

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT LEGISLATION
Released for public comment December 2005

**Tax Laws Amendment (Taxation of
Financial Arrangements) Bill 2006**

No. , 2006

(Treasury)

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

EXPOSURE DRAFT

Contents

1	Short title	1
2	Commencement.....	1
3	Schedule(s)	2
Schedule 1—Main amendments		3
	<i>Income Tax Assessment Act 1997</i>	3

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Tax Laws Amendment (Taxation of*
6 *Financial Arrangements) Act 2006.*

7 **2 Commencement**

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2.		

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Schedule 1—Main amendments

Income Tax Assessment Act 1997

1 Before Division 240

Insert:

Division 230—Taxation of financial arrangements

Table of Subdivisions

	Guide to Division 230
230-A	Core rules
230-B	Fair value election
230-C	Foreign exchange retranslation election
230-D	Special rules about hedging financial arrangements
230-E	Commissioner discretions
230-F	Exceptions
230-G	Additional operation of Division

Guide to Division 230

230-1 What this Division is about

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

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

If it is reasonably likely you will make a gain, or it is reasonably likely you will make a loss, you use a compounding accruals basis. Otherwise you use a realisation basis. Instead of either, you can choose to use a fair value or hedging basis. You can also choose to

1 recognise foreign exchange gains and losses on a retranslation
2 basis.

3 **230-5 Scope of this Division**

- 4 (1) You have a financial arrangement if you have one or more legal or
5 equitable rights and/or obligations to receive or provide something
6 of economic value in the future.
- 7 (2) This Division does not apply to all financial arrangements. The
8 main exceptions are for the following:
- 9 (a) short-term financial arrangements where non-money amounts
10 are involved;
 - 11 (b) financial arrangements involving individuals, or entities
12 whose annual turnover is less than \$20,000,000, where there
13 is no significant deferral;
 - 14 (c) equity interests.

15 **Subdivision 230-A—Core rules**

16 **Table of sections**

17	230-10	Objects of this Division
18	230-15	Tax treatment of gains or losses from your financial arrangements
19	230-20	Disregarded gains or losses
20	230-25	How to work out gains or losses from your financial arrangements
21	230-30	Financial arrangement
22	230-35	Consistency in working out gains or losses

23 **230-10 Objects of this Division**

24 The objects of this Division are:

- 25 (a) to minimise the extent to which the tax treatment of gains
26 and losses on your financial arrangements distorts, through
27 the provision of inappropriate impediments and stimulation,
28 your trading, financing and investment decisions and your
29 risk taking and risk management; and
- 30 (b) to do so by aligning more closely the tax and commercial
31 recognition of gains and losses from your financial
32 arrangements in the following ways:

-
- 1 (i) by allocating such gains and losses to income years
2 throughout the life of your financial arrangements on a
3 reasonable basis; and
4 (ii) by generally recognising gains and losses on revenue
5 rather than capital account.

6 **230-15 Tax treatment of gains or losses from your financial**
7 **arrangements**

8 *Gains*

- 9 (1) Your assessable income includes a gain you make for the income
10 year from a *financial arrangement you have at any time in the
11 income year.

12 *Losses*

- 13 (2) You can deduct a loss you make for the income year from a
14 *financial arrangement you have at any time in the income year,
15 but only to the extent that:
16 (a) you make it in gaining or producing your assessable income;
17 or
18 (b) you necessarily make it in carrying on a *business for the
19 purpose of gaining or producing your assessable income.
- 20 (3) You can also deduct a loss you make for the income year from a
21 *financial arrangement you have at any time in the income year if:
22 (a) you are an *Australian entity; and
23 (b) you make the loss in deriving income from a foreign source;
24 and
25 (c) the income is *non-assessable non-exempt income under
26 section 23AI, 23AJ or 23AK of the *Income Tax Assessment*
27 *Act 1936*; and
28 (d) the loss is a cost in relation to a *debt interest issued by you
29 that is covered by paragraph (a) of the definition of **debt**
30 **deduction** in subsection 820-40(1).

