



**Tax Laws Amendment (2013 Measures  
No. 2) Act 2013**

**No. 124, 2013**

**An Act to amend the law relating to taxation and  
the *Tax Agent Services Act 2009*, and for other  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Schedule 2—Incentives for designated infrastructure projects

### Part 1—Main amendments

#### *Income Tax Assessment Act 1936*

##### **1 At the end of section 272-100 in Schedule 2F**

Add:

; or (f) it is a designated infrastructure project entity at the particular time.

#### *Income Tax Assessment Act 1997*

##### **2 Paragraph 165-35(b)**

Omit “*period*.”, substitute “*period*); or”.

##### **3 After paragraph 165-35(b)**

Insert:

(c) the company was a \*designated infrastructure project entity during the whole of the income year.

Note: See subsection 415-35(7) if there is only part of the income year during which the company was a designated infrastructure project entity.

##### **4 At the end of Part 3-45**

Add:

### Division 415—Designated infrastructure projects

#### Table of Subdivisions

	Guide to Division 415
415-A	Object of this Division
415-B	Tax losses and bad debts
415-C	Designating infrastructure projects

## Guide to Division 415

### 415-1 What this Division is about

This Division provides for special treatment for tax losses and bad debts for certain entities (called “designated infrastructure project entities”) that carry on infrastructure projects that the Infrastructure Coordinator designates under Subdivision 415-C.

### Subdivision 415-A—Object of this Division

#### Table of sections

415-5 Object of this Division

### 415-5 Object of this Division

The object of this Division is to reduce the disincentives for private expenditure on nationally significant infrastructure that result from the long lead times between incurring deductions for, and earning assessable income from, such expenditure.

### Subdivision 415-B—Tax losses and bad debts

## Guide to Subdivision 415-B

### 415-10 What this Subdivision is about

The unutilised amounts of a designated infrastructure project entity’s tax losses are increased each year by the long term bond rate. A *designated infrastructure project entity* is a fixed trust or company that:

- (a) carries on an infrastructure project designated under Subdivision 415-C; and
- (b) only engages, and has only ever engaged, in activities for the purposes of carrying on that designated infrastructure project.

## Schedule 2 Incentives for designated infrastructure projects

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The tests that apply in relation to tax losses and bad debts if there is a change of ownership of an entity are modified so that periods during which the entity is a designated infrastructure project entity are not tested.

The loss utilisation rules in Subdivision 707-C do not apply if the head company of a consolidated group is a designated infrastructure project entity after another designated infrastructure project entity joins the group.

Note: The transfer rules in subsection 707-120(1A) do not apply if a designated infrastructure project entity joins a consolidated group: see subsection 707-120(5).

### Table of sections

#### Uplift of tax losses

- 415-15 Uplift of tax losses of designated infrastructure project entities  
415-20 *Designated infrastructure project entity*

#### Change of ownership of trusts and companies

- 415-25 Tax losses of trusts  
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415-40 Bad debts written off by companies

#### Consolidated groups

- 415-45 Losses transferred to head companies of consolidated groups

### Uplift of tax losses

#### 415-15 Uplift of tax losses of designated infrastructure project entities

- (1) The amount of a <sup>\*</sup>tax loss of a <sup>\*</sup>loss year of an entity is increased, at the end of each later income year (and before any <sup>\*</sup>utilisation of the tax loss by the entity in the later income year), by the amount worked out using the following formula:

$$\begin{array}{r} \text{Amount of the } ^*\text{tax loss,} \\ \text{to the extent it has} \\ \text{not been } ^*\text{utilised} \end{array} \times \begin{array}{r} ^*\text{Long term bond} \\ \text{rate for the later} \\ \text{income year} \end{array} \times \begin{array}{r} \text{Eligible portion} \\ \text{of the later} \\ \text{income year} \end{array}$$

where:

*eligible portion of the later income year* means the amount worked out using the following formula:

$$\frac{\text{Number of days in the later income year on which subsection (2) applies to the entity}}{\text{Number of days in the later income year}}$$

- (2) This subsection applies to the entity on a day in the later income year if:
- (a) the entity is a \*designated infrastructure project entity on that day; and
  - (b) on the day mentioned in subsection (3), the entity has notified the Commissioner (whether before, during or after the later income year) in the \*approved form that the entity was, at any time, a designated infrastructure project entity.
- (3) For the purposes of paragraph (2)(b), the day is the day after the latest of the following days:
- (a) the day before which the entity:
    - (i) is required to lodge its \*income tax return for the later income year with the Commissioner; or
    - (ii) if the entity is not required to lodge an income tax return for the later income year—would be required to lodge its income tax return for the later income year were the entity required to lodge such a return;
  - (b) the 28th day after the first day the entity \*carries on the infrastructure project mentioned in paragraph 415-20(1)(b);
  - (c) the 28th day after the day the Infrastructure Coordinator designates the infrastructure project under section 415-70;
  - (d) a later day allowed by the Commissioner.

