

PARLIAMENTARY COUNSEL

Drafting Direction No. 1.8 Special rules for Tax Code drafting

Document History		
Release number	Release date	Document number
1.0	1 May 2006	s06pf334.v01.doc

Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 6 of 2005.

Contents

Part 1—Creating the Tax Code	4
What is already in place.....	4
Future additions to the Tax Code	5
For the income tax law.....	5
Enacting new material.....	5
Completing the rewrite of the old income tax law	5
For the Taxation Administration Act.....	5
Enacting new material.....	5
Completing the re-organisation of the old administration provisions.....	5
Identifying other laws to become part of the Tax Code.....	5
Part 2—The purpose of this Drafting Direction	6
Part 3—Acts that make up the Tax Code	6
Schedules 2C to 2J of the 1936 Act.....	6
Differences in the indirect tax legislation and the ABN Act	7
Part 4—Where to locate provisions in Acts forming part of the Tax Code: how to maintain a coherent overall structure	7
General.....	7
Where to put new provisions in the 1997 Act and Schedule 1 to the Taxation Administration Act 1953.....	7
Location of provisions in the GST Act	8
Application and transitional provisions	8
Checking whether amendments affect, or are affected by, recent or proposed amendments.....	8
Part 5—Asterisking and other signposting of definitions	8
Part 6—Defined terms (TLIP Note 3)	9
Part 7—Guides and decentralised tables of contents (TLIP Notes 5 and 45)	11
Except in the indirect tax legislation	11
General	11
Theme statements.....	13
In the indirect tax legislation.....	14
Part 8—End of a Guide	15

Part 9—Link notes	15
Part 10—Amending group, section and subsection headings (TLIP Note 43)	15
Part 11—When to use “you” (TLIP Note 11)	16
Part 12—References to things in certain Schedules	16
Part 13—Notes aligned to the right-hand margin	16
Part 14—Signposting in the GST Act	17
Part 15—All other rules to be followed	17
Attachment A—Order and content of introductory information in Divisions and Subdivisions	18
Division 975—Concepts about companies	18
Subdivision 975-A—General	18
Division 108—CGT assets.....	19
Guide to Division 108	19
108-1	What this Division is about
.....	19
Subdivision 108-A—What a CGT asset is.....	19
Division 30—Gifts or contributions	20
Guide to Division 30.....	20
30-1	What this Division is about
.....	20
30-5	How to find your way around this Division
.....	20
30-10	Index
.....	20
Subdivision 30-A—Deductions for gifts or contributions.....	20
Subdivision 108-A—What a CGT asset is.....	21
108-5	CGT assets
.....	21
Subdivision 108-D—Separate CGT assets	22
Guide to Subdivision 108-D.....	22
108-50	What this Subdivision is about
.....	22
Operative provisions	22
108-55	When is a building a separate asset from land?
.....	22
Attachment B—Extracts from various TLIP Notes	23
28-12	Car expenses
.....	26
392-35	Stage 1—working out your basic amount
.....	27
392-70	Working out your tax at the notional rate
.....	27
392-75	Working out the kind of adjustment and making it
.....	27
Example:.....	33
165-10	To deduct a tax loss
.....	33
Example:.....	34
34-10	What you can deduct
.....	34
34-15	What is a non-compulsory uniform?
.....	34

34-25	Application to register the design	34
Example:.....		35
41-15	When is roll-over relief available?	35
41-20	Disposals of property	35
Conditions for deducting a tax loss.....		36
165-10	Company must meet conditions to deduct a tax loss	36
Attachment C—TLIP Features used in Tax Code Acts		37

Part 1—Creating the Tax Code

What is already in place

1 The term “Tax Code” refers to the proposed Integrated Tax Code that was first announced in August 1998 in *Tax Reform: not a new tax, a new tax system*, and was also the subject of recommendations by the Ralph Review of Business Taxation in Chapter 2 of its Final Report.

2 The Tax Code does not so far have any formal legislative identity, but a number of its key elements already exist:

- the rewritten income tax law, comprising:
 - the *Income Tax Assessment Act 1997* (the **1997 Act**)
 - the *Income Tax (Transitional Provisions) Act 1997*
- the new indirect tax law, comprising:
 - the *A New Tax System (Goods and Services Tax) Act 1999* (the **GST Act**)
 - the *A New Tax System (Luxury Car Tax) Act 1999*
 - the *A New Tax System (Wine Equalisation Tax) Act 1999*
 - Imposition Acts for those indirect taxes
- the new collection and recovery provisions and generic administration provisions in:
 - Schedule 1 to the *Taxation Administration Act 1953*
 - the *A New Tax System (Australian Business Number) Act 1999* (the **ABN Act**)
- the *Venture Capital Act 2002*.

