

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2013 Measures**
3 **No. 1) Bill 2013: Taxation of Financial**
4 **Arrangements (Stages 3 and 4 Part 1)**
5

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Section 4	The day this Act receives the Royal Assent.	
2. Schedule 1	Immediately after the commencement of item 1 of Schedule 3 to the <i>Tax Laws Amendment (2010 Measures No. 4) Act 2010</i> .	26 March 2009

7

8 **4 Amendment of assessments**

9 Section 170 of the *Income Tax Assessment Act 1936* does not
10 prevent the amendment of an assessment if:

- 11 (a) the assessment was made before the commencement of
12 Schedule 1 to this Act; and
13 (b) the amendment is made within 2 years after that
14 commencement; and
15 (c) the amendment is made for the purpose of giving effect to
16 that Schedule.
17

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Schedule 1—Taxation of financial arrangements

Part 1—Core rules

Division 1—Attribution of costs

Income Tax Assessment Act 1997

1 Subsection 230-70(2)

Omit “are to provide”, substitute “might provide”.

2 Subsection 230-75(2)

Omit “are to receive”, substitute “might receive”.

Division 2—Interest

Income Tax Assessment Act 1997

3 Subsection 230-70(4)

Repeal the subsection.

4 At the end of section 230-70

Add:

Note: Generally, no financial benefit you have provided, or might provide, under a financial arrangement is reasonably attributable to an amount you receive that is in the nature of interest.

5 Subsection 230-75(4)

Repeal the subsection.

6 At the end of section 230-75

Add:

Note: Generally, no financial benefit you have received, or might receive, under a financial arrangement is reasonably attributable to an amount you provide that is in the nature of interest.

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1 Part 2—Accruals/realisation methods

2 Division 1—Sufficiently certain particular gains or losses

3 *Income Tax Assessment Act 1997*

4 **7 Paragraph 230-110(2)(a)**

5 After “gain or loss”, insert “, and the extent to which such a financial
6 benefit is, for the purposes of subsection 230-70(2) or 230-75(2),
7 reasonably attributable to the benefit, right or obligation mentioned in
8 paragraph (1)(c) or (d) of this section at the time mentioned in
9 subsection (1)”.

10 Division 2—Precedence of particular gains or losses

11 *Income Tax Assessment Act 1997*

12 **8 At the end of subsection 230-100(2) (before the note)**

13 Add:

14 ; and (c) you choose to apply the accruals method to the gain or loss,
15 or subsection (4) applies to the gain or loss.

16 **9 Paragraph 230-110(2)(b)**

17 Repeal the paragraph, substitute:

18 (b) disregard any financial benefit that has already been taken
19 into account, under subsection 230-105(1), in working out, at
20 the time when you started to have the arrangement, the
21 amount of a sufficiently certain overall gain or loss from the
22 *financial arrangement to which the accruals method applies;
23 and

24 **10 Subsection 230-130(2)**

25 Repeal the subsection.

26 Division 3—Spreading prepayments

27 *Income Tax Assessment Act 1997*

28 **11 After subsection 230-100(4)**

29 Insert:

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Accruals method—particular gain or loss becomes sufficiently certain

- (4A) The accruals method provided for in this Subdivision also applies to a gain or loss you have from a *financial arrangement if:
- (a) the gain or loss arises from a *financial benefit that you are to receive or are to provide under the arrangement; and
 - (b) the gain or loss becomes sufficiently certain at the time you receive or provide the benefit; and
 - (c) at least part of the period over which the gain or loss would be spread under that method (assuming that method applied) occurs after the time you receive or provide the benefit.

Note 1: Subsection 230-110(1) tells you when you have a sufficiently certain gain or loss at a particular time.

Note 2: For the period over which the gain or loss would be spread, see subsections 230-130(3) to (5).

12 Subsection 230-110(1)

Omit “will make”, substitute “make, or will make,”.

13 Subsection 230-115(1)

Omit “will make”, substitute “make, or will make,”.

14 Paragraph 230-130(4)(b)

Before “not start”, insert “other than in the case of a gain or loss to which subsection 230-100(4A) applies—”.

