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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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**EXPOSURE DRAFT**

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by Tuesday 15 July 2003.

**New Business Tax System (Tax Preferred  
Entities—Asset Financing) Bill 2003**

**No.     , 2003**

*(Treasury)*

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

EXPOSURE DRAFT



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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 *New Business Tax System (Tax*  
6                     *Preferred Entities—Asset Financing) Act 2003*.

7     **2 Commencement**

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

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1     **3 Schedule(s)**

2                   Each Act that is specified in a Schedule to this Act is amended or  
3                   repealed as set out in the applicable items in the Schedule  
4                   concerned, and any other item in a Schedule to this Act has effect  
5                   according to its terms.

1  
2 **Schedule 1—Tax preferred entities (asset**  
3 **financing)**

4 **Part 1—Main amendments**

5 *Income Tax Assessment Act 1997*

6 **1 Section 243-75 (link note)**

7 Repeal the link note, substitute:

8 *[The next Division is Division 250.]*

9 **Division 250—Assets put to tax preferred use**  
10

11 **Table of Subdivisions**

12 Guide to Division 250

13 250-A Objects

14 250-B When this Division applies to you and an asset

15 250-C Denial of, or reduction in, capital allowance deductions

16 250-D Notional loan treatment for financial benefits provided for tax  
17 preferred use

18 250-E Adjustments when arrangement period ends

19 250-F Treatment of asset after Division ceases to apply to the asset

20 250-G Objections against determinations and decisions by the  
21 Commissioner

22 **Guide to Division 250**

23 **250-1 What this Division is about**

24 This Division denies, or reduces, certain capital allowance  
25 deductions that would otherwise be available to you in relation to  
26 an asset if the asset is put to a tax preferred use in certain  
27 circumstances.

**Schedule 1** Tax preferred entities (asset financing)

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1 If the capital allowance deductions are denied or reduced, certain  
2 financial benefits in relation to the tax preferred use of the asset are  
3 assessed only to the extent of a notional interest component.

4 An adjustment is made at the end of the relevant arrangement to  
5 take account of any discrepancy between the projected level of  
6 financial benefits used to calculate the notional interest component  
7 and the financial benefits actually provided.

8 **Subdivision 250-A—Objects**

9 **Table of sections**

10 250-5 Objects

11 **250-5 Objects**

12 (1) An object of this Division is to deny or reduce certain capital  
13 allowance deductions in respect of an asset that is \*put to a tax  
14 preferred use if:

- 15 (a) sufficient risk in relation to the asset has not been allocated  
16 to, or assumed by, entities outside the tax preferred sector; or  
17 (b) the taxpayer otherwise entitled to the deductions does not  
18 have sufficient risk in relation to the asset.

19 The \*arrangement under which the asset is put to a tax preferred  
20 use may be one involving the provision of goods, services or  
21 facilities.

22 (2) Another object of this Division is to ensure that, in a case in which  
23 capital allowance deductions are denied or reduced, there is, for tax  
24 purposes, an appropriate alteration of the timing of the recognition  
25 of:

- 26 (a) the cost of the asset; and  
27 (b) the \*financial benefits that are \*provided in relation to the  
28 \*tax preferred use of the asset.

29 (3) This is done by notionally reconstructing the \*arrangement under  
30 which the asset is put to that use so that:

- 31 (a) those \*financial benefits are assessed only to the extent of a  
32 notional interest component (worked out on an accruals basis



- 1 and subject to certain adjustments to reflect the amount and  
2 level of risk of the financial benefits actually provided); and  
3 (b) a component attributable to the cost for tax purposes of the  
4 asset for the period of the arrangement is not assessed.
- 5 (4) Any component of a \*financial benefit that is not \*provided in  
6 relation to that use of the asset is to be treated, for tax purposes, as  
7 if it was provided separately (for example, as consideration for  
8 services rendered).

9 **Subdivision 250-B—When this Division applies to you and an**  
10 **asset**

11 **Table of sections**

12 **Overall test**

- 13 250-10 When this Division applies to you and an asset  
14 250-15 Election to have Division apply

15 **Tax preferred use of asset**

- 16 250-20 What constitutes a separate asset for the purposes of this Division  
17 250-25 Asset put to a tax preferred use  
18 250-30 End user, and tax preferred use, of the asset  
19 250-35 Arrangement period for tax preferred use  
20 250-40 New tax preferred use at end of arrangement period if tax preferred use  
21 continues

22 **Financial benefits in relation to tax preferred use**

- 23 250-45 Financial benefits in relation to tax preferred use of an asset  
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25 **Predominant economic interest**

- 26 250-55 Predominant economic interest in an asset  
27 250-60 Level of assumed risk in relation to asset (test 1)  
28 250-65 Assumed risk in relation to asset  
29 250-70 Level of expected low risk returns or alternative risk test (test 2)  
30 250-75 Expected low risk returns  
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32 250-85 Meaning of *effectively non-cancellable arrangement*  
33 250-90 Right to acquire asset (test 4)
-

**Schedule 1** Tax preferred entities (asset financing)

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- 1                   250-95    Prior ownership by a member of the tax preferred end user group (test 5)  
2                   250-100   Retesting of predominant economic interest against sections 250-60 and  
3   250-70  
4                   250-105   Compound rates of interest and compound discount rates

5                   **Overall test**

6                   **250-10 When this Division applies to you and an asset**

- 7                   (1) This Division applies to you and an asset at a particular time if:  
8                                   (a) the asset is being put to a tax preferred use at that time; and  
9                                   (b) the \*arrangement period for the \*tax preferred use of the asset  
10                                   is greater than 12 months; and  
11                                   (c) \*financial benefits in relation to the tax preferred use of the  
12                                   asset have been, or are to be, \*provided to you (or a  
13                                   \*connected entity) by:  
14   (i) the \*tax preferred end user (or a connected entity); or  
15   (ii) any \*tax preferred entity (or a connected entity); or  
16   (iii) any entity that is not an Australian resident; and  
17                                   (d) at the start of the arrangement period for the tax preferred use  
18                                   of the asset, the \*present value of those financial benefits  
19                                   exceeds 10% of the \*market value of the asset; and  
20                                   (e) those financial benefits include one or more \*low risk  
21                                   financial benefits; and  
22                                   (f) disregarding this Division, you would be entitled to:  
23   (i) a deduction under Subdivision 40-B in relation to a  
24   decline in value of the asset; or  
25   (ii) a deduction under Subdivision 40-F, Subdivision 40-G,  
26   Subdivision 40-H, Subdivision 40-I, section 40-880 or  
27   section 43-10 of this Act or section 73B or 73BA of the  
28   *Income Tax Assessment Act 1936* in relation to capital  
29   expenditure in relation to the asset; and  
30                                   (g) either:  
31   (i) you do not have a \*predominant economic interest in the  
32   asset at that time; or  
33   (ii) you elect to have this Division apply to the asset at that  
34   time.

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

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- 1 (2) The \*financial benefits referred to in paragraph (1)(c) may be ones  
2 that have been, or are to be, provided to you (or the \*connected  
3 entity) either:  
4 (a) directly; or  
5 (b) indirectly (including indirectly through an entity that is not a  
6 connected entity of yours or of the other entities referred to in  
7 paragraph (1)(c)).
- 8 (3) This Division does not apply to you and an asset at a particular  
9 time if:  
10 (a) you request the Commissioner to make a determination under  
11 this subsection; and  
12 (b) the Commissioner determines that it is unreasonable that the  
13 Division should apply to you and the asset at that time,  
14 having regard to:  
15 (i) the circumstances because of which this Division would  
16 apply to you and the asset; and  
17 (ii) any other relevant circumstances.
- 18 (4) This Division does not apply to you and an asset if:  
19 (a) you are eligible to be an \*STS taxpayer for the income year  
20 in which the \*arrangement period for the \*tax preferred use of  
21 the asset starts; and  
22 (b) you could deduct amounts under Subdivision 328-D for the  
23 asset if you were an STS taxpayer for that income year.
- 24 (5) If this Division applies to you and the asset:  
25 (a) the asset referred to in subparagraph (1)(f)(i) is the **relevant**  
26 **asset** if this Division applies because of that subparagraph;  
27 and  
28 (b) the capital expenditure referred to in subparagraph (1)(f)(ii)  
29 is the **relevant capital expenditure** if this Division applies  
30 because of that subparagraph.

31 **250-15 Election to have Division apply**

32 An election under subparagraph 250-10(1)(g)(ii) in relation to an  
33 asset that is \*put to a tax preferred use:

- 34 (a) must be made for the whole of the \*arrangement period for  
35 the \*tax preferred use of the asset; and
-

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- 1 (b) must extend to all assets that are, or are to be, put to a tax  
2 preferred use under the \*arrangement under which the asset is  
3 put to that use; and  
4 (c) is irrevocable.

5 **Tax preferred use of asset**

6 **250-20 What constitutes a separate asset for the purposes of this**  
7 **Division**

- 8 (1) This Division applies to:  
9 (a) an improvement to land; or  
10 (b) a fixture on land;  
11 whether the improvement or fixture is removable or not, as if it  
12 were an asset separate from the land.
- 13 (2) Whether a particular composite item is itself an asset or whether its  
14 components are separate assets is a question of fact and degree  
15 which can only be determined in the light of all the circumstances  
16 of the particular case.
- 17 Example 1: A car is made up of many separate components, but usually the car is  
18 an asset rather than each component.
- 19 Example 2: A floating restaurant consists of many separate components (like the  
20 ship itself, stoves, fridges, furniture, crockery and cutlery), but usually  
21 these components are treated as separate assets.
- 22 (3) This Division applies to a renewal or extension of an asset that is a  
23 right as if the renewal or extension were a continuation of the  
24 original right.
- 25 (4) This Division applies to an asset (the *underlying asset*) in which:  
26 (a) you have an interest; and  
27 (b) one or more other entities also have an interest;  
28 as if your interest in the underlying asset were itself the underlying  
29 asset.

1 **250-25 Asset put to a tax preferred use**

2 *End use by tax preferred entities etc.*

3 (1) An asset is being ***put to a tax preferred use*** at a particular time if  
4 an \*end user of the asset at that time is:

5 (a) a \*tax preferred entity; or

6 (b) a \*connected entity of a tax preferred entity.

7 The \*tax preferred use of the asset need not be the sole or dominant  
8 use to which the asset is being put at that time.

9 *End use by non-residents etc.*

10 (2) An asset is also ***put to a tax preferred use*** at a particular time if:

11 (a) an \*end user of the asset at that time is:

12 (i) an entity that is not an Australian resident; or

13 (ii) a \*connected entity of an entity that is not an Australian  
14 resident; and

15 (b) at that time, the asset is:

16 (i) used, or \*installed ready for use, wholly or principally  
17 outside Australia; and

18 (ii) used, or installed ready for use, otherwise than wholly  
19 and exclusively for the purpose of producing assessable  
20 income.

21 The \*tax preferred use of the asset need not be the sole or dominant  
22 use to which the asset is being put at that time.