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

1 *Effect on other provisions*

- 2 (4) If a gain or loss is included in your assessable income or allowable
3 as a deduction to you for an income year under this Division:
4 (a) the gain or loss is not included in your assessable income, or
5 allowable as a deduction to you, to any extent under any
6 other provision of this Act for the same or any other income
7 year; and
8 (b) an amount taken into account in working out the gain or loss
9 is not taken into account to any extent in working out an
10 amount included in your assessable income, or allowable as a
11 deduction to you, under any other provision of this Act for
12 the same or any other income year.

13 **230-20 Disregarded gains or losses**

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

- 15 (1) A gain is disregarded to the extent that:
16 (a) you make it in gaining or producing your *exempt income or
17 your *non-assessable non-exempt income; or
18 (b) you necessarily make it in carrying on a *business for the
19 purpose of gaining or producing your exempt income or your
20 non-assessable non-exempt income.

21 *Private or domestic nature*

- 22 (2) A gain or a loss is disregarded to the extent that it is of a private or
23 domestic nature.

24 **230-25 How to work out gains or losses from your financial**
25 **arrangements**

- 26 (1) To work out a gain or loss you make for an income year from a
27 *financial arrangement, use the method or methods that apply
28 under the table.

1

Table of methods for working out gains or losses

Item	In these circumstances...	Your gain or loss is...
1	a *fair value election applies to your *financial arrangement.	the gain or loss that the *accounting standards, or the other standards, mentioned in paragraph 230-45(1)(b), requires you to recognise for the income year on the financial asset or liability mentioned in that paragraph.
2	for the whole or part of the income year: (a) it is reasonably likely that you will make an actual net gain from your *financial arrangement; or (b) it is reasonably likely that you will make an actual net loss from your financial arrangement. In deciding this, you must: (c) have regard to the terms and conditions of your financial arrangement; and (d) assume that you will continue to have your financial arrangement until it ends. However, this item does not apply if a *fair value election applies to your financial arrangement or you cease to have your financial arrangement in the income year.	worked out on a compounding accruals basis for the whole or the part of the income year, as follows: (a) take into account the actual net gain or loss you are reasonably likely to make and the concept of compounding interest or returns; and (b) use a compounding period that does not exceed 12 months; and (c) assume that you will continue to have the financial arrangement until it ends. You can instead use a reasonable approximation of the above basis.
3	a foreign exchange retranslation election applies to your *financial arrangement.	equal to the amount in profit or loss mentioned in paragraph 230-60(1)(b) for the income year, reduced to the extent that you take the amount into account in working out a gain or loss under item 2.
4	item 1 does not apply and you realise a gain or loss in the income year because: (a) you cease to have the whole or part of your *financial arrangement before, during or after the income year; or (b) in the income year, you receive or provide a thing of economic value under your financial arrangement or the time for you to do so occurs.	your realised gain or loss, minus each amount worked out under item 2 of this table for this or a previous income year (so far as the amount relates to the realised gain or loss).

2

Note 1: If an entity becomes a subsidiary member of a consolidated group, the calculation of the gain or loss will be affected by the tax cost setting amount at the joining time: see section [to be drafted].

3

4

1 Note 2: Subdivision 230-D contains special rules about the tax treatment of
2 hedging financial arrangements.

3 *Exception where delivery involved*

4 (2) If:

5 (a) any of the things of economic value under a *financial
6 arrangement consists of a right to take delivery of, or an
7 obligation to deliver, a commodity, share or other thing
8 (other than money or a *money equivalent); and

9 (b) you cease to have the whole or part of the financial
10 arrangement because that delivery takes place; and

11 (c) a *fair value election does not apply to the financial
12 arrangement;

13 item 4 of the table in subsection (1) does not apply to the whole or
14 the part.

15 **230-30 Financial arrangement**

16 (1) You have a *financial arrangement* if you have any of the
17 following:

18 (a) a legal or equitable right to receive something of economic
19 value in the future;

20 (b) a legal or equitable obligation to provide something of
21 economic value in the future;

22 (c) a combination of one or more such rights and/or one or more
23 such obligations.

