 applies; and
11 (b) that are recognised in financial reports referred to in
12 paragraph (1)(a); and
13 (c) in relation to which you are required by:
14 (i) *accounting standard AASB 121 (or another accounting
15 standard prescribed for the purposes of this paragraph);
16 or
17 (ii) 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 to recognise, in the financial reports, amounts in profit or loss
22 (if any) that are attributable to changes in currency exchange
23 rates; and
24 (d) that you start to have in the income year in which you make
25 the election or in a later income year.

26 This subsection has effect subject to subsections (3) and (4).

27 *Financial arrangements general election does not apply to*

- 28 (3) A *foreign exchange retranslation election made under
29 subsection (1) does not apply to a *financial arrangement if:
30 (a) the arrangement is an *equity interest; and
31 (b) you are the issuer of the equity interest.
- 32 (4) A *foreign exchange retranslation election made under
33 subsection (1) does not apply to a *financial arrangement if:
34 (a) you are:
35 (i) an individual; or

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- 1 (ii) an entity (other than an individual) that satisfies
2 subsection @230-310(2) for the income year in which
3 you start to have the arrangement; and
4 (b) the arrangement is a qualifying security (within the meaning
5 of Division 16E of Part III of the *Income Tax Assessment Act*
6 *1936*); and
7 (c) you have not made an election under subsection
8 @230-310(4).

9 *Election in relation to qualifying forex accounts*

- 10 (5) You may make a **foreign exchange retranslation election** under
11 this subsection in relation to a *financial arrangement if:
12 (a) the arrangement is a *qualifying forex account; and
13 (b) you have not made a *foreign exchange retranslation election
14 under subsection (1) that applies to the account.

15 You may make the election even if you start to have the
16 arrangement before you make the election.

- 17 (6) The election under subsection (5) applies to the *financial
18 arrangement:
19 (a) from the time when you start to have the arrangement if the
20 election is made before you start to have the arrangement; or
21 (b) from the start of the income year in which the election is
22 made if you make the election after you start to have the
23 arrangement.

- 24 (7) If you make the election under subsection (5) after you start to
25 have the *financial arrangement, you must make a balancing
26 adjustment. The balancing adjustment is the balancing adjustment
27 you would make under Subdivision 230-G if you ceased to have
28 the arrangement at the time when the election started to apply to
29 the arrangement.

30 *Elections irrevocable*

- 31 (8) A *foreign exchange retranslation election is irrevocable.

32 Note: The election may cease to apply under section @230-190.

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1 **@230-185 Applying foreign exchange retranslation method to gains**
2 **and losses**

3 *General election*

- 4 (1) You have a gain or loss from a *financial arrangement for an
5 income year if:
6 (a) a *foreign exchange retranslation election under subsection
7 @230-180(1) applies to the arrangement; and
8 (b) the standard referred to in paragraph @230-180(2)(c)
9 requires you to recognise a particular amount in profit or loss
10 in relation to that arrangement for that income year.

11 The amount of the gain or loss is the amount the standard requires
12 you to recognise.

13 Note: See subsection @230-30(4).

14 *Election in relation to qualifying forex accounts*

- 15 (2) You have a gain or loss from a *financial arrangement for an
16 income year if:
17 (a) a *foreign exchange retranslation election under subsection
18 @230-180(5) applies to the arrangement; and
19 (b) the standard referred to in paragraph @230-180(2)(c):
20 (i) requires you to recognise a particular amount in profit
21 or loss in relation to that arrangement for that income
22 year; or
23 (ii) would require you to recognise a particular amount in
24 profit or loss in relation to that arrangement for that
25 income year if that standard applied to the arrangement.

26 The amount of the gain or loss is the amount the standard requires
27 you to recognise.

28 **@230-190 When election ceases to apply**

29 *General election*

- 30 (1) A *foreign exchange retranslation election under subsection
31 @230-180(1) ceases to apply to a *financial arrangement from the
32 start of an income year during which:
33 (a) you cease to satisfy a requirement of subsection
34 @230-180(1); or
-

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1 (b) the arrangement ceases to satisfy a requirement of paragraph
2 @230-180(2)(b) or (c).

3 The election cannot subsequently reapply to that arrangement
4 (even if those requirements are satisfied once more in relation to
5 the arrangement).

6 Note: You will be able to make a new election under subsection
7 @230-180(1) if those requirements are satisfied once more, but the
8 new election will only apply to financial arrangements you start to
9 have after the start of the income year in which the new election is
10 made.

11 *Election in relation to qualifying forex accounts*

12 (2) A *foreign exchange retranslation election under subsection
13 @230-180(5) ceases to apply to a *financial arrangement from the
14 start of an income year during which the arrangement ceases to
15 satisfy a requirement of subsection @230-180(5). The election
16 cannot subsequently reapply to that arrangement (even if those
17 requirements are satisfied once more in relation to the
18 arrangement).

19 **@230-195 Balancing adjustment if election ceases to apply**

- 20 (1) You must make a balancing adjustment under this section if a
21 *foreign currency retranslation election ceases to apply to a
22 *financial arrangement.
- 23 (2) The balancing adjustment is the balancing adjustment you would
24 make under Subdivision 230-G if:
- 25 (a) you disposed of the *financial arrangement for its fair value
26 when the election ceases to apply to the financial
27 arrangement; and
28 (b) you immediately reacquired it for that value.

29 **Subdivision 230-E—Hedging financial arrangements method**

30 **Table of sections**

31 @230-200 Objects of this Subdivision
32 @230-205 Applying hedging financial arrangement method to gains and losses
33 @230-210 Table of events and allocation rules
34 @230-215 Aligning tax treatment of gain or loss from hedging financial arrangement
35 with tax treatment of hedged item

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- 1 @230-220 Hedging financial arrangement election
- 2 @230-225 *Hedging financial arrangement* and *hedged item*
- 3 @230-230 *Derivative financial arrangement* and *foreign currency hedge*
- 4 @230-235 Recording requirements
- 5 @230-240 Determining basis for allocating gains and losses
- 6 @230-245 Determining tax treatment of gains and losses
- 7 @230-250 Effectiveness of the hedge
- 8 @230-255 Where requirements not met
- 9 @230-260 You may be excluded from this Division for deliberate failures to comply
- 10 with requirements

11 @230-200 Objects of this Subdivision

12 The objects of this Subdivision are:

- 13 (a) to facilitate the efficient management of financial risk by
- 14 reducing after-tax mismatches and better aligning tax
- 15 treatment where hedging takes place; and
- 16 (b) to minimise tax deferral and tax motivated practices
- 17 (including tax deferral arising from such practices as tax
- 18 advantaged selection from among possible hedges and
- 19 inappropriate selection of tax treatment).

20 @230-205 Applying hedging financial arrangement method to gains 21 and losses

- 22 (1) If you have a *hedging financial arrangement to which a *hedging
- 23 financial arrangement election applies, your gain or loss for an
- 24 income year from the hedging financial arrangement is worked out
- 25 under this section and section @230-215 instead of under
- 26 Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.
- 27 (2) Except where subsection (3) applies, your gain or loss is equal to
- 28 your overall gain or loss from the *hedging financial arrangement,
- 29 and is allocated over income years according to the determination
- 30 referred to in subsection @230-240(1).

31 Note 1: The allocation is capable of extending to income years after you cease

32 to have the hedging financial arrangement.