23 *Tax preferred end user*

24 (3) The \*end user in subsection (1) or (2) is referred to as the ***tax***  
25 ***preferred end user***.

26 *Members of the tax preferred end user group and tax preferred*  
27 *sector*

28 (4) If the asset is being \*put to a tax preferred use:

29 (a) the ***members of the tax preferred end user group*** are:

30 (i) the \*tax preferred end user; and

31 (ii) the \*connected entities of the tax preferred end user; and

32 (b) the ***members of the tax preferred sector*** are:

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- 1 (i) the tax preferred end user (and connected entities); and  
2 (ii) any \*tax preferred entity (or a connected entity); and  
3 (iii) any entity that is not an Australian resident.

4 **250-30 End user, and tax preferred use, of the asset**

5 *End user*

- 6 (1) An entity is an *end user* of an asset at a particular time if an item in  
7 the following table applies to the entity at that time:  
8

<b>End user and tax preferred use</b>		
<b>Item</b>	<b>This item applies to an entity if...</b>	<b>The tax preferred use is...</b>
1	the entity leases the asset or takes the asset on hire (even if the entity subleases the asset, or on-hires the asset, to another entity)	(a) the lease or hire of the asset by the *end user; or (b) the use of the asset by the end user under the lease or hire arrangement
2	the entity manages the asset or the use to which the asset is put (otherwise than in the exercise of regulatory powers given to the entity under legislation designed to protect public health and safety or to ensure the continued supply of essential services to the public)	(a) the management of the asset; or (b) the use to which the asset is put
3	the entity uses the asset, or *installs the asset ready for use, in any other way	(a) the use of the asset by the *end user; or (b) the installation of the asset ready for use by the end user
4	the asset is used, or *installed ready for use, by someone to provide goods, services or facilities: (a) to the entity; or (b) directly or indirectly for the benefit of the entity; or (c) to, or for the benefit of, other entities directly or indirectly on behalf of the entity	(a) the use of the asset, or the installation of the asset ready for use, to provide those goods, services or facilities; or (b) the provision of those goods, services or facilities

**End user and tax preferred use**

<b>Item</b>	<b>This item applies to an entity if..</b>	<b>The tax preferred use is...</b>
5	the asset is used, or *installed ready for use, by someone to produce goods: (a) for use by, or for supply to, the entity; or (b) directly or indirectly for the benefit of the entity; or (c) for use by, for supply to, or for the benefit of, other entities directly or indirectly on behalf of the entity	(a) the use of the asset, or the installation of the asset ready for use, to produce those goods; or (b) the production of those goods; or (c) the supply of those goods

1 *Tax preferred use*

2 (2) If the asset is being \*put to a tax preferred use because a particular  
 3 item in the table in subsection (1) applies to the entity, each use of  
 4 the asset specified in the table in relation to that item is a **tax**  
 5 **preferred use** of the asset.

6 Note: This means, for example, that a financial benefit provided in relation  
 7 to any of those uses will be taken to be provided in relation to the tax  
 8 preferred use of the asset.

9 *Facilities*

10 (3) To avoid doubt, the facilities referred to in item 4 of the table in  
 11 subsection (1) include:  
 12 (a) hospital or medical facilities; or  
 13 (b) prison facilities; or  
 14 (c) educational facilities; or  
 15 (d) \*land transport facilities; or  
 16 (e) other transport facilities; or  
 17 (f) the supply of water, gas or electricity; or  
 18 (g) housing or accommodation; or  
 19 (h) premises from which to operate a \*business or other  
 20 undertaking.

1       **250-35 Arrangement period for tax preferred use**

2                       *Start of the arrangement period*

- 3           (1) Subject to subsection (2), the **arrangement period** for a particular  
4            \*tax preferred use of an asset starts when that tax preferred use of  
5           the asset starts.
- 6           (2) If subsection 250-100(2) or (3) ceases to apply to the asset because  
7           you (or a \*connected entity), or a \*member of the tax preferred  
8           sector, do something, or omit to do something, that:
- 9               (a) reduces your \*assumed risk in relation to the asset; or  
10              (b) if regulations are not in force under paragraph  
11               250-70(2)(b)—increases your \*expected low risk returns  
12               from the asset; or  
13              (c) if regulations are in force under paragraph 250-70(2)(b)—  
14               gives rise to circumstances that those regulations specify as  
15               ones that will trigger a retesting against section 250-70;  
16           the **arrangement period** for the \*tax preferred use of the asset starts  
17           immediately after subsection 250-100(2) or (3) cease to apply to  
18           the asset.

19                       *End of the arrangement period*

- 20           (3) Subject to subsection (4), the **arrangement period** for a particular  
21           \*tax preferred use of an asset is taken to end on the day determined  
22           by the Commissioner as the date on which the tax preferred use of  
23           the asset may reasonably be expected, or is likely, to end.
- 24           (4) The **arrangement period** for the \*tax preferred use of the asset ends  
25           when this Division ceases to apply to you and the asset if that  
26           happens before the day referred to in subsection (3).
- 27           (5) In determining when a particular \*tax preferred use of an asset is  
28           likely to end, the Commissioner must:
- 29               (a) have regard to:
- 30                   (i) the terms of any \*arrangement dealing with that tax  
31                    preferred use of the asset; and  
32                   (ii) the terms of any arrangement dealing with the  
33                    \*provision of \*financial benefits in relation to that tax  
34                    preferred use of the asset; and



- 1 (b) assume that any right that an entity has to renew or extend  
2 such an arrangement will not be exercised (unless it is  
3 reasonable to assume that the right will be exercised because  
4 of the commercial consequences for the entity (or a  
5 \*connected entity) of not exercising the right.

6 *Tax preferred uses of asset by entity and connected entity*

- 7 (6) For the purposes of this section:  
8 (a) the \*tax preferred use of an asset by an entity; and  
9 (b) the tax preferred use of the asset by a \*connected entity of  
10 that entity;  
11 are taken to constitute a single tax preferred use of the asset.

12 **250-40 New tax preferred use at end of arrangement period if tax**  
13 **preferred use continues**

14 If:

- 15 (a) this Division applies to you and an asset because the asset is  
16 \*put to a tax preferred use; and  
17 (b) the \*arrangement period for the tax preferred use of the asset  
18 ends on a particular date (the *termination date*); and  
19 (c) the asset continues to be \*put to the tax preferred use after the  
20 termination date;

21 the tax preferred use of the asset after the termination date is taken  
22 to be a separate and distinct tax preferred use of the asset from the  
23 tax preferred use of the asset before the termination date.

24 Note: This means, among other things, that there is a new arrangement  
25 period for the tax preferred use after the termination date and that the  
26 arrangement is retested under section 250-10 against circumstances as  
27 they stand immediately after the termination date.

28 **Financial benefits in relation to tax preferred use**

29 **250-45 Financial benefits in relation to tax preferred use of an asset**

- 30 (1) For the purposes of this Division, the \*financial benefits *provided*  
31 *in relation to a tax preferred use of an asset* include (but are not  
32 limited to):  
33 (a) a financial benefit provided in relation to:
-

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- 1 (i) bringing the asset into a state, condition or location in  
2 which it can be put to the \*tax preferred use; or  
3 (ii) the start of the tax preferred use of the asset; and  
4 (b) a financial benefit provided in relation to the end of the tax  
5 preferred use of the asset; and  
6 (c) a financial benefit provided in relation to the termination or  
7 expiration of an \*arrangement that deals with:  
8 (i) the tax preferred use of the asset; or  
9 (ii) the provision of financial benefits in relation to the tax  
10 preferred use of the asset; and  
11 (d) a financial benefit provided in relation to the purchase or  
12 acquisition of the asset by, or transfer of the asset to, the \*tax  
13 preferred end user (or a \*connected entity).
- 14 (2) If:  
15 (a) an asset is \*put to a tax preferred use; and  
16 (b) an entity is an \*end user of the asset because the entity  
17 manages the asset or the use to which the asset is put;  
18 any \*financial benefit that the entity (or a \*connected entity)  
19 provides that is calculated by reference to the receipts, revenue or  
20 income generated by the use of the asset is also taken to be a  
21 financial benefit ***provided in relation to the tax preferred use of***  
22 ***the asset.***
- 23 (3) For the purposes of this Division (other than this subsection), a  
24 \*financial benefit provided by a \*member of the tax preferred  
25 sector is taken not to be ***provided in relation to the \*tax preferred***  
26 ***use of an asset*** to the extent to which the financial benefit merely  
27 passes on, or represents:  
28 (a) financial benefits provided in relation to the use of the asset;  
29 or  
30 (b) something derived from the use of the asset;  
31 by someone who is not a member of the tax preferred sector.
- 32 (4) For the purposes of this Division, if a \*financial benefit is  
33 \*provided in relation to the use of a number of assets, a separate  
34 financial benefit of an amount or value that is reasonably  
35 attributable to each asset is taken to be provided in relation to each  
36 asset.
-

1 (5) To avoid doubt, a \*financial benefit may be ***provided in relation to***  
2 ***a tax preferred use of an asset*** even though it is provided before  
3 the \*tax preferred use of the asset starts.

4 (6) If:

5 (a) a \*financial benefit consists of a number of components; and

6 (b) at a particular time:

7 (i) the amount or value of one or more of those components  
8 is certain; and

9 (ii) the amount or value of one or more of those components  
10 is not certain;

11 each of those components is taken to constitute a separate financial  
12 benefit at that time for the purposes of this Division.

13 Note: This means that a financial benefit that consists, for example, of a  
14 fixed amount plus an indexation amount will be treated as consisting  
15 of one financial benefit whose amount is fixed and another financial  
16 benefit whose amount is not fixed.

17 (7) For the purposes of this Division:

18 (a) a \*financial benefit that is not an amount:

19 (i) is taken to become due and payable when the entity  
20 providing the financial benefit becomes liable to  
21 provide the financial benefit; and

22 (ii) is taken to be paid when it is provided; and

23 (b) a financial benefit that is paid without becoming due and  
24 payable is taken to have become due and payable on the day  
25 on which it was paid.

## 26 **250-50 Present value of financial benefit**

### 27 *Present value of financial benefit*

28 (1) The ***present value*** of a \*financial benefit at a particular time is:

29 (a) if the financial benefit has been provided before that time—  
30 the nominal amount or value of the financial benefit; or

31 (b) if the financial benefit is to be, or is expected to be, provided  
32 after that time—the nominal amount or value of the financial  
33 benefit discounted:

34 (i) by the discount rate applicable under subsection (2); and

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1 (ii) for the period that starts at that time and ends when the  
 2 financial benefit is to be, or is expected to be, provided.