15 Subsection 230-130(5)

Repeal the subsection, substitute:

- (5) The end of the period over which a gain or loss to which subsection (3) applies is to be spread must not end later than the time when you will cease to have the *financial arrangement.

16 After subsection 230-170(2)

Insert:

- (2A) Subsections (1) and (2) do not apply to a part of a gain or loss if:
- (a) subsection 230-100(4A) applies to the gain or loss; and
 - (b) that part of the gain or loss is allocated to an interval under section 230-135; and

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1 (c) that interval ends before or during the income year during
2 which the gain or loss becomes sufficiently certain.
3 Instead, you are taken, for the purposes of section 230-15, to make,
4 for that income year, a gain or loss equal to that part of that gain or
5 loss.

6 **Division 4—Spreading single payment**

7 *Income Tax Assessment Act 1997*

8 **17 After subsection 230-135(6)**

9 Insert:

10 (6A) However, if there is only one *financial benefit that is to be taken
11 into account in working out the amount of the gain or loss, then,
12 for the purposes of paragraph (5)(b), in determining the amount to
13 which you apply the rate of return, have regard to a notional
14 principal:

- 15 (a) by reference to which the financial benefit is calculated; or
16 (b) which is reasonably related to the financial benefit.

17 **Division 5—Re-estimations**

18 *Income Tax Assessment Act 1997*

19 **18 Paragraph 230-190(1)(c)**

20 Omit “and”.

21 **19 Paragraph 230-190(1)(d)**

22 Repeal the paragraph.

23 **20 Subsection 230-190(2)**

24 Repeal the subsection, substitute:

25 (2) You must re-estimate the gain or loss as soon as reasonably
26 practicable after you become aware of the circumstances referred
27 to in paragraph (1)(b), if subsection (1) applies.

28 **21 After subsection 230-190(3)**

29 Insert:

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- 1 (3A) You also re-estimate a gain or loss from a *financial arrangement
2 under subsection (5) if:
- 3 (a) the gain or loss is spread using the method referred to in
4 paragraph 230-135(2)(b) in accordance with section 230-140
5 (effective interest method); and
- 6 (b) the maximum life of the arrangement (as determined under
7 the terms and conditions of the arrangement) is more than 12
8 months; and
- 9 (c) the method requires you to recalculate the effective interest
10 rate.
- 11 (3B) You must re-estimate the gain or loss at the relevant reset date if:
- 12 (a) subsection (3A) applies; and
- 13 (b) the terms and conditions of the *financial arrangement
14 provide for reset dates to occur no more than 12 months
15 apart.

16 **22 Subsections 230-190(8) to (10)**

17 Repeal the subsections.

18 **23 After section 230-190**

19 Insert:

20 **230-192 Re-estimation—impairments and reversals**

- 21 (1) This section applies if the re-estimation mentioned in
22 section 230-190 arises because of:
- 23 (a) an impairment (within the meaning of the *accounting
24 principles) of:
- 25 (i) the *financial arrangement; or
- 26 (ii) a financial asset or financial liability that forms part of
27 the arrangement; or
- 28 (b) a reversal of an impairment loss (within the meaning of the
29 accounting principles) that resulted from such an impairment.
- 30 (2) Despite paragraph 230-190(6)(a), you must make the fresh
31 allocation in accordance with paragraph 230-190(6)(b).
- 32 (3) You cannot deduct a loss you make for an income year under
33 section 230-15, to the extent that the loss results from:
- 34 (a) the impairment (including as affected by any later reversal of
35 the impairment loss that resulted from the impairment); or
- 36 (b) the operation of subsection (6).

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1 (4) Disregard subsection (3) for the purposes of step 1 of the method
2 statement in subsection 230-445(1).

3 *Reversal*

4 (5) Subsections (6) and (7) apply to the part of the gain or loss that is
5 to be reallocated in accordance with paragraph 230-190(6)(b), if:

6 (a) the fresh determination under paragraph 230-190(5)(a) that
7 arose because of the reversal resulted in that part being a
8 gain; and

9 (b) there are losses that:

10 (i) resulted from the impairment; and

11 (ii) you could have deducted apart from subsection (3).