33 Note 2: The determination must be included in the record made under section

34 @230-235.

- 35 (3) If an event listed in the table in section @230-210 occurs:

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- 1 (a) your gain or loss is equal to any gain or loss that you would
2 realise if you ceased to have your *hedging financial
3 arrangement for its fair value at the time of the event, and the
4 gain or loss is allocated over income years according to the
5 table; and
6 (b) this Division further applies as if, just after the event, you had
7 acquired the *financial arrangement for its fair value at the
8 time of the event.

9 **@230-210 Table of events and allocation rules**

10 For the purposes of paragraph @230-205(3)(a), the following table
11 lists events and their consequences:
12

Table of events and allocation rules

Item	If this event occurs ...	Your gain or loss is allocated ...
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 @230-250 in relation to your hedging financial arrangement.	over income years according to the basis determined under subsection @230-240(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence.	to the income year in which the event occurs

13

14 **@230-215 Aligning tax treatment of gain or loss from hedging**
15 **financial arrangement with tax treatment of hedged item**

- 16 (1) The object of this section is to better align, in particular
17 circumstances, the tax treatment of a gain or loss made on a
18 *hedging financial arrangement with the tax treatment of the item
19 that is hedged.
20 (2) This section applies if:
-

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- 1 (a) you have a gain or a loss from a *hedging financial
2 arrangement for an income year; and
3 (b) a *hedging financial arrangement election applies to the
4 arrangement.
- 5 (3) Subject to subsections (4) and (5):
6 (a) if you have a gain from the arrangement—your assessable
7 income includes the gain in accordance with subsection
8 @230-15(1); and
9 (b) if you have a loss from the arrangement—you may deduct
10 the loss in accordance with subsections @230-15(2) and (3).
- 11 (4) If a gain or loss from a *hedging financial arrangement is
12 reasonably attributable to a risk that:
13 (a) is the sole or dominant risk that the arrangement hedges; and
14 (b) an item in the following table applies to that risk;
15 the gain or loss is dealt with in the way indicated in that item for
16 the arrangement:
17

Special tax treatment for gains and losses

Item	If the risk is in relation to the amount or value of a hedged item that is ...	the gain ...	the loss ...
1	a *CGT asset if any net capital gain in relation to the asset would be assessable under Parts 3-1 and 3-3	is treated as a capital gain	is treated as a capital loss
2	a CGT asset that is *taxable Australian property	is treated as a capital gain for a CGT asset that is taxable Australian property	is treated as a capital loss for a CGT asset that is taxable Australian property
3	a CGT asset your capital gains and losses in relation to which are disregarded under Division 855	is disregarded	is disregarded
4	*non-assessable non-exempt income	is treated as non-assessable non-exempt income	is not deductible

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Special tax treatment for gains and losses			
Item	If the risk is in relation to the amount or value of a hedged item that is ...	the gain ...	the loss ...
5	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 Division 768-G	is treated as a capital gain and is reduced by the same percentage	is treated as a capital loss and is reduced by the same percentage
6	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 your ordinary income or statutory income from an Australian source
7	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
8	a loss or outgoing incurred in earning ordinary income or statutory income from a source outside Australia that is assessable income	reduces the amount of the deduction that is allowable in relation to the loss or outgoing against the income by the amount of the gain	increases the amount of the deduction that is allowable in relation to the loss or outgoing against the income by the amount of the loss
9	a loss or outgoing incurred in earning ordinary income or statutory income from a source in Australia that is assessable income	reduces the amount of the deduction that is allowable in relation to the loss or outgoing against the income by the amount of the gain	increases the amount of the deduction that is allowable in relation to the loss or outgoing against the income by the amount of the loss
10	a loss or outgoing that is not allowed as a	reduces the amount of the loss or outgoing by	increases the amount of the loss or outgoing by

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Special tax treatment for gains and losses

Item	If the risk is in relation to the amount or value of a hedged item that is ...	the gain ...	the loss ...
	deduction	the amount of the gain	the amount of the loss
11	ordinary income or statutory income that is not assessable because you are a foreign resident	is treated as *non-assessable non-exempt income	is treated as not being allowable as a deduction
12	a loss or outgoing that is a cost that is incurred in relation to a debt interest and that is a *debt deduction because of paragraph 840-20(1)(a)	reduces the amount of the debt deduction	increases the amount of the debt deduction

1

2

3

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5

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Note: In some circumstances, more than one item can apply to the same hedging financial arrangement. For example, item 1 might apply to make the gain on the arrangement a capital gain and item 2 might apply to treat the capital gain as being made on an asset that is taxable Australian property.

7

8

9

10

(5) An item of the table in subsection (4) applies to a risk hedged by a *hedging financial arrangement only if you have recorded that risk as the sole or dominant risk that the arrangement hedges in the record required by section @230-245.

11

@230-220 Hedging financial arrangement election

12

Election

13

14

(1) You can make a **hedging financial arrangement election** in relation to all your *hedging financial arrangements.

15

Financial arrangements election applies to

16

17

(2) The *hedging financial arrangement election applies to a *hedging financial arrangement if:

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- 1 (a) you start to have the arrangement in the income year in which
2 you make the election or in a later income year; and
3 (b) the requirements in sections @230-235 to @230-250 are met
4 in relation to the arrangement.

5 Note: Paragraph (b)—see section @230-255 for the Commissioner's
6 discretion in relation to failures to meet the requirements of sections
7 @230-235 to @230-250.

8 *Financial arrangements election does not apply to*

- 9 (3) The *hedging financial arrangement election does not apply to a
10 *financial arrangement if:
11 (a) the arrangement is an *equity interest; or
12 (b) you are:
13 (i) an individual; or
14 (ii) an entity (other than an individual) that satisfies
15 subsection @230-310(2) for the income year in which
16 you start to have the arrangement;
17 and the arrangement is a qualifying security (within the
18 meaning of Division 16E of Part III of the *Income Tax*
19 *Assessment Act 1936*).

20 *Election irrevocable*

- 21 (4) The *hedging financial arrangement election is irrevocable.

22 Note: The election may cease to apply under section @230-260.

23 **@230-225 Hedging financial arrangement and hedged item**

24 *Hedging financial arrangement*

- 25 (1) A *financial arrangement that you have that is a *derivative
26 financial arrangement, or is not a derivative financial arrangement
27 but is a *foreign currency hedge, is a ***hedging financial***
28 ***arrangement*** if:
29 (a) you create, acquire or apply the arrangement for the purpose
30 of hedging a risk or risks in relation to an asset, liability or
31 current or future transaction; and
32 (b) you prepare a financial report in accordance with:
33 (i) the *accounting standards; or

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- 1 (ii) if those standards do not apply to the preparation of the
2 financial report—comparable accounting standards
3 made under a *foreign law that apply to the preparation
4 of the financial report under a foreign law; and
5 (c) the financial report:
6 (i) is required by a law of the Commonwealth, or of a State
7 or Territory, to be audited in accordance with the
8 *auditing standards; or
9 (ii) if those standards do not apply to the auditing of those
10 reports—is required by a foreign law to be audited in
11 accordance with comparable auditing standards made
12 under a foreign law that apply to the auditing of those
13 reports; and
14 (d) at the time you do so, the arrangement satisfies the
15 requirements of the standards referred to in paragraph (b) to
16 be a hedging instrument; and
17 (e) the arrangement is recorded as a hedging instrument in:
18 (i) your financial report; or
19 (ii) if the hedging financial arrangement is not a derivative
20 financial arrangement and hedges a risk in relation to
21 foreign currency—the financial report of a consolidated
22 entity in which you are included;
23 for the income year in which the rights and/or obligations are
24 created, acquired or applied.

