

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

Presented and read a first time

*(Treasury)*

**FINANCIAL CORPORATIONS (TRANSFER OF ASSETS  
AND LIABILITIES) BILL 1993**

**TABLE OF PROVISIONS**

**PART 1—PRELIMINARY**

Section

1. Short title
2. Commencement

**PART 2—GENERAL PROVISIONS**

3. Interpretation
4. Eligible money market corporation
5. Transferring and receiving corporations
6. Object of Act
7. Application of Act
8. Extension of Act to external Territories
9. Transfer of asset etc. not to require consent etc. of third party
10. Exemption from taxes etc.
11. Compensation for acquisition of property
12. Delegation

TABLE OF PROVISIONS—*continued*

Section

## PART 3—INCOME TAX RELIEF FOR TRANSFERS

*Division 1—Preliminary*

13. Object of Part  
 14. Part to be treated as if it were a provision of the income tax law

*Division 2—General relief*

15. Asset transfers—general  
 16. Liability transfers—general

*Division 3—Securities*

17. Securities—adjustment of cost base

*Division 4—Capital gains and capital losses*

18. CGT—roll-over relief  
 19. CGT—asset to be treated as a taxable Australian asset of the receiving corporation  
 20. CGT—transfer of net capital loss from transferring corporation to receiving corporation

*Division 5—Trading stock*

21. Transfers of trading stock

*Division 6—Bad debts*

22. Deductions for bad debts

*Division 7—Interest withholding tax*

23. Exemption from interest withholding tax

*Division 8—Tax losses*

24. Transfer of tax loss from transferring corporation to receiving corporation  
 25. Transfer of tax loss—modification of “substantial continuity of ownership” test  
 26. Deduction for tax loss—modification of “substantial continuity of ownership” test etc.

*Division 9—Continuity of partnerships*

27. Transfer of an interest in a partnership does not affect continuity of partnership

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

Presented and read a first time

(*Treasury*)

## **A BILL**

FOR

### **An Act making provision relating to the transfer of assets and liabilities from and to certain financial corporations**

The Parliament of Australia enacts:

#### **PART 1—PRELIMINARY**

##### **Short title**

- 5     1. This Act may be cited as the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*.

##### **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

#### **PART 2—GENERAL PROVISIONS**

##### **Interpretation**

- 10     3.(1) In this Part, unless the contrary intention appears:

“asset” means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and 5
- (c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936*; 10

“banking authority” means an authority to carry on banking business granted under section 9 of the *Banking Act 1959*;

“eligible foreign bank” means a foreign bank (within the meaning of Division 1B of Part II of the *Banking Act 1959*) in possession of a banking authority: 15

- (a) granted before this Act commenced; or
- (b) granted after this Act commenced upon an application made either before, or not later than 3 years after, this Act commenced;

“eligible local bank” means a local bank in possession of a banking authority granted on or before 18 June 1993; 20

“eligible money market corporation” has the meaning given by section 4;

“eligible subsidiary”, in relation to an eligible local bank or eligible money market corporation, means a body that:

- (a) is incorporated under a law of the Commonwealth, of a State or a Territory relating to companies; and 25
- (b) is a financial corporation registered under the *Financial Corporations Act 1974*; and
- (c) is a subsidiary of the eligible local bank or money market corporation; 30

“financial corporation” means a financial corporation within the meaning of paragraph 51(xx) of the Constitution;

“foreign corporation” means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;

“interest”, in relation to land, includes: 35

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land;

“liability” includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective);

“**local bank**” means a body that:

- (a) is incorporated under a law of the Commonwealth, of a State or a Territory relating to companies; and
- (b) is in possession of a banking authority;

5 “**newly established local bank**” means a local bank in possession of a banking authority:

- (a) granted before this Act commenced but after 18 June 1993; or
- (b) granted after this Act commenced upon an application made either before, or not later than 3 years after, this Act commenced;

10 “**receiving corporation**” has the meaning given by section 5;

“**subsidiary**” has the same meaning as in the Corporations Law;

“**transfer**”, in relation to an asset or liability, means an act as a result of which the asset or liability:

- (a) ceases to be vested in a person; and
- 15 (b) becomes vested in another person;

“**transferring corporation**” has the meaning given by section 5.