12 (6) Treat the fresh determination as having resulted in that part being a
13 loss, if the total of the losses mentioned in paragraph (5)(b)
14 exceeds the amount of the gain mentioned in paragraph (5)(a). The
15 amount of the loss is equal to the amount of the excess.

16 (7) Otherwise, reduce the amount of that gain by the total of those
17 losses.

18 **Division 6—Running balancing adjustments**

19 *Income Tax Assessment Act 1997*

20 **24 After subsection 230-175(1)**

21 Insert:

22 (1A) Subsection (1) does not apply to the extent that the difference
23 results from:

24 (a) an impairment (within the meaning of the *accounting
25 principles) of:

26 (i) the *financial arrangement; or

27 (ii) a financial asset or financial liability that forms part of
28 the arrangement; or

29 (b) you writing off, as a bad debt, a right to a *financial benefit
30 (or a part of a financial benefit).

31 **25 After subsection 230-175(2)**

32 Insert:

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- 1 (2A) Subsection (2) does not apply to the extent that the difference
2 results from the reversal of an impairment loss (within the meaning
3 of the *accounting principles) that resulted from an impairment
4 (within the meaning of the accounting principles) of:
5 (a) the *financial arrangement; or
6 (b) a financial asset or financial liability that forms part of the
7 arrangement.

8 **Division 7—Ceasing of rights or obligations**

9 *Income Tax Assessment Act 1997*

10 **26 Subsection 230-180(2)**

11 Repeal the subsection, substitute:

- 12 (2) For the purposes of subsection (1), a gain or loss from a *financial
13 arrangement is taken to occur at the time at which the last of the
14 *financial benefits, rights and obligations taken into account in
15 determining the amount of the gain or loss:
16 (a) in the case of a financial benefit:
17 (i) is provided; or
18 (ii) if the financial benefit is not provided at the time when
19 it is due to be provided under the arrangement and it is
20 reasonable to expect that the financial benefit will be
21 provided—is due to be provided; or
22 (b) in the case of a right or obligation—ceases.
23 This subsection has effect subject to subsection (3).
24

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1 **Part 3—Fair value method**

2 *Income Tax Assessment Act 1997*

3 **27 Paragraph 230-40(4)(a)**

4 Repeal the paragraph, substitute:

- 5 (a) to the extent that Subdivision 230-C (fair value method)
6 applies to the gain or loss; or

7 Note: See subsection (5) of this section and subsection 230-230(4).

8 **28 Paragraph 230-220(1)(c)**

9 Omit “to classify or designate”, substitute “to classify, designate or (in
10 whole or in part) otherwise treat”.

11 **29 Subsection 230-230(1)**

12 Repeal the subsection, substitute:

- 13 (1) You make a gain or loss for an income year from a *financial
14 arrangement to which a *fair value election applies if:

15 (a) the principles or standards mentioned in paragraph
16 230-210(2)(a) require you to recognise a gain or loss in profit
17 or loss for the income year from the asset or liability
18 mentioned in paragraph 230-220(1)(c); or

19 (b) in the case of an arrangement to which subsection 230-220(2)
20 applies—the principles or standards referred to in paragraph
21 230-220(1)(c) would have required you to recognise a gain or
22 loss in profit or loss for the year from the asset or liability
23 mentioned in paragraph 230-220(1)(c) if the arrangement had
24 not been an intra-group transaction for the purposes of the
25 standard referred to in paragraph 230-220(2)(b); or

26 (c) in the case of an arrangement to which subsection 230-220(3)
27 applies—the principles or standards referred to in paragraph
28 230-220(1)(c) would have required you to recognise a gain or
29 loss in profit or loss for the year from the asset or liability
30 mentioned in paragraph 230-220(1)(c) if the arrangement had
31 been between 2 separate entities.