3 At present, what distinguishes legislation in the Tax Code from legislation not in the Code are features of design, drafting style and presentation, many of which are documented in this Drafting Direction.

Future additions to the Tax Code

For the income tax law

Enacting new material

4 For some time now, it has been the practice to enact new provisions of the income tax law as amendments of the 1997 Act and not the *Income Tax Assessment Act 1936*. New material should only be included in the 1936 Act with the agreement of First Parliamentary Counsel.

Completing the rewrite of the old income tax law

5 The process for continuing the re-write of the income tax law is currently under discussion. One option for the next step in the process is for the “operative” provisions of the *Income Tax Assessment Act 1936* to be imported into the 1997 Act, perhaps as a Schedule to that Act.

For the Taxation Administration Act

Enacting new material

6 New collection, recovery and tax administration provisions are to be included in Schedule 1 to the *Taxation Administration Act 1953*.

Completing the re-organisation of the old administration provisions

7 The provisions in the body of the *Taxation Administration Act 1953* will over time be brought into the Tax Code, by being either re-enacted as provisions in Schedule 1 to that Act, or amended to make them consistent with the rules applying to Tax Code drafting. At the end of that process, the Act will be reorganised so that:

- the provisions in Schedule 1 are moved into the body of the Act (without being renumbered); and
- the provisions already in the body of the Act are renumbered and integrated into the sequence established for the Schedule 1 provisions.

Identifying other laws to become part of the Tax Code

8 Any new tax legislation will form part of the Tax Code. This will mean that:

- legislation will need to be drafted in the TLIP style; and
- terms used in the new legislation will need to be defined in such a way that they work with the other Acts that make up the Code.

9 If you have any concerns about the appropriateness of including a particular piece of legislation in the Tax Code, you should raise these with the Manager of the Tax Code Unit within the Tax Design Division at the Treasury.

10 In due course, other existing Acts administered by the Commissioner (such as the *Fringe Benefits Tax Assessment Act 1986*) may be included in the Tax Code as and when they are rewritten.

Part 2—The purpose of this Drafting Direction

11 This Drafting Direction contains special rules that apply to Bills that will form part of the Tax Code or that amend Acts that are part of the Tax Code. The rules do not apply to any other Bills. In particular, they do not apply to Bills amending tax legislation that has not yet been brought into the Code.

12 These rules override rules contained in other Drafting Directions, Word Notes or the Amending Forms Manual.

13 This Drafting Direction sets out a brief summary of each of the rules and refers to the TLIP Drafting Note in which the rule was originally set out. Extracts from various TLIP Drafting Notes are attached to this Drafting Direction.

Part 3—Acts that make up the Tax Code

14 The Acts that make up the Tax Code for the purposes of this Drafting Direction are:

- 1997 Act;
- *Income Tax (Transitional Provisions) Act 1997*;
- GST Act;
- *A New Tax System (Luxury Car Tax) Act 1999*;
- *A New Tax System (Wine Equalisation Tax) Act 1999*;
- Schedule 1 to the *Taxation Administration Act 1953*;
- ABN Act;
- *Venture Capital Act 2002*;
- any new tax legislation.

Schedules 2C to 2J of the 1936 Act

15 In addition, Schedules 2C to 2J (only) of the *Income Tax Assessment Act 1936* (the *1936 Act*) should be treated as if they formed part of the Code.

16 These Schedules do not comply with the rules in this Drafting Direction (that is why they were not included in the 1997 Act in the first place), and they will of course need to be rewritten for inclusion in that Act. The work involved in rewriting them will however be reduced if they are treated as part of the Tax Code for the purposes of applying the rules in

this Drafting Direction to drafting other Tax Code legislation, and to drafting amendments of those Schedules.

17 No further Schedules should be added to the *Income Tax Assessment Act 1936*.

Differences in the indirect tax legislation and the ABN Act

18 The indirect tax legislation (GST Act, *A New Tax System (Luxury Car Tax) Act 1999* and *A New Tax System (Wine Equalisation Tax) Act 1999*) does not use all of the features set out in this Drafting Direction. A list of the features used, and not used, in those Acts is in Attachment C.

19 The ABN Act uses only a small subset of the standard features set out in this Drafting Direction. A list of the features used, and not used, in that Act is in Attachment C.

20 New principal Acts should use either all of the features set out in this Drafting Direction, or only the subset of features used in the ABN Act.