24 Note: The operative provisions of this Division do not apply to all financial
25 arrangements, and only apply partially to some: see the exceptions in
26 Subdivision 230-F.

27 *Matters relevant to determining what rights and/or obligations*
28 *comprise particular financial arrangements*

29 (2) Whether a number of rights and/or obligations are themselves a
30 financial arrangement or are 2 or more separate financial
31 arrangements is a question of fact and degree that you determine
32 having regard to the following:

33 (a) the nature of the rights and/or obligations;

34 (b) their terms and conditions, including those relating to any
35 payment or other consideration for them;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

- (c) the circumstances surrounding their creation and their proposed exercise or performance (including what can reasonably be seen as the purposes of persons involved);
- (d) normal commercial understandings and practices in relation to them;
- (e) the objects of this Division.

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

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

Note 2: If the commercial effect of your individual rights and/or obligations in a group or series cannot be understood without reference to the group or series as a whole, this would tend to indicate that all of your rights and/or obligations in the group or series together comprise one financial arrangement.

20 **230-35 Consistency in working out gains or losses**

- 21 (1) The object of this section is to stop you obtaining an inappropriate
22 tax benefit from not working out gains and losses in a consistent
23 manner.
- 24 (2) If this Division provides that the gain or loss from one or more
25 *financial arrangements that you have is to be worked out in a
26 particular manner for more than one income year, you must apply
27 that manner consistently to the financial arrangement, or to all of
28 the financial arrangements, for each of those income years.

29 **Subdivision 230-B—Fair value election**

30 **Table of sections**

31	230-40	Objects
32	230-45	Fair value election
33	230-50	Splitting financial arrangements into 2 financial arrangements

34 **230-40 Objects**

35 The objects of this Subdivision are:

-
- 1 (a) to allow you to align the tax treatment of gains and losses
2 from financial arrangements with the accounting treatment
3 that applies where financial assets and liabilities are
4 classified as at fair value through profit and loss;
5 (b) to facilitate efficient price-making; and
6 (c) to achieve the above objects without allowing you to obtain
7 an inappropriate tax benefit.

8 **230-45 Fair value election**

- 9 (1) You may make a *fair value election* that applies to each of your
10 *financial arrangements reported in a set of financial statements
11 where:
12 (a) Chapter 2M of the *Corporations Act 2001* applies to the set
13 of financial statements, or if it does not, comparable
14 provisions of a foreign law apply; and
15 (b) you are required (whether or not as a result of a choice you
16 make) by:
17 (i) *accounting standard AASB 139; or
18 (ii) if that standard does not apply—a comparable
19 accounting standard that applies under a foreign law;
20 to classify, in the set of financial statements, a financial asset
21 or liability as at fair value through profit and loss; and
22 (c) the financial asset or liability comprises the whole or part of
23 the financial arrangement; and
24 (d) you start to have the financial arrangement in the income
25 year in which you make the election or in a later income year.
26 (2) A *fair value election is irrevocable.

27 **230-50 Splitting financial arrangements into 2 financial**
28 **arrangements**

- 29 If:
30 (a) a *fair value election applies to a *financial arrangement that
31 you have; and
32 (b) the financial asset or financial liability mentioned in
33 paragraph 230-45(1)(c) comprises only part (the *fair valued*
34 *part*) of your financial arrangement;

1 the other provisions of this Division apply to your financial
2 arrangement as if it were instead 2 separate financial arrangements
3 that you have, as follows:

4 (c) one consisting of the fair valued part; and

5 (d) the other consisting of the remaining part.

6 **Subdivision 230-C—Foreign exchange retranslation election**

7 **Table of sections**

8	230-55	Objects
9	230-60	Foreign exchange retranslation election

10 **230-55 Objects**

11 The objects of this Subdivision are:

12 (a) to allow you to align the tax treatment of gains and losses
13 from foreign exchange rate changes with the accounting
14 treatment of profits and losses from such changes; and

15 (b) to achieve this without allowing you to obtain an
16 inappropriate tax benefit.

