

## Subdivision 230-J—Special integrity measures (deemed disposal)

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@230-350 Additional operation of Division

#### @230-348A Object of this Subdivision

The object of this Subdivision is to minimise tax deferral and tax arbitrage that would otherwise occur through \*arrangements that allow circumstances to be brought into existence that:

- (a) would have substantially the same effect as, but do not take the form of, circumstances that give rise to \*Subdivision 230-G assessable gains from \*financial arrangements; and
- (b) would otherwise not, because of their form, give rise to Subdivision 230 assessable gains from those financial arrangements.

#### @230-348B Balancing adjustment where there is an “in substance” disposal

If this Subdivision applies, at a particular time, to rights and/or obligations that you have under a \*financial arrangement:

- (a) you are taken, for the purposes of Subdivision 230-G, to have transferred those rights and/or obligations to another person for their market value at that time; and
- (b) you are taken, for the purposes of this Division, to have reacquired those rights and/or obligations for their market value just after that time.

#### @230-348C When this Subdivision applies

- (1) This Subdivision applies at a particular time to one or more rights and/or obligations (the *subject rights and/or obligations*) that you have under a \*Division 230 financial arrangement if:
  - (a) you (and/or a \*connected entity) enter into one or more \*arrangements (the *effective disposal arrangements*) at that time; and
  - (b) either:
    - (i) the term of the effective disposal arrangements is, or is likely to be, more than 12 months; or
    - (ii) the term of the effective disposal arrangements is, or is likely to be, 12 months or less but subsection (2) is satisfied; and
  - (c) the effective disposal arrangements have the effect of transferring to another person, or relieving you of, the risk of all, or a substantial proportion, of the negative aspects (see subsection (3)) of the subject rights and/or obligations; and
  - (d) the effective disposal arrangements have the effect of transferring to another person, or depriving you of, the opportunity to obtain the benefit of all, or a substantial proportion, of the positive aspects (see subsection (3)) of the subject rights and/or obligations; and
  - (e) it is reasonable to conclude that you (and/or a connected entity) entered into the effective disposal arrangements with the purpose that the effective disposal arrangements would have the effects referred to in paragraphs (c) and (d); and
  - (f) were you to have transferred the subject rights and/or obligations to another person for their market value at that time, you would have made a Subdivision 230-G assessable gain from the financial arrangement; and
  - (g) a \*fair value election does not apply to the subject rights and/or obligations at that time; and
  - (h) if an election to rely on financial reports applies to the subject rights and/or obligations—those rights and/or obligations are not assets or liabilities that are classified as at fair value through profit and loss in the financial reports referred to in section @230-270.

Note 1: Subsection @230-348F(1) affects the operation of paragraph (a).

Note 2: Subsection @230-348F(2) affects the operation of paragraph (c).

Note 3: Subsection @230-348F(3) affects the operation of paragraph (d).

Note 4: Subsection @230-348F(4), (5) and (6) affect the operation of paragraph (e).