32 Note: Subsection 230-40(7) provides that an election under
33 Subdivision 230-E (hedging financial arrangements method) or
34 Subdivision 230-F (method of relying on financial reports) may
35 override a fair value election.

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1 (1A) The gain or loss you make is the gain or loss the principles or
2 standards require, or would have required, you to recognise in
3 profit or loss as mentioned in subsection (1).

4 **30 At the end of section 230-230**

5 Add:

6 *Subdivision does not apply to extent gains or losses not recognised*
7 *as at fair value*

8 (4) This Subdivision does not apply to a gain or loss you make from
9 the *financial arrangement, to the extent:

10 (a) you are required, as mentioned in paragraph 230-220(1)(c),
11 to otherwise treat the financial arrangement as at fair value
12 through profit and loss; and

13 (b) the principles or standards referred to in paragraph
14 230-210(2)(a) do not require you to recognise the gain or loss
15 as at fair value through profit or loss.

16 Note: See also subsection 230-40(5).

17 **31 At the end of section 230-245**

18 Add:

19 (6) In determining, for the purposes of the balancing adjustment under
20 subsection (2) or (4) or for the purposes of subsection (5), the fair
21 value of the *financial arrangement at a time, disregard any
22 changes in the fair value to the extent that:

23 (a) you are required, as mentioned in paragraph 230-220(1)(c),
24 to otherwise treat the financial arrangement as at fair value
25 through profit and loss; and

26 (b) the principles or standards referred to in paragraph
27 230-210(2)(a) do not require you to recognise the changes as
28 at fair value through profit or loss.
29

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1 Part 4—Hedging financial arrangements method

2 Division 1—One in all in principle

3 *Income Tax Assessment Act 1997*

4 **32 Section 230-325**

5 Repeal the section, substitute:

6 **230-325 Hedging financial arrangements to which election applies**

7 A *hedging financial arrangement election applies to a *hedging
8 financial arrangement:

- 9 (a) that you start to have in the income year in which you make
10 the election or in a later income year; and
11 (b) that is not excluded from the application of the election by
12 section 230-330.

13 Note: Subject to a determination by the Commissioner, the hedging financial
14 arrangement election does not apply to a financial arrangement you
15 start to have after you fail to comply with the requirements in
16 sections 230-355 and 230-360 and paragraph 230-365(c) in relation to
17 a hedging financial arrangement to which the election does apply: see
18 section 230-385. See also subsection 230-305(1).

19 **33 Paragraph 230-335(3)(d)**

20 Before “you satisfy”, insert “in a case in which none of subsections (5),
21 (6) and (7) are satisfied—”.

22 **34 Paragraph 230-335(3)(e)**

23 Before “you satisfy”, insert “in any case—”.

24 **35 After subsection 230-335(3)**

25 Insert:

26 (3A) Disregard paragraph (3)(d) if subsection (4) is satisfied and:

- 27 (a) a *hedging financial arrangement election applies to the
28 *financial arrangement (because you previously satisfied the
29 additional recording requirements mentioned in that
30 paragraph at a time when the election applied); or
31 (b) all of the following subparagraphs apply:
32 (i) a hedging financial arrangement election would apply to
33 the financial arrangement if you satisfied the additional
34 recording requirements mentioned in paragraph (3)(d);

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- 1 (ii) the election and subsection (3) apply to another
2 financial arrangement;
3 (iii) subsection (4) is or was satisfied in relation to that other
4 arrangement at a time when the election applied to that
5 other arrangement.

6 **36 Paragraph 230-365(c)**

7 Omit all the words after subparagraph (ii).

8 **37 At the end of section 230-365**

9 Add:

- 10 ; and (d) your assessment must be that the hedging of the risk will be
11 highly effective (within the meaning of the principles or
12 standards referred to in paragraph 230-315(2)(a)) in reducing
13 your exposure to changes in the fair value of the hedged item
14 or items or cash flows attributable to the hedged risk
15 throughout the remainder of the period for which you expect
16 to have the arrangement.