3 *Discount rate*

4 (2) The discount rate that is applicable under this subsection is worked  
 5 out using the following table:  
 6

<b>Discount rate</b>		
<b>Item</b>	<b>In these circumstances...</b>	<b>the discount rate is equal to...</b>
1	(a) the total value of all *financial benefits provided, or to be provided, to you (or a *connected entity) by anyone in relation to any use of the asset during the *arrangement period is known or can reasonably be estimated; and (b) it is possible to calculate the pre-tax weighted average cost of capital for the asset	(a) the rate of compound interest which, if it were applied to the nominal amounts or values of those financial benefits to work out their *present values, would yield present values the total of which would equal the *market value of the asset; or (b) the rate of compound interest that is the pre-tax weighted average cost of capital for the asset if that rate is less than the rate referred to in paragraph (a)
2	(a) it is possible to calculate the pre-tax weighted average cost of capital for the asset; but (b) item 1 does not apply.	the rate of compound interest that is the pre-tax weighted average cost of capital for the asset
3	neither item 1 nor item 2 applies	the rate of compound interest that is determined by the Commissioner as reasonably reflecting the pre-tax weighted average cost of capital for the asset

7 Note: Paragraph (a) of item 1 in the table is intended to capture your total  
 8 returns in relation to any use of the asset during the arrangement  
 9 period. This includes:  
 10 (a) financial benefits provided by the tax preferred end user (and  
 11 connected entities) in relation to the tax preferred use of the  
 12 asset; and  
 13 (b) financial benefits provided by other people in relation to the tax  
 14 preferred use of the asset; and

- 1 (c) financial benefits provided by anyone in relation to uses of the  
2 asset other than the tax preferred use.
- 3 (3) In determining the rate under item 3 of the table in subsection (2),  
4 the Commissioner must have regard to:
- 5 (a) the nature of the use to which the asset is to be put (including  
6 the nature of any project in which the asset is to be used); and  
7 (b) any \*arrangement that relates to:  
8 (i) the tax preferred use of the asset; or  
9 (ii) the \*financial benefits to be \*provided by the \*members  
10 of the tax preferred sector in relation to the \*tax  
11 preferred use of the asset; and  
12 (c) any other relevant matter.
- 13 (4) If:  
14 (a) an asset is used in a project; and  
15 (b) a pre-tax weighted average cost of capital has been  
16 determined for the project;  
17 the pre-tax weighted average cost of capital for the asset is taken to  
18 be the pre-tax weighted average cost of capital determined for the  
19 project.
- 20 *Compounding period*
- 21 (5) Any compounding period (not exceeding 12 months) may be used  
22 to work out the discount rate under subsection (2). The same  
23 compounding period must, however, also be used in applying the  
24 discount rate to \*financial benefits under paragraph (1)(b).
- 25 (6) If:  
26 (a) the rate of compound interest specified in an item of the table  
27 in subsection (2) is based on a particular compounding  
28 period; and  
29 (b) the discount rate is being worked out using a different  
30 compounding period;  
31 the rate specified in that item is to be converted into an equivalent  
32 rate for the compounding period being used to work out the  
33 discount rate.

1 *Regulations*

2 (7) The regulations may:

- 3 (a) specify the method to be used in working out the pre-tax  
4 weighted average cost of capital for an asset for the purposes  
5 of subsection (2); and  
6 (b) make provision in relation to the determination of a rate  
7 under item 3 of the table in subsection (2).

8 **Predominant economic interest**

9 **250-55 Predominant economic interest in an asset**

10 You do not have a *predominant economic interest* in an asset at a  
11 particular time if section 250-60, 250-70, 250-80, 250-90 or 250-95  
12 applies to the asset at that time. If none of those sections apply to  
13 the asset at that time, you have a *predominant economic interest* in  
14 the asset at that time.

15 **250-60 Level of assumed risk in relation to asset (test 1)**

16 This section applies to the asset if at that time your \*assumed risk  
17 in relation to the asset is less than:

- 18 (a) 20% of the \*market value of the asset if the asset is taken to  
19 be \*put to a tax preferred use because of subsection  
20 250-25(1) (end use by \*tax preferred entities etc.); and  
21 (b) 50% of the market value of the asset if the asset is taken to be  
22 put to a tax preferred use because of subsection 250-25(2)  
23 (end use by non-residents etc.).

24 **250-65 Assumed risk in relation to asset**

25 *Assumed risk in relation to asset*

26 (1) Your *assumed risk* in relation to an asset at a particular time is the  
27 amount that represents the loss you would bear if the asset were to  
28 continue in existence, but lose all its value, at that time.

29 *Criteria*

30 (2) In applying subsection (1), have regard to:

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- 1 (a) whether there are any guarantees, \*arrangements or other  
2 factors that would have the effect of reducing or eliminating  
3 your loss or the loss of a \*connected entity (for example, an  
4 arrangement under which another entity agrees to buy the  
5 asset at a particular time for a fixed price); and  
6 (b) any limitations or restrictions on the remedies available to  
7 your creditors or the creditors of a connected entity  
8 (particularly in relation to borrowings in relation to the  
9 asset); and  
10 (c) whether you or a connected entity are in a position to  
11 effectively access the value of your investment or the  
12 connected entity's investment in the asset (for example, by  
13 withdrawing capital from a venture); and  
14 (d) any other relevant matters.

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

- 16 (3) In applying subsection (1) disregard:  
17 (a) any right you have to compensation or indemnity in respect  
18 of physical damage to the asset under a contract of insurance  
19 entered into in the ordinary course of business; and  
20 (b) any right you have to compensation or damages in relation to  
21 the physical quality or physical condition of the asset under a  
22 contract of sale or a lease entered into in the ordinary course  
23 of business.

24 *Partnership assets*

- 25 (4) In applying this section to an asset that is a partnership asset, a nil  
26 value is to be attributed to any loss that would be borne by a  
27 partner who is a \*tax preferred entity (or a \*connected entity of a  
28 tax preferred entity).

29 *Regulations*

- 30 (5) The regulations may make provision for the application and  
31 operation of this section. Without limiting this, the regulations  
32 may:  
33 (a) prescribe rules for determining the amount of the loss an  
34 entity would bear if an asset were to continue in existence,  
35 but lose all its value, at a particular time; and

- 1 (b) specify rights or interests that are to be taken into account, or  
2 disregarded, for the purposes of subsection (1).

3 **250-70 Level of expected low risk returns or alternative risk test**  
4 **(test 2)**

- 5 (1) Subject to subsection (3), this section applies to the asset if at that  
6 time the \*expected low risk returns from the \*tax preferred use of  
7 the asset exceeds 50% of the \*market value of the asset.
- 8 (2) The regulations may:  
9 (a) specify the circumstances in which this section applies to an  
10 asset; and  
11 (b) specify the circumstances that will trigger a retesting against  
12 this section.
- 13 (3) If regulations for the purposes of paragraph (2)(a) are in force at a  
14 particular time:  
15 (a) this section applies to an asset at that time only in the  
16 circumstances specified in the regulations; and  
17 (b) subsection (1) does not apply at that time.
- 18 (4) Regulations made for the purposes of paragraph (2)(a) may apply,  
19 adopt or incorporate (with or without modifications) matter  
20 contained in any of the \*accounting standards or in any  
21 international standard that deals with accounting matters:  
22 (a) as in force or existing at a particular time; or  
23 (b) as in force or existing from time to time.

24 **250-75 Expected low risk returns**

25 *Expected low risk returns*

- 26 (1) The ***expected low risk returns*** in relation to an asset at a particular  
27 time is the sum of the \*present values of the \*low risk \*financial  
28 benefits that at that time:  
29 (a) have been; or  
30 (b) will, assuming normal operating conditions, be; or  
31 (c) can, assuming normal operating conditions, reasonably be  
32 expected to be;



1                   \*provided in relation to the \*tax preferred use of the asset by a  
2                   \*member of the tax preferred sector to someone who is not a  
3                   member of the tax preferred sector.

4                   *Low risk financial benefits*

5                   (2) A \*financial benefit is **low risk** at a particular time if the financial  
6                   benefit:

- 7                   (a) has been provided before that time; or  
8                   (b) is provided at that time; or  
9                   (c) is to be provided after that time and both the amount or value  
10                  and the timing of the financial benefit are certain at that time.

11                  This subsection has effect subject to the regulations made for the  
12                  purposes of subsection (7).

13                  (3) A \*financial benefit is also **low risk** at a particular time if:

- 14                  (a) the financial benefit is to be provided after that time; and  
15                  (b) either the amount or value or the timing, or both the amount  
16                  or value and the timing, of the financial benefit are not  
17                  certain at that time; and  
18                  (c) the financial benefit satisfies subsection (4), (5) or (6).

19                  This subsection has effect subject to the regulations made for the  
20                  purposes of subsection (7).

21                  (4) The \*financial benefit satisfies this subsection if the amount or  
22                  value of the financial benefit will not be materially reduced or  
23                  otherwise affected by the financial benefits that entities (other than  
24                  the \*members of the tax preferred sector) would, in a competitive  
25                  market, be willing to provide from time to time for:

- 26                  (a) the use of the asset; or  
27                  (b) goods, services or facilities provided by or produced by the  
28                  use of the asset.

29                  (5) The \*financial benefit satisfies this subsection if:

- 30                  (a) the financial benefit is to be provided in relation to the  
31                  purchase or acquisition of the asset by, or transfer of the asset  
32                  to, the \*tax preferred end user (or a \*connected entity); and  
33                  (b) the amount or value of the financial benefit is not fixed by  
34                  reference to the \*market value of the asset at the time of  
35                  purchase, acquisition or transfer.
-

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- 1 (6) The \*financial benefit satisfies this subsection if:  
2 (a) the level of usage of the asset by, or to provide services to,  
3 entities (other than the \*members of the tax preferred sector)  
4 from time to time will not be materially affected by the  
5 amount or value of the financial benefit; or  
6 (b) the amount or value of the financial benefit will not be  
7 materially affected by the level of usage of the asset by  
8 entities (other than the \*members of the tax preferred sector)  
9 from time to time.

10 Note: Paragraph (a)—The level of usage by those entities may, for example,  
11 be unaffected because they do not have to pay anything for the use of  
12 the asset.

13 *Regulations*

- 14 (7) The regulations may provide that a \*financial benefit is, or is not,  
15 **low risk** at a particular time.
- 16 (8) The regulations may:  
17 (a) specify a method to be used in working out the amount or  
18 value of a \*financial benefit for the purposes of this section;  
19 and  
20 (b) make provision for the application and operation of  
21 subsections (4), (5) and (6).
- 22 (9) Regulations made for the purposes of subsection (7) may apply,  
23 adopt or incorporate (with or without modifications) matter  
24 contained in any of the \*accounting standards or in an international  
25 standard that deals with accounting matters:  
26 (a) as in force or existing at a particular time; or  
27 (b) as in force or existing from time to time.

28 **250-80 Effectively non-cancellable, long term arrangement (test 3)**

- 29 This section applies to the asset if:  
30 (a) any \*arrangement that relates to:  
31 (i) the tax preferred use of the asset; or  
32 (ii) the \*financial benefits to be \*provided by the \*members  
33 of the tax preferred sector in relation to the \*tax  
34 preferred use of the asset;
-

- 1 is \*effectively non-cancellable (see section 250-85); and  
2 (b) the \*arrangement period for the tax preferred use of the asset  
3 is equal to or greater than:  
4 (i) 50% of the period that is, in the Commissioner's  
5 opinion, the \*remaining expected life of the asset when  
6 the tax preferred use starts if the asset is real property;  
7 or  
8 (ii) 75% of the period that is, in the Commissioner's  
9 opinion, the remaining expected life of the asset when  
10 the tax preferred use starts if the asset is not real  
11 property.