17 **230-60 Foreign exchange retranslation election**

18 (1) You may make a *foreign exchange retranslation election* that
19 applies to each of your *financial arrangements reported in a set of
20 financial statements where:

21 (a) Chapter 2M of the *Corporations Act 2001* applies to the set
22 of financial statements, or if it does not, comparable
23 provisions of a foreign law do; and

24 (b) you are required by:

25 (i) *accounting standard AASB 121; or

26 (ii) if that standard does not apply—a comparable
27 accounting standard that applies under a foreign law;

28 to recognise, in the set of financial statements, an amount in
29 profit or loss in respect of the financial arrangement; and

30 (c) you start to have the financial arrangement in the income
31 year in which you make the election or in a later income year.

32 (2) A *foreign exchange retranslation election is irrevocable.

1 **Subdivision 230-D—Special rules about hedging financial**
2 **arrangements**

3 **Table of sections**

4	230-65	Objects
5	230-70	Gains or losses where hedging financial arrangement elections apply
6	230-75	Table of events and allocation rules
7	230-80	Hedging financial arrangement election
8	230-85	Basic concepts: derivative financial arrangement, hedging financial arrangement and hedged item
9		
10	230-90	Requirement about recording details of the hedge
11	230-95	Requirements about allocation of gains and losses
12	230-100	Requirement about the effectiveness of the hedge
13	230-105	Where requirements of preceding sections not met
14	230-110	Where accounting standard applies hedging treatment on an “actually effective” basis
15		

16 **230-65 Objects**

17 The objects of this Subdivision are:

- 18 (a) to facilitate the efficient management of financial risk by
19 reducing after-tax timing mismatches where hedging takes
20 place; and
21 (b) to minimise tax deferral, including deferral arising from such
22 practices as tax advantaged selection from among possible
23 hedges.

24 **230-70 Gains or losses where hedging financial arrangement**
25 **elections apply**

- 26 (1) If you have a *hedging financial arrangement to which a *hedging
27 financial arrangement election applies, your gain or loss for an
28 income year from the hedging financial arrangement is worked out
29 under this section instead of under section 230-25.
- 30 (2) Except where subsection (3) applies, your gain or loss is equal to
31 your actual net gain or loss, and is allocated over income years
32 according to the basis described in the record mentioned in
33 subsection 230-95(1).

34 Note: The allocation is capable of extending to income years after you cease
35 to have the hedging financial arrangement.

-
- 1 (3) If an event listed in the table in section 230-75 occurs:
- 2 (a) your gain or loss is equal to any gain or loss that you would
- 3 realise if you disposed of your *hedging financial
- 4 arrangement for its *market value at the time of the event,
- 5 and the gain or loss is allocated over income years according
- 6 to the table; and
- 7 (b) this Division further applies as if, just after the event, you
- 8 had acquired the *financial arrangement for its market value
- 9 at the time of the event.

10 **230-75 Table of events and allocation rules**

11 For the purposes of paragraph 230-70(3)(a), the following table

12 lists events and their consequences:

13 **Table of events and allocation rules**

14

Item	If this event occurs...	Your gain or loss is allocated...
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-100 in relation to your hedging financial arrangement.	over income years according to the basis described in the record mentioned in subsection 230-95(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence; or (c) you have your *hedging financial arrangement when the period of 20 years mentioned in paragraph 230-95(2)(c), or 5 years mentioned in paragraph 230-95(2)(d), (about the maximum period for allocating gains or losses) ends.	to the income year in which the event occurs

1 **230-80 Hedging financial arrangement election**

- 2 (1) You can make a *hedging financial arrangement election* if, at or
3 before the time you start to have a *hedging financial arrangement,
4 the requirements in sections 230-90 to 230-100 are met.
- 5 (2) The *hedging financial arrangement election applies to your
6 *hedging financial arrangement for the income year in which you
7 start to have the hedging financial arrangement and all later income
8 years.
- 9 (3) The *hedging financial arrangement election is irrevocable.