17 **38 Section 230-380 (heading)**

18 Repeal the heading, substitute:

19 **230-380 Commissioner may determine that requirement met**

20 **39 Section 230-385**

21 Repeal the section, substitute:

22 **230-385 Consequences of failure to meet requirements**

23 *When this section applies*

- 24 (1) This section applies if:
25 (a) your *hedging financial arrangement election applies to a
26 *hedging financial arrangement; and
27 (b) you do not meet a requirement of section 230-355 or 230-360
28 or paragraph 230-365(c) in relation to the arrangement.
- 29 (2) For the purposes of paragraph (1)(b), treat the requirement in
30 paragraph 230-365(c) as being met even if you do not assess the
31 hedging of the risk mentioned in that paragraph, but you can
32 demonstrate that you intend to do so.

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1 *Commissioner may determine matter under section 230-360*

- 2 (3) If:
- 3 (a) you fail to determine a matter in relation to the *hedging
4 financial arrangement under section 230-360; or
- 5 (b) you determine a matter in relation to the arrangement under
6 section 230-360 but the determination does not satisfy the
7 requirements of subsection 230-360(2);
- 8 the Commissioner may determine that matter. A reference in this
9 Division to a determination made under that section is treated as
10 including a reference to a determination under this subsection.

11 *Election does not apply to hedging financial arrangements you*
12 *start to have after failing to comply with requirements*

- 13 (4) Your *hedging financial arrangement election does not apply to a
14 *hedging financial arrangement you start to have:
- 15 (a) after you fail to meet the requirement mentioned in
16 paragraph (1)(b) in relation to the arrangement mentioned in
17 that paragraph; and
- 18 (b) before a date (if any) determined by the Commissioner.
- 19 (5) The Commissioner may make a determination under
20 paragraph (4)(b) only if satisfied that you are unlikely to fail again
21 to meet a requirement of section 230-355 or 230-360 or paragraph
22 230-365(c) in relation to a *hedging financial arrangement.
- 23 (6) In deciding whether to make a determination under
24 paragraph (4)(b), the Commissioner must have regard to:
- 25 (a) your record keeping practices; and
26 (b) your compliance history; and
27 (c) any changes that have been made to:
- 28 (i) your accounting systems and controls; and
29 (ii) your internal governance processes;
30 to ensure that failures of the kind mentioned in
31 paragraph (1)(b) do not happen again; and
32 (d) any other relevant matter.

33 *Commissioner may still exercise powers under section 230-380*

- 34 (7) This section does not prevent the Commissioner from exercising
35 the Commissioner's powers under section 230-380 in relation to
36 the *hedging financial arrangement mentioned in subsection (1).

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1 **Division 2—Hedging net investments in foreign**
2 **operations**

3 *Income Tax Assessment Act 1997*

4 **40 Subsection 230-310(5)**

5 Repeal the subsection, substitute:

6 (5) Subsection (6) applies if:

7 (a) a *hedged item is your net investment in a foreign operation
8 (within the meaning of the *accounting principles); and

9 (b) the foreign operation is carried on through:

10 (i) a company in which you hold *shares; or

11 (ii) a company that is a subsidiary of yours (within the
12 meaning of the *Corporations Act 2001*).

13 (6) The table in subsection (4) has effect as if:

14 (a) to the extent that the *hedging financial arrangement hedges a
15 risk or risks in relation to *shares you hold in the company—
16 the reference in that table to the *hedged item were a
17 reference to your interest in those shares; and

18 (b) to the extent that the hedging financial arrangement hedges a
19 risk or risks in relation to another interest you have in the
20 company—the reference in that table to the hedged item were
21 a reference to that interest.
22

EXPOSURE-DRAFT

1 Part 5—Transitional balancing adjustments

2 *Tax Laws Amendment (Taxation of Financial Arrangements)* 3 *Act 2009*

4 **41 At the end of paragraph 104(14)(c) of Schedule 1**

5 Add “and”.

6 **42 After paragraph 104(14)(c) of Schedule 1**

7 Insert:

8 (ca) the attributable assessable amount represents the whole of the
9 deferred tax effect of a gain or loss from the financial
10 arrangement that has been recognised in profit or loss in
11 accordance with the accounting principles mentioned in
12 paragraph 230-395(2)(a) of the *Income Tax Assessment Act*
13 *1997*;

14 **43 At the end of subitem 104(14) of Schedule 1**

15 Add:

16 Note: The deferred tax effect to be taken into account for the purposes of paragraph (ca) might
17 be affected by a later assessment, the amendment of an assessment or a law that applies
18 retrospectively.