12 **250-85 Meaning of *effectively non-cancellable arrangement***

- 13 (1) An \*arrangement that relates to \*financial benefits to be \*provided  
14 by a \*member of the tax preferred sector in relation to the \*tax  
15 preferred use of an asset is ***effectively non-cancellable*** if:  
16 (a) the arrangement can be cancelled only with:  
17 (i) your permission; or  
18 (ii) the permission of a \*connected entity of yours; or  
19 (iii) an agent or entity acting on your behalf (or on behalf of  
20 a connected entity of yours); or  
21 (b) the arrangement can be cancelled without the permission of  
22 an entity referred to in paragraph (a) but, if the arrangement  
23 were cancelled, the member of the tax preferred sector or  
24 another member of the tax preferred sector:  
25 (i) would be required to enter into a new arrangement for  
26 the \*provision of financial benefits in relation to the tax  
27 preferred use of the asset; or  
28 (ii) would incur a penalty and the magnitude of the penalty  
29 would be such as to discourage cancellation.  
30 (2) For these purposes, if a \*member of the tax preferred sector  
31 defaults under an \*arrangement and the arrangement is cancelled,  
32 the arrangement is to be taken to have been cancelled without the  
33 permission of an entity referred to in paragraph (1)(a).

34 **250-90 Right to acquire asset (test 4)**

35 This section applies to the asset if:

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- 1 (a) a \*member of the tax preferred end user group has, or will  
2 have:  
3 (i) a right, or an obligation, to purchase or acquire the  
4 asset; or  
5 (ii) a right to require the transfer of the asset; and  
6 (b) the consideration for the purchase, acquisition or transfer is  
7 not fixed as the \*market value of the asset at the time of the  
8 purchase, acquisition or transfer.  
9 To avoid doubt, this subsection does not apply to the asset merely  
10 because your interest in the asset is one that ceases to exist after the  
11 passage of a particular period of time.

12 **250-95 Prior ownership by a member of the tax preferred end user**  
13 **group (test 5)**

- 14 (1) Subject to subsections (2), (3) and (4), this section applies to the  
15 asset if a \*member of the tax preferred end user group owned the  
16 asset, and used or held the asset for use, before you acquired it.
- 17 (2) Subsection (1) does not apply to the asset if:  
18 (a) the asset was first used or held for use by a \*member of the  
19 tax preferred end user group within 6 months before you  
20 acquired it; and  
21 (b) at that time there was in existence an \*arrangement that:  
22 (i) the asset would be sold or transferred to another entity;  
23 and  
24 (ii) that entity would enter into an arrangement for the \*tax  
25 preferred use of the asset by a member of the tax  
26 preferred end user group.
- 27 (3) Subsection (1) does not apply to the asset if the asset:  
28 (a) is a \*privatised asset; or  
29 (b) would be a privatised asset if it were a \*depreciating asset.
- 30 (4) Subsection (1) does not apply to the asset if:  
31 (a) the asset is \*put to a tax preferred use because of subsection  
32 250-25(2) (end use by non-residents etc.); and  
33 (b) the asset is used wholly or principally for a purpose other  
34 than leasing or hiring the asset.
-

1 **250-100 Retesting of predominant economic interest against**  
2 **sections 250-60 and 250-70**

- 3 (1) This section applies for the purposes of working out whether this  
4 Division applies to you and to an asset that is \*put to a tax  
5 preferred use.
- 6 (2) If neither section 250-60 nor section 250-70 applies to the asset at  
7 the time when the \*tax preferred use of the asset starts, both of  
8 those sections are taken to continue not to apply to the asset.
- 9 (3) If:
- 10 (a) you (or a \*connected entity), or a \*member of the tax  
11 preferred sector, do something, or omit to do something, at a  
12 particular time that:
- 13 (i) reduces your \*assumed risk in relation to the asset; or  
14 (ii) if regulations are not in force under paragraph  
15 250-70(2)(b)—increases your \*expected low risk returns  
16 from the asset; or  
17 (iii) if regulations are in force under paragraph  
18 250-70(2)(b)—gives rise to circumstances that those  
19 regulations specify as ones that will trigger a retesting  
20 against section 250-70; and
- 21 (b) neither section 250-60 nor section 250-70 applies to the asset  
22 at that time;
- 23 both of those sections are taken to continue not to apply to the  
24 asset.
- 25 (4) Subsection (2) or (3) ceases to apply to the asset if you (or a  
26 \*connected entity), or a \*member of the tax preferred sector, do  
27 something, or omit to do something, that:
- 28 (a) reduces your \*assumed risk in relation to the asset; or  
29 (b) if regulations are not in force under paragraph  
30 250-70(2)(b)—increases your \*expected low risk returns  
31 from the asset; or  
32 (c) if regulations are in force under paragraph 250-70(2)(b)—  
33 gives rise to circumstances that those regulations specify as  
34 ones that will trigger a retesting against section 250-70.

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1 For the purposes of reapplying section 250-70 to the asset,  
2 disregard \*financial benefits provided before subsection (2) or (3)  
3 of this section ceased to apply to the asset.

- 4 (5) To avoid doubt, subsection (2) or (3) does not cease to apply  
5 merely because:  
6 (a) your \*assumed risk in relation to the asset is reduced; or  
7 (b) your \*expected low risk returns from the asset increases;  
8 because of something other than action taken, or an omission  
9 made, by you (or a \*connected entity) or a \*member of the tax  
10 preferred sector.

11 **250-105 Compound rates of interest and compound discount rates**

12 For the purposes of this Division, a rate of compound interest or a  
13 discount rate consists of both:

- 14 (a) a percentage interest rate or percentage discount rate; and  
15 (b) the compounding period to be used in applying the rate.

16 **Subdivision 250-C—Denial of, or reduction in, capital**  
17 **allowance deductions**

18 **Table of sections**

19 250-110 Denial of capital allowance deductions  
20 250-115 Apportionment rule

21 **250-110 Denial of capital allowance deductions**

22 Subject to section 250-115, the following table sets out  
23 consequences that follow if this Division applies to you and an  
24 asset at a particular time:  
25

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**Denial of capital allowance deductions**

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**Item For the purposes of... Consequences...**

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1	Subdivision 40-B of this Act	you are taken not to be using the asset for *taxable purposes at that time
2	Subdivision 40-F of this Act	the applicable condition in section 40-525 is taken not to be satisfied for the asset at that time

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**Denial of capital allowance deductions**

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Item	For the purposes of...	Consequences...
3	Subdivision 40-G of this Act	if the asset is land—you are taken to be using the land at that time otherwise than for the purpose of carrying on: (a) a *primary production business; or (b) a *business for the purposes of producing assessable income from the use of rural land (except a business of *mining operations)
4	Subdivision 40-H of this Act	you cannot deduct expenditure you incur in relation to the asset at that time
5	Subdivision 40-I of this Act	you are taken not to be using the asset for *taxable purposes at that time
6	section 40-880 of this Act	you cannot deduct an amount for capital expenditure you incur in relation to the asset at that time
7	section 43-140 of this Act	you are taken not to be using the asset at that time for the purposes of: (a) producing assessable income; or (b) carrying on *research and development activities
8	section 73B of the <i>Income Tax Assessment Act 1936</i>	you are taken not to have qualifying expenditure at that time in relation to the use of the asset
9	section 73BC of the <i>Income Tax Assessment Act 1936</i>	the asset is taken not to be being used, or *installed ready for use, for the purposes of the carrying on, by or on behalf of an eligible company, of *research and development activities

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1 **250-115 Apportionment rule**

- 2 (1) This section applies if:
- 3 (a) this Division applies to you and an asset that is \*put to a tax
- 4 preferred use; and
- 5 (b) it is reasonable to expect that, during the \*arrangement period
- 6 for the \*tax preferred use of the asset, particular \*financial
- 7 benefits will be provided to you (or a \*connected entity); and
-

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- 1 (c) it is reasonable to expect that those financial benefits:  
2 (i) will be provided in relation to a use of the asset that is  
3 not that tax preferred use and is not a private use; or  
4 (ii) will be \*provided in relation to that tax preferred use of  
5 the asset but will not be attributable, directly or  
6 indirectly, to financial benefits that are provided by  
7 \*members of the tax preferred sector; and  
8 (d) the amount or value of those financial benefits are known or  
9 can reasonably be estimated; and  
10 (e) you elect to have this section apply to the asset.
- 11 (2) An election under paragraph (1)(e) in relation to an asset:  
12 (a) must be made for the whole of the \*arrangement period for  
13 the \*tax preferred use of the asset; and  
14 (b) is irrevocable.
- 15 (3) If this section applies, the Commissioner may make a  
16 determination of a kind set out in the following table:  
17

<b>Reduction in capital allowance deductions</b>		
<b>Item</b>	<b>For the purposes of...</b>	<b>the Commissioner may determine that...</b>
1	Subdivision 40-B of this Act	at that time, you are to be taken to be using the asset for *taxable purposes to the extent (expressed as a percentage) specified in the determination
2	Subdivision 40-F of this Act	at that time, the applicable condition in section 40-525 is taken to be satisfied for the asset to the extent (expressed as a percentage) specified in the determination
3	Subdivision 40-G of this Act	if the asset is land—at that time you are taken to be using the land for the purpose of carrying on: (a) a *primary production business; or (b) a *business for the purposes of producing assessable income from the use of rural land (except a business of *mining operations); to the extent (expressed as a percentage) specified in the determination
4	Subdivision 40-H of this Act	you can deduct expenditure you incur in relation to the asset at that time to the extent (expressed as a percentage) specified in the determination



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**Reduction in capital allowance deductions**

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<b>Item</b>	<b>For the purposes of...</b>	<b>the Commissioner may determine that...</b>
5	Subdivision 40-I of this Act	at that time, you are to be taken to be using the asset for *taxable purposes to the extent (expressed as a percentage) specified in the determination
6	section 40-880 of this Act	you can deduct an amount for capital expenditure you incur in relation to the asset at that time to the extent (expressed as a percentage) specified in the determination
7	section 43-140 of this Act	you are taken to be using the asset at that time for the purposes of: (a) producing assessable income; or (b) carrying on *research and development activities; to the extent (expressed as a percentage) specified in the determination
8	section 73B of the <i>Income Tax Assessment Act 1936</i>	you are taken to have qualifying expenditure at that time in relation to the use of the asset to the extent (expressed as a percentage) specified in the determination
9	section 73BC of the <i>Income Tax Assessment Act 1936</i>	at that time, the asset is taken to be being used, or *installed ready for use, for the purposes of the carrying on, by or on behalf of an eligible company, of *research and development activities to the extent (expressed as a percentage) specified in the determination

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1

2

(4) The percentage specified in the determination is the ***allowable percentage***. The difference between 100% and the allowable percentage is the ***disallowed percentage***.

3

4

5

(5) The allowable percentage must not exceed 50%.