10 **230-85 Basic concepts: derivative financial arrangement, hedging**
11 **financial arrangement and hedged item**

- 12 (1) This section defines the basic concepts used in this Subdivision.

13 *Hedging financial arrangement*

- 14 (2) A *derivative financial arrangement that you have is a *hedging*
15 *financial arrangement* if:
- 16 (a) you create, acquire or apply the derivative financial
17 arrangement for the purpose of hedging a risk or risks in
18 relation to an asset, liability or current or future transaction;
19 and
- 20 (b) at the time you do so, the derivative financial arrangement
21 satisfies the requirements of the *accounting standards (or, if
22 those standards do not apply, of applicable comparable
23 standards of a foreign law) to be a hedging instrument; and
- 24 (c) your financial accounts for the income year in which the
25 rights and/or obligations are created, acquired or applied
26 record the financial arrangement as a hedging instrument;
27 and
- 28 (d) those financial accounts are audited in accordance with:
- 29 (i) Chapter 2M of the *Corporations Act 2001*; or
30 (ii) if that Chapter does not apply, but comparable
31 provisions of a foreign law apply—those provisions.

1 *Where some requirements not satisfied*

- 2 (3) If a ^{*}derivative financial arrangement that you have would not be a
3 hedging financial arrangement only because the requirements of
4 paragraph (2)(b) or (c), or both, are not satisfied, it is nevertheless
5 a ***hedging financial arrangement*** if the Commissioner considers
6 this appropriate having regard to:
- 7 (a) in the case only of paragraph (2)(b)—the respects in which,
8 and extent to which, it does not satisfy the requirements of
9 the ^{*}accounting standards or the other standards; and
 - 10 (b) in the case of either paragraph—the reasons for the paragraph
11 not being satisfied and the objects of this Subdivision.

12 *Derivative financial arrangement*

- 13 (4) A ***derivative financial arrangement*** is a ^{*}financial arrangement
14 that you have where:
- 15 (a) its value changes in response to changes in a specified
16 variable or variables; and
- 17 Note: A specified variable includes an interest rate, foreign exchange
18 rate, credit rating or index, commodity or financial instrument
19 price.
- 20 (b) there is no requirement for a net investment, or there is such
21 a requirement but the net investment is smaller than would be
22 required for other types of financial arrangement that would
23 be expected to have a similar response to changes in market
24 factors.

25 *Hedged item*

- 26 (5) Each asset, liability or current or future transaction whose risk is
27 hedged by a ^{*}hedging financial arrangement that you have is a
28 ***hedged item***.

29 **230-90 Requirement about recording details of the hedge**

- 30 (1) The requirement of this section is that you must make a record
31 containing a description of the following:
- 32 (a) the ^{*}hedging financial arrangement;
 - 33 (b) the purpose of the hedging;
 - 34 (c) the nature of the risk being hedged;
 - 35 (d) the ^{*}hedged item or items;
-

-
- 1 (e) how you will assess the effectiveness of the hedging of the
2 risk in reducing your exposure to changes in the *market
3 value of the hedged item or items or cash flows attributable
4 to them.
- 5 (2) The description must be sufficiently precise that the following are
6 clear:
- 7 (a) that the risk in respect of the particular *hedged item or items
8 was the one hedged by the *hedging financial arrangement;
9 (b) the extent to which the risk was hedged;
10 (c) that the rights and/or obligations comprising the hedging
11 financial arrangement were in fact those created, acquired or
12 applied for the purpose of hedging the risk.