25 Note: Subparagraphs (b)(ii) and (c)(ii)—Section @230-340 allows
26 regulations to be made specifying particular foreign accounting and
27 auditing standards as ones that are to be treated as comparable with
28 Australian accounting and auditing standards for the purposes of this
29 Division.

30 *Generally whole arrangement must be financial hedging* 31 *arrangement*

- 32 (2) Subject to subsections (3), (4), (5) and (6), the whole of a *financial
33 arrangement must satisfy the requirements of subsection (1) for the
34 arrangement to be a ***hedging financial arrangement***.

35 *Partial hedges*

- 36 (3) If a *financial arrangement:
37 (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;
3 the arrangement is to 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
6 subsection (1).

7 (4) 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 is to be treated as a **hedging financial**
11 **arrangement** to the extent to which the spot price element satisfies
12 the requirements of subsection (1).

13 *Proportionate hedges*

14 (5) 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 (1).

18 *Extent to which arrangement is actually effective in hedging risk*

19 (6) To the extent that the standards referred to in paragraph (1)(b)
20 provide that only that part of a gain or loss on the financial assets
21 or financial liabilities that comprise a *financial arrangement that is
22 actually effective in hedging a risk is to obtain hedge accounting
23 treatment, the arrangement is to be treated as a **hedging financial**
24 **arrangement** only to the extent to which the arrangement is
25 actually effective in hedging that risk.

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 one risk*

32 (8) If 2 or more *financial arrangements hedge the same risk or risks,
33 each of the arrangements may only be a **hedging financial**
34 **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 *Where some requirements not satisfied*

4 (9) If a *derivative financial arrangement, or a *foreign currency
5 hedge, that you have would not be a *hedging financial
6 arrangement only because the requirements of paragraph (1)(d) or
7 (e), or both, are not satisfied, it is nevertheless a **hedging financial**
8 **arrangement** if the Commissioner considers this appropriate
9 having regard to:

10 (a) in the case only of paragraph (1)(d)—the respects in which,
11 and extent to which, it does not satisfy the requirements of
12 the relevant standards; and

13 (b) in the case of either paragraph—the reasons for the paragraph
14 not being satisfied and the objects of this Subdivision.

15 *Hedged item*

16 (10) If a *hedging financial arrangement that you have hedges a risk in
17 relation to:

18 (a) an asset; or

19 (b) a liability; or

20 (c) a current or future transaction;

21 the asset, liability or transaction is a **hedged item** for the
22 arrangement.

23 **@230-230 Derivative financial arrangement and foreign currency** 24 **hedge**

25 *Derivative financial arrangement*

26 (1) A **derivative financial arrangement** is a *financial arrangement
27 that you have where:

28 (a) its value changes in response to changes in a specified
29 variable or variables; and

30 (b) there is no requirement for a net investment, or there is such a
31 requirement but the net investment is smaller than would be
32 required for other types of financial arrangement that would
33 be expected to have a similar response to changes in market
34 factors.

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

4 *Foreign currency hedge*

- 5 (2) A *foreign currency hedge* is a *financial arrangement that you
6 have if:
7 (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and
8 (b) the arrangement hedges a risk in relation to movements in
9 currency exchange rates.

10 **@230-235 Recording requirements**

- 11 (1) The requirement of this section is that you must make a record that:
12 (a) contains a description of the following:
13 (i) the *hedging financial arrangement in relation to which
14 the election is made;
15 (ii) the purpose of the hedging;
16 (iii) the nature of the risk being hedged;
17 (iv) the *hedged item or items;
18 (v) how you will assess the effectiveness of hedging the
19 risk in reducing your exposure to changes in the fair
20 value of the hedged item or items or cash flows
21 attributable to them; and
22 (b) sets out the terms of the determinations you make under
23 sections @230-240 and @230-245.
- 24 (2) The description must be sufficiently precise that the following are
25 clear:
26 (a) that the risk in respect of the particular *hedged item or items
27 was the one hedged by the *hedging financial arrangement;
28 (b) the extent to which the risk was hedged;
29 (c) that the rights and/or obligations comprising the hedging
30 financial arrangement were in fact those created, acquired or
31 applied for the purpose of hedging the risk.

32 **@230-240 Determining basis for allocating gains and losses**

- 33 (1) A requirement of this section is that you must determine the basis
34 on which your gains and losses from the *hedging financial
-

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1 arrangement are to be allocated over income years for the purposes
2 of this Division.

- 3 (2) It is also a requirement of this section that the basis that you
4 determine must:
- 5 (a) be objective; and
 - 6 (b) fairly and reasonably correspond with the basis on which you
7 allocate your gains and losses from the *hedged item or
8 items.

9 @230-245 Determining tax treatment of gains and losses

- 10 (1) A requirement of this section is that you must:
- 11 (a) determine the risk that is the sole or the dominant risk that
12 the *hedging financial arrangement hedges; and
 - 13 (b) determine the item or items (if any) in the table in subsection
14 @230-215(4) that are to apply to that risk; and
 - 15 (c) determine the basis on which it would be appropriate to apply
16 that item or those items to that risk.
- 17 (2) It is also a requirement of this section that the determinations under
18 paragraphs (1)(a) and (b) be objective and reasonable.

19 @230-250 Effectiveness of the hedge

20 The requirement of this section is that:

- 21 (a) hedging the risk must be expected to be highly effective in
22 reducing your exposure to changes in the fair value of the
23 *hedged item or items or cash flows attributable to your
24 hedged risk; and
- 25 (b) the fair value of the hedged item or items or cash flows
26 relating to them and the fair value of the *hedging financial
27 arrangement must be able to be reliably measured; and
- 28 (c) you must assess the hedging of the risk by the hedging
29 financial arrangement on an ongoing basis and your
30 assessment must be that it is highly effective in reducing your
31 exposure to changes in the fair value of the hedged item or
32 items or cash flows attributable to the hedged risk throughout
33 the period that it has been in operation.

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1 **@230-255 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 @230-235 to @230-250, it
5 nevertheless meets the requirements if the Commissioner considers
6 this 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) whether any of the following applies to the arrangement:

11 (i) subsection @230-225(3) or (4) (partial hedge);

12 (ii) subsection @230-225(5) (proportionate hedge);

13 (iii) subsection @230-225(7) (hedge for multiple risks);

14 (iv) subsection @230-225(8) (multiple hedges for single
15 risk); and

16 (e) if the Commissioner is considering whether to impose
17 conditions under subsection (2)—the likelihood that you will
18 comply with those conditions; and

19 (f) the objects of this Subdivision.

20 *Commissioner may impose additional record keeping requirements*

21 (2) The Commissioner may make a determination under subsection (1)
22 conditional on your keeping records in addition to those required
23 by section @230-235.

24 (3) A determination under subsection (1) ceases to have effect if you
25 breach a condition imposed under subsection (2).

26 (4) Subsection (3) ceases to apply to you if the Commissioner
27 determines that that subsection ceases to apply to you. The
28 determination takes effect from the date specified in the
29 determination.