Part 4—Where to locate provisions in Acts forming part of the Tax Code: how to maintain a coherent overall structure

General

21 Provisions for inclusion in the Tax Code are broadly of these kinds:

- imposition provisions, which must be in a separate Act to comply with section 55 of the Constitution;
- liability provisions, which should be in the assessment Act for the particular tax;
- provisions dealing with collection, recovery or administration, which by and large, should be included in Schedule 1 to the *Taxation Administration Act 1953*;
- interpretation provisions, which need to comply with the rules set out in this Drafting Direction about defined terms; they can be located on a “just in time” basis with the provisions they relate to, but must also be signposted in the relevant Dictionary.

Where to put new provisions in the 1997 Act and Schedule 1 to the Taxation Administration Act 1953

22 Any new instructions to include provisions in the 1997 Act or Schedule 1 to the *Taxation Administration Act 1953* should include a statement on where, in your instructor’s view, those provisions are best inserted.

23 Treasury maintains master plans for the 1997 Act and Schedule 1 to the *Taxation Administration Act 1953*. A copy of the current version of the master plans is in Folio Office

Documents, under Other Drafting Documents. The master plans will be updated on the database whenever we receive new versions.

24 The master plans include both current provisions and placeholders for provisions that are anticipated. Your instructions should be based upon the plans.

25 If you believe that the provisions would be better inserted elsewhere, you should initially discuss this with your instructor and then, if you cannot resolve the issue in that way, with the Manager of the Tax Code Unit within the Tax Design Division in the Treasury.

Location of provisions in the GST Act

26 The GST Act deals separately with provisions of general application (Chapter 2—Basic rules) and provisions of specific application (Chapter 4—Special rules). This is to ensure that the rules covering the vast majority of cases are short and not cluttered with the myriad of qualifications that a GST generates. Avoid inserting detailed rules in Chapter 2. Consider creating new special rules instead.

Application and transitional provisions

27 The *Income Tax (Transitional Provisions) Act 1997* was enacted to house application and transitional provisions arising from the rewrite of the *Income Tax Assessment Act 1936*. It has since become the practice to include in the Transitional Provisions Act provisions relating to a new Division or Subdivision of the 1997 Act, even if the new material is not a rewrite. In other cases, application and transitional provisions should be included in amending Acts in the traditional manner.

28 The *Income Tax (Transitional Provisions) Act 1997* is numbered in parallel with the 1997 Act. This makes it easy to work out where to include provisions in the Transitional Provisions Act.

Checking whether amendments affect, or are affected by, recent or proposed amendments

29 Given the volume of tax amendments that sometimes passes through the Office, you should take particular care when checking whether your amendments will affect, or be affected by, recent or proposed amendments. You may find IT Circular No. 38 (currently in draft form) useful in carrying out the necessary searches.

Part 5—Asterisking and other signposting of definitions

30 Most occurrences of defined terms must be marked with an asterisk. (You can just type a normal asterisk as the Fix document and Finaliser macros will replace them with the special TLIP asterisks.)

31 The occurrences that do not require an asterisk are:

- the second or subsequent occurrence in a subsection (for this purpose, each Step in a method statement and each row in a table is treated as a separate subsection);

[The qualification “if it is clear that it is referring back to an earlier (asterisked) occurrence of the same term in the same subsection” (for which TLIP Note 2 provides) no longer applies.]

- in a heading;
- in a heading that is quoted in parentheses in a provision;
- in any Guide material or other non-operative provision;
- in a note or example;
- in a table that is only for information or signposting (as opposed to a table that has substantive effect).

32 If the label for a defined term includes an expression that is also a defined term, that expression should *not* be asterisked in addition to the asterisking of the full label.

Example: *business travel expense *not* *business *travel expense.

33 Special rules apply to asterisking in formulas. See the extract from TLIP Note 2 in Attachment B.

34 Certain terms are not asterisked at all. So far, the exceptions to asterisking are specific to particular Acts. The non-asterisked terms are those that are used very extensively throughout the Act concerned.

35 Section 2-15 of the 1997 Act sets out the list of non-asterisked terms for that Act and for Schedule 1 to the *Taxation Administration Act 1953*. Section 3-5 in each of the GST Act, *A New Tax System (Wine Equalisation Tax) Act 1999* and *A New Tax System (Luxury Car Tax) Act 1999* sets out the list for that Act. (Note that the lists of terms are not the same.) The ABN Act does not have a list so there are no non-asterisked terms in that Act.

36 Information about signposts for definitions is contained in the extract from TLIP Note 3 in Attachment B.

Part 6—Defined terms (TLIP Note 3)

37 The original approach in TLIP drafting was to have “one expression/one meaning” across the Tax Code. To follow this approach, you should not:

- define the same expression in different parts of the legislation to mean different things (ie setting out the definitions themselves in different parts of the legislation); or
- define one expression, set out in the Dictionary, to mean different things in different parts of the legislation; or
- define an expression in one part of the Act that takes its ordinary English meaning in another; or
- use a relational definition to avoid these rules.