Note: The increase under this section can occur at the end of an income year even if, at the end of the year, the entity does not know the entity is a designated infrastructure project entity (e.g. because the Infrastructure Coordinator has not yet designated the infrastructure project that the entity carries on, but the Infrastructure Coordinator does so later).

*Consolidated groups*

- (4) Disregard paragraph 701-30(3)(a) for the purposes of the denominator in the formula in the definition of ***eligible portion of the later income year*** in subsection (1) of this section.

Note: Paragraph 701-30(3)(a) applies if the entity becomes a subsidiary member of a consolidated group during the later income year.

- (5) For the purposes of applying this section to a \*tax loss the \*head company of a \*consolidated group makes as mentioned in subsection 707-140(1):
- (a) the head company is treated as having made the loss in the income year before the income year in which the transfer mentioned in that subsection occurs; and
  - (b) subsection (2) of this section is treated as not applying to the head company on or before the day the transfer occurs;
- unless the transferred loss was a non-membership period loss (within the meaning of subsection 701-30(3)) in relation to the group.

Note: Subsection 707-140(1) treats the head company of a consolidated group as having made a loss in an income year in which a loss is transferred to the head company from an entity that joins the group.

*Total net forgiven amounts*

- (6) A reference in subsection (1) to any \*utilisation of a \*tax loss is treated as including a reference to any reduction of the loss by the application of a \*total net forgiven amount.

**415-20 Designated infrastructure project entity**

*Designated infrastructure project entity*

- (1) An entity is a ***designated infrastructure project entity*** at a time (the ***relevant time***) if:
- (a) at the relevant time, the entity is a \*fixed trust or a company; and
  - (b) at or after the relevant time, the entity \*carries on a single \*designated infrastructure project; and
  - (c) the entity does not, at or before the relevant time, carry on any other designated infrastructure project; and

- (d) the only activities in which the entity engages at the relevant time, or engaged before the relevant time, are or were for the purposes of the entity carrying on the single designated infrastructure project.
- (2) For the purposes of this section:
- (a) an \*enterprise that becomes a \*designated infrastructure project at a time is treated as having been a designated infrastructure project at all earlier times; and
  - (b) if the entity \*carries on (whether or not at the same time) one or more parts, but not the whole, of a single designated infrastructure project—the parts are treated as being a single designated infrastructure project; and
  - (c) in any case—the following are treated as being a single designated infrastructure project:
    - (i) a single designated infrastructure project (the ***listed infrastructure project***) that is included on an Infrastructure Priority List;
    - (ii) any designated infrastructure projects that the entity carries on (whether or not at the same time) and that are part of the listed infrastructure project; and
- Note: For Infrastructure Priority Lists, see paragraph 5(2)(b) of the *Infrastructure Australia Act 2008*.
- (d) in any case—any designated infrastructure projects that the entity carries on (whether or not at the same time) and that are part of a single infrastructure project that:
- (i) is included on an Infrastructure Priority List; and
  - (ii) is not a designated infrastructure project;
- are treated as being a single designated infrastructure project.

#### *Partnerships*

- (3) Subsection (4) applies to an entity if:
- (a) the entity is a \*fixed trust or a company; and
  - (b) the person that is the trustee of the trust, or the person that is the company, is a partner in a partnership.
- (4) For the purposes of subsections (1) and (2), the entity:
- (a) is treated as \*carrying on any \*designated infrastructure project carried on by the partnership; and

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- (b) is treated as engaging in any activity engaged in by the partnership; and
- (c) if the partnership engages in an activity for the purpose of the partnership carrying on a designated infrastructure project— is treated as engaging in that activity for the purpose of the entity carrying on that designated infrastructure project.

#### *Consolidated groups*

- (5) For the purposes of working out whether the \*head company of a \*consolidated group was a \*designated infrastructure project entity at a time (whether before or after the group consolidates), section 701-5 (Entry history rule) is treated as not applying to the head company in relation to an entity that was not a \*member of the consolidated group at that time.
- (6) For the purposes of working out whether an entity is a \*designated infrastructure project entity at a time after the entity ceases to be a \*subsidiary member of a \*consolidated group, section 701-40 (Exit history rule) is treated as not applying to the entity in relation to the group.

## Change of ownership of trusts and companies

### 415-25 Tax losses of trusts

#### *Scope*

- (1) This section applies to a \*tax loss of a \*trust if the trust is a \*designated infrastructure project entity at a time (the *status time*) in the \*loss year.

#### *Modifications of Schedule 2F to the Income Tax Assessment Act 1936*

- (2) Despite paragraph 266-25(1)(b), 266-30(a), 266-75(1)(b) or (2)(b), 266-80(1)(a) or (2)(a), 266-110(1)(b), 266-115(a), 266-150(2)(a), 266-155(2)(a), 267-20(1)(b) or 267-60(a) in Schedule 2F to the *Income Tax Assessment Act 1936*, for the purposes of sections 266-40 and 266-45, section 266-90, subsections 266-125(1) and (2), subsections 266-165(1) and (2), sections 267-40 and 267-45 or sections 267-70 and 267-75 in that

Schedule (whichever are applicable), the test period starts at the first time:

- (a) that occurs after the status time; and
- (b) at which the trust is not a \*designated infrastructure project entity;

if, apart from this subsection, the test period would start earlier.