13 **230-95 Requirements about allocation of gains and losses**

- 14 (1) A requirement of this section is that you must:
- 15 (a) determine the basis on which your gains and losses from the
16 *hedging financial arrangement are to be allocated over
17 income years for the purposes of this Division; and
18 (b) make a record describing the basis.
- 19 (2) It is also a requirement of this section that the basis that you
20 determine must:
- 21 (a) be objective; and
22 (b) fairly and reasonably correspond with the basis on which you
23 allocate your gains and losses from the *hedged item or
24 items; and
25 (c) if there is only one hedged item—not extend over more than
26 20 years from the time you start to have the *hedging
27 financial arrangement; and
28 (d) if there is more than one hedged item—not extend over more
29 than 5 years from the time you start to have the hedging
30 financial arrangement.

31 **230-100 Requirement about the effectiveness of the hedge**

- 32 The requirement of this section is that:
- 33 (a) the hedging of the risk must be expected to be highly
34 effective in reducing your exposure to changes in the *market

-
- 1 value of the *hedged item or items or cash flows attributable
2 to your hedged risk; and
- 3 (b) for cash flows in relation to the hedged item or items, the
4 forecast risk must be highly probable and must involve an
5 exposure to variations in cash flows that could ultimately
6 affect your taxable income; and
- 7 (c) the market value of the hedged item or items or cash flows
8 relating to them and the market value of the *hedging
9 financial arrangement must be able to be reliably measured;
10 and
- 11 (d) you must assess the hedging of the risk by the hedging
12 financial arrangement on an ongoing basis and your
13 assessment must be that it is highly effective in reducing your
14 exposure to changes in the market value of the hedged item
15 or items or cash flows attributable to the hedged risk
16 throughout the period that it has been in operation.

17 **230-105 Where requirements of preceding sections not met**

18 If a *hedging financial arrangement that you have would not meet
19 the requirements of sections 230-90 to 230-100, it nevertheless
20 meets the requirements if the Commissioner considers this
21 appropriate having regard to:

- 22 (a) the respects in which it would not do so; and
23 (b) the extent to which it would not do so; and
24 (c) the reasons why it would not do so; and
25 (d) the objects of this Subdivision.

26 **230-110 Where accounting standard applies hedging treatment on
27 an “actually effective” basis**

- 28 (1) If this section applies to a *hedging financial arrangement that you
29 have, for the purposes of applying this Division (other than
30 section 230-135), the hedging financial arrangement is treated as 2
31 separate *financial arrangements, as follows:
- 32 (a) a hedging financial arrangement that consists of that part in
33 respect of which the gain or loss is actually effective in
34 hedging the risk; and
- 35 (b) another financial arrangement consisting of the remaining
36 part.

-
- 1 (2) This section applies to a *hedging financial arrangement that you
2 have if:
- 3 (a) you make a *hedging financial arrangement election that
4 applies to the hedging financial arrangement; and
- 5 (b) according to the *accounting standards, only that part of a
6 gain or loss on the financial assets or financial liabilities that
7 comprise the financial arrangement that is actually effective
8 in hedging a risk is to be treated as a hedge.

9 **Subdivision 230-E—Commissioner discretions**

10 **Table of sections**

11 230-115 Commissioner discretion to rely on financial records
12 230-120 Commissioner discretion to apply Division on an arm's length basis

13 **230-115 Commissioner discretion to rely on financial records**

- 14 (1) If the auditing and election requirements in subsection (2) are
15 satisfied for an income year in relation to a *financial arrangement
16 that you have and:
- 17 (a) in one or more respects the way in which you have worked
18 out a gain or loss from the financial arrangement for the
19 income year in your financial records differs from the way
20 the gain or loss is worked out in accordance with this
21 Division (disregarding section 230-120); and
- 22 (b) the Commissioner is satisfied that the difference is not
23 substantial and that, if the gain or loss were worked out for
24 the purposes of this Division in the way you have done, this
25 would be in accordance with the objects of this Division; and
- 26 (c) having regard to:
- 27 (i) the cost of your complying with this Division; and
28 (ii) the cost of administering this Division; and
29 (iii) any other matter that the Commissioner considers
30 relevant;
- 31 the Commissioner considers it appropriate that the way in
32 which you worked out the gain or loss should also apply for
33 the purposes of this Division;
- 34 then, subject to section 230-120, the gain or loss is so worked out
35 for the purposes of this Division.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