### **Eligible money market corporation**

4. For the purposes of this Act, a body corporate is an **eligible money market corporation** if it:

- 20 (a) is incorporated under a law of the Commonwealth, of a State or a Territory relating to companies; and
- (b) is, and has been from and including 18 June 1993, under the *Financial Corporations Act 1974*, a registered corporation included in the category for money market corporations.

### 25 **Transferring and receiving corporations**

5. If a financial corporation is proposing to transfer, or transfers, an asset or liability to another financial corporation, then, for the purposes of this Act;

- (a) the first-mentioned corporation is the **transferring corporation**; and
  - 30 (b) the other corporation is the **receiving corporation**;
- in relation to the transfer.

### **Object of Act**

6. The object of this Act is to facilitate, in accordance with Commonwealth Government policy, the transfer of assets and liabilities  
35 from certain subsidiaries of a foreign corporation that is:

- (a) an eligible foreign bank; or

(b) the holding company (within the meaning of the Corporations Law) of an eligible foreign bank or of a newly established local bank; to the foreign corporation or one of the subsidiaries referred to in paragraph (b) (as the case may be) if the assets and liabilities are reasonably required to be so transferred for the proper organisation of the activities in Australia of the transferring corporation and the receiving corporation, following the grant of a banking authority to the receiving corporation. 5

**Application of Act**

7.(1) This Act applies only as provided in this section.

- (2) Subject to subsection (6), if: 10
  - (a) an eligible local bank is, and has been from and including 18 June 1993, a subsidiary of a foreign corporation; and
  - (b) the foreign corporation is an eligible foreign bank; and
  - (c) the eligible local bank or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to the foreign corporation; 15

this Act applies in relation to the transfer.

- (3) Subject to subsection (6), if:
  - (a) an eligible local bank is, and has been from and including 18 June 1993, a subsidiary of a foreign corporation (“parent corporation”); 20  
and
  - (b) the eligible local bank or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to an eligible foreign bank that is a subsidiary of the parent corporation;

this Act applies in relation to the transfer. 25

- (4) Subject to subsection (6), if:
  - (a) an eligible money market corporation is, and has been from and including 18 June 1993, a subsidiary of a foreign corporation; and
  - (b) the foreign corporation is an eligible foreign bank; and
  - (c) the eligible money market corporation or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to the foreign corporation; 30

this Act applies in relation to the transfer.

- (5) Subject to subsection (6), if:
  - (a) an eligible money market corporation is, and has been from and including 18 June 1993, a subsidiary of a foreign corporation; and 35

- (b) the eligible money market corporation or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to a newly established local bank that is a wholly-owned subsidiary (within the meaning of the Corporations law) of the foreign corporation;

5

this Act applies in relation to the transfer.

(6) This Act applies in relation to the transfer of an asset or liability only if:

10

- (a) the Treasurer determines in writing that the transfer is reasonably required for the proper organisation of the activities in Australia of the transferring corporation and of the receiving corporation, following the grant of a banking authority to the receiving corporation; and

15

- (b) within the prescribed period (*see* subsection (7)) in relation to the transfer, the transferring corporation gives notice in writing of the proposed transfer, identifying the asset or liability to be transferred, to:

20

- (i) the Treasurer; and  
(ii) if the law of a State or Territory requires that the transfer be registered—the person authorised under that law to register the transfer; and

- (c) the transfer is effected within 6 years from the day on which this Act commences.