- (3) For the purposes of section 267-30 in that Schedule, disregard any part of an income year during which the trust is a \*designated infrastructure project entity.
- (4) For the purposes of working out, under subsection 268-10(3), 268-15(3) or 268-20(3) in that Schedule, the end of the first period, disregard any part of the income year mentioned in that subsection during which the trust is a \*designated infrastructure project entity.

Note: A trust does not calculate its net income and tax loss under Division 268 in that Schedule if the trust was a designated infrastructure project entity during the whole of the income year: see paragraphs 266-30(c), 266-80(1)(d) and (2)(c), 266-115(b), 266-155(2)(b), 267-60(b) and 272-100(f) in that Schedule.

- (5) For the purposes paragraph 268-20(4)(b) in that Schedule, disregard any part of the first of the successive periods during which the trust is a \*designated infrastructure project entity.

#### **415-30 Bad debts written off etc. by trusts**

##### *Scope*

- (1) This section applies to a debt to which paragraph 266-35(1)(a), 266-85(1)(a) or (2)(a), 266-120(1)(a), 266-160(1)(a) or (b), 267-25(1)(a) or 267-65(1)(a) in Schedule 2F to the *Income Tax Assessment Act 1936* applies, if the trust is a \*designated infrastructure project entity at a time (the *status time*) in the income year in which the debt was incurred.

##### *Modifications of Schedule 2F to the Income Tax Assessment Act 1936*

- (2) Despite paragraph 266-35(1)(b), 266-85(1)(b) or (2)(b), 266-120(1)(b), 266-160(2)(a), 267-25(1)(b) or 267-65(1)(a) in that Schedule, for the purposes of sections 266-40 and 266-45, section 266-90, subsections 266-125(1) and (2),

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subsections 266-165(1) and (2), sections 267-40 and 267-45 or sections 267-70 and 267-75 in that Schedule (whichever are applicable), the test period starts at the first time:

- (a) that occurs after the status time; and
  - (b) at which the trust is not a \*designated infrastructure project entity.
- (3) For the purposes of section 267-30 in that Schedule, disregard any part of an income year during which the trust is a \*designated infrastructure project entity.

### 415-35 Tax losses of companies

#### *Scope*

- (1) This section applies to a \*tax loss of a company if the company is a \*designated infrastructure project entity at a time (the *status time*) in the \*loss year.

#### *Modifications of Divisions 165 and 166*

- (2) Despite subsection 165-12(1), 166-5(2) or 166-20(1), the \*ownership test period or \*test period under that subsection starts at the earlier of:
- (a) the first time:
    - (i) that occurs after the status time; and
    - (ii) at which the company is not a \*designated infrastructure project entity; and
  - (b) the end of the income year referred to in that subsection as the income year.
- (3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-12.
- (4) Despite subsection 165-13(2), 166-5(5), 165-15(2) or 166-20(4), the \*same business test period under that subsection starts at the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the same business test period would start earlier.
- (5) Despite subsection 165-13(2), 165-15(3), 166-5(6) or 166-20(4), the \*test time under that subsection occurs just after the start of the

\*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.

- (6) A reference in subsection 165-15(1) to the \*loss year is treated as being a reference to the period:
- (a) starting at the start of the \*ownership test period; and
  - (b) ending at the end of the income year in which the ownership test period starts.
- (7) For the purposes of working out, under paragraph 165-45(3)(a) or (b) or subsection 165-45(4), the end of the first period, disregard any part of the income year mentioned in section 165-45 during which the company is a \*designated infrastructure project entity.

Note: A company does not calculate its taxable income and tax loss under Subdivision 165-B if the company was a designated infrastructure project entity during the whole of the income year: see paragraph 165-35(c).

#### *Exceptions*

- (8) Disregard this section for the purposes of Subdivisions 165-CA and 165-CB (about net capital losses) and 175-A and 175-CA (about tax benefits).

### **415-40 Bad debts written off by companies**

#### *Scope*

- (1) This section applies to a debt that a company writes off as bad, if the company is a \*designated infrastructure project entity at a time (the *status time*) in the income year in which the debt was incurred.