- (2) This subsection is satisfied if:
- (a) either or both of the following is satisfied:
    - (i) you (or a \*connected entity) is a party to an \*arrangement;
    - (ii) you (or a connected entity) have taken, or are in a position to, take an action; and
  - (b) one or more of the following is satisfied:
    - (i) you (or a connected entity) intend that the circumstances referred to in paragraph (a) will bring about an arrangement that is, or a series of arrangements that are, substantially the same as the effective disposal arrangements;
    - (ii) the circumstances referred to in paragraph (a) have the effect that there will be brought about an arrangement that is, or a series of arrangements that are, substantially the same as the effective disposal arrangements;
    - (iii) it reasonably likely, because of the circumstances referred to in paragraph (b), that there will be brought about an arrangement that is, or a series of arrangements that are, substantially the same as the effective disposal arrangements; and
  - (c) the period, or the aggregate of the periods, covered by the terms of:
    - (i) the effective disposal arrangements; and
    - (ii) the other arrangement or arrangements referred to in paragraph (b);is more than 12 months; and
  - (d) either:
    - (i) the terms of the effective disposal arrangements and the other arrangement or arrangements referred to in paragraph (b) all overlap or are continuous; or
    - (ii) any break in the continuity of those terms is only for a short period.
- (3) For the purposes of applying paragraphs (1)(c) and (d) at a particular time:
- (a) the *negative aspects* of the subject rights and/or obligations are:
    - (i) the obligations you have under the subject rights and/or obligations to provide financial benefits after that time; and
    - (ii) any possibility that the financial benefits you are to provide, after that time, under the subject rights and/or obligations will increase; and
    - (iii) any possibility that the financial benefits that are to be provided to you, after that time, under the subject rights and/or obligations will decrease; and
    - (iv) any decline in the value of the subject rights and/or obligations after that time; and
  - (b) the *positive aspects* of the subject rights and/or obligations are:
    - (i) the rights you have under the subject rights and/or obligations to receive financial benefits after that time; and
    - (ii) any possibility that the financial benefits that are to be provided to you, after that time, under the subject rights and/or obligations will increase; and
    - (iii) any possibility that the financial benefits that you are to provide, after that time, under the subject rights and/or obligations will decrease; and
    - (iv) any increase in the value of the subject rights and/or obligations after that time.

### **@230-348D Clarifying when this Subdivision applies**

- (1) To avoid doubt, the effective disposal arrangements may be ones that:
- (a) are legally separate from, and legally unrelated to, each other; and
  - (b) are legally separate from, and legally unrelated to, the subject rights and/or obligations.
- (2) Paragraph @230-348C(1)(c) may be satisfied even if you retain any or all of the following:
- (a) a risk that a dividend or other return may not be paid or provided in relation to the subject rights and/or obligations;

- (b) a risk as to the amount of any dividend or other return paid or provided in relation to the subject rights and/or obligations;
  - (c) a risk as to the creditworthiness of any party to the financial arrangement;
  - (d) a risk as to changes in interest rates;
  - (e) a risk as to changes in foreign currency exchange rates.
- (3) Paragraph @230-348C(1)(d) may be satisfied even if you retain any or all of the following:
- (a) the opportunity to benefit from a dividend or other return being paid or provided in relation to the subject rights and/or obligations;
  - (b) the opportunity to benefit from the amount of any dividend or other return paid or provided in relation to the subject rights and/or obligations;
  - (c) the opportunity to benefit from an improvement in the creditworthiness of any party to the financial arrangement;
  - (d) the opportunity to benefit from changes in interest rates;
  - (e) the opportunity to benefit from changes in foreign currency exchange rates.
- (4) The purpose referred to in paragraph @230-348C(1)(e) need not be the dominant purpose of the person concerned but must not be a merely incidental purpose.
- (5) For the purpose of determining whether paragraph @230-348C(1)(e) is satisfied, regard is to be had to the following:
- (a) the extent to which the effective disposal arrangements have been structured to achieve a particular commercial or economic outcome or result;
  - (b) the extent to which you (or a \*connected entity) are aware of, or can reasonably be expected to be aware of:
    - (i) the links between the effective disposal arrangements; and
    - (ii) the links between the effective disposal arrangements and the subject rights and/or obligations; and
    - (iii) the effects of the effective disposal arrangements;
  - (c) the form and substance of the effective disposal arrangements;
  - (d) the income tax consequences if you were not to make a Subdivision 230-G assessable gain from the financial arrangement (including the extent to which the realisation method under Subdivision 230-B applies to the \*financial arrangement and the effective disposal arrangements);
  - (e) whether the economic or commercial effect (as distinct from the income tax consequences referred to in paragraph (d)) is that there is:
    - (i) a sale or disposal; or
    - (ii) a derecognition for the purposes of the accounting standards; of all, or substantially all, of the subject rights and/or obligations;
  - (f) whether the economic or commercial purpose of the effective disposal arrangements is that there will be:
    - (i) a sale or disposal; or
    - (ii) a derecognition for the purposes of the accounting standards; of all, or substantially all, of the subject rights and/or obligations.
- (6) Without limiting paragraph (5)(a) regard is to be had to whether the effective disposal arrangements have been structured to lock in a gain (whether realised or unrealised).