25

(7) For the purposes of paragraph (6)(b), the prescribed period in relation to the transfer of an asset or liability is:

30

- (a) if the receiving corporation was in possession of a banking authority on the day on which this Act commences—the period of 6 months from that day; or  
(b) if paragraph (a) does not apply—the period of 6 months from the day on which the receiving corporation is granted a banking authority.

### **Extension of Act to external Territories**

8. This Act extends to every external Territory.

### **Transfer of asset etc. not to require consent etc. of third party**

9. If:

35

- (a) a financial corporation is proposing to transfer an asset or liability to another financial corporation; and  
(b) apart from this Act, the transferring corporation or receiving corporation would be required (whether under an instrument or otherwise):

- (i) to obtain the consent or approval of a third person in a particular respect; or
- (ii) to give particular information to a third person;

before effecting the transfer of the asset or liability;

the transfer may be validly effected without the consent or approval being obtained, or the information given, as the case requires. 5

**Exemption from taxes etc.**

10. If, apart from this section, a transferring corporation or a receiving corporation would be liable to pay a tax or fee under:

- (a) a law of the Commonwealth (other than the *Income Tax Assessment Act 1936*); or 10
- (b) a law of a State or Territory;

in respect, or as a result, of the transfer of an asset or liability or in respect of the registration of such a transfer, that corporation is exempted from paying the tax or fee. 15

**Compensation for acquisition of property**

11.(1) If, apart from this section, the transfer of an asset or liability from a financial corporation to another financial corporation would result in an acquisition of property from a person by one of those corporations otherwise than on just terms, there is payable to the person by that corporation such reasonable amount of compensation as is agreed on between the person and that corporation or, failing agreement, as is determined by a court of competent jurisdiction. 20

(2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and arises out of the same event or transaction. 25

(3) In this section:

“acquisition of property” and “just terms” have the same respective meanings as in paragraph 51(xxxi) of the Constitution. 30

**Delegation**

12. The Treasurer may by signed instrument delegate his or her powers under paragraph 7(6)(a) to:

- (a) the Governor, or a Deputy Governor, of the Reserve Bank; or 35
- (b) an officer of the Reserve Bank Service.



## PART 3—INCOME TAX RELIEF FOR TRANSFERS

### Division 1—Preliminary

#### Object of Part

5 13. The object of this Part is to provide income tax relief for transfers by modifying the effect of certain provisions of the *Income Tax Assessment Act 1936*.

#### Part to be treated as if it were a provision of the income tax law

14.(1) An expression used in this Part and in the *Income Tax Assessment Act 1936* has the same meaning in this Part as it has in that Act.

10 (2) For the purposes of the application of the *Income Tax Assessment Act 1936* to a taxpayer, the provisions of this Part are to be treated as if they were provisions of that Act.

### Division 2—General relief

#### Asset transfers—general

#### 15 *Tax treatment of transferring corporation*

15.(1) In determining:

- (a) whether an amount is included in the assessable income of the transferring corporation under section 25, 25A, 26BB, 26C, 82Y or 159GS of the *Income Tax Assessment Act 1936*; or
- 20 (b) whether an amount is allowable as a deduction to the transferring corporation under section 51, 52, 70B, 82Z or 159GS of that Act;
- in respect of a transfer of an asset, the transferring corporation is to be treated as if the transfer had not occurred.

#### 25 *Receiving corporation not entitled to a deduction for expenditure incurred in acquiring asset*

(2) A deduction is not allowable to the receiving corporation under section 51 of the *Income Tax Assessment Act 1936* in respect of expenditure incurred in the acquisition of an asset as the result of a transfer. However, this subsection does not apply to the acquisition of trading stock.