#### *Modifications of Divisions 165 and 166*

- (2) Despite subsection 165-123(1) or 166-40(2), the \*ownership test period or \*test period under that subsection starts at the earlier of:
- (a) the first time that occurs after the status time and on or after:
    - (i) in the case of subsection 165-123(1)—the start of the \*first continuity period; or
    - (ii) in the case of subsection 166-40(2)—the time the company chooses under that subsection;
- and at which the company is not a \*designated infrastructure project entity; and

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- (b) the end of the \*second continuity period.
- (3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-123.
- (4) Despite subsection 165-126(2), 165-129(2), 165-132(1) or 166-40(5), the \*same business test period under that subsection starts at the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the same business test period would start earlier.
- (5) Despite subsection 165-126(2), 165-129(3) or 166-40(6), the \*test time under that subsection occurs just after the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.
- (6) A reference in subsection 165-129(1) to the \*first continuity period is treated as being a reference to the period:
  - (a) starting at the start of the \*ownership test period; and
  - (b) ending at the end of the income year in which the ownership test period starts.

#### *Exception*

- (7) Disregard this section for the purposes of Subdivision 175-C (about tax benefits).

## **Consolidated groups**

### **415-45 Losses transferred to head companies of consolidated groups**

Subdivision 707-C (Amount of transferred losses that can be utilised) does not apply to a loss transferred under Subdivision 707-A (Transfer of previously unutilised losses to head company), if:

- (a) just before the transfer, the transferor of the loss was a \*designated infrastructure project entity; and
- (b) just after the transfer, the transferee of the loss is a designated infrastructure project entity.

## **Subdivision 415-C—Designating infrastructure projects**

### **Guide to Subdivision 415-C**

#### **415-50 What this Subdivision is about**

To receive the special treatment for tax losses and bad debts under Subdivision 415-B, an entity must only engage in activities for the purposes of carrying on an infrastructure project designated by the Infrastructure Coordinator under this Subdivision.

Designation is dependent on:

- (a) criteria prescribed by the Minister; and
- (b) a cap on the total estimated private capital expenditure that would be incurred for all provisionally designated and designated infrastructure projects.

#### **Table of sections**

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##### **Miscellaneous**

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## Designating infrastructure projects

### 415-55 Applications for designation

- (1) An entity may apply to the Infrastructure Coordinator to have the Infrastructure Coordinator designate an \*enterprise (the *infrastructure project*) that is a proposed investment in, or enhancement to, infrastructure as being an infrastructure project in relation to which Subdivision 415-B applies.

Note: The Infrastructure Coordinator holds office under the *Infrastructure Australia Act 2008*.

- (2) The application must include an estimate of the \*infrastructure project capital expenditure that would be incurred for the purpose of the infrastructure project.
- (3) Subsection (2) does not apply to \*infrastructure project capital expenditure to the extent that the infrastructure project capital expenditure would be:
  - (a) incurred by an \*Australian government agency; or
  - (b) funded by a grant from an Australian government agency.
- (4) The application must:
  - (a) be in a form (if any) approved by the Infrastructure Coordinator; and
  - (b) be accompanied by the fee (if any) prescribed by the \*infrastructure project designation rules.

### 415-60 Dealing with applications

#### *Dealing with applications*

- (1) The Infrastructure Coordinator must deal with applications made under this Division:
  - (a) in accordance with the requirements prescribed by the \*infrastructure project designation rules; or
  - (b) if the infrastructure project designation rules do not prescribe any requirements—in the order in which the applications are made.

- (2) Without limiting paragraph (1)(a), the requirements the \*infrastructure project designation rules may prescribe for the purposes of that paragraph include:
- (a) requirements relating to the time at which or by which the Infrastructure Coordinator must deal with an application; and
  - (b) requirements relating to applications that, in the opinion of the Infrastructure Coordinator, are incomplete or do not contain sufficient information for the Infrastructure Coordinator to deal with the applications.
- (3) For the purposes of subsection (1), the Infrastructure Coordinator deals with an application by:
- (a) designating the infrastructure project provisionally under section 415-65, or deciding not to designate the infrastructure project provisionally under that section; or
  - (b) designating the infrastructure project under section 415-70 or deciding not to designate the infrastructure project under that section (whether or not the Infrastructure Coordinator has previously dealt with the application by designating the infrastructure project provisionally under section 415-65).
- (4) Paragraph (1)(b) does not apply to the Infrastructure Coordinator deciding whether to designate a \*provisionally designated infrastructure project under section 415-70.

*No designation after 30 June 2017 or later prescribed day*

- (5) Despite anything else in this Subdivision, the Infrastructure Coordinator must not provisionally designate the infrastructure project under section 415-65, or designate the infrastructure project under section 415-70, after:
- (a) 30 June 2017; or
  - (b) a later day (if any) prescribed by the \*infrastructure project designation rules.