38 Treasury has expressed its continued, strong commitment to this approach.

39 It has also expressed support for an approach to policy development and legislative drafting that makes the greatest use of existing concepts, rather than reinventing new ones.

40 The purpose of this rule is to create conceptual consistency within the Tax Code. It is easiest to explain the problem and the suggested approach using an example.

41 In drafting provisions dealing with an associate of another entity, you might be asked to develop a definition of *associate* that differs from that currently used in the Tax Code. One approach is to create a new expression, defined differently from the first and distinguished from the first by the addition of “noise words” (eg: an *XYZ associate*). There are many examples of this approach in the Tax Code.

42 On the approach now adopted by Treasury, the drafter would work with instructors to see whether there is really any need, in policy terms, for the group of individuals targeted in the new provision to differ from those targeted as associates in other provisions across the Code. If, after those discussions, there were still concerns about the lack of consistency with other provisions in the Code, those concerns would be raised with the Manager of the Tax Code Unit within the Tax Design Division at the Treasury.

43 You may encounter difficulty:

- in deciding on which of the definitions already in the Tax Code is the core definition for a particular concept;
- finding any core definition at all for some concepts.

44 If this happens, you should discuss the issue with the Manager of the Tax Code Unit within the Tax Design Division at the Treasury with a view to settling the core definition.

45 You should also raise with Treasury any cases where standardisation at a higher level may be possible. For example, “tracing” rules involving chains of trusts, partnerships and companies occur in a variety of contexts and take a variety of forms. These rules cover both indirect ownership or control as well as the flow-through of indirect distributions. There may be room for consistency in the approach taken in formulating these rules, and it is the sort of issue that could usefully be raised with Treasury.

46 It is envisaged that, at some time, all of the defined terms in the Tax Code will be brought together in some form of Common Dictionary for the entire Code.

47 At this stage, each definition (or a signpost to each definition) must be included in the relevant Dictionary:

- section 995-1 of the 1997 Act for definitions in that Act, Schedule 1 to the *Taxation Administration Act 1953* and the *Venture Capital Act 2002*;
- section 195-1 of the GST Act for definitions in that Act;
- section 33-1 of the *A New Tax System (Wine Equalisation Tax) Act 1999* for definitions in that Act;

- section 27-1 of the *A New Tax System (Luxury Car Tax) Act 1999* for definitions in that Act;
- section 41 of the ABN Act for definitions in that Act.

48 Other fundamental rules are:

- don't define a word in a way that conflicts with its ordinary meaning;
- don't change the scope of a defined concept by deeming provisions;
- don't use a definition to do work more appropriately done by a substantive rule (it might, for example, be more useful to scope a suite of provisions using a substantive provision, rather than creating yet another variation of a core concept).

49 You should read the edited extract from TLIP Note 3 in Attachment B for a full description of the rules relating to definitions.

Part 7—Guides and decentralised tables of contents (TLIP Notes 5 and 45)

Except in the indirect tax legislation

General

50 You must provide information at the start of each Division and Subdivision to give readers an idea of what to expect from the Division or Subdivision. This information must always include a table of Subdivisions or a table of sections (as appropriate). You should always include a Guide to a Division, unless there is good reason not to. You may choose to include a Guide to a Subdivision.

51 You may also choose to provide a Guide explaining the key features of a Part, Chapter or Act.

52 Sometimes a Guide will be a whole Division or Part. This kind of Guide is usually used to introduce a Part, Chapter or whole Act. (For example, see Division 100 of the 1997 Act, which introduces the capital gains tax provisions of the 1997 Act.)

53 The Guide status of the Division or Part should be shown by including the following provision in the Division or Part:

This Division is a Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

54 Subdivisions are sometimes used as part of a Division, where the whole of the Division is a Guide (see, for example, Division 11 of the 1997 Act). In this case, the Guide status of each Subdivision in the Division should be shown by including the following provision in the Subdivision:

Drafting Direction No. 1.8
Special rules for Tax Code drafting

This Subdivision is a Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

The same provision need not appear at Division level.

55 A “Subdivision” may also be used as a guide to the Division in which it appears. If so:

- the heading to the Subdivision should indicate that it is a Guide (so it should read “Guide to Division x”, rather than “Subdivision x-A); and
- the next Subdivision is “Subdivision x-A”; and
- the provision mentioned in the previous paragraph need not be included.

56 Information on how to format decentralised tables of contents is contained in Word Note 22. There is a macro available to create decentralised tables of contents in the Tax Code macros.

57 If you are amending text covered by a decentralised table of contents, you should not amend the table of contents. This will be done automatically as part of the reprint process. If a parliamentary amendment changes text covered by a decentralised table, the table can be updated when the Third Reading or Assent print of the Bill is prepared. It is advisable to draw the need for the change to the attention of the Table Office of the relevant House.