6

7

(6) In making a determination under subsection (3), the Commissioner must have regard to:

8

(a) the relationship between:

9

(i) the sum of the \*present values of the \*financial benefits

10

\*provided, or to be provided, by the \*members of the tax

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- 1 preferred sector in relation to the \*tax preferred use of  
2 the asset; and  
3 (ii) the \*market value of the asset;  
4 if the values referred to in subparagraph (i) are known or can  
5 be reasonably estimated; and  
6 (b) any other relevant matter.

7 **Subdivision 250-D—Notional loan treatment for financial**  
8 **benefits provided for tax preferred use**

9 **Table of sections**

10	250-120	Assessment of notional interest when accrual event occurs
11	250-125	Financial benefits subject to notional loan treatment
12	250-130	Accrual event and accrual period
13	250-135	Calculation of notional interest amount for accrual period
14	250-140	Calculation of the notional compound interest rate
15	250-145	What happens when the balance of the notional loan principal reaches zero 16 or estimated end value
17	250-150	Negative or positive adjustment for an income year

18 **250-120 Assessment of notional interest when accrual event occurs**

19 *Notional interest amount assessed*

- 20 (1) If:  
21 (a) this Division applies to you and an asset at a particular time  
22 in an income year; and  
23 (b) an \*accrual event for the asset occurs at that time;  
24 an amount equal to the \*notional interest amount for the \*accrual  
25 period for that accrual event is included in your assessable income  
26 for that income year.

27 Note: The notional interest amount is worked out under section 250-135.

28 *Multiple capital allowance deductions denied or reduced*

- 29 (2) If more than one item in the table in section 250-110 or in  
30 subsection 250-115(3) applies to the asset:  
31 (a) there is a separate \*notional interest amount for each of those  
32 items for each \*accrual event that occurs; and

- 1 (b) there is a separate \*balance of the notional loan principal for  
2 each of those items; and  
3 (c) a separate component of each \*financial benefit that:  
4 (i) is \*subject to the notional loan treatment; and  
5 (ii) becomes due and payable;  
6 is to be allocated to each of those items.

7 **250-125 Financial benefits subject to notional loan treatment**

8 *Financial benefits subject to notional loan treatment not assessed*

- 9 (1) Subject to section 250-145, a \*financial benefit is not included in  
10 your assessable income if the financial benefit:  
11 (a) is \*provided to you in relation to the \*tax preferred use of the  
12 asset; and  
13 (b) is provided directly or indirectly by a \*member of the tax  
14 preferred sector; and  
15 (c) is \*subject to notional loan treatment.

16 *Financial benefits subject to notional loan treatment*

- 17 (2) Subject to subsections (4) and (5), a \*financial benefit is **subject to**  
18 **notional loan treatment** if:  
19 (a) the financial benefit:  
20 (i) has been; or  
21 (ii) will, assuming normal operating conditions, be; or  
22 (iii) can, assuming normal operating conditions, reasonably  
23 be expected to be;  
24 \*provided to you (or a \*connected entity); and  
25 (b) the financial benefit has been, will be or can be expected to  
26 be provided directly or indirectly by a \*member of the tax  
27 preferred sector in relation to the \*tax preferred use of the  
28 asset; and  
29 (c) the financial benefit has not been, will not be or can be  
30 expected not to be provided by one of your connected  
31 entities.

32 Note: Paragraph (c) stops a financial benefit passing between you and any of  
33 your connected entities from being counted twice.

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- 1 (3) A reasonable estimate of the \*end value of the asset is also taken to  
2 be a \*financial benefit that is ***subject to notional loan treatment*** if:  
3 (a) the asset is not to be purchased or acquired by, or transferred  
4 to, the \*tax preferred end user (or a \*connected entity) at the  
5 end of the \*arrangement period under a legally enforceable  
6 \*arrangement; or  
7 (b) the asset:  
8 (i) is, or is to become, a \*privatised asset; or  
9 (ii) would be, or would become, a privatised asset if it were  
10 a \*depreciating asset; or  
11 (c) you elected to have this Division apply to the asset under  
12 subparagraph 250-10(1)(g)(ii).
- 13 (4) The \*financial benefit is ***subject to notional loan treatment*** only to  
14 the extent to which it reasonably represents a return of or on an  
15 investment in the asset (as distinct from representing consideration  
16 for the provision of services), having regard to:  
17 (a) the \*market value of the asset; and  
18 (b) the discount rate applicable under subsection 250-50(2); and  
19 (c) your debt funding in respect of the asset; and  
20 (d) any other relevant matter.  
21 The regulations may provide rules to be applied in determining the  
22 extent to which a financial benefit reasonably represents a return of  
23 or on an investment in the asset.
- 24 (5) If the \*tax preferred use of the asset starts before this Division  
25 starts applying to you and the asset, only \*financial benefits  
26 provided after this Division starts applying to you and the asset are  
27 ***subject to notional loan treatment***.

28 **250-130 Accrual event and accrual period**

- 29 (1) An ***accrual event*** for the asset occurs if:  
30 (a) a \*financial benefit that is \*subject to notional loan treatment  
31 becomes due and payable (whether or not it is paid); or  
32 (b) an income year ends.
- 33 (2) The ***accrual period*** for the \*accrual event is the period between the  
34 accrual event and:  
35 (a) the most recent earlier accrual event for the asset; or
-

1 (b) the start of the \*arrangement period for the \*tax preferred use  
2 of the asset if the accrual event is the first accrual event for  
3 the asset.

4 (3) There are no accrual periods after the \*balance of the notional loan  
5 principal reaches:

6 (a) nil for a \*relevant asset that is a \*depreciating asset; or

7 (b) the estimate of the \*end value of the asset made for the  
8 purposes of subsection 250-125(3) in any other case.

9 Note: Once this happens the financial benefits are assessed under  
10 section 250-145.

### 11 **250-135 Calculation of notional interest amount for accrual period**

12 (1) The **notional interest amount** for the \*accrual period is worked out  
13 by applying the \*notional compound interest rate to the \*balance of  
14 the notional loan principal at the beginning of the accrual period.  
15 The rate is applied to that balance for the duration of the accrual  
16 period. The notional compound interest rate is to be applied on a  
17 proportional compounding basis.

18 (2) The **balance of the notional loan principal** at a particular time is  
19 worked out using subsections (3) and (4).

20 (3) The opening \*balance of the notional loan principal at the  
21 beginning of the first \*accrual period for the asset is:

22 (a) the \*undeducted tax cost for the \*relevant asset or \*relevant  
23 capital expenditure at that time; or

24 (b) the \*disallowed percentage of the undeducted tax cost for the  
25 relevant asset or relevant capital expenditure at that time if  
26 the Commissioner has made a determination in relation to the  
27 asset or expenditure under subsection 250-115(3);

28 less the sum of all \*financial benefits that are \*subject to notional  
29 loan treatment and that have become due and payable before the  
30 start of that accrual period.

31 (4) This is how to work out the \*balance of the notional loan principal  
32 at the beginning of an \*accrual period (the **reference accrual**  
33 **period**) for the asset after the first accrual period for the asset:

34 

<i>Method statement</i>
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**Schedule 1** Tax preferred entities (asset financing)  
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*Step 1.* Add:

(a) the opening \*balance of the notional loan principal at the beginning of the first \*accrual period for the asset; and

(b) the sum of all the \*notional interest amounts for accrual periods before the reference accrual period.

*Step 2.* Add all \*financial benefits that are \*subject to notional loan treatment and that have become due and payable before the beginning of the reference accrual period.

*Step 3.* Deduct the amount obtained in step 2 from the amount obtained in step 1.

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(5) The ***undeducted tax cost*** of the \*relevant asset or \*relevant capital expenditure is worked out using the following table:

<b>Undeducted tax cost</b>		
<b>Item</b>	<b>Relevant asset or relevant capital expenditure</b>	<b>Undeducted tax cost</b>
1	*relevant asset is a *depreciating asset	the *adjustable value of the asset
2	*relevant capital expenditure under Division 40	the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40
3	*relevant capital expenditure under Division 43	the *undeducted construction expenditure in relation to the capital expenditure

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1 **250-140 Calculation of the notional compound interest rate**

- 2 (1) The *notional compound interest rate* is the compound discount  
3 rate which, if it were applied to the nominal amounts or values of  
4 all the \*financial benefits that:  
5 (a) are \*subject to notional loan treatment; and  
6 (b) whose amounts or values are known or can reasonably be  
7 estimated;  
8 to work out their \*present values, would yield present values the  
9 total of which would equal the opening \*balance of the notional  
10 loan principal at the beginning of the first \*accrual period for the  
11 asset.
- 12 (2) If the nominal amounts or values of all the \*financial benefits that  
13 are \*subject to notional loan treatment are not known or cannot  
14 reasonably be estimated, the Commissioner may determine the  
15 nominal amounts or values of those financial benefits.
- 16 (3) In making a determination under subsection (2), the Commissioner  
17 must have regard to:  
18 (a) the nature of the use to which the asset is to be put (including  
19 the nature of any project in which the asset is to be used); and  
20 (b) any \*arrangement that relates to:  
21 (i) the tax preferred use of the asset; or  
22 (ii) the \*financial benefits to be \*provided by the \*members  
23 of the tax preferred sector in relation to the \*tax  
24 preferred use of the asset; and  
25 (c) any other relevant matter.
- 26 (4) The regulations may specify a method to be used in working out  
27 the amount or value of a \*financial benefit for the purposes of this  
28 section.

29 **250-145 What happens when the balance of the notional loan**  
30 **principal reaches zero or estimated end value**

- 31 Once the \*balance of the notional loan principal reaches:  
32 (a) nil for a \*relevant asset that is a \*depreciating asset; or  
33 (b) the estimate of the \*end value of the asset made for the  
34 purposes of subsection 250-125(3) in any other case;
-

**Schedule 1** Tax preferred entities (asset financing)  
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1 all \*financial benefits that are \*subject to notional loan treatment  
2 and that subsequently become due and payable are wholly included  
3 in your assessable income.

4 **250-150 Negative or positive adjustment for an income year**

5 (1) This is how to work out whether you have a negative or positive  
6 adjustment for an income year (the *reference income year*):

7 *Method statement*

8 *Step 1.* Add up all the following:

- 9 (a) the \*notional interest amounts included in your  
10 assessable income under subsection 250-120(1), in  
11 relation to the \*relevant asset or \*relevant capital  
12 expenditure, for the reference income year and any  
13 earlier income years;
- 14 (b) the amounts (if any) included in your assessable  
15 income under section 250-145, in relation to the  
16 relevant asset or relevant capital expenditure, for  
17 any income year earlier than the reference income  
18 year;
- 19 (c) the amounts (if any) included in your assessable  
20 income under subsection (3) of this section, in  
21 relation to the relevant asset or relevant capital  
22 expenditure, for any income year earlier than the  
23 reference income year.

24 *Step 2.* Add up all the following:

- 25 (a) the amounts of the \*financial benefits that are  
26 \*subject to notional loan treatment and have  
27 become due and payable at any time before the end  
28 of the reference income year;
- 29 (b) the amount of the deductions (if any) under  
30 subsection (2) of this section, in relation to the  
31 relevant asset or relevant capital expenditure, for



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any income year earlier than the reference income year.