### **Subdivision 230-JA—Special integrity rules (deemed non disposal)**

#### **@230-348M Object of this Subdivision**

The object of this Subdivision is to minimise tax deferral and tax arbitrage that would otherwise occur through \*arrangements that would allow circumstances to be brought into existence that:

- (a) would take the form, but do not have the economic or commercial effect, of circumstances that give rise to Subdivision 230-G deductible losses from \*financial arrangements; and
- (b) would otherwise give rise to Subdivision 230-G deductible losses from those financial arrangements.

### **@230-348N Denial of balancing adjustment where there is no “in substance” disposal**

There is no Subdivision 230-G deductible loss from a \*financial arrangement in relation to particular circumstances if:

- (a) those circumstances exist at a particular time in relation to rights and/or obligations that you have under the financial arrangement; and
- (b) this Subdivision applies, at that time, to those rights and/or obligations because of the existence of those circumstances.

### **@230-348P When this Subdivision applies**

This Subdivision applies at a particular time to one or more rights and/or obligations (the *subject rights and/or obligations*) that you have under a \*Division 230 financial arrangement applies if:

- (a) but for this Subdivision, you would make a Subdivision 230-G deductible loss from the financial arrangement because of particular circumstances existing at that time in relation to the subject rights and/or obligations; and
- (b) you (and/or a \*connected entity) enter into an \*arrangement (or arrangements) (the *effective retention arrangements*) at, or just before or after, that time; and
- (c) the effect of the effective retention arrangements is that you are not relieved of the risk of all, or a substantial proportion, of the negative aspects (see subsection (3)) of the subject rights and/or obligations; and
- (d) the effect of the effective retention arrangements is that you are not deprived of the opportunity to obtain the benefit of all, or a substantial proportion, of the positive aspects (see subsection (3)) of the subject rights and/or obligations; and
- (e) it is reasonable to conclude that you (and/or a \*connected entity) entered into the effective retention arrangements for the purpose of achieving the effects referred to in paragraphs (c) and (d); and
- (f) a \*fair value election does not apply to the subject rights and/or obligations at that time; and
- (g) if an election to rely on financial reports applies to the subject rights and/or obligations—those rights and/or obligations are not assets or liabilities that are classified as at fair value through profit and loss in the financial reports referred to in section @230-270.

Note 1: Subsection @230-348Q(1) affects the operation of paragraph (b).

Note 2: Subsection @230-348Q(2) affects the operation of paragraph (c).

Note 3: Subsection @230-348Q(3) affects the operation of paragraph (d).

Note 4: Subsections @230-348Q(4), (5) and (6) affect the operation of paragraph (e).

### **@230-348Q Clarifying when this Subdivision applies**

- (1) To avoid doubt, the effective retention arrangements may be ones that:
  - (a) are legally separate from, and legally unrelated to, each other; and
  - (b) are legally separate from, and legally unrelated to, the subject rights and/or obligations.
- (2) Paragraph @230-348P(c) may be satisfied even if you are relieved of any or all of the following:
  - (a) a risk that a dividend or other return may not be paid or provided in relation to the subject rights and/or obligations;