58 The following tables show the order and content of introductory information in Divisions and Subdivisions. Attachment A contains the examples referred to in the table. You should note that new Divisions should always contain Subdivisions.

Division		
No Guide (Example A)	Guide	
	No sections in Guide except theme statement (Example B)	1 or more non-theme statement sections in Guide (Example C)
Div. heading	Div. heading	Div. heading
Table of Subdivision headings	Table of Guide and Subdivision headings	Table of Guide and Subdivision headings
	Guide heading	Guide heading
	Theme statement (see paragraph 59)	Theme statement (see paragraph 59)
		Table of non-theme statement section(s) in Guide
		Non-theme statement section(s)
Subdivision A heading	Subdivision A heading	Subdivision A heading

Subdivision	
No Guide (Example D)	Guide (Example E)
Subdivision heading	Subdivision heading
	Guide heading
	Theme statement
Table of section and any group headings	Table of section and group headings
	Any non-theme statement sections in Guide
Group heading (if any)	Group heading
First operative section	First operative section

Theme statements

59 A theme statement is the text that you put in a box at or near the start of a Guide. As originally conceived, its true function is to state in one or 2 sentences (at most) what the Division or Subdivision is about. This is based on Tony Golsby-Smith's proposition that you do not truly understand the subject matter of your text unless you can state its thesis in this form.

60 A theme statement is meant to *encapsulate* rather than to *summarise*. In particular, it is meant to establish the relevance of the provisions to the reader. A theme statement is thus different from a simplified outline. Here is an example (section 387-160 of the 1997 Act):

You can deduct capital expenditure on establishing a horticultural plant that you own and use for commercial horticulture. The period over which you can deduct the expenditure depends on the effective life of the plant.

Drafting Direction No. 1.8
Special rules for Tax Code drafting

61 If further Guide material is needed to prepare the reader for the operative provisions, it should be included in additional sections within the Guide, not in the theme statement.

Example: See Subdivision 170-A of the 1997 Act.

62 In practice, theme statements have got a lot longer than one or 2 sentences. In some cases this is because the principle in paragraph 59 has not been observed. In others, it is because one or 2 sentences weren't quite enough, but the further explanatory material didn't quite seem to justify additional Guide sections. This last point is a legitimate consideration, but should not be used to undermine the basic principle.

63 In drafting theme statements, a degree of judgment is required, but the following points should be observed (as well as the ones already mentioned).

64 Try not to start with "This Division ...". It wastes words and delays the real message. In some cases, however, this form may be necessary, perhaps because the subject matter of the provisions is too diverse to encapsulate well.

Examples: Section 36-1 of the 1997 Act is as follows:

If you have more deductions for an income year than you have income, the difference is a *tax loss* which you may be able to deduct in a later income year.

By contrast, section 41-1 of the 1997 Act is as follows:

This Division has a group of rules that are common to some of the capital allowances.

65 The first of the examples in paragraph 64 also illustrates the principle that the theme statement is often better for not using technical language, especially if the language is not defined until the reader gets to the operative provisions. Encapsulation means getting a good handle on the basic idea: technical accuracy can often get in the way of that.

66 The second of the examples in paragraph 64 illustrates the principle that in some cases it is necessary for the theme statement to be very general rather than for it to attempt to set out all of the particular cases.

67 No block of text in the theme statement should be more than 5 lines long. Even if the theme statement is broken into a number of blocks of text, the theme statement should never be longer than 10 lines. If you are having trouble keeping your theme statement within this principle, there is either too much material in the Division or Subdivision, or you have not thought through the unifying concept.

In the indirect tax legislation

68 The GST Act uses a streamlined version of the system used elsewhere in the Tax Code, as follows.

69 You must provide information at the start of each Division and Subdivision to give readers an idea of what to expect from the Division or Subdivision. The Division or Subdivision heading may be adequate for this purpose, but you may choose to include other material as well. In most cases, a theme statement is added following the practice in the income tax law.

70 A table of Subdivisions is included at the start of a Division, but a table of sections is *not* included at the start of a Division or Subdivision. Also, the expression “Guide” is not used. The reason for not including these features in indirect tax laws is that these laws are much shorter than the income tax laws, and this amount of explanatory architecture was therefore hard to justify.

71 The following table shows the order and content of introductory information in Divisions and Subdivisions.

Division	Subdivision
Div. heading	Subdiv. heading
Table of Subdivision headings	
Explanatory sections (if any)	
Subdivision A heading	First operative section

72 The term *explanatory section* is defined in section 182-10 of the GST Act. It is used to identify briefly sections that are not operative. It covers all TLIP style theme statements, but any other non-operative sections should end with a note as follows:

Note: This is an explanatory section.