#### 30 *Receiving corporation to inherit transferring corporation's cost base*

(3) If an asset is transferred, then, in determining:

- (a) whether an amount is included in the assessable income of the receiving corporation under section 25, 25A, 26BB, 26C or 82Y or Division 16E of Part III of the *Income Tax Assessment Act 1936*; or

- (b) whether an amount is allowable as a deduction to the receiving corporation under section 51, 52, 70B or 82Z or Division 16E of Part III of that Act;

in respect of the holding, or any subsequent disposal, of the asset, the receiving corporation is to be treated as if it had acquired the asset for a consideration equal to the amount that would have been the cost base to the transferring corporation of the asset for the purposes of Part IIIA of that Act if that Part had applied in relation to the transfer. 5

### **Liability transfers—general**

#### *Tax treatment of transferring corporation* 10

##### **16.(1)** In determining:

- (a) whether an amount is included in the assessable income of the transferring corporation under section 25 or 82Y of the *Income Tax Assessment Act 1936*; or

- (b) whether an amount is allowable as a deduction to the transferring corporation under section 51 or 82Z of that Act; 15

in respect of a transfer of a liability, the transferring corporation is to be treated as if the transfer had not occurred.

#### *Receiving corporation not assessable in respect of assumption of liability*

(2) An amount is not to be included in the assessable income of the receiving corporation under section 25 or 82Y of the *Income Tax Assessment Act 1936* in respect of the assumption of the liability as a result of the transfer. 20

#### *Assumption of liability by receiving corporation*

##### **(3)** If a liability is transferred, then, in determining:

- (a) whether an amount is included in the assessable income of the receiving corporation under section 25 or 82Y or Division 16E of Part III of the *Income Tax Assessment Act 1936*; or 25

- (b) whether an amount is allowable as a deduction to the receiving corporation under section 51 or 82Z or Division 16E of Part III of that Act; 30

in respect of the subsistence, or any subsequent transfer, of the liability, the receiving corporation is to be treated as if:

- (c) it had been paid or given consideration for the original transfer; and

- (d) the amount of the consideration were equal to the amount (if any) of the consideration paid or given to the transferring corporation in respect of the assumption by the transferring corporation of the liability. 35

**Division 3—Securities**

**Securities—adjustment of cost base**

*Adjustment where security is transferred*

17.(1) If:

- 5 (a) a security is transferred; and  
(b) either:
- 10 (i) one or more amounts (other than periodic interest) are or were included in the transferring corporation's assessable income under section 25 or Division 16E of Part III of the *Income Tax Assessment Act 1936* in respect of the security; or
  - (ii) one or more amounts (other than periodic interest) are or were allowable as deductions to the transferring corporation under section 51 or Division 16E of Part III of the *Income Tax Assessment Act 1936* in respect of the security;
- 15 that Act has effect as if the amount that, apart from this subsection, would have been the consideration paid or given by the receiving corporation in respect of the acquisition of the security as the result of the transfer were:
- (c) increased by the amount, or the sum of the amounts, covered by subparagraph (b)(i); and
  - 20 (d) reduced by the amount, or the sum of the amounts, covered by subparagraph (b)(ii).

*Adjustment where liability under security is transferred*

(2) If:

- (a) a liability under a security is transferred; and
- 25 (b) one or more amounts (other than periodic interest) are or were allowable as deductions to the transferring corporation under section 51 or Division 16E of Part III of the *Income Tax Assessment Act 1936* in respect of the security;

30 that Act has effect as if the amount that, apart from this subsection, would have been the consideration paid or given to the receiving corporation in respect of the assumption of the liability as the result of the transfer were increased by the amount, or the sum of the amounts, covered by paragraph (b).

*Definitions*

- 35 (3) In this section:  
“**periodic interest**” has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*;

“**security**” has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*.