-
- (2) The auditing and election requirements for the income year in relation to a *financial arrangement that you have (the *subject arrangement*) are as follows:
- (a) your financial records for the income year must be audited in accordance with Chapter 2M of the *Corporations Act 2001* or, if that Chapter does not apply to you, in accordance with the applicable comparable auditing requirements of a foreign law; and
 - (b) a *fair value election and a *foreign currency retranslation election must apply in relation to the set of financial statements in which the subject arrangement is reported; and
 - (c) a *hedging financial arrangement election must apply to:
 - (i) if the subject arrangement is a *hedging financial arrangement—the subject arrangement; and
 - (ii) each other hedging financial arrangement you have that you started to have in the same income year as, or a later income year than, the subject arrangement and that is reported in the set of financial statements in which the subject arrangement is reported.

20
21

230-120 Commissioner discretion to apply Division on an arm's length basis

22
23
24
25
26
27
28
29
30
31
32
33
34

If the Commissioner is satisfied, having regard to any connection between you and another entity, that:

- (a) you and the other entity were not dealing with each other at arm's length in relation to any of the rights and/or obligations comprising a *financial arrangement that you have; and
- (b) as a result, this Division has a different operation in relation to the financial arrangement than it would have had if you and the other entity had been dealing with each other at arm's length in relation to the rights and/or obligations;

this Division has the operation that the Commissioner considers it would have had in relation to the financial arrangement if you and the other entity had been dealing with each other at arm's length in relation to the rights and/or obligations.

35

Subdivision 230-F—Exceptions

36

Table of sections

1	230-125	Exception for short-term arrangements where non-money amount involved
2	230-130	Exception for individual or small business where no significant deferral
3	230-135	Exceptions for various rights and/or obligations
4	230-140	Deliverable derivatives disposed of prior to maturity
5	230-145	Disposal or redemption of traditional securities
6	230-150	Forgiveness of commercial debts

7 **230-125 Exception for short-term arrangements where non-money**
8 **amount involved**

9 This Division does not apply in relation to your gains and losses
10 from a *financial arrangement, other than a *derivative financial
11 arrangement, for any income year if:

- 12 (a) either the thing or things of economic value or the
13 consideration for them, or both, are not money or a *money
14 equivalent; and
- 15 (b) the period between the time the consideration (or a
16 substantial proportion of it) is to be received or given and the
17 time the thing or things of economic value (or a substantial
18 proportion of them) are to be received or provided is not
19 more than 12 months; and
- 20 (c) a *fair value election does not apply to the financial
21 arrangement.

22 **230-130 Exception for individual or small business where no**
23 **significant deferral**

24 (1) This Division does not apply to your gains or losses from a
25 *financial arrangement for any income year if:

- 26 (a) you are:
- 27 (i) an individual; or
- 28 (ii) an entity whose turnover for the income year (worked
29 out at the end of the income year) in which you start to
30 have the financial arrangement is less than \$20,000,000;
31 and
- 32 (b) either:
- 33 (i) the financial arrangement is to end not more than 12
34 months after you start to have it; or
- 35 (ii) the implicit annual interest rate of your return from the
36 financial arrangement, worked out over the period from
37 when you start to have it until it is to end, does not

1 differ by more than 1.5 percentage points from the
2 interest rate of the return worked out in respect of your
3 actual receipts and payments for any single income
4 year.

- 5 (2) For the purposes of subparagraph (1)(a)(ii), the question whether
6 your turnover for the income year mentioned in that
7 subparagraph (worked out at the end of the income year) is less
8 than \$20,000,000 is to be determined by applying subsection
9 188-10(2) of the *GST Act as if the amount of \$20,000,000 were a
10 turnover threshold for the purposes of that subsection.

11 **230-135 Exceptions for various rights and/or obligations**

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

16 *Equity interest*

- 17 (2) A right carried by an *equity interest, or an obligation that
18 corresponds to such a right, is the subject of an exception, unless a
19 *fair value election applies to the *financial arrangement and the
20 right or obligation is not that of the issuer of the equity interest.