Part 8—End of a Guide

73 The Guide to a Division ends just before the heading to the first numbered Subdivision of the Division. A Guide to a Subdivision ends just before the next group heading in the Subdivision.

74 A group heading is a heading to a group of sections within a Subdivision. The first group heading is the heading for the Guide itself. If no other, more meaningful, group heading is available to mark the beginning of the operative provisions of a Subdivision that contains a Guide, you should include the group heading “Operative provisions”. Group headings are formatted in the Subdivision heading style.

Part 9—Link notes

75 Link notes were, at one time, used:

- to let a reader know that s/he had reached the end of a Guide; and
- to let a reader know the number of the next provision where there was a gap in numbering.

76 These notes are no longer used. All link notes have been repealed.

Part 10—Amending group, section and subsection headings (TLIP Note 43)

77 Group headings, section headings and subsection headings all form part of the 1997 Act and the other Acts in the Tax Code. (This includes Schedule 1 to the *Taxation*

Administration Act 1953, but not Schedules 2C to 2J to the Income Tax Assessment Act 1936.)

78 Therefore, any amendment of such a heading needs to be done by an amending item in a Schedule to a Bill (and not just a note to an amending item).

79 Any amendment of an existing group heading, section heading or subsection heading must be made by repealing the heading and substituting a new heading (to be consistent with the practice for amending other headings).

80 Examples of the amending forms to be used are in the extract from TLIP Note 43 in Attachment B.

Part 11—When to use “you” (TLIP Note 11)

81 Generally, you should use “you” and draft in the second person when dealing with taxpayers. However, there are some cases where it is inappropriate to use “you”. The exceptions are:

- when “you” would refer *only* to a person who is not an individual;
- when “you” would refer to an individual who is dead;
- when there are a number of key players;
- when the provision affects the tax position of more than one entity;
- when creating obligations, rights etc. for someone other than as a taxpayer.

[For example, the obligations to withhold amounts from payments to taxpayers do not address the withholders as “you”.]

82 The edited extract from TLIP Note 11 in Attachment B contains more information about these exceptions.

Part 12—References to things in certain Schedules

83 The units of text in Schedules 2C to 2J to the *Income Tax Assessment Act 1936* and Schedule 1 to the *Taxation Administration Act 1953* that would normally be described as clauses of the Schedule are to be described as sections in the Schedule (eg section 18-45 in Schedule 1) [note the use of “in” rather than “of”].

84 This should be used when amending the Schedule and when referring to the Schedule in a cross-reference.

Part 13—Notes aligned to the right-hand margin

85 These were developed for the purpose of signposting. Here are some examples:

See Division 4, starting at section 4-1.

For a list of the entities that must pay income tax, see Division 9, starting at section 9-1.

86 They are no longer used, although the existing right-aligned notes will not be repealed.

Part 14—Signposting in the GST Act

87 The GST Act has a signposting system that links basic rules to particular special rules (at the end of Divisions and Subdivisions in Chapter 2). This system should be maintained if changes are made to Chapter 4. (Note also that new special rules require an amendment to the list in Division 37.)

Part 15—All other rules to be followed

88 All other rules contained in other Drafting Directions (including the Amending Forms Manual) and Word Notes must be complied with when drafting material for the Tax Code.

Peter Quiggin
First Parliamentary Counsel
1 May 2006

Attachment A—Order and content of introductory information in Divisions and Subdivisions

Example A

Division 975—Concepts about companies

Table of Subdivisions

975-A General

975-W Wholly-owned groups of companies

Subdivision 975-A—General

Example B

Division 108—CGT assets

Table of Subdivisions

	Guide to Division 108
108-A	What a CGT asset is
108-B	Collectables
108-C	Personal use assets
108-D	Separate CGT assets

Guide to Division 108

108-1 What this Division is about

This Division defines the various categories of assets that are relevant to working out your capital gains and losses. They are CGT assets, collectables and personal use assets.

It also tells you how capital losses from collectables and personal use assets are relevant to working out your net capital gain or loss.

It also sets out when land, buildings and capital improvements are taken to be separate CGT assets.

Subdivision 108-A—What a CGT asset is

Example C

Division 30—Gifts or contributions

Table of Subdivisions

	Guide to Division 30
30-A	Deductions for gifts or contributions
30-B	Tables of recipients for deductible gifts
30-C	Rules applying to particular gifts of property
30-D	Testamentary gifts under the Cultural Bequests Program
30-E	Register of environmental organisations
30-F	Register of cultural organisations
30-G	Index to this Division

Guide to Division 30

30-1 What this Division is about

This Division sets out the rules for working out deductions for certain gifts or contributions that you make.