**Division 4—Capital gains and capital losses**

**CGT—roll-over relief**

**18.(1)** In addition to its effect apart from this section, section 160ZZO of the *Income Tax Assessment Act 1936* also has the effect it would have if both of the changes set out in subsections (2) and (3) of this section were made. 5

**(2)** The first change is that paragraph 160ZZO(1)(a) of the *Income Tax Assessment Act 1936* is to be replaced by the following paragraph: 10

“(a) both:

- (i) a company (the ‘**transferor**’) disposes of an asset (a ‘**roll-over asset**’) to another company (the ‘**transferee**’); and
- (ii) the disposal is by way of a transfer to which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* applies;” 15

**(3)** The second change is that paragraphs 160ZZO(1)(b) and (d) of the *Income Tax Assessment Act 1936* are to be omitted.

**CGT—asset to be treated as a taxable Australian asset of the receiving corporation** 20

**19.** Part IIIA of the *Income Tax Assessment Act 1936* has effect, in relation to an asset acquired by the receiving corporation as a result of a transfer, as if the asset were a taxable Australian asset of the receiving corporation.

**CGT—transfer of net capital loss from transferring corporation to receiving corporation** 25

**20.(1)** In addition to its effect apart from this section, section 160ZP of the *Income Tax Assessment Act 1936* also has the effect it would have if both of the changes set out in subsections (2) and (3) of this section were made.

**(2)** The first change is that paragraphs 160ZP(7)(a), (b) and (ba) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs: 30

“(a) assuming that:

5 (i) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by a transferring corporation within the meaning of that Act (the ‘**loss company**’) to a receiving corporation within the meaning of that Act (the ‘**gain company**’) on the last day of a particular year of income of the loss company (the ‘**notional transfer year**’); and

10 (ii) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer;

that Act would have applied to that transfer; and

15 (b) the loss company incurred in respect of a year of income (the ‘**loss year**’) a net capital loss that, apart from this section, would be taken into account in ascertaining whether a net capital gain accrued to the loss company, or the loss company incurred a net capital loss, in respect of the next succeeding year of income; and

(ba) the loss year is:

(i) the year of income in which that Act commenced; or

(ii) an earlier year of income; and

20 (bb) both the following conditions are satisfied in relation to a year of income (the ‘**gain year**’) of the gain company:

(i) either:

(A) the gain year ends at the end of the notional transfer year; or

25 (B) the gain year corresponds to the year of income of the loss company next following the notional transfer year;

(ii) the gain year is:

(A) the year of income in which that Act commenced; or

(B) one of the 5 following years of income; and”.

30 (3) The second change is that paragraphs 160ZP(7)(d) and (e) and subsection 160ZP(8) of the *Income Tax Assessment Act 1936* are to be omitted.

### *Division 5—Trading stock*

#### **Transfers of trading stock**

##### 35 *Trading stock on hand at beginning of year of income*

21.(1) If:

(a) a transfer of trading stock occurred during a year of income of the transferring corporation; and

(b) the trading stock was on hand at the beginning of that year of income;  
then:

(c) section 28 of the *Income Tax Assessment Act 1936* has effect as if the trading stock were not on hand at the beginning of the year of income;  
and

5

(d) section 51 of the *Income Tax Assessment Act 1936* has effect as if:

(i) the receiving corporation had incurred expenditure in the acquisition of the trading stock; and

(ii) the amount of that expenditure were equal to the value of the trading stock as at the end of the immediately preceding year of income of the transferring corporation (being the value that applies for the purposes of section 31 of the *Income Tax Assessment Act 1936*); and

10

(iii) that expenditure had been so incurred immediately after the transfer; and

15

(e) section 36 of the *Income Tax Assessment Act 1936* does not apply in relation to the transfer of the trading stock.

*Trading stock not on hand at beginning of year of income*

(2) If:

(a) a transfer of trading stock occurred during a year of income of the transferring corporation; and

20

(b) the trading stock was not on hand at the beginning of that year of income;

then:

(c) a deduction is not allowable under the *Income Tax Assessment Act 1936* to the transferring corporation in respect of expenditure incurred in the acquisition of the trading stock; and

25

(d) section 51 of the *Income Tax Assessment Act 1936* has effect as if:

(i) the receiving corporation had incurred expenditure in the acquisition of the trading stock; and

30

(ii) the amount of that expenditure were equal to the amount of the expenditure mentioned in paragraph (c); and

(iii) that expenditure had been so incurred immediately after the transfer; and

(e) section 36 of the *Income Tax Assessment Act 1936* does not apply in relation to the transfer of the trading stock.