#### **415-65 Provisional designation**

*Provisional designation*

- (1) The Infrastructure Coordinator must, by instrument in writing, designate the infrastructure project provisionally for the purposes of this Division if:

- (a) the entity applies to have the Infrastructure Coordinator designate the infrastructure project in accordance with section 415-55; and
  - (b) the Infrastructure Coordinator accepts the estimate of the \*infrastructure project capital expenditure under section 415-80; and
  - (c) the provisional designation would not breach the infrastructure project capital expenditure cap under section 415-75; and
  - (d) the following conditions are satisfied:
    - (i) the conditions prescribed by the \*infrastructure project designation rules;
    - (ii) if the infrastructure project designation rules do not prescribe any conditions—in the opinion of the Infrastructure Coordinator, the infrastructure is nationally significant infrastructure (within the meaning of the *Infrastructure Australia Act 2008*); and
  - (e) the infrastructure project is not a \*designated infrastructure project.
- (2) The instrument of provisional designation must contain any details prescribed by the \*infrastructure project designation rules.

*Amendment of instruments of provisional designation*

- (3) The Infrastructure Coordinator must, by instrument in writing, amend the instrument of provisional designation in accordance with any requirements prescribed by the \*infrastructure project designation rules. The Infrastructure Coordinator must not amend the instrument in any other circumstances.
- (4) Without limiting subsection (3), the requirements the \*infrastructure project designation rules may prescribe for the purposes of that subsection include requirements relating to when an amendment must take effect, which may be a time before the amendment is made.

*Revocation of instruments of provisional designation*

- (5) The Infrastructure Coordinator must, by instrument in writing, revoke the instrument of provisional designation:

- (a) if the Infrastructure Coordinator has designated the project under section 415-70, or decides not to designate the project; or
- (b) if the Infrastructure Coordinator has revoked the instrument of acceptance of the estimate under section 415-80; or
- (c) in the circumstances (if any) prescribed by the \*infrastructure project designation rules.

The Infrastructure Coordinator must not revoke the instrument in any other circumstances.

- (6) Without limiting paragraph (5)(c), the circumstances the \*infrastructure project designation rules may prescribe for the purposes of that paragraph include:
  - (a) circumstances involving a failure by a prescribed entity to give prescribed information to the Infrastructure Coordinator; and
  - (b) circumstances involving a breach of conditions set by the Infrastructure Coordinator for the \*provisionally designated infrastructure project to remain provisionally designated.
- (7) The \*infrastructure project designation rules must prescribe matters to which the Infrastructure Coordinator must have regard in setting conditions for a \*provisionally designated infrastructure project to remain provisionally designated, if the infrastructure project designation rules provide for the Infrastructure Coordinator to set such conditions, as mentioned in paragraph (6)(b).

## **415-70 Designation**

### *Designation*

- (1) The Infrastructure Coordinator must, by instrument in writing, designate the infrastructure project for the purposes of this Division if:
  - (a) the entity applies to have the Infrastructure Coordinator designate the infrastructure project in accordance with section 415-55; and
  - (b) the Infrastructure Coordinator accepts the estimate of the \*infrastructure project capital expenditure under section 415-80; and

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- (c) the designation would not breach the infrastructure project capital expenditure cap under section 415-75; and
  - (d) the following conditions are satisfied:
    - (i) the conditions prescribed by the \*infrastructure project designation rules;
    - (ii) if the infrastructure project designation rules do not prescribe any conditions—the conditions mentioned in subsection (2);
- (whether or not the infrastructure project is a \*provisionally designated infrastructure project).
- (2) For the purposes of subparagraph (1)(d)(ii), the following are the conditions:
    - (a) in the opinion of the Infrastructure Coordinator, the infrastructure is nationally significant infrastructure (within the meaning of the *Infrastructure Australia Act 2008*);
    - (b) in the opinion of the Infrastructure Coordinator, financial close on the infrastructure project has occurred or is imminent.
  - (3) The instrument of designation must contain any details prescribed by the \*infrastructure project designation rules.

*Amendment of instruments of designation*

- (4) The Infrastructure Coordinator must, by instrument in writing, amend the instrument of designation in accordance with any requirements prescribed by the \*infrastructure project designation rules. The Infrastructure Coordinator must not amend the instrument in any other circumstances.
- (5) Without limiting subsection (4), the requirements the \*infrastructure project designation rules may prescribe for the purposes of that subsection include requirements relating to when an amendment must take effect, which may be a time before the amendment is made.

*Revocation of instruments of designation*

- (6) The Infrastructure Coordinator must, by instrument in writing, revoke the instrument of designation in the circumstances prescribed by the \*infrastructure project designation rules. The
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Infrastructure Coordinator must not revoke the instrument in any other circumstances.

- (7) Without limiting subsection (6), the circumstances the \*infrastructure project designation rules may prescribe for the purposes of that subsection include:
- (a) circumstances involving a failure by a prescribed entity to give prescribed information to the Infrastructure Coordinator; and
  - (b) circumstances involving a breach of conditions set by the Infrastructure Coordinator for the \*designated infrastructure project to remain designated.
- (8) The \*infrastructure project designation rules must prescribe matters to which the Infrastructure Coordinator must have regard in setting conditions for a \*designated infrastructure project to remain designated, if the infrastructure project designation rules provide for the Infrastructure Coordinator to set such conditions, as mentioned in paragraph (7)(b).