19 **44 At the end of paragraph 104(15)(c) of Schedule 1**

20 Add “and”.

21 **45 After paragraph 104(15)(c) of Schedule 1**

22 Insert:

23 (ca) the attributable deductible amount represents the whole of the
24 deferred tax effect of a gain or loss from the financial
25 arrangement that has been recognised in profit or loss in
26 accordance with the accounting principles mentioned in
27 paragraph 230-395(2)(a) of the *Income Tax Assessment Act*
28 *1997*;

29 **46 At the end of subitem 104(15) of Schedule 1**

30 Add:

31 Note: The deferred tax effect to be taken into account for the purposes of paragraph (ca) might
32 be affected by a later assessment, the amendment of an assessment or a law that applies
33 retrospectively.

34

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1 Part 6—Elective requirements

2 *Income Tax Assessment Act 1997*

3 **47 At the end of Subdivision 230-I**

4 Add:

5 **230-527 Elections—reporting documents of foreign ADIs**

6 (1) So much of a Statement of Financial Performance and a Statement
7 of Financial Position, given to *APRA by a foreign ADI (within
8 the meaning of the *Banking Act 1959*) as required under section 13
9 of the *Financial Sector (Collection of Data) Act 2001*, as:

- 10 (a) cover the activities of an *Australian permanent
11 establishment of the foreign ADI for the year; and
12 (b) are prepared in accordance with the recognition and
13 measurement standards under the *accounting principles; and
14 (c) are audited in accordance with the *auditing principles;
15 are treated, for the purposes of the provisions mentioned in
16 subsection (2), as being a financial report for a year:
17 (d) prepared by the foreign ADI in accordance with the
18 accounting principles; and
19 (e) audited in accordance with the auditing principles.

20 (2) The provisions are as follows:

- 21 (a) sections 230-150 to 230-165 (election for portfolio treatment
22 of fees);
23 (b) sections 230-210 to 230-220 (fair value election);
24 (c) sections 230-255 to 230-265 (foreign exchange retranslation
25 election);
26 (d) sections 230-315 to 230-335 (hedging financial arrangement
27 election);
28 (e) sections 230-395, 230-400, 230-410 and 230-430 (election to
29 rely on financial reports).
30

EXPOSURE-DRAFT

1 **Part 7—Miscellaneous amendments**

2 **Division 1—Consistency of language**

3 *Income Tax Assessment Act 1997*

4 **48 Paragraphs 230-80(2)(a) and (3)(a)**

5 Omit “make”, substitute “have”.

6 **49 Subsections 230-100(2), (3), (4) and (5)**

7 Omit “make”, substitute “have”.

8 **50 Section 230-125**

9 Omit “make”, substitute “have”.

10 **Division 2—Other amendments**

11 *Income Tax Assessment Act 1997*

12 **51 Subparagraph 230-5(2)(a)(iv) (second occurring)**

13 Renumber as subparagraph (iva).

14 **52 Subparagraph 230-140(3)(c)(ii)**

15 Omit “will be provided or received”, substitute “is to be provided or
16 received”.

17 **53 Paragraph 230-190(7)(a)**

18 Omit “are to apply”, substitute “is to apply”.

19 Note: This item fixes a grammatical error.

20 **54 Subsections 230-290(1) and (3)**

21 Omit “*foreign currency retranslation election”, substitute “*foreign
22 exchange retranslation election”.

23 Note: This item fixes typographical errors.

24 **55 Paragraph 230-455(1)(d)**

25 Omit “subparagraph (iv)”, substitute “subparagraph (a)(iv)”.

26 Note: This item clarifies a cross-reference.