Table of sections

30-5	How to find your way around this Division
30-10	Index

30-5 How to find your way around this Division

30-10 Index

Subdivision 30-A—Deductions for gifts or contributions

Example D

Subdivision 108-A—What a CGT asset is

Table of sections

108-5	CGT assets
108-7	Interest in CGT assets as joint tenants

108-5 CGT assets

Example E

Subdivision 108-D—Separate CGT assets

Guide to Subdivision 108-D

108-50 What this Subdivision is about

For CGT purposes, there are:

- exceptions to the common law principle that what is attached to the land is part of the land; and
- special rules about buildings and adjacent land; and
- rules about when a capital improvement to a CGT asset is treated as a separate CGT asset.

Table of sections

Operative Provisions

108-55	When is a building a separate asset from land?
108-60	Plant that is part of a building is a separate asset
108-65	Land adjacent to land acquired before 20 September 1985
108-70	When is a capital improvement a separate asset?
108-75	Capital improvements to CGT assets for which a roll-over may be available
108-80	Deciding if capital improvements are related to each other
108-85	Meaning of improvement threshold

Operative provisions

108-55 When is a building a separate asset from land?

Attachment B—Extracts from various TLIP Notes

TLIP Note 2

Defined terms in formulas

16. It should be made easy for a reader to find definitions of all defined terms used in a formula.

17. A defined term should be asterisked in a formula unless the definition is in the subsection containing the formula or the next subsection. Each occurrence of the term in the formula should be asterisked (even if the term is also asterisked in the text introducing the formula).

18. If a term *is* asterisked in a formula, an extra definition of the term (or a signpost to the definition of the term) is not needed in any list of definitions that is set out in the subsection containing the formula (or in the next subsection).

19. An exception is if you use in a formula a term that embodies a concept (rather than just being a label):

- the occurrence of the term in the formula should be asterisked; and
- the definition should be signposted in the Dictionary.

This approach ensures that a reader can find the concept by looking in the Dictionary.

20. If a term that is just a label is used only in a formula and is defined in the subsection containing the formula (or in the next subsection):

- the occurrence of the term in the formula should *not* be asterisked; and
- the definition should *not* be signposted in the Dictionary.

(However, a term that is used in the definition but defined elsewhere should be asterisked according to the normal rules about asterisking.)

21. For example, if an abbreviation of a defined term is used in a formula (to save space) and the abbreviation is spelt out in a definition in the subsection containing the formula:

- the occurrence of the abbreviation in the formula should *not* be asterisked; and
- the definition spelling out the abbreviation should *not* be signposted in the dictionary; but
- the occurrence (in full) of the defined term in the definition of the abbreviation should be asterisked.

Example:

If your *non-PP taxable income exceeds \$5,000, work out your *averaging adjustment* using the formula:

$$\text{*Basic averaging adjustment} \times \frac{\left(\text{BTI} - \text{Discounted income} \right)}{\text{BTI}}$$

where:

BTI is your *basic taxable income.

discounted income is the amount worked out under section 392-120.

.....

Signposts for locating the definition

23. Each page of the *Income Tax Assessment Act 1997* has a footer in this form:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Income Tax Assessment Act 1997 No. 38, 1997 5

24. This footer is the first stage in signposting from the asterisked defined term to the actual definition.

25. The definitions in the Dictionary in section 995-1 are of 2 basic kinds:

- “Real definitions”, which give the reader the definition of the asterisked term.
- Signpost definitions, which refer the reader on to “just in time” definitions located elsewhere in the Bill, or to definitions in other legislation, usually the *Income Tax Assessment Act 1936*. (Every term that is not itself defined in the Dictionary should have a signpost definition there.)

Sometimes a term defined in another Act is to be used in the *Income Tax Assessment Act 1997* with the same meaning as in the other Act but the definition of the term is not appropriate for the whole of the 1997 Act (usually because the term is already used elsewhere in the 1997 Act with a different meaning). The appropriate course here is simply to refer to the term as defined in the other Act:

“... if he or she is a dependant child (within the meaning of the *Dependant Children Act 1901*)”. The term does not then need to be included in the Dictionary, so questions of asterisking it do not arise. This case is a limited exception to the “one expression, one meaning” rule.

26. It is TLIP drafting policy to use “just in time” definitions wherever possible: in other words, to find the point in the narrative structure where the definition is most useful to the reader. The fact that the term is used in other areas of the law is *not* a sufficient reason for putting the definition somewhere else. If the definition is integral to 2 or more areas, it should be put in the area that is most commonly used or with which it has the closest connection.