21 *Interest in partnership or trust*

- 22 (3) A right carried by an interest in a partnership or a trust, or an
23 obligation that corresponds to such a right, is the subject of an
24 exception if:
25 (a) there is only one class of interest in the partnership or trust;
26 or
27 (b) the interest would be an *equity interest if the partnership or
28 trust were a company and the holder of the interest were a
29 member.

30 *Life insurance policy*

- 31 (4) A right or obligation under a life insurance policy within the
32 meaning of the *Life Insurance Act 1995* is the subject of an
33 exception.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Personal services

- (5) A right to receive, or an obligation to provide:
 - (a) personal services; or
 - (b) consideration for the provision of personal services;is the subject of an exception.

Restrictive covenant

- (6) A right to the benefit of a restrictive covenant, or an obligation to be bound by a restrictive covenant, is the subject of an exception.

Personal injuries

- (7) A right or obligation arising from a personal injury is the subject of an exception.

Leasing or property arrangement

- (8) A right or obligation arising under:
 - (a) an arrangement to which Division 42A (Leases of luxury cars) of Schedule 2E to the *Income Tax Assessment Act 1936* applies; or
 - (b) an arrangement to which Division 240 (Arrangements treated as a sale and loan) of this Act applies.

230-140 Deliverable derivatives disposed of prior to maturity

- If:
- (a) you have a *derivative financial arrangement where all of the things of economic value consist of a right to take delivery of, or an obligation to deliver, a commodity, share or other thing; and
 - (b) a gain or loss that you make arises from ceasing to have the derivative financial arrangement (other than by delivery of the commodity, share or other thing); and
 - (c) ignoring this Division, a gain or loss from delivery of the commodity, share or other thing would not have been included in your assessable income (other than under Part 3-1 or 3-3—about capital gains and capital losses) or allowable as a deduction to you; and

1 (d) a *fair value election does not apply to the derivative
2 financial arrangement;
3 this Division does not apply to the gain or loss.

4 Note 1: The loss is however a capital loss: see CGT event *[to be drafted]*.

5 Note 2: Subsection 230-25(2) contains a rule about deliverable derivatives that
6 are settled by delivery.

7 **230-145 Disposal or redemption of traditional securities**

8 To the extent that, ignoring this Division, subsection 70B(4) (about
9 disposal or redemption of traditional securities that are not
10 deductible) of the *Income Tax Assessment Act 1936* prevents you
11 from deducting a loss that you make from a *financial arrangement,
12 this Division does not apply to the loss.

13 Note: The loss is however a capital loss: see CGT event *[to be drafted]*.

14 **230-150 Forgiveness of commercial debts**

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

19 (a) if section 245-90 (about agreements to forgo capital losses or
20 revenue reductions) of that Schedule does not apply—the
21 debt's net forgiven amount as defined in paragraph
22 245-85(2)(a) of that Schedule; or

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

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

29 **Subdivision 230-G—Additional operation of Division**

30 **Table of sections**

31 230-155 Additional operation of Division in relation to foreign currency

1 **230-155 Additional operation of Division in relation to foreign**
2 **currency**

3 This Division also applies to foreign currency as if it were the right
4 that comprised a *financial arrangement.

5 **2 Subsection 995-1(1)**

6 Insert:

7 *derivative financial arrangement* has the meaning given by
8 subsection 230-85(4).

9 *fair value election* has the meaning given by subsection 230-45(1).

10 *financial arrangement* has the meaning given by section 230-30.

11 *foreign exchange retranslation election* has the meaning given by
12 subsection 230-60(1).

13 *hedged item* has the meaning given by subsection 230-85(5).

14 *hedging financial arrangement* has the meaning given by
15 subsections 230-85(2) and (3).

16 *hedging financial arrangement election* has the meaning given by
17 section 230-80.

18 *money equivalent* means:

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