35

**Division 6—Bad debts**

**Deductions for bad debts**

*Receiving corporation to inherit certain characteristics from transferring corporation*

5       **22.(1)** Section 63 of the *Income Tax Assessment Act 1936* has effect, in relation to a transfer of a debt, as if:

- 10           (a) if the debt has been brought to account by the transferring corporation as assessable income of a year of income—the debt were a debt that has been brought to account by the receiving corporation as assessable income of that year of income; and
- 15           (b) if the debt was in respect of money lent in the ordinary course of the business of the lending of money by the transferring corporation—the debt were a debt in respect of money lent in the ordinary course of the business of the lending of money by the receiving corporation.

*Modification of “substantial continuity of ownership” test etc.*

(2) Sections 63A, 63B and 63C of the *Income Tax Assessment Act 1936* have effect, in relation to a transfer of a debt, as if the debt had been incurred at the time of the transfer.

20 *Modification of “substantial continuity of ownership” test etc.*

- (3) If:
- 25           (a) this Act applies to one or more transfers of assets by the transferring corporation to the receiving corporation; and
- (b) a debt is incurred to the transferring corporation by another person during a year of income of the transferring corporation (the “**debt year**”); and
- (c) the debt year is the year of income in which this section commenced or an earlier year of income; and
- 30           (d) section 63A or 63B, or both, of the *Income Tax Assessment Act 1936* prevent a deduction from being allowable under that Act to the transferring corporation for a year of income (the “**deduction year**”) in respect of that debt; and
- (e) the transferring corporation did not, at any time during the deduction year, derive income:
- 35           (i) from a business of a kind that it did not carry on; or
- (ii) from a transaction of a kind that it had not entered into in the course of its business operations;
- before the transfer, or the earliest of the transfers, occurred;

sections 63A and 63B of the *Income Tax Assessment Act 1936* do not prevent a deduction from being allowable to the transferring corporation in respect of that debt.

*Part debt write-offs*

(4) If this Act applies to the transfer of a partly written-off debt, the deduction, or the sum of the deductions, allowable to the receiving corporation under section 63 of the *Income Tax Assessment Act 1936* in respect of the debt must not exceed the amount worked out using the formula:

$$\text{Debt} - \text{Unrecouped deductions}$$

where:

“**Debt**” means the amount of the debt;

“**Unrecouped deductions**” means the deduction, or the sum of the deductions, allowable to the transferring corporation under section 63 of that Act in respect of the debt, reduced by any amount included in the transferring corporation’s assessable income under subsection 63(3) in respect of the debt.

*Division 7—Interest withholding tax*

**Exemption from interest withholding tax**

23.(1) In addition to its effect apart from this section, section 128F of the *Income Tax Assessment Act 1936* also has the effect it would have if the change set out in subsection (2) of this section were made.

(2) The change is that paragraphs 128F(1)(a) and (b) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs:

- “(a) the liability to pay the interest was transferred to the company by another company (the ‘**transferor**’);
- (b) the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* applies to the transfer;
- (c) before the transfer, this section applied to interest paid by the transferor in discharge of the liability;
- (ca) the transferor issued the debentures;
- (cb) the debentures were issued on or before 18 June 1993;
- (cc) the interest was not paid in respect of a debenture resulting from a ‘roll-over’, after 18 June 1993, of the whole or a part of a previous debenture;
- (cd) the interest was not paid in respect of the period of extension of the period of a debenture, being an extension occurring after 18 June 1993;”.