27. A term that has no particular affinity with any area of the new law will be defined in the Dictionary.

Matching the defined term with the Dictionary definition

28. The aim is for the reader to find the defined term in the Dictionary as easily as possible. This can present problems for the drafter if the term:

- has a number of elements in its name (for example, *purpose of producing assessable income*); or
- is a composite expression or relative term (for example, the uses of *provide* described [below at paragraphs 30-32]).

29. For relative terms, the old form that used “in relation to” one or more times is to be avoided wherever possible. Example of how this can be done are:

relative of a person means:

- (a) the person’s *spouse; or

quasi-ownership right over land means:

- (a) a lease of the land; or ...

30. The *provide* example is more difficult. The actual definitions of the different aspects of the term may be elsewhere in the new law. The question is how to draft appropriate signposts.

31. In this situation, you should create a single signpost, as follows:

provide:

- (a) for entertainment—has the meaning given by section 32-6; and
- (b) for a fringe benefit—has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

33. Follow whichever approach or combination of approaches best promotes the aim of leading the reader quickly to the necessary information. The choice should not be driven by merely theoretical considerations such as whether there are 2 concepts involved, as opposed to 2 aspects of a larger concept.

34. There will be cases where, in order to make it easier to match the defined term with the Dictionary definition, it is appropriate to reshape the term (this will mean changing what is in bold italics in the actual definition).

Signpost definitions referring to more than one section

35. Consider this example:

taxable income has the meaning given by sections 4-15 and 165-65.

36. The main rules about working out taxable income are in section 4-15. Section 165-65 deals with a special case where the rules in section 4-15 don’t apply. So between them, the 2 sections determine what the expression refers to in particular cases. As other special rules for working out taxable income are added to the rewritten law, the signpost definition will need amending so that it continues to set out a complete list. Note that there is no departure here from the principle that a term should only have one meaning. *Taxable income* is a single concept, whose application is determined by different rules in different cases.

37. Here is another example:

termination value of property: for the purposes of a particular *capital allowance, the *termination value* of property is worked out as set out in the following table:

Item	For this capital allowance:	the rules for working out the termination value are in:
1.	Mining and quarrying: exploration or prospecting	section 330-490
2.	Mining and quarrying: development and operation of a mine or quarry	section 330-490
3.	Mining and quarrying: transporting minerals or quarry materials	section 330-490

38. Different rules for working out the termination value of property apply for the purposes of different capital allowances. This is an example of an expression having different meanings when used in relation to different subject matters. It is also analogous to the approach to the concept of *taxable income*. Either way, the principle that a term should only have one meaning is not infringed.

Signpost definitions for different grammatical forms

39. The Dictionary includes signpost definitions such as this:

held: see *hold*.

This is legally redundant because of section 18A of the *Acts Interpretation Act 1901*. However, it promotes the aim of helping the reader to match the definition with occurrences of the defined term. “Held” will be asterisked wherever “hold” would be.

Other signposting techniques are not used except in special cases

40. The new income tax law uses a system of notes to signpost from general rules to exceptions or special rules, or between sets of rules that are related in some other way. For example:

28-12 Car expenses

- (1) If you owned or leased a *car or hired a car under a hire purchase agreement, you can deduct for the car’s expenses an amount or amounts worked out using one of 4 methods.

Note: For particular types of cars taken on hire you cannot use one of the 4 methods: see section 28-165 (Exception for particular cars taken on hire).

41. In general, notes are *not* used to signpost to definitions. The system of asterisking defined terms is used instead. This has led to a big reduction in the number of notes required in the rewrite.

Alternatives to asterisking “labels” and signposting them in the Dictionary

42. If a reader will encounter in one section a “label” for a concept that is labelled in another section, the reader should be helped to find the provision where the concept is labelled.

43. However, it is generally desirable not to clutter the Dictionary with signposts to labels for concepts. Also, if a label is generic, it may be useful to be able to use the label again in an obviously different context for a different concept. Therefore it may often (but not always) be desirable to use a signposting technique that does not involve asterisking a label when it is used in a section other than the section where the label is applied to a concept. In many cases it will be possible to help the reader find out where a label is applied to a concept by including in the text of the section that uses the label a reference to the section where the label is applied.

44. For example:

392-35 Stage 1—working out your basic amount

Work out the amount (the *basic amount*) of tax that would be payable on your *basic taxable income for the *current year if ...

...

392-70 Working out your tax at the notional rate

Work out the amount (the *notional amount*) of tax that would be payable on your *basic taxable income for the *current year if ...

...

392-75 Working out the kind of adjustment and making it

- (1) Compare your basic amount worked out under section 392-35 with your notional amount worked out under section 392-70. ...

45. It should not be necessary to provide this kind of help for the reader within a section. If a label is applied to a concept in one subsection and the reader encounters the label in another subsection of the same section, the narrative flow should be clear enough