*Infrastructure Coordinator must notify Commissioner*

- (9) The Infrastructure Coordinator must notify the Commissioner of a decision made by the Infrastructure Coordinator:
- (a) to designate the infrastructure project; or
  - (b) to amend or to revoke the instrument of designation;
- within 28 days after making the decision.

## **Infrastructure project capital expenditure cap**

### **415-75 Infrastructure project capital expenditure cap**

- (1) Provisional designation, or designation, of the infrastructure project would breach the \*infrastructure project capital expenditure cap under this section if, were the provisional designation or designation to occur, the total of the estimates accepted under section 415-80 for each infrastructure project that, just after the provisional designation or designation, would be:
- (a) a \*provisionally designated infrastructure project; or
  - (b) a \*designated infrastructure project;
- would exceed the amount mentioned in subsection (2).

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- (2) The amount is:
- (a) \$25 billion; or
  - (b) if the \*infrastructure project designation rules prescribe a greater amount—that prescribed amount.
- (3) For the purposes of subsection (1), disregard so much of the amount of an estimate for an infrastructure project (the *listed infrastructure project*) as relates to a part of the listed infrastructure project, if:
- (a) that part of the listed project is (or would be, were the provisional designation or designation mentioned in that subsection to occur):
    - (i) a \*provisionally designated infrastructure project; or
    - (ii) a \*designated infrastructure project; and
  - (b) the listed infrastructure project is included on an Infrastructure Priority List.

Note: For Infrastructure Priority Lists, see paragraph 5(2)(b) of the *Infrastructure Australia Act 2008*.

- (4) In this Act:

***infrastructure project capital expenditure:***

- (a) has the meaning given by the \*infrastructure project designation rules; or
- (b) if the infrastructure project designation rules do not give ***infrastructure project capital expenditure*** a meaning—means capital expenditure.

**415-80 Acceptance of estimates of infrastructure project capital expenditure**

*Acceptance of estimates*

- (1) The Infrastructure Coordinator must, by instrument in writing, accept the estimate of \*infrastructure project capital expenditure if the following conditions are satisfied:
- (a) the conditions prescribed by the \*infrastructure project designation rules;
  - (b) if the infrastructure project designation rules do not prescribe any conditions—in the opinion of the Infrastructure Coordinator, the estimate is acceptable.

*Revocation of instruments of acceptance*

- (2) The Infrastructure Coordinator must not revoke the instrument of acceptance if the infrastructure project is a \*designated infrastructure project.
- (3) Subject to subsection (2), the Infrastructure Coordinator must, by instrument in writing, revoke the instrument of acceptance in the circumstances prescribed by the \*infrastructure project designation rules. The Infrastructure Coordinator must not revoke the instrument in any other circumstances.
- (4) Without limiting subsection (3), the circumstances the \*infrastructure project designation rules may prescribe for the purposes of that subsection include:
  - (a) circumstances involving a failure by a prescribed entity to give prescribed information to the Infrastructure Coordinator; and
  - (b) circumstances involving a failure by the applicant to amend the estimate in accordance with a request made by the Infrastructure Coordinator.
- (5) The \*infrastructure project designation rules must prescribe matters to which the Infrastructure Coordinator must have regard in requesting the applicant to amend the estimate, if the infrastructure project designation rules provide for the Infrastructure Coordinator to make such requests as mentioned in paragraph (4)(b).
- (6) If:
  - (a) the \*infrastructure project designation rules provide for the Infrastructure Coordinator to request the applicant to amend the estimate; and
  - (b) the applicant amends the estimate in accordance with such a request;the acceptance is treated, from the time the amendment is made, as being an acceptance of the amended estimate.

## **Miscellaneous**

### **415-85 Review of decisions**

Applications may be made to the \*AAT for review of the following decisions of the Infrastructure Coordinator:

- (a) a decision not to designate the infrastructure project provisionally under section 415-65;
- (b) a decision to amend or revoke the instrument of provisional designation under section 415-65;
- (c) a decision not to designate the infrastructure project under section 415-70;
- (d) a decision to amend or revoke the instrument of designation under section 415-70.

### **415-90 Information to be made public**

The Infrastructure Coordinator must comply with any requirements prescribed by the \*infrastructure project designation rules in relation to the publication of information about:

- (a) \*provisionally designated infrastructure projects and \*designated infrastructure projects; and
- (b) the \*infrastructure project capital expenditure cap under section 415-75.

### **415-95 Delegation**

The Infrastructure Coordinator may, by instrument in writing, delegate any of the Infrastructure Coordinator's powers or functions under this Subdivision to an SES employee, or acting SES employee, who is a member of the staff assisting the Infrastructure Coordinator as mentioned in section 39 of the *Infrastructure Australia Act 2008*.