*Step 3.* If the amount obtained in step 1 exceeds the amount obtained in step 2, you have a **negative adjustment** for the reference income year and the amount of the excess is the amount of the negative adjustment.

*Step 4.* If the amount obtained in step 2 exceeds the amount obtained in step 1, you have a **positive adjustment** for the reference income year and the amount of the excess is the amount of the positive adjustment.

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*When negative adjustment gives rise to deduction*

- (2) If you have a \*negative adjustment for the reference income year under subsection (1), you are entitled to a deduction for that income year equal to the lesser of:
- (a) the amount of the \*negative adjustment; and
  - (b) the sum of the \*financial benefits that:
    - (i) are \*subject to notional loan treatment; and
    - (ii) have become due and payable at any time before the end of the reference income year; and
    - (iii) are not financial benefits of a kind that were taken into account as \*low risk financial benefits at the beginning of the \*arrangement period for the \*tax preferred use of the asset.

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*When adjustments result in amount being included in your assessable income*

- (3) If you have a positive adjustment for the reference income year under subsection (1), this is how to work out whether your assessable income for the reference income year includes an amount under this subsection and the amount to be included:

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*Method statement*

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- Step 1.* Add up all the amounts (if any) you have deducted in earlier income years in relation to the \*relevant asset or \*relevant capital expenditure under subsection (2).
- Step 2.* Add up all amounts (if any) you have included, under this subsection, in your assessable income for earlier income years in relation to the relevant asset or capital expenditure.
- Step 3.* If the amount obtained in step 1 exceeds the amount obtained in step 2, your assessable income for the reference income year includes an amount under this subsection.
- Step 4.* The amount included in your assessable income is the lesser of:
- (a) the excess obtained in step 3; and
  - (b) the amount of the \*positive adjustment for the reference income year.

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**Subdivision 250-E—Adjustments when arrangement period ends**

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**Table of sections**

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250-155	Recalculation of interest and principal components at the end of the tax preferred use of an asset
250-160	End value of asset

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**250-155 Recalculation of interest and principal components at the end of the tax preferred use of an asset**

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*When a recalculation of interest and principal must be done*

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- (1) If:
- (a) this Division applies to you and an asset; and
  - (b) the \*arrangement period for the \*tax preferred use of the asset ends;

1 the difference between the amount worked out under subsection (4)  
2 and the amount worked out under subsection (6) is to be calculated.

3 *Balancing assessable amount or deduction*

4 (2) If the amount worked out under subsection (4) exceeds the amount  
5 worked out under subsection (6), the excess is included in your  
6 assessable income for the income year in which the \*arrangement  
7 period ends.

8 (3) If the amount worked out under subsection (6) exceeds the amount  
9 worked out under subsection (4), you can deduct the excess from  
10 your assessable income for the income year in which the  
11 \*arrangement period ends.

12 *Working out the amounts referred to in subsection (1)*

13 (4) This is how to work out the amount under this subsection:

14 *Method statement*

15 *Step 1.* Add up the amounts or values of all the \*financial  
16 benefits that were \*subject to notional loan treatment and  
17 that have become due and payable.

18 *Step 2.* Deduct from the amount obtained in step 1 the opening  
19 \*balance of the notional loan principal at the beginning of  
20 the first \*accrual period for the asset.

21 (5) If the asset is not to be purchased or acquired by, or transferred to,  
22 the \*tax preferred end user (or a \*connected entity) at the end of the  
23 \*arrangement period for the \*tax preferred use under a legally  
24 enforceable \*arrangement, an amount equal to the \*end value of the  
25 asset is taken, for the purposes of step 1 of the method statement in  
26 subsection (4), to be a \*financial benefit that:

- 27 (a) is \*subject to notional loan treatment; and  
28 (b) became due and payable on the last day of the arrangement  
29 period.

30 (6) This is how to work out the amount under this subsection:

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*Method statement*

*Step 1.* Add up all of the following:

- (a) the \*notional interest amounts included in your assessable income under subsection 250-120(1) in relation to the \*relevant asset or \*relevant capital expenditure;
- (b) the amounts (if any) included in your assessable income under section 250-145, in relation to the relevant asset or relevant capital expenditure;
- (c) the amounts (if any) included in your assessable income under subsection 250-150(3) in relation to the relevant asset or relevant capital expenditure.

*Step 2.* Add up all the amounts deducted (if any) from your assessable income under subsection 250-150(2) in relation to the \*relevant asset or \*relevant capital expenditure.

*Step 3.* Deduct the amount obtained in step 2 from the amount obtained in step 1.

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**250-160 End value of asset**

(1) The *end value* of an asset is worked out using the following table:

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<b>End value for asset</b>		
<b>Item</b>	<b>If this item applies.....</b>	<b>the end value is.....</b>
1	the *relevant asset: (a) is purchased or acquired by, or transferred to, the *tax preferred end user (or a *connected entity) before the end of the income year in which the *arrangement period for the *tax preferred use of the asset ends; and (b) would have had a *termination value at the time of the purchase, acquisition or transfer if this Division had never applied to the asset	the amount that would have been the termination value of the asset at the time of the purchase, acquisition or transfer if this Division had never applied to the asset
2	the *relevant asset: (a) is purchased or acquired by, or transferred to, the *tax preferred end user (or a *connected entity) before the end of the income year in which the *arrangement period for the *tax preferred use of the asset ends; and (b) is not one to which item 1 applies	the *capital proceeds for the disposal of the asset worked out under Division 116

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**Schedule 1** Tax preferred entities (asset financing)

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<b>End value for asset</b>		
<b>Item</b>	<b>If this item applies.....</b>	<b>the end value is.....</b>
3	the *relevant asset: (a) is not purchased or acquired by, or transferred to, the *tax preferred end user (or a *connected entity) before the end of the income year in which the *arrangement period for the *tax preferred use of the asset ends; and (b) would have had a *termination value if: (i) this Division had never applied to the asset; and (ii) the end of the arrangement period for the tax preferred use of the asset were a *balancing adjustment event	the amount that would have been the termination value of the asset if: (a) this Division had never applied to the asset; and (b) the end of the arrangement period for the tax preferred use of the asset were a balancing adjustment event
4	the *relevant asset: (a) is not purchased or acquired by or transferred to the *tax preferred end user (or a *connected entity) before the end of the income year in which the *arrangement period for the *tax preferred use of the asset ends; and (b) is not one to which item 3 applies	the amount that would have been the *adjustable value of the asset at the time when the arrangement period ended if this Division had never applied to the asset
5	the *relevant capital expenditure is expenditure that, apart from this Division, would have attracted a capital allowance deduction under Division 40	the amount of the capital expenditure less the capital allowance deductions that would have been allowable under Division 40 in relation to the expenditure if this Division had never applied to the asset

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**End value for asset**

<b>Item</b>	<b>If this item applies.....</b>	<b>the end value is.....</b>
6	the *relevant capital expenditure is expenditure that, apart from this Division, would have attracted a capital allowance deduction under Division 43	the amount that would have been the *undeducted construction expenditure in relation to the asset for the purpose of section 43-15 at the end of the *arrangement period for the *tax preferred use of the asset if this Division had never applied to the asset

1 (2) If more than 1 item in the table in subsection (1) applies to a  
2 particular asset, the **end value** for the asset is the sum of the end  
3 values specified for each of those items.

4 **Subdivision 250-F—Treatment of asset after Division ceases to**  
5 **apply to the asset**

6 **Table of sections**

7 250-165 Treatment of asset after Division ceases to apply to the asset

8 **250-165 Treatment of asset after Division ceases to apply to the asset**

9 (1) For the purposes of Division 40, if:

10 (a) this Division applies to you and an asset; and

11 (b) the \*arrangement period for the \*tax preferred use of the asset  
12 ends at a particular time; and

13 (c) the asset would have had an \*adjustable value at that time, for  
14 the purposes of Division 40, if this Division had never  
15 applied to the asset;

16 the adjustable value of the asset, immediately after the end of the  
17 arrangement period, is taken to be equal to the \*end value of the  
18 asset.

19 (2) For the purposes of Division 43, if:

20 (a) this Division applies to you and an asset; and

21 (b) the \*arrangement period for the \*tax preferred use of the asset  
22 ends at a particular time; and

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- 1 (c) there would have been an \*undeducted construction  
2 expenditure in relation to the asset at that time, for the  
3 purposes of Division 43, if this Division had never applied to  
4 the asset;  
5 the undeducted construction expenditure in relation to the asset,  
6 immediately after the end of the arrangement period, is taken to be  
7 equal to the \*end value of the asset.
- 8 (3) If:  
9 (a) this Division applies to you and an asset; and  
10 (b) the \*arrangement period for the \*tax preferred use of the asset  
11 ends;  
12 the \*cost base, and the \*reduced cost base, of the asset are each  
13 taken to be reduced at the end of the arrangement period by an  
14 amount equal to the difference between:  
15 (c) the total amounts or values of the \*financial benefits that  
16 were \*subject to notional loan treatment; and  
17 (d) the net amount included in your assessable income under this  
18 Division in relation to the tax preferred use of the asset  
19 (taking into account deductions, and amounts included in  
20 your assessable income, under section 250-150).

21 **Subdivision 250-G—Objections against determinations and**  
22 **decisions by the Commissioner**

23 **Table of sections**

24 250-170 Objections against determinations and decisions by the Commissioner

25 **250-170 Objections against determinations and decisions by the**  
26 **Commissioner**

- 27 (1) This section applies to a determination by the Commissioner under  
28 any of the following provisions:  
29 (a) subsection 250-10(3);  
30 (b) subsection 250-35(3);  
31 (c) item 3 of the table in subsection 250-50(2);  
32 (d) subsection 250-115(3);  
33 (e) subsection 250-140(2).



1 (2) This section also applies to a decision by the Commissioner under  
2 section 250-80.

3 (3) A person who is dissatisfied with a determination or decision to  
4 which this section applies may object against the determination or  
5 decision in the manner set out in Part IVC of the *Taxation*  
6 *Administration Act 1953*.

7 *[The next Part is Part 3-35.]*

8 **2 Subsection 995-1(1)**

9 Insert:

10 *accrual event* for an asset has the meaning given by subsection  
11 250-130(1).

12 **3 Subsection 995-1(1)**

13 Insert:

14 *accrual period* for an \*accrual event has the meaning given by  
15 subsection 250-130(2).

16 **4 Subsection 995-1(1)**

17 Insert:

18 *arrangement period* for a \*tax preferred use of an asset has the  
19 meaning given by section 250-35.

20 **5 Subsection 995-1(1)**

21 Insert:

22 *assumed risk*, in relation to an asset, has the meaning given by  
23 section 250-65.

24 **6 Subsection 995-1(1)**

25 Insert:

26 *balance of the notional loan principal* has the meaning given by  
27 subsection 250-135(2).