30 (5) In deciding whether to make the determination under
31 subsection (4), the Commissioner must have regard to:

32 (a) your record keeping practices; and

33 (b) your compliance history; and

34 (c) any changes that have been made to:

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- 1 (i) your accounting systems and controls; and
2 (ii) your internal governance processes;
3 to ensure that breaches of the kind referred to in
4 subsection (3) do not happen again; and
5 (d) any other relevant matter.

6 *Commissioner may determine matter under section @230-240 or*
7 *@230-245*

- 8 (6) If:
9 (a) the Commissioner makes a determination under
10 subsection (1) in relation to a *hedging financial
11 arrangement; and
12 (b) you fail to determine a matter in relation to the arrangement
13 under section @230-240 or @230-245;
14 the Commissioner may determine that matter and the
15 Commissioner's determination has effect as if you had made the
16 determination and recorded it under that section.

17 **@230-260 You may be excluded from this Division for deliberate**
18 **failures to comply with requirements**

19 *When section applies*

- 20 (1) This section applies if:
21 (a) you start to have a *hedging financial arrangement to which
22 your *hedging financial arrangement election applies; and
23 (b) you do not meet a requirement of section @230-235,
24 @230-240 or @230-245 in relation to the arrangement; and
25 (c) you deliberately fail to meet that requirement in order to have
26 this Subdivision not apply to the arrangement.

27 *Hedging financial arrangement election ceases to apply*

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

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1 *Commissioner may determine that hedging financial arrangement*
2 *is to reapply*

3 (3) Subsection (2) ceases to apply to you if the Commissioner
4 determines that that subsection ceases to apply to you. The
5 determination takes effect from the date specified in the
6 determination.

7 (4) The Commissioner may make the determination under
8 subsection (3) only if satisfied that you are unlikely to deliberately
9 fail again to meet the requirements of sections @230-235,
10 @230-240 and @230-245 in order to have this Subdivision not
11 apply to a *hedging financial arrangement.

12 (5) In deciding whether to make the determination under
13 subsection (3), the Commissioner must have regard to:
14 (a) your record keeping practices; and
15 (b) your compliance history; and
16 (c) any changes that have been made to:
17 (i) your accounting systems and controls; and
18 (ii) your internal governance processes;
19 to ensure that failures of the kind referred to in
20 paragraph (1)(c) do not happen again; and
21 (d) any other relevant matter.

22 *Commissioner may still exercise powers under section @230-255*

23 (6) This section does not prevent the Commissioner from exercising
24 the Commissioner's powers under section @230-255 in relation to
25 the *hedging financial arrangement referred to in paragraph (1)(a).

26 **Subdivision 230-F—Reliance on financial reports**

27 **Table of sections**

28 @230-265 Objects of this Subdivision
29 @230-270 Election to rely on financial reports
30 @230-275 Effect of election to rely on financial reports
31 @230-280 When election ceases to apply
32 @230-285 Balancing adjustment if election ceases to apply

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1 **@230-265 Objects of this Subdivision**

2 The objects of this Subdivision are:

- 3 (a) to reduce administration and compliance costs by allowing
4 you to align the tax treatment of your gains and losses from a
5 *financial arrangement with the accounting treatment that
6 applies to the arrangement; and
7 (b) to put integrity measures in place for the application of this
8 Subdivision; and
9 (c) to achieve those objects without your obtaining inappropriate
10 tax benefits.

11 **@230-270 Election to rely on financial reports**

12 *Election*

13 (1) You may make an *election to rely on financial reports* if:

- 14 (a) you are:
15 (i) not an individual; and
16 (ii) not an entity (other than an individual) that satisfies
17 subsection @230-310(2) for the income year in which
18 you start to have the *financial arrangement; and
19 (b) you prepare financial reports in accordance with:
20 (i) the *accounting standards; or
21 (ii) if those standards do not apply to the preparation of the
22 financial report—comparable accounting standards
23 made under a *foreign law that apply to the preparation
24 of the financial report under a foreign law; and
25 (c) the financial reports:
26 (i) are required by a law of the Commonwealth, or of a
27 State or Territory, to be audited in accordance with the
28 *auditing standards; or
29 (ii) if those standards do not apply to the auditing of those
30 reports—are required by a foreign law to be audited in
31 accordance with comparable auditing standards made
32 under a foreign law that apply to the auditing of those
33 reports; and
34 (d) your auditor has not qualified the auditor's report on your
35 financial reports for the current financial year or any of the

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- 1 last 4 financial years in a respect that is relevant to the
2 treatment of a financial arrangement; and
- 3 (e) the amount of the overall gains or losses you make from
4 financial arrangements (as determined using the method used
5 in your financial reports) is, or will be, the same as the
6 amount of those overall gains or losses (as determined by
7 applying the provisions of this Division other than this
8 Subdivision); and
- 9 (f) the differences between the following methods would
10 reasonably be expected not to be substantial:
- 11 (i) the method used in your financial reports to work out
12 the amounts of the gain or loss you make from a
13 financial arrangement for each income year;
- 14 (ii) the method applied by this Division (other than this
15 Subdivision) to work out the amounts of those gains or
16 losses; and
- 17 (g) the election is reasonable and appropriate having regard to
18 the matters set out in subsection (2).

19 Note: Subparagraphs (b)(ii) and (c)(ii)—Section @230-340 allows
20 regulations to be made specifying particular foreign accounting and
21 auditing standards as ones that are to be treated as comparable with
22 Australian accounting and auditing standards for the purposes of this
23 Division.

- 24 (2) The matters to which regard is to be had for the purposes of
25 paragraph (1)(g) are the following:
- 26 (a) the comparison between:
- 27 (i) your costs in complying with this Division (other than
28 this Subdivision); and
- 29 (ii) your costs in relying on your financial reports;
- 30 (b) your costs in preparing your financial reports and having
31 them audited;
- 32 (c) the comparison between:
- 33 (i) the tax outcome achieved in relation to the gains and
34 losses you would have from *financial arrangements if
35 those gains and losses were worked out under this
36 Division (other than this Subdivision); and
- 37 (ii) the tax outcome achieved in relation to those gains and
38 losses if you make the election to rely on your financial
39 reports;

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- 1 (d) the nature of your business activities (including the nature
2 and extent of your financial arrangements);
- 3 (e) whether you are required to prepare your financial reports in
4 accordance with the standards referred to in paragraph (1)(b),
5 and to have those reports audited, as a condition of your
6 securities being quoted on a securities exchange;
- 7 (f) the standard of your accounting systems and controls and
8 your internal governance processes;
- 9 (g) the level of your compliance with the standards referred to in
10 paragraph (1)(b).

11 *Financial arrangements election applies to*

- 12 (3) The election under subsection (1) applies in relation to *financial
13 arrangements that:
- 14 (a) are financial arrangements to which this Division applies;
15 and
- 16 (b) are recognised in the financial reports referred to in
17 paragraph (1)(b); and
- 18 (c) you start to have in the income year in which you make the
19 election or in a later income year.

20 *Election irrevocable*

- 21 (4) An election under subsection (1) is irrevocable.

22 **@230-275 Effect of election to rely on financial reports**

23 If an election under section @230-270 applies to a *financial
24 arrangement, the following are to be determined in accordance
25 with the provision made in your financial reports (to the extent to
26 which those reports comply with the standards referred to in
27 paragraph @230-270(1)(b)):

- 28 (a) whether you have, and the amount of, a gain or loss from the
29 arrangement; and
- 30 (b) when those gains and losses are to be regarded as arising.