**Division 8—Tax losses**

**Transfer of tax loss from transferring corporation to receiving corporation**

5 **24.(1)** In addition to its effect apart from this section, section 80G of the *Income Tax Assessment Act 1936* also has the effect it would have if all of the changes set out in subsections (2), (3) and (4) of this section were made.

(2) The first change is that paragraphs 80G(6)(a), (b) and (ba) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs:

10 “(a) assuming that:

(i) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by a transferring corporation within the meaning of that Act (the ‘**loss company**’) to a receiving corporation within the meaning of that Act (the ‘**income company**’) on the last day of a particular year of income of the loss company (the ‘**notional transfer year**’); and

(ii) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer;

20 that Act would have applied to that transfer; and

(b) the loss company is taken to have incurred a loss for the purposes of section 79E or 80 in a year of income (the ‘**loss year**’); and

(ba) the loss year is:

(i) the year of income in which that Act commenced; or

25 (ii) an earlier year of income; and

(bb) both the following conditions are satisfied in relation to a year of income (the ‘**income year**’) of the income company:

(i) either:

30 (A) the income year ends at the end of the notional transfer year; or

(B) the income year corresponds to the year of income of the loss company next following the notional transfer year;

(ii) the income year is:

35 (A) the year of income in which that Act commenced; or

(B) one of the 5 following years of income; and”.

(3) The second change is that paragraphs 80G(6)(d) and (e) and subsections 80G(7), (8), (10) and (14) of the *Income Tax Assessment Act 1936* are to be omitted.

(4) The third change is that paragraphs 80G(6)(f) and (g) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs:

“(f) if the loss year is the same year of income as the income year—the year of income immediately preceding the loss year; or

(g) if the income year is a year of income later than the loss year—the loss year.”. 5

**Transfer of tax loss—modification of “substantial continuity of ownership” test**

25.(1) This section applies if, under subsection 80G(6) of the *Income Tax Assessment Act 1936* (as that subsection has effect because of this Division), a loss, or a part of a loss, is taken to have been incurred by the income company in a particular year of income (the “normal year”). 10

(2) For the purposes of the application of section 80A of the *Income Tax Assessment Act 1936* to the income company, the loss, or the part of the loss, as the case may be, is to be treated as if it had been incurred in the income year instead of in the normal year. 15

(3) In this section:

“income company” has the same meaning as in section 80G of the *Income Tax Assessment Act 1936* (as that section has effect because of this Division); “income year” has the same meaning as in section 80G of the *Income Tax Assessment Act 1936* (as that section has effect because of this Division). 20

**Deduction for tax loss—modification of “substantial continuity of ownership” test etc.**

26. If:

(a) this Act applies to one or more transfers by the transferring corporation to the receiving corporation; and 25

(b) the transferring corporation is taken (otherwise than because of section 80G of the *Income Tax Assessment Act 1936*) to have incurred a loss in a year of income (the “loss year”) for the purposes of section 79E, 79F, 80, 80AAA or 80AA of that Act; and 30

(c) the loss year is the year of income in which this section commenced or an earlier year of income; and

(d) section 80A or 80DA, or both, of that Act prevent a deduction from being allowable under that Act to the transferring corporation for a year of income (the “deduction year”) in respect of that loss; and 35

(e) the transferring corporation did not, at any time in the deduction year, derive income from:

(i) a business of a kind that it did not carry on; or

(ii) a transaction of a kind that it had not entered into in the course of its business operations;

before the transfer, or the earliest of the transfers, occurred;

5 sections 80A and 80DA of the *Income Tax Assessment Act 1936* do not prevent a deduction from being allowable to the transferring corporation in respect of that loss.

***Division 9—Continuity of partnerships***

**Transfer of an interest in a partnership does not affect continuity of partnership**

10 27.(1) This section applies if an interest in a partnership is transferred.

(2) For the purposes of the *Income Tax Assessment Act 1936*, the transfer does not affect the continuity of the partnership.



9 780644 265911