28 **7 Subsection 995-1(1)**

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**Schedule 1** Tax preferred entities (asset financing)

**Part 1** Main amendments

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1                   Insert:

2                               *disallowed percentage* has the meaning given by subsection  
3                               250-115(4).

4                   **8 Subsection 995-1(1)**

5                   Insert:

6                               *effectively non-cancellable* has the meaning given by  
7                               section 250-85.

8                   **9 Subsection 995-1(1)**

9                   Insert:

10                              *end user* of an asset has the meaning given by subsection  
11                              250-30(1).

12                   **10 Subsection 995-1(1)**

13                   Insert:

14                              *end value* of an asset has the meaning given by section 250-160.

15                   **11 Subsection 995-1(1)**

16                   Insert:

17                              *excluded STB* has the same meaning as in section 24AT of the  
18                              *Income Tax Assessment Act 1936*.

19                   **12 Subsection 995-1(1)**

20                   Insert:

21                              *expected low risk returns*, in relation to an asset, has the meaning  
22                              given by section 250-75.

23                   **13 Subsection 995-1(1)**

24                   Insert:

25                              *low risk*, in relation to a \*financial benefit, has a meaning affected  
26                              by section 250-75.

27                   **14 Subsection 995-1(1)**

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1           Insert:

2                    *member of the tax preferred end user group* has the meaning  
3                    given by paragraph 250-25(4)(a).

4   **15 Subsection 995-1(1)**

5           Insert:

6                    *member of the tax preferred sector* has the meaning given by  
7                    paragraph 250-25(4)(b).

8   **16 Subsection 995-1(1)**

9           Insert:

10                   *negative adjustment* for an income year has the meaning given by  
11                    subsection 250-150(1).

12   **17 Subsection 995-1(1)**

13           Insert:

14                    *notional compound interest rate* has the meaning given by  
15                    section 250-140.

16   **18 Subsection 995-1(1)**

17           Insert:

18                    *notional interest amount* has the meaning given by subsection  
19                    250-135(1).

20   **19 Subsection 995-1(1)**

21           Insert:

22                    *positive adjustment* for an income year has the meaning given by  
23                    subsection 250-150(1).

24   **20 Subsection 995-1(1)**

25           Insert:

26                    *predominant economic interest* in an asset has the meaning given  
27                    by section 250-55.

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

2 Insert:

3 *prescribed excluded STB* means an \*excluded STB that is  
4 prescribed by the regulations for the purposes of Division 1AB of  
5 Part III of the *Income Tax Assessment Act 1936*.

6 **22 Subsection 995-1(1)**

7 Insert:

8 *present value* of a \*financial benefit has the meaning given by  
9 subsection 250-50(1).

10 **23 Subsection 995-1(1)**

11 Insert:

12 *provided in relation to a tax preferred use of an asset*, in relation  
13 to a \*financial benefit, has a meaning affected by section 250-45.

14 **24 Subsection 995-1(1)**

15 Insert:

16 *put to a tax preferred use*, in relation to an asset, has the meaning  
17 given by section 250-25.

18 **25 Subsection 995-1(1)**

19 Insert:

20 *relevant asset* has the meaning given by paragraph 250-10(5)(a).

21 **26 Subsection 995-1(1)**

22 Insert:

23 *relevant capital expenditure* has the meaning given by paragraph  
24 250-10(5)(b).

25 **27 Subsection 995-1(1)**

26 Insert:

27 *remaining expected life* of an asset at a particular time means the  
28 period after that time for which the asset could be used by any

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1 entity for a \*taxable purpose or for the purpose of producing  
2 \*exempt income:

- 3 (a) assuming it will be subject to wear and tear at a rate that is  
4 reasonable for the Commissioner to assume; and  
5 (b) assuming it will be maintained in reasonably good order and  
6 condition; and  
7 (c) having regard to the period within which it is likely to be  
8 scrapped, sold for no more than scrap value or abandoned.

9 **28 Subsection 995-1(1)**

10 Insert:

11 *subject to notional loan treatment*, in relation to a \*financial  
12 benefit, has the meaning given by section 250-125.

13 **29 Subsection 995-1(1)**

14 Insert:

15 *tax preferred end user* has the meaning given by subsection  
16 250-25(3).

17 **30 Subsection 995-1(1)**

18 Insert:

19 *tax preferred entity* means:

- 20 (a) an \*exempt entity; or  
21 (b) an \*exempt Australian government agency; or  
22 (c) an \*associated government entity of an \*exempt Australian  
23 government agency; or  
24 (d) a \*prescribed excluded STB; or  
25 (e) an \*exempt foreign government agency.

26 **31 Subsection 995-1(1)**

27 Insert:

28 *tax preferred use* of an asset has the meaning given by subsection  
29 250-30(2).

30 **32 Subsection 995-1(1)**

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**Schedule 1** Tax preferred entities (asset financing)

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1                   Insert:

2                               *undeducted tax cost* of a \*relevant asset or \*relevant capital  
3                               expenditure has the meaning given by subsection 250-135(5).

1

2 **Part 2—Consequential amendments**

3 ***Development Allowance Authority Act 1992***

4 **33 Paragraph 93K(2)(c)**

5 Repeal the paragraph, substitute:

6 (c) it will not do anything that:

- 7 (i) will cause section 51AD of the Tax Act or Division 16D  
8 of Part III of that Act to apply to any of the facilities  
9 concerned; or  
10 (ii) would have caused section 51AD of the Tax Act or  
11 Division 16D of Part III of that Act to apply to any of  
12 the facilities concerned if the amendments made by  
13 Part 2 of Schedule 1 to the *New Business Tax System*  
14 (*Tax Preferred Asset Financing*) Act 2003 had not been  
15 made.

16 **34 Paragraph 93K(4)(c)**

17 Repeal the paragraph, substitute:

18 (c) it will not do anything during the period before the transfer  
19 that:

- 20 (i) will cause section 51AD of the Tax Act or Division 16D  
21 of Part III of that Act to apply to any of those facilities;  
22 or  
23 (ii) would have caused section 51AD of the Tax Act or  
24 Division 16D of Part III of that Act to apply to any of  
25 those facilities if the amendments made by Part 2 of  
26 Schedule 1 to the *New Business Tax System (Tax*  
27 *Preferred Asset Financing)* Act 2003 had not been  
28 made.

29 **35 Subparagraph 93R(b)(v)**

30 Repeal the subparagraph, substitute:

31 (v) if the certificate applies to a direct infrastructure  
32 borrowing—not do anything that:

**Schedule 1** Tax preferred entities (asset financing)  
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- 1 (A) will cause section 51AD of the Tax Act or  
2 Division 16D of Part III of that Act to apply to  
3 any of the facilities concerned; or  
4 (B) would have caused section 51AD of the Tax  
5 Act or Division 16D of Part III of that Act to  
6 apply to any of the facilities concerned if the  
7 amendments made by Part 2 of Schedule 1 to  
8 the *New Business Tax System (Tax Preferred*  
9 *Asset Financing) Act 2003* had not been made;  
10 and

11 **36 Subparagraph 93R(c)(ii)**

12 Repeal the subparagraph, substitute:

- 13 (ii) not do anything that:  
14 (A) will cause section 51AD of the Tax Act or  
15 Division 16D of Part III of that Act to apply to  
16 any of the facilities concerned; or  
17 (B) would have caused section 51AD of the Tax  
18 Act or Division 16D of Part III of that Act to  
19 apply to any of the facilities concerned if the  
20 amendments made by Part 2 of Schedule 1 to  
21 the *New Business Tax System (Tax Preferred*  
22 *Asset Financing) Act 2003* had not been made;  
23 and

24 ***Income Tax Assessment Act 1936***

25 **37 After subsection 51AD(1)**

26 Insert:

- 27 (1A) This section does not apply to property that is put to a tax preferred  
28 use (within the meaning of the *Income Tax Assessment Act 1997*) if  
29 the tax preferred use:  
30 (a) starts on or after 1 July 2003; and  
31 (b) does not occur under a legally enforceable arrangement  
32 entered into before 1 July 2003.  
33 (1B) This section does not apply to property on or after 1 July 2003 if:  
34 (a) Division 16D applied to the property immediately before  
35 1 July 2003; or
-



1 (b) this section did not apply to the property immediately before  
2 1 July 2003 and Division 16D would apply to the property on  
3 or after 1 July 2003 but for subsection 159GH(2).

4 (1C) Subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D) do not  
5 apply to property acquired or constructed by a taxpayer if:

6 (a) the property is acquired by the taxpayer on or after 1 July  
7 2003; and

8 (b) the property is not acquired under a legally enforceable  
9 arrangement entered into before 1 July 2003.

### 10 **38 Subsection 51AD(4)**

11 Omit “subsection (8)”, substitute “subsections (1A), (1B), (1C) and  
12 (8)”.

### 13 **39 At the end of subsection 73B(15AA)**

14 Add:

15 Note: If Division 250 of the *Income Tax Assessment Act 1997* applies to you  
16 and an asset:

17 (a) if section 250-115 of that Act applies—you are taken to have  
18 qualifying expenditure in relation to the use of the asset to the  
19 extent specified in a determination made under subsection  
20 250-115(3) of that Act; or

21 (b) otherwise—you are taken not to have such expenditure.

### 22 **40 Subsection 73BC(2) (note)**

23 Omit “Note”, substitute “Note 1”.

### 24 **41 At the end of subsection 73BC(2)**

25 Add:

26 Note 2: If Division 250 of the *Income Tax Assessment Act 1997* applies to you  
27 and an asset:

28 (a) if section 250-115 of that Act applies—the asset is taken to be  
29 used, or installed ready for use, for the purpose of carrying on, by  
30 or on behalf of an eligible company, of research or development  
31 activities to the extent specified in a determination made under  
32 subsection 250-115(3) of that Act; or

33 (b) otherwise—the asset is taken not to be used, or installed ready  
34 for use, for such a purpose.

1 **42 Before subsection 159GH(1)**

2 Insert:

- 3 (1A) This Division does not apply in relation to the item of eligible  
4 property that is put to a tax preferred use (within the meaning of  
5 the *Income Tax Assessment Act 1997*) if the tax preferred use:  
6 (a) starts on or after 1 July 2003; and  
7 (b) does not occur under a legally enforceable arrangement  
8 entered into before 1 July 2003.

9 **43 Subsection 159GH(1)**

10 Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

11 **44 Subsection 170(10AA) (after table item 170)**

12 Insert:

13

175	Division 250	Asset is put to a tax preferred use by a tax preferred end user
-----	--------------	--

14

15 ***Income Tax Assessment Act 1997***

16 **45 Section 12-5 (table item headed “capital allowances”)**

17 After:

18 trading ships, special depreciation..... **57AM**

19 insert:

20 tax preferred use of asset ..... Division 250

22

23 **46 Section 12-5 (table item headed “leases”)**

24 After:

25

improvements on leased land and premiums, leases assigned  
or surrendered before 23 October 1964 and for mining  
leases assigned or surrendered before 10 May 1968..... **83 to 89, 88A(3)**

1

2 insert:

2

3

leases of assets being put to tax preferred use ..... Division 250

4

5 **47 Section 12-5 (table item headed “notional sales and**  
6 **loans”)**

6

7

After “240-50”, insert “, 250-120”.