31 Note: Subsection @230-30(5) provides that this Division does not apply to a
32 gain or loss from a financial arrangement to the extent to which
33 Subdivision 230-E (hedging financial arrangements method) applies to
34 the arrangement.

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1 **@230-280 When election ceases to apply**

2 An election under subsection @230-270(1) ceases to apply to a
3 *financial arrangement from the start of an income year during
4 which:

- 5 (a) you cease to satisfy a requirement of subsection
6 @230-270(1); or
7 (b) the arrangement ceases to satisfy a requirement of paragraph
8 @230-270(3)(b).

9 The election cannot subsequently apply to that arrangement (even
10 if those requirements are satisfied once more in relation to the
11 arrangement).

12 Note: You will be able to make a new election under subsection
13 @230-270(1) if those requirements are satisfied once more but the
14 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 **@230-285 Balancing adjustment if election ceases to apply**

- 18 (1) You must make a balancing adjustment under this section if an
19 election under subsection @230-270(1) ceases to apply to a
20 *financial arrangement.
- 21 (2) The balancing adjustment is the balancing adjustment you would
22 make under Subdivision 230-G if:
- 23 (a) you disposed of the *financial arrangement for its fair value
24 when the election ceases to apply; and
25 (b) you immediately reacquired it for that value.

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

28 **Table of sections**

29 @230-290 When balancing adjustment made
30 @230-295 Exceptions
31 @230-300 Balancing adjustment

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1 **@230-290 When balancing adjustment made**

2 *When balancing adjustment made*

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

- 17 (2) Subsection (1) does not apply to a right or obligation under a
- 18 *financial arrangement unless that right or obligation is one of the
- 19 rights or obligations that constitute the financial arrangement.

20 Note: See subsections @230-40(1) and @230-45(1) for the rights and/or

21 obligations that constitute a financial arrangement.

22 *Modifications for arrangements that are assets*

- 23 (3) The following modifications are made if the *financial arrangement
- 24 is an asset of yours at the time the event referred to in
- 25 subsection (1) occurs:
- 26 (a) paragraphs (1)(a) and (c) do not apply unless the effect of the
- 27 transfer is to transfer to the other person substantially all the
- 28 risks and rewards of ownership of the interest transferred;
- 29 (b) for the purposes of applying this Subdivision to the
- 30 arrangement, you are treated as transferring a right under the
- 31 arrangement to another person if:
- 32 (i) you retain the right but assume a new obligation; and
- 33 (ii) your assumption of the new obligation has the same
- 34 effect, in substance, as transferring the right to another
- 35 person; and

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- 1 (iii) the new obligation arises only to the extent to which the
2 right to *financial benefits under the financial
3 arrangement is satisfied; and
4 (iv) you cannot sell or pledge the right (other than as
5 security in relation to the new obligation); and
6 (v) you must, under the new obligation, provide financial
7 benefits you receive in relation to the right to the person
8 to whom you owe the new obligation without delay.

9 *Historic rate rollover of derivative financial arrangement*

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

14 **@230-295 Exceptions**

15 *Financial arrangements to which hedging financial arrangements*
16 *elections apply*

- 17 (1) Balancing adjustments are not made under this Subdivision in
18 relation to a *financial arrangement in relation to which a *hedging
19 financial arrangement election applies.

20 *Bad debts, margining and conversion into, or exchange for,*
21 *ordinary shares*

- 22 (2) A balancing adjustment is not made under this Subdivision in
23 relation to the following events:
24 (a) a *financial arrangement being written off as a bad debt;
25 (b) a financial arrangement that is a *derivative financial
26 arrangement being settled or closed out for margining
27 purposes;
28 (c) the ceasing of obligations or rights under a financial
29 arrangement that is a *traditional security if:
30 (i) the ceasing occurs because the traditional security is
31 converted into, or exchanged for, ordinary shares in, or
32 transferred to, a company that is the issuer of the
33 traditional security or a connected entity; and

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- 1 (ii) the traditional security was issued on the basis that it
2 will or may convert into, or be exchanged for, ordinary
3 shares in, or transferred to, the issuer of the traditional
4 security or the connected entity.

5 Note: Paragraph (a)—For the treatment of bad debts, see paragraph
6 @230-140(2)(c).

7 *Subsidiary member leaving consolidated group*

- 8 (3) A balancing adjustment is not made under this Subdivision in
9 relation to a subsidiary member of a *consolidated group that has a
10 *financial arrangement ceasing to be a member of the consolidated
11 group.

12 **@230-300 Balancing adjustment**

13 *Complete cessation or transfer*

- 14 (1) Use the following method statement to make the balancing
15 adjustment if paragraph @230-290(1)(a) or (b) applies:

16 *Method statement for balancing adjustment*

17 *Step 1. Add up the following:*

- 18 (a) the total of all the *financial benefits you have
19 received under the *financial arrangement;
- 20 (b) the amount or value of the consideration (if any)
21 you receive in relation to the transfer or cessation
22 referred to in subsection @230-290(1);
- 23 (c) the total of the amounts that have been allowed to
24 you as deductions, because of circumstances that
25 have occurred before the transfer or cessation, for
26 losses from the arrangement;
- 27 (d) the total of the other amounts that would have been
28 allowed to you as deductions, because of
29 circumstances that have occurred before the
30 transfer or cessation, for losses from the

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arrangement if all your losses from the arrangement were allowable as deductions.

Step 2. Add up the following:

- (a) the total of all the *financial benefits you have provided under the *financial arrangement;
- (b) the amount or value of the consideration (if any) you provide in relation to the transfer or cessation referred to in subsection @230-290(1);
- (c) 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;
- (d) 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.

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 @230-290(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:

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1 (a) the amounts referred to in paragraphs (a) and (c) in step 1;
2 and

3 (b) the amounts referred to in paragraphs (a) and (c) in step 2;
4 by applying the proportion referred to in subparagraph
5 @230-290(1)(c)(i) to them.

6 *Transfer of specifically identified right or obligation under*
7 *financial arrangement*

8 (3) If subparagraph @230-290(1)(c)(ii) applies, you make the
9 balancing adjustment by applying the method statement in
10 subsection (1) as if the references to:

11 (a) the amounts referred to in paragraphs (a) and (c) in step 1;
12 and

13 (b) the amounts referred to in paragraphs (a) and (c) in step 2;
14 were references to those amounts to the extent to which they are
15 reasonably attributable to the right or obligation referred to in
16 subparagraph @230-290(1)(c)(ii).

17 *Proportionate transfer of specifically identified right or obligation*
18 *under financial arrangement*

19 (4) If subparagraph @230-290(1)(c)(iii) applies, you make the
20 balancing adjustment by applying the method statement:

21 (a) as if the references to:

22 (i) the amounts referred to in paragraphs (a) and (c) in step
23 1; and

24 (ii) the amounts referred to in paragraphs (a) and (c) in step
25 2;

26 were references to those amounts to the extent to which they
27 are reasonably attributable to the right or obligation referred
28 to in subparagraph @230-290(1)(c)(iii); and

29 (b) by reducing those amounts by applying the proportion
30 referred to in subparagraph @230-290(1)(c)(iii) to them.