### **415-100 Infrastructure project designation rules**

- (1) The Minister may, by legislative instrument, make rules (the *infrastructure project designation rules*) prescribing matters:
  - (a) required or permitted by this Subdivision to be prescribed by the rules; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Subdivision.
- (2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the \*infrastructure project designation rules may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument, or other writing, made by Infrastructure Australia as in force or existing from time to time.

## **5 At the end of section 707-120**

Add:

### *Designated infrastructure project entities*

- (5) Despite subsection (1A), the loss is transferred under subsection (1) to the full extent if:
  - (a) the loss is a \*tax loss; and
  - (b) the joining entity is a \*designated infrastructure project entity:
    - (i) at a time in the \*loss year; and
    - (ii) just before the joining time.

## **6 After subsection 719-265(3)**

Insert:

### *Transfer of tax loss from designated infrastructure project entity*

- (3A) If:
  - (a) the focal company made the loss because the loss was transferred under Subdivision 707-A to the focal company as the \*head company of a \*MEC group; and
  - (b) subsection 707-120(5) (about designated infrastructure project entities joining consolidated groups) applies to the transfer;the test company for the focal company is the company that was the \*top company for the MEC group at the time of a transfer.

## Part 2—Consequential amendments

### *Income Tax Assessment Act 1936*

#### **7 At the end of section 266-15 in Schedule 2F**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
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#### **8 At the end of section 266-30 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

#### **9 At the end of section 266-65 in Schedule 2F**

Add:

Note:	The exception mentioned in this section applies differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
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#### **10 At the end of section 266-80 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

#### **11 At the end of section 266-100 in Schedule 2F**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
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**12 At the end of section 266-115 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

**13 At the end of section 266-140 in Schedule 2F**

Add:

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
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**14 At the end of section 266-155 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

**15 At the end of section 267-15 in Schedule 2F**

Add:

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
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**16 At the end of section 267-55 in Schedule 2F**

Add:

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
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**17 At the end of section 267-60 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

**18 Subsection 268-20(4) in Schedule 2F**

Repeal the subsection, substitute:

- (4) However, what would, apart from this subsection, be 2 or more successive periods are treated as a single period if:
  - (a) the trust is a listed widely held trust; and
  - (b) during all of the periods the trust passed the same business test in relation to the time immediately before the end of the first of the successive periods.

**19 Subsection 272-140(1) in Schedule 2F**

Insert:

*designated infrastructure project entity* has the meaning given by the *Income Tax Assessment Act 1997*.

**20 Subsection 272-140(1) in Schedule 2F (at the end of paragraph (c) of the definition of tax loss)**

Add “(including such a tax loss as increased under section 415-15 of that Act)”.

*Income Tax Assessment Act 1997*

**21 Section 12-5 (table item headed “financial arrangements”)**

Omit “*borrowings*”.

**22 Section 12-5 (table item headed “infrastructure borrowings”)**

Repeal the item, substitute:

**infrastructure**

infrastructure borrowings ..... 159GZZZZD to  
159GZZZZH

see also *tax losses*

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

Omit “*borrowings*”.

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

After:

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change of ownership or control of a company  
generally ..... Division 165  
for earlier income years ..... Subdivision 165-A  
for income year of the change ..... Subdivision 165-B

insert:

designated infrastructure project entities ..... Division 415

**25 Section 36-25 (at the end of the table dealing with tax losses of companies)**

Add:

6. A company is a designated infrastructure project entity. Subdivision 415-B

**26 Section 36-25 (at the end of the table dealing with tax losses of trusts)**

Add:

3. A trust is a designated infrastructure project entity. Subdivision 415-B

**27 At the end of section 165-5**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-35.
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**28 At the end of section 165-117**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-40.
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**29 Subsection 707-120(1)**

Repeal the subsection, substitute:

*Transfer of loss from joining entity to head company*

- (1) Subject to subsection (1A), the loss is transferred at the joining time from the joining entity to the \*head company of the joined group (even if they are the same entity).
- (1A) The loss is transferred under subsection (1) only to the extent (if any) that the loss could have been \*utilised by the joining entity for an income year consisting of the \*trial year if:
- (a) at the joining time, the joining entity had not become a \*member of the joined group (but had been a \*wholly-owned subsidiary of the \*head company if the joining entity is not the head company); and
  - (b) the amount of the loss that could be utilised for the trial year were not limited by the joining entity's income or gains for the trial year.

**30 Paragraph 707-125(1)(b)**

Omit "subsection 707-120(1)", substitute "section 707-120".

**31 Subsection 707-130(1)**

Omit "subsection 707-120(1)", substitute "section 707-120".

**32 At the end of section 707-300**

Add:

Note: This Subdivision does not apply if the joining entity is a designated infrastructure project entity just before the transfer and the head company is a designated infrastructure project entity just after the transfer: see section 415-45.
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**33 Paragraph 719-265(1)(a)**

After "(3),", insert "(3A),".

**34 Subsection 719-265(7)**

After "(3),", insert "(3A),".

**35 Subsection 995-1(1)**

Insert:

*designated infrastructure project* means an infrastructure project designated under section 415-70.