8 **48 Section 12-5 (table item headed “notional sales and**  
9 **loans”)**

8

9

10 Before:

10

11

payments to acquire property, no deduction for ..... 240-85

12

13 insert:

13

14

notional loan treatment for financial benefits provided for  
tax preferred use of asset..... Subdivision 250-C

15

16 **49 Section 12-5 (table item headed “property”)**

16

17 After:

17

18

arrangements relating to use of property if end user an exempt  
public body or use outside Australia to produce exempt  
income..... **159GE to**  
**159GO**

19

20 insert:

20

21

arrangements relating to assets being put to tax preferred use  
..... Division 250

---

1

2

**50 Section 12-5 (after table item headed “tax losses”)**

3

Insert:

4

**Tax preferred asset financing**

generally .....	Division 250
denial of capital allowance deductions in relation to asset being put to tax preferred use.....	250-110
reduction in capital allowance deductions in relation to asset being put to tax preferred use.....	250-115
deduction relating to the notional loan treatment for asset being put to a tax preferred use.....	250-150
balancing deduction at the end of arrangement period for the tax preferred use of asset.....	250-155

5

6

**51 Subsection 40-25(7)**

7

Omit “A *taxable purpose*”, substitute “Subject to subsection (8), a  
*taxable purpose*”.

8

9

**52 At the end of section 40-25**

10

Add:

11

(8) If Division 250 applies to you and an asset that is a \*depreciating  
asset:

12

13

(a) if section 250-115 applies—you are taken to be using the  
asset for a \*taxable purpose to the extent specified in a  
determination made under subsection 250-115(3); or

14

15

16

(b) otherwise—you are taken not to be using the asset for such a  
purpose.

17

18

**53 At the end of subsection 40-525(1)**

19

Add:

20

Note: If Division 250 applies to you and an asset that is a water facility:

21

(a) if section 250-115 applies—the condition in this subsection is  
taken to be satisfied for the facility to the extent specified in a  
determination made under subsection 250-115(3); or

22

23

- 1 (b) otherwise—the condition in this subsection is taken not to be  
2 satisfied for the facility.

3 **54 At the end of subsection 40-525(2)**

4 Add:

5 Note: If Division 250 applies to you and an asset that is a horticultural plant:

- 6 (a) if section 250-115 applies—a condition in this subsection is  
7 taken to be satisfied for the plant to the extent specified in a  
8 determination made under subsection 250-115(3); or  
9 (b) otherwise—the conditions in this subsection are taken not to be  
10 satisfied for the horticultural plant.

11 **55 At the end of subsection 40-525(3)**

12 Add:

13 Note: If Division 250 applies to you and an asset that is a grapevine:

- 14 (a) if section 250-115 applies—the condition in this subsection is  
15 taken to be satisfied for the grapevine to the extent specified in a  
16 determination made under subsection 250-115(3); or  
17 (b) otherwise—the condition in this subsection is taken not to be  
18 satisfied for the grapevine.

19 **56 At the end of subsection 40-630(1)**

20 Add:

21 Note: If Division 250 applies to you and an asset that is land:

- 22 (a) if section 250-115 applies—you are taken to be using the land for  
23 the purpose of carrying on a primary production business, or a  
24 business for the purposes of producing assessable income from  
25 the use of rural land (except a business of mining operations), to  
26 the extent specified in a determination made under subsection  
27 250-115(3); or  
28 (b) otherwise—you are taken not to be using the land for such a  
29 purpose.

30 **57 At the end of subsection 40-730(1)**

31 Add:

32 Note: If Division 250 applies to you and an asset that is land:

- 33 (a) if section 250-115 applies—you can deduct expenditure you  
34 incur in relation to the land to the extent specified in a  
35 determination made under subsection 250-115(3); or  
36 (b) otherwise—you cannot deduct such expenditure.
-

1 **58 Subsection 40-735(1) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **59 At the end of subsection 40-735(1)**

4 Add:

5 Note 2: If Division 250 applies to you and an asset that is land:

- 6 (a) if section 250-115 applies—you can deduct expenditure you  
7 incur in relation to the land to the extent specified in a  
8 determination made under subsection 250-115(3); or  
9 (b) otherwise—you cannot deduct such expenditure.

10 **60 Subsection 40-750(1) (note)**

11 Omit “Note”, substitute “Note 1”.

12 **61 At the end of subsection 40-750(1)**

13 Add:

14 Note 2: If Division 250 applies to you and an asset:

- 15 (a) if section 250-115 applies—you can deduct expenditure you  
16 incur in relation to the asset to the extent specified in a  
17 determination made under subsection 250-115(3); or  
18 (b) otherwise—you cannot deduct such expenditure.

19 **62 At the end of subsection 40-755(1)**

20 Add:

21 Note: If Division 250 applies to you and an asset that is land:

- 22 (a) if section 250-115 applies—you can deduct expenditure you  
23 incur in relation to the land to the extent specified in a  
24 determination made under subsection 250-115(3); or  
25 (b) otherwise—you cannot deduct such expenditure.

26 **63 At the end of section 40-835**

27 Add:

28 Note: If Division 250 applies to you and an asset:

- 29 (a) if section 250-115 applies—you are taken to be using the asset  
30 for taxable purposes to the extent specified in a determination  
31 made under subsection 250-115(3); or  
32 (b) otherwise—you are taken not to be using the asset for such  
33 purposes.
-

1 **64 At the end of subsection 40-880(1)**

2 Add:

3 Note: If Division 250 applies to you and an asset:

- 4 (a) if section 250-115 applies—you can deduct an amount for capital  
5 expenditure you incur in relation to the asset to the extent  
6 specified in a determination made under subsection 250-115(3);  
7 or  
8 (b) otherwise—you cannot deduct an amount for such expenditure.

9 **65 Subsection 43-140(1) (note)**

10 Omit “Note”, substitute “Note 1”.

11 **66 At the end of subsection 43-140(1)**

12 Add:

13 Note 2: If Division 250 applies to you and an asset that is a capital work:

- 14 (a) if section 250-115 applies—you are taken to be using the capital  
15 work for the purpose of producing assessable income, or for the  
16 purpose of carrying on research and development activities, to  
17 the extent specified in a determination made under subsection  
18 250-115(3); or  
19 (b) otherwise—you are taken not to be using the capital work for  
20 such a purpose.

21 **67 Section 112-97 (after table item 24)**

22 Insert:

23

24A	The arrangement period for the tax preferred use of an asset ends	The total cost base and reduced cost base	Subsection 250-165(3)
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24 **68 Subsection 396-75(2) (example)**

25 Repeal the example, substitute:

26 Example: The Commissioner may advise the Minister that:

- 27 • a lender is not an Australian resident; or  
28 • section 51AD of the *Income Tax Assessment Act 1936* may  
29 apply to the project; or  
30 • Division 250 may apply in relation to the land transport  
31 facilities.

1 **69 Paragraph 396-85(1)(c)**

2 Repeal the paragraph, substitute:

3 (c) that the borrower will not do anything that will cause the  
4 following provisions to apply to any of the facilities  
5 concerned:

6 (i) section 51AD of the *Income Tax Assessment Act 1936*;

7 (ii) Division 16D of Part III of that Act;

8 (iii) Division 250 of this Act;

9 **70 At the end of paragraph 974-130(4)(a)**

10 Add:

11 (vi) the asset leased or bailed is not an asset to which  
12 Division 250 of this Act applies;



1

2 **Part 3—Application**

3 **71 Application**

4 (1) Subject to subitems (3) and (5), Division 250 applies in relation to a tax  
5 preferred use of an asset if and only if the tax preferred use:

- 6 (a) starts on or after 1 July 2003; and  
7 (b) does not occur under a legally enforceable arrangement that  
8 was entered into before 1 July 2003.

9 (2) This subitem applies to an asset that is put to a tax preferred use if:

- 10 (a) the tax preferred use starts on or after 1 July 2003; and  
11 (b) the tax preferred use occurs under a legally enforceable  
12 arrangement that was entered into before 1 July 2003; and  
13 (c) immediately before 1 July 2003:  
14 (i) section 51AD did not apply to the asset in relation to a  
15 taxpayer; and  
16 (ii) Division 16D did not apply to the asset; and  
17 (d) the arrangement referred to in paragraph (b) is altered on or  
18 after 1 July 2003; and  
19 (e) but for this subitem and subitem (3):  
20 (i) section 51AD would apply to the asset in relation to a  
21 taxpayer immediately after the alteration; or  
22 (ii) Division 16D would apply to the asset immediately after  
23 the alteration.

24 For the purposes of applying paragraph (c), assume that the asset was in  
25 existence and was being put to the tax preferred use immediately before  
26 1 July 2003.

27 (3) If subitem (2) applies:

- 28 (a) section 51AD or Division 16D does not apply to the asset;  
29 and  
30 (b) Division 250 applies to the tax preferred use of the asset after  
31 the alteration instead.

32 (4) This subitem applies to an asset that is put to a tax preferred use if:

- 33 (a) the tax preferred use started before 1 July 2003; and  
34 (b) immediately before 1 July 2003:
-

**Schedule 1** Tax preferred entities (asset financing)

**Part 3** Application

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- 1 (i) section 51AD did not apply to the asset in relation to a  
2 taxpayer; and
- 3 (ii) Division 16D did not apply to the asset; and
- 4 (c) the arrangement under which the tax preferred use of the  
5 asset occurs is altered on or after 1 July 2003; and
- 6 (d) but for this subitem and subitem (5):
- 7 (i) section 51AD would apply to the asset in relation to a  
8 taxpayer immediately after the alteration; or
- 9 (ii) Division 16D would apply to the asset immediately after  
10 the alteration.
- 11 (5) If subitem (4) applies:
- 12 (a) section 51AD does not apply to the asset; and
- 13 (b) Division 250 applies to the tax preferred use of the asset after  
14 the alteration instead.
- 15 (6) For the purposes of applying subparagraphs (2)(c)(ii) and (e)(ii) and  
16 (4)(b)(ii) and (d)(ii), disregard the operation of section 159GL of the  
17 *Income Tax Assessment Act 1936*.
- 18 (7) For the purposes of applying Division 250 to the tax preferred use of an  
19 asset in accordance with subitem (3) or (5), the **arrangement period** for  
20 the tax preferred use of the asset is taken to start on the day on which  
21 the alteration referred to in paragraph (2)(d) or (4)(c) occurs.
- 22 (8) In this item:
- 23 **arrangement** has the same meaning as in the *Income Tax Assessment*  
24 *Act 1997*.
- 25 **Division 16D** means Division 16D of Part III of the *Income Tax*  
26 *Assessment Act 1936*.
- 27 **Division 250** means Division 250 of the *Income Tax Assessment Act*  
28 *1997*.
- 29 **section 51AD** means section 51AD of the *Income Tax Assessment Act*  
30 *1936*.
- 31 **tax preferred use** has the same meaning as in the *Income Tax*  
32 *Assessment Act 1997*.
-