31 *Attribution must reflect appropriate and commercially accepted*
32 *valuation principles*

33 (5) Any attribution made under subsection (3) or paragraph (4)(a) must
34 reflect appropriate and commercially accepted valuation principles
35 that properly take into account:

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- 1 (a) the nature of the rights and obligations under the *financial
2 arrangement; and
3 (b) the risks associated with each *financial benefit, right and
4 obligation under the arrangement; and
5 (c) the time value of money.

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

- 7 (6) The gain or loss you are taken to make under subsection (1), (2),
8 (3) or (4) is a gain or loss for the income year in which the event
9 referred to in subsection @230-290(1) occurs.

10 **Subdivision 230-H—Exceptions**

11 **Table of sections**

- 12 @230-305 Short-term arrangements where non-money amount involved
13 @230-310 Certain taxpayers where no significant deferral
14 @230-315 Various rights and/or obligations
15 @230-320 Ceasing to have financial arrangement in certain circumstances
16 @230-325 Forgiveness of commercial debts
17 @230-330 Clarifying exceptions

18 **@230-305 Short-term arrangements where non-money amount 19 involved**

- 20 (1) This Division does not apply in relation to your gains and losses
21 from a *financial arrangement if:
22 (a) the arrangement is a financial arrangement under section
23 @230-40 (the primary test for what is a financial
24 arrangement); and
25 (b) either:
26 (i) you acquired goods (other than goods that are money or
27 a *money equivalent) or services (other than services
28 that are a money equivalent) from another person and
29 the *financial benefits you are to provide under the
30 arrangement are consideration for those goods or
31 services; or
32 (ii) you provided goods (other than goods that are money or
33 a money equivalent) or services (other than services that
34 are a money equivalent) to another person and the
35 financial benefits you are to receive under the
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- 1 arrangement are consideration for those goods or
2 services; and
- 3 (c) the period between the following is not more than 12 months:
4 (i) the time when you are to provide or receive the
5 consideration (or a substantial proportion of it);
6 (ii) the time when you acquired or provided the goods or
7 services (or a substantial proportion of them); and
8 (d) the arrangement is not a *derivative financial arrangement for
9 any income year; and
10 (e) a *fair value election does not apply to the arrangement.
- 11 (2) Subsection (1) does not apply to an *arrangement that, in
12 accordance with *accounting standards, or statements of
13 accounting concepts made by the Australian Accounting Standards
14 Board, is classified as a finance lease.

15 @230-310 Certain taxpayers where no significant deferral

- 16 (1) This Division does not apply to your gains or losses from a
17 *financial arrangement for any income year if:
18 (a) you are:
19 (i) an individual; or
20 (ii) an entity (other than an individual) that satisfies
21 subsection (2) for the income year in which you start to
22 have the arrangement; and
23 (b) either:
24 (i) the arrangement is to end not more than 12 months after
25 you start to have it; or
26 (ii) the arrangement is not a qualifying security (within the
27 meaning of Division 16E of Part III of the *Income Tax*
28 *Assessment Act 1936*).
- 29 (2) An entity satisfies this subsection for an income year if:
30 (a) the entity's turnover for the income year (worked out at the
31 end of the income year) is less than \$20 million if the income
32 year is the one in which the entity comes into existence; or
33 (b) the entity's turnover for the immediately preceding income
34 year (worked out at the end of that immediately preceding
35 income year) is less than \$20 million if the income year is an

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1 income year after the one in which the entity comes into
2 existence.

3 Note: For the purposes of applying this subsection to a consolidated group,
4 the single entity rule in section 701-1 applies to make the relevant
5 turnover that of the consolidated group and not that of any of the
6 subsidiary members of the consolidated group.

7 (3) Subsection (1) does not apply to your gains or losses from a
8 *financial arrangement for an income year if:

9 (a) you have made an election under subsection (4) in that
10 income year or an earlier income year; and

11 (b) you start to have the arrangement after the beginning of the
12 income year in which you make the election.

13 (4) An election under this subsection is an election to have this
14 Division apply to all of the *financial arrangements that you start to
15 have in the income year in which the election is made or a
16 subsequent income year.

17 (5) An election under subsection (4) is irrevocable.

18 **@230-315 Various rights and/or obligations**

19 *Rights and obligations subject to an exception*

20 (1) This Division does not apply to your gains and losses from a
21 *financial arrangement for any income year to the extent that your
22 rights and/or obligations under the arrangement are the subject of
23 an exception under any of the following subsections.

24 Note: Further exceptions are also provided for in section @230-330.

25 *Leasing or property arrangement*

26 (2) A right or obligation arising under:

27 (a) an *arrangement to which Division 42A (Leases of luxury
28 cars) of Schedule 2E to the *Income Tax Assessment Act 1936*
29 applies; or

30 (b) an arrangement to which Division 240 of this Act
31 (Arrangements treated as a sale and loan) applies; or

32 (c) an arrangement that, in substance or effect, depends on the
33 use of a specific asset that is:

34 (i) real property; or

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- 1 (ii) goods or a personal chattel (other than money or a
2 *money equivalent);
3 and gives a right to control the use of the asset; or
4 (d) an arrangement that is a licence to use:
5 (i) real property; or
6 (ii) goods or a personal chattel (other than money or a
7 *money equivalent);
8 is the subject of an exception.
- 9 (3) Paragraph (2)(c) does not apply to an *arrangement that, in
10 accordance with *accounting standards, or statements of
11 accounting concepts made by the Australian Accounting Standards
12 Board, is classified as a finance lease.

Interest in partnership or trust

- 14 (4) A right carried by an interest in a partnership or a trust, or an
15 obligation that corresponds to such a right, is the subject of an
16 exception if:
17 (a) there is only one class of interest in the *partnership or trust;
18 or
19 (b) the interest is an *equity interest in the partnership or trust;
20 unless a *fair value election applies to the *financial arrangement.

Certain insurance policies

- 22 (5) A right or obligation under a *life insurance policy is the subject of
23 an exception unless the policy provides for an annuity that is not
24 dependent on the termination or continuation of a person's life.
- 25 (6) A right or obligation under a *general insurance policy is the
26 subject of an exception unless the policy is a *derivative financial
27 arrangement.

Certain guarantees and indemnities

- 29 (7) A right or obligation under a guarantee or indemnity is the subject
30 of an exception unless:
31 (a) the *financial arrangement is the subject of a *fair value
32 election; or
33 (b) the financial arrangement is a *derivative financial
34 arrangement.
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Personal arrangements and personal injury

- 1
- 2 (8) 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 (9) Without limiting paragraph (8)(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 (10) 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 dependent of a member to receive financial
2 benefits or an obligation to provide financial benefits to a
3 dependent of a member; and
4 (b) a right or obligation arising from an interest in:
5 (i) a *complying or *non-complying superannuation fund;
6 or
7 (ii) a *PST; or
8 (iii) an *approved deposit fund.

9 *Interest in CFC*

- 10 (11) A right or obligation that arises under an *attributable taxpayer's
11 *associate-inclusive control interest in a *CFC is the subject of an
12 exception.

13 *Interest in a FIF*

- 14 (12) A right or obligation that arises under an interest in a *FIF is the
15 subject of an exception.