- (b) a risk as to the amount of any dividend or other return paid or provided in relation to the subject rights and/or obligations;
  - (c) a risk as to the creditworthiness of any party to the financial arrangement;
  - (d) a risk as to changes in interest rates;
  - (e) a risk as to changes in foreign currency exchange rates.
- (3) Paragraph @230-348P(d) may be satisfied even if you are deprived of any or all of the following:
- (a) the opportunity to benefit from a dividend or other return being paid or provided in relation to the subject rights and/or obligations;
  - (b) the opportunity to benefit from the amount of any dividend or other return paid or provided in relation to the subject rights and/or obligations;
  - (c) the opportunity to benefit from an improvement in the creditworthiness of any party to the financial arrangement;
  - (d) the opportunity to benefit from changes in interest rates;
  - (e) the opportunity to benefit from changes in foreign currency exchange rates.
- (4) The purpose referred to in paragraph @230-348P(d) need not be the dominant purpose of the person concerned but must not be a merely incidental purpose.
- (5) In determining whether paragraph @230-348P(d) is satisfied, regard is to be had to the following:
- (a) the extent to which the effective retention arrangements have been structured to achieve a particular commercial or economic outcome or result (including the realisation of a loss for income tax purposes);
  - (b) the extent to which you (or a \*connected entity) are aware of, or can reasonably be expected to be aware of:
    - (i) the effective retention arrangements; and
    - (ii) any links between the effective retention arrangements; and
    - (iii) any links between the effective retention arrangements and the subject rights and/or obligations; and
    - (iv) the effects of the effective retention arrangements;
  - (c) the form and substance of the effective retention arrangements;
  - (d) the income tax consequences if you were not to make a Subdivision 230-G deductible loss from the financial arrangement (including the extent to which the realisation method under Subdivision 230-B applies to the financial arrangement and the effective retention arrangements);
  - (e) whether the economic or commercial effect (as distinct from any income tax consequences) of the effective retention arrangements is that there is not:
    - (i) a sale or disposal; or
    - (ii) a derecognition for the purposes of the accounting standards;
      - of all, or substantially all, the subject rights and/or obligations;
  - (f) whether the commercial purpose of effective retention arrangements is that there not be:
    - (i) a sale or disposal; or
    - (ii) a derecognition for the purposes of the accounting standards;
      - of all, or substantially all, the subject rights and/or obligations.

## **Subdivision 230-JB—Special integrity rules (deemed gain from financial arrangement)**

### **@230-348T Object of this Subdivision**

The object of this Subdivision is to minimise tax deferral and tax arbitrage that would otherwise occur through \*arrangements that would allow circumstances to be brought into existence that:

- (a) would have substantially the same effect as, but do not take the form of, circumstances that give rise to gains that are sufficiently certain and to which the accruals method provided for in Subdivision 230-B applies; and
- (b) would otherwise not, because of their form, give rise to circumstances of that kind.

### **@230-348U Relationship with subsection @230-55(3)**

This Subdivision applies without limiting subsection @230-55(3).

### **@230-348V Deemed gain from financial arrangement**

If this Subdivision applies, at a particular time, to rights and/or obligations that you have under a financial arrangement:

- (a) you are taken to have a gain from the financial arrangement that is sufficiently certain at that time; and
- (b) accruals method provided for in Subdivision 230-B is taken to apply to that gain; and
- (c) the amount of that gain is the amount of the gain referred to in paragraph @230-348W(1)(b); and
- (d) the period over which that gain is to be spread under subsection @230-110(1) is the period of the effective gain arrangement referred to in paragraph @230-348W(1)(a).

### **@230-348W When this Subdivision applies**

- (1) This Subdivision applies at a particular time to one or more rights and/or obligations (the *subject rights and/or obligations*) that you have under a \*financial arrangement if:
  - (a) you (and/or a \*connected entity) have, or enter into, an \*arrangement (or arrangements) (the *effective gain arrangements*) at that time; and
  - (b) if:
    - (i) the rights and/or obligations that you (or a connected entity) have under the effective gain arrangement were part of the financial arrangement and were rights and/or obligations that you had; and
    - (ii) any financial benefits provided by or to a connected entity under those rights and/or obligations were provided by or to you;
 you would have a gain from the financial arrangement from the combination of the subject rights and/or obligations and the rights and/or obligations under the effective gain arrangements that was sufficiently certain at that time; and
  - (c) either:
    - (i) the term of the effective gain arrangements is, or is likely to be, more than 12 months; or
    - (ii) the term of the effective gain arrangements is, or is likely to be, 12 months or less but subsection (2) is satisfied; and
  - (d) it is reasonable to conclude that you (and/or a connected entity) entered into the effective gain arrangements with the purpose that the financial arrangement together with the effective gain arrangements would have the effect referred to in paragraph (b); and
  - (e) a \*fair value election does not apply to the subject rights and/or obligations at that time; and
  - (f) if an election to rely on financial reports applies to the subject rights and/or obligations—those rights and/or obligations are not assets or liabilities that are classified as at fair value through profit and loss in the financial reports referred to in section @230-270.