*designated infrastructure project entity* has the meaning given by section 415-20.

*infrastructure project capital expenditure* has the meaning given by subsection 415-75(4).

*infrastructure project designation rules* has the meaning given by section 415-100.

**36 Subsection 995-1(1) (at the end of the definition of ownership test period)**

Add “, and affected by sections 415-35 and 415-40”.

**37 Subsection 995-1(1)**

Insert:

*provisionally designated infrastructure project* means an infrastructure project designated provisionally under section 415-65.

**38 Subsection 995-1(1) (definition of same business test period)**

Omit “section 707-400”, substitute “sections 415-35, 415-40 and 707-400”.

**39 Subsection 995-1(1) (paragraph (a) of the definition of tax loss)**

After “this Act”, insert “(including such a tax loss as increased under section 415-15)”.

**40 Subsection 995-1(1) (at the end of paragraph (d) of the definition of tax loss)**

Add “(including such a tax loss as increased under section 415-15 of this Act)”.

**41 Subsection 995-1(1) (at the end of the definition of test period)**

Add “, and affected by sections 415-35 and 415-40”.

**42 Subsection 995-1(1) (at the end of the definition of *test time*)**

Add “, and affected by sections 415-35 and 415-40”.

***Infrastructure Australia Act 2008***

**43 Subsection 28(2)**

Repeal the subsection, substitute:

- (2) The Infrastructure Coordinator has the following additional functions:
- (a) any functions that the Minister, by writing, directs the Infrastructure Coordinator to perform;
  - (b) any other functions conferred on the Infrastructure Coordinator by this Act or any other law.

**44 Subsections 28(3) and (4)**

Omit “subsection (2)”, substitute “paragraph (2)(a)”.

**45 Subsection 40(1)**

Omit “subsection 28(2)”, substitute “paragraph 28(2)(a)”.

**46 Saving provision—directions**

A direction:

- (a) made under subsection 28(2) of the *Infrastructure Australia Act 2008*; and
  - (b) in force just before the commencement of this item;
- has effect, from that commencement, as if it had been made under paragraph 28(2)(a) of that Act, as amended by this Schedule.

## **Part 3—Application of amendments**

### ***Income Tax (Transitional Provisions) Act 1997***

#### **47 At the end of Part 3-45**

Add:

### **Division 415—Designated infrastructure projects**

#### **Table of Subdivisions**

415-B Application of Subdivision 415-B of the Income Tax Assessment Act 1997

### **Subdivision 415-B—Application of Subdivision 415-B of the Income Tax Assessment Act 1997**

#### **Table of sections**

415-10 Application of Subdivision 415-B of the *Income Tax Assessment Act 1997*

#### **415-10 Application of Subdivision 415-B of the *Income Tax Assessment Act 1997***

Subdivision 415-B of the *Income Tax Assessment Act 1997* applies to:

- (a) a tax loss for the 2012-13 income year or a later income year;  
or
- (b) a debt incurred in the 2012-13 income year or a later income year.

#### **48 Application of amendments**

- (1) The amendments made by items 1, 2 and 3 of this Schedule apply in relation to the 2012-13 income year and later income years.
- (2) The amendments made by items 5 and 6 of this Schedule apply to a loss for the 2012-13 income year or a later income year.

## **Part 4—Miscellaneous amendments**

### **Division 1—Income Tax Assessment Act 1936**

#### **49 Subsections 266-185(1) and 267-90(1) in Schedule 2F**

Omit “start”, substitute “beginning”.

#### **50 Subsection 268-10(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **51 Subsection 268-10(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **52 Subsection 268-15(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **53 Subsection 268-15(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **54 Subsection 268-20(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **55 Subsection 268-20(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **56 Subsection 268-25(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **57 Subsection 268-25(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **58 Subsections 268-75(1) and 268-80(1) in Schedule 2F**

Omit “starts” (wherever occurring), substitute “begins”.

#### **59 Subsection 268-85(5) in Schedule 2F**

Omit “start”, substitute “begin”.

**60 Subsection 269-65(1) in Schedule 2F**

Omit “start” (first occurring), substitute “begin”.

**61 Subsection 269-65(1) in Schedule 2F**

Omit “start” (second occurring), substitute “beginning”.

**62 Paragraph 269-65(1)(a) in Schedule 2F**

Omit “start”, substitute “beginning”.

**63 Paragraphs 269-100(4)(a) and 271-80(a) in Schedule 2F**

Omit “started”, substitute “began”.

**64 Subparagraph 272-80(6A)(a)(i) in Schedule 2F**

Omit “starting”, substitute “beginning”.

**65 Paragraphs 272-80(6B)(a) and (b) and 272-85(5C)(a) and (b) in Schedule 2F**

Omit “starting”, substitute “beginning”.

**Division 2—Income Tax Assessment Act 1997**

**66 Subsection 415-15(6)**

Repeal the subsection.