16 *Proceeds from certain business sales*

- 17 (13) A right to receive, or an obligation to provide, *financial benefits
18 arising from the sale of a business is the subject of an exception if
19 the amounts, or the values, of those benefits are contingent only on
20 the economic performance of the business after the sale.

21 *Regulations may provide for exceptions*

- 22 (14) A right or obligation of a kind specified in the regulations for the
23 purposes of this subsection is the subject of an exception.

24 **@230-320 Ceasing to have financial arrangement in certain**
25 **circumstances**

- 26 (1) This section applies if:
27 (a) you cease to have a *financial arrangement; and
28 (b) you have a loss from ceasing to have the arrangement; and
29 (c) if the arrangement is a marketable security (within the
30 meaning of section 70B of the *Income Tax Assessment Act*
31 *1936*):

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

- 1 (i) you did not acquire the arrangement in the ordinary
2 course of trading on a securities market (within the
3 meaning of that section); and
4 (ii) at the time you acquired the arrangement, it was not
5 open to you to acquire an identical financial
6 arrangement in the ordinary course of trading on a
7 securities market; and
8 (d) if the arrangement is a marketable security—you did not
9 dispose of the arrangement in the course of trading on a
10 securities market; and
11 (e) it would be concluded that you ceased to have the
12 arrangement wholly or partly because there was an
13 apprehension or belief that the other party or other parties to
14 the arrangement were, or would be likely to be, unable or
15 unwilling to discharge all their liabilities to pay amounts
16 under the arrangement.
- 17 (2) The amount of the loss is reduced by so much of that amount as is
18 a loss of capital or a loss of a capital nature.
- 19 Note: The loss is however a capital loss.
- 20 (3) In applying paragraph (1)(d) have regard to:
21 (a) the financial position of the other party or parties to the
22 *financial arrangement; and
23 (b) the perceptions of the financial position of the other party or
24 parties to the arrangement; and
25 (c) other relevant matters.

26 @230-325 Forgiveness of commercial debts

- 27 If a gain that you make from a *financial arrangement arises from
28 the forgiveness of a debt (as defined in Subdivision 245-B of
29 Schedule 2C to the *Income Tax Assessment Act 1936*), the gain is
30 reduced by:
31 (a) if section 245-90 (about agreements to forgo capital losses or
32 revenue reductions) of that Schedule does not apply—the
33 debt's net forgiven amount as defined in paragraph
34 245-85(2)(a) of that Schedule; or
35 (b) if that section does apply—the debt's provisional net
36 forgiven amount as defined in paragraph 245-85(2)(b) of that
37 Schedule.
-

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Schedule 1 Amendments Part 1 Main amendments

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

4 @230-330 Clarifying exceptions

5 *Exceptions*

- 6 (1) To avoid doubt, this Division does not apply to your gains and
7 losses from a *financial arrangement for any income year to the
8 extent that your rights and/or obligations are the subject of an
9 exception under any of the following subsections.
- 10 (2) This section is not intended to limit, expand or otherwise affect the
11 operation of sections @230-35 to @230-55 (which tell you what is
12 covered by the concept of *financial arrangement*) in relation to
13 rights and/or obligations other than those dealt with in this section.

14 *Retirement village arrangements*

- 15 (3) A right or obligation arising under a *retirement village residence
16 contract or a *retirement village services contract is the subject of
17 an exception.
- 18 (4) For the purposes of subsection (3):
- 19 (a) a *retirement village residence contract* is a contract that
20 gives rise to a right to occupy *residential premises in a
21 *retirement village; and
- 22 (b) a *retirement village services contract* is a contract under
23 which a resident of a retirement village is provided with
24 general or personal services in the retirement village.

25 Subdivision 230-I—Other provisions

26 Table of sections

27 @230-335 Effect of change of residence
28 @230-340 Comparable foreign accounting and auditing standards
29 @230-345 Applying Division on an arm's length basis

EXPOSURE DRAFT

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

1 **@230-335 Effect of change of residence**

2 *Becoming an Australian resident*

3 (1) If:

- 4 (a) you become an Australian resident at a particular time; and
- 5 (b) immediately before that time:
- 6 (i) you have a *financial arrangement; and
- 7 (ii) your gains and losses from the arrangement are not
- 8 assessable or deductible under this Division;
- 9 you are taken for the purposes of this Division to start to have the
- 10 arrangement when you become an Australian resident and to have
- 11 acquired your interest in the arrangement at that time for its market
- 12 value at that time.

13 *Ceasing to be an Australian resident*

14 (2) If:

- 15 (a) you cease to be an Australian resident at a particular time;
- 16 and
- 17 (b) immediately before that time:
- 18 (i) you have a *financial arrangement; and
- 19 (ii) your gains and losses from the arrangement are
- 20 assessable or deductible under this Division;
- 21 you are taken for the purposes of this Division to cease to have the
- 22 arrangement when you cease to be an Australian resident and to
- 23 have disposed of your interest in the arrangement at that time for
- 24 its market value at that time.

25 **@230-340 Comparable foreign accounting and auditing standards**

26 The regulations may:

- 27 (a) specify that particular standards that apply under a *foreign
- 28 law are to be taken for the purposes of this Division to be
- 29 comparable to the *accounting standards; and
- 30 (b) specify that particular standards that apply under a foreign
- 31 law are to be taken for the purposes of this Division to be
- 32 comparable to the *auditing standards.

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Schedule 1 Amendments

Part 1 Main amendments

1 **@230-345 Applying Division on an arm's length basis**

2 (1) This section applies if:

3 (a) you and another entity do not deal with each other at arm's
4 length in relation to any of the rights and/or obligations
5 comprising a *financial arrangement that you have; and

6 (b) as a result, this Division has a different operation in relation
7 to the arrangement than it would have had if you and the
8 other entity had been dealing with each other at arm's length
9 in relation to the rights and/or obligations.

10 (2) This Division has the operation that it would have had in relation to
11 the *financial arrangement if you and the other entity had been
12 dealing with each other at arm's length in relation to the rights
13 and/or obligations.

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

15 **Table of sections**

16 @230-350 Additional operation of Division

17 **@230-350 Additional operation of Division**

18 *Foreign currency*

19 (1) This Division also applies to foreign currency as if the currency
20 were a right that comprised a *financial arrangement.

21 *Non-equity shares*

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

24 *Commodities held by traders*

25 (3) This Division also applies to a commodity that you hold if:

26 (a) you are a person who trades or deals in that commodity; and

27 (b) you hold that commodity for the purposes of dealing in the
28 commodity;

29 as if the commodity were a right that comprised a *financial
30 arrangement.

EXPOSURE DRAFT

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

1 **2 Subsection 995-1(1)**

2 Insert:

3 *auditing standard* has the same meaning as in the *Corporations*
4 *Act 2001*.

5 **3 Subsection 995-1(1)**

6 Insert:

7 *cease* in relation to an obligation or right under a *financial
8 arrangement has a meaning affected by section @230-75.

9 **4 Subsection 995-1(1)**

10 Insert:

11 *derivative financial arrangement* has the meaning given by
12 subsection @230-230(1).

13 **5 Subsection 995-1(1)**

14 Insert:

15 *fair value election* has the meaning given by subsection
16 @230-150(1).

17 **6 Subsection 995-1(1)**

18 Insert:

19 *financial arrangement* has the meaning given by sections
20 @230-35 to @230-55.

21 **7 Subsection 995-1(1)**

22 Insert:

23 *foreign currency hedge* has the meaning given by subsection
24 @230-230(2).