Note 1: Subsection @230-348F(1) affects the operation of paragraph (b).

Note 2: Subsection @230-348F(2) affects the operation of paragraph (c).

Note 3: Subsection @230-348F(3) affects the operation of paragraph (d).

Note 4: Subsections @230-348F(4), (5) and (6) affect the operation of paragraph (f).

- (2) This subsection is satisfied if:
- (a) either or both of the following is satisfied:
    - (i) you (or a \*connected entity) is a party to an \*arrangement;
    - (ii) you (or a connected entity) have taken, or are in a position to, take an action; and
  - (b) one or more of the following is satisfied:
    - (i) you (or a connected entity) intend that the circumstances referred to in paragraph (b) will bring about an arrangement that is, or a series of arrangements that are, substantially the same as the effective gain arrangements;
    - (ii) the circumstances referred to in paragraph (b) have the effect that there will be brought about an arrangement that is, or a series of arrangements that are, substantially the same as the effective gain arrangements;
    - (iii) it reasonably likely, because of the circumstances referred to in paragraph (b), that there will be brought about an arrangement that is, or a series of arrangements that are, substantially the same as the effective gain arrangements; and
  - (c) the period, or the aggregate of the periods, covered by the terms of:
    - (i) the effective gain arrangements; and
    - (ii) the other arrangement or arrangements referred to in paragraph (b);is more than 12 months; and
  - (d) either:
    - (i) the terms of the effective gain arrangements and the other arrangement or arrangements referred to in paragraph (b) all overlap or are continuous; or
    - (ii) any break in the continuity of those terms is only for a short period.

### **@230-348X Clarifying when this Subdivision applies**

- (1) To avoid doubt, the effective gain arrangements may be ones that:
  - (a) are legally separate from, and legally unrelated to, each other; and
  - (b) are legally separate from, and legally unrelated to, the subject rights and/or obligations.
- (2) The purpose referred to in paragraph @230-348W(1)(d) need not be the dominant purpose of the person concerned but must not be a merely incidental purpose.
- (3) For the purpose of determining whether paragraph @230-348W(1)(d) is satisfied, regard is to be had to the following:
  - (a) the extent to which the effective gain arrangements have been structured to achieve a particular commercial or economic outcome or result;
  - (b) the extent to which you (or a \*connected entity) are aware of, or can reasonably be expected to be aware of:
    - (i) the links between the component parts of the effective gain arrangements; and
    - (ii) the effects of the effective gain arrangements;
  - (c) the form and substance of the effective gain arrangements;
  - (d) the income tax consequences if the accruals method provided for in Subdivision 230-B does not apply to the gain from the combination of the subject rights and/or obligations and the effective gain arrangements;
  - (e) whether the economic or commercial effect (as distinct from any income tax consequences) of the effective gain arrangements is that there is a gain from the combination of the subject rights and/or obligations and the effective gain arrangements;
  - (f) whether the commercial purpose of effective gain arrangements is that there be a gain from the combination of the subject rights and/or obligations and the effective gain arrangements.

**@230-348Y Commissioner determinations**

If this Subdivision applies to a financial arrangement that you have, the Commissioner may make a determination under this section making consequential adjustments to the operation of this Act in relation to your affairs to make sure that the gain brought to account because of this Subdivision is properly reflected.