25 **8 Subsection 995-1(1)**

26 Insert:

27 *foreign exchange retranslation election* has the meaning given by
28 subsections @230-180(1) and (5).

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Schedule 1 Amendments
Part 1 Main amendments

1 **9 Subsection 995-1(1)**

2 Insert:

3 *hedged item* has the meaning given by subsection @230-225(10).

4 **10 Subsection 995-1(1)**

5 Insert:

6 *hedging financial arrangement* has the meaning given by
7 subsections @230-225(1) to (9).

8 **11 Subsection 995-1(1)**

9 Insert:

10 *hedging financial arrangement election* has the meaning given by
11 section @230-220.

12 **12 Subsection 995-1(1)**

13 Insert:

14 *monetary nature* in relation to a *financial benefit has the meaning
15 given by subsections @230-40(7) and (8).

16 **13 Subsection 995-1(1)**

17 Insert:

18 *money equivalent* means:

- 19 (a) a right to receive money or something that is a *money
20 equivalent under this definition; or
21 (b) something whose value is, or is limited by, a specified
22 amount of money or an amount of money that is worked out
23 in a specified way; or
24 (c) something that can be settled in:
25 (i) money; or
26 (ii) something that is a *money equivalent under this
27 definition.

28 Note: An example of paragraph (b) is a right to receive \$100 worth of oil in
29 12 months time.

30 **14 Subsection 995-1(1) (paragraph (b) of the definition of**
31 ***qualifying forex account*)**

EXPOSURE DRAFT

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

1 Repeal the paragraph.

2 **15 Subsection 995-1(1)**

3 Insert:

4 *residential premises* has the same meaning as in the *A New Tax*
5 *System (Goods and Services Tax) Act 1999*.

6 **16 Subsection 995-1(1)**

7 Insert:

8 *retirement village* has the same meaning as in the *A New Tax*
9 *System (Goods and Services Tax) Act 1999*.

10 **17 Subsection 995-1(1)**

11 Insert:

12 *retirement village residence contract* has the meaning given by
13 paragraph @230-330(4)(a).

14 **18 Subsection 995-1(1)**

15 Insert:

16 *retirement village services contract* has the meaning given by
17 paragraph @230-330(4)(b).

18 **19 Subsection 995-1(1) (after paragraph (a) of the definition**
19 **of special accrual amount)**

20 Insert:

21 (aa) Subdivision 230-B of this Act; or

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Application and transitional provisions

1

2 Part 2—Application and transitional provisions

3 20 Definitions

4 In this Part:

5 *financial arrangement* includes anything to which, under
6 Subdivision 230-J of the *Income Tax Assessment Act 1997*,
7 Division 230 of that Act applies as if it were a financial arrangement.

8 *financial arrangement amendments* means the amendments made by
9 Part 1 of this Schedule.

10 *first applicable income year* means the first income year for which the
11 financial arrangement amendments apply to you under item 21.

12 *lodgement date* means the due date for you to lodge an income tax
13 return.

14 21 Application of financial arrangement amendments 15 (income years)

16 (1) Subject to subitem (2), the financial arrangement amendments apply to
17 you for income years commencing on or after 1 July 2008.

18 (2) The financial arrangement amendments apply to you for income years
19 commencing on or after 1 July 2007 if you elect to have this subitem
20 apply to you.

21 Note: For a consolidated group, it is the head entity that would make the election.

22 (3) An election under subitem (2) must be made on or before the first
23 lodgement date that occurs on or after 1 July 2007.

24 22 Application of financial arrangement amendments 25 (financial arrangements)

26 *Future financial arrangements*

27 (1) The financial arrangement amendments apply to financial arrangements
28 that you start to have in the first applicable income year and all
29 subsequent income years.

EXPOSURE DRAFT

Amendments **Schedule 1**
Application and transitional provisions **Part 2**

- 1 *Existing financial arrangements*
- 2 (2) The financial arrangement amendments apply to all financial
3 arrangements that:
- 4 (a) you started to have before the start of the first applicable
5 income year; and
- 6 (b) you have at the start of that income year;
7 only if you elect to have this subitem apply to you.
- 8 (3) The financial arrangement amendments do not apply under subitem (2)
9 to a financial arrangement that arose from a disposal of property
10 (including a disposal of a capital asset, a revenue asset, a depreciating
11 asset or trading stock).
- 12 (4) An election under subitem (2) must:
- 13 (a) be made on or before the first lodgement date that occurs on
14 or after the start of the first applicable income year; and
- 15 (b) be notified to the Commissioner at the time when you lodge
16 the income tax return due for lodgement on that day.
- 17 (5) An election that you make under Subdivision 230-C, 230-D, 230-E or
18 230-F of the *Income Tax Assessment Act 1997* extends to financial
19 arrangements referred to in subitem (2) only if that election is made on
20 or before the first lodgement date that occurs after the start of the first
21 applicable income year.
- 22 (6) To avoid doubt, the election referred to in subitem (5) applies to the
23 financial arrangements referred to in subitem (2) even though you
24 started to have the arrangements before the election is made.
- 25 Note: Normally these elections can only apply to financial arrangements that you start to have
26 after the election is made.
- 27 (7) If you make an election under subitem (2), balancing adjustments must
28 be made under subitem (8).
- 29 (8) Use the following method statement to make the balancing adjustments:

30 *Balancing adjustment method statement*

31 *Step 1.* Work out the total of all the amounts that relate to the
32 financial arrangements and that would have been
33 included in your assessable income if Division 230 of the
34 *Income Tax Assessment Act 1997* had applied to the

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Application and transitional provisions

- 1 arrangements from the time when you started to have
2 them: the result is the ***notional assessable amount***.
- 3 *Step 2.* Work out the total of all the amounts that relate to the
4 financial arrangements and that would have been
5 allowable to you as deductions if that Division had
6 applied to the arrangements from the time when you
7 started to have them: the result is the ***notional deductible***
8 ***amount***.
- 9 *Step 3.* Work out the total of all the amounts that relate to the
10 financial arrangements and have been included in your
11 assessable income from the time when you started to
12 have them: the result is the ***actual assessed amount***.
- 13 *Step 4.* Work out the total of all the amounts that relate to the
14 financial arrangements and that have been allowable as
15 deductions for you from the time when you started to
16 have them: the result is the ***actual deducted amount***.
- 17 *Step 5.* Add the notional assessable amount to the actual
18 deducted amount: the result is the ***step 5 amount***.
- 19 *Step 6.* Add the actual assessed amount to the notional deductible
20 amount: the result is the ***step 6 amount***.
- 21 *Step 7.* Compare the step 5 amount with the step 6 amount. If the
22 step 5 amount exceeds the step 6 amount, the excess is
23 included in your assessable income as a balancing
24 adjustment. If the step 6 amount exceeds the step 5
25 amount, the excess is allowable as a deduction as a
26 balancing adjustment. If the step 5 amount and the step 6
27 amount are equal there is no balancing adjustment.

- 28 (9) A balancing adjustment under subitem (8) is to be spread evenly over
29 the first applicable income year and the next 3 income years.
- 30 (10) In applying steps 1 and 2 in the method statement in subitem (8) to
31 financial arrangements, assume that any election that extends to the
32 arrangements under subitem (4) had applied to those financial reports
33 from the time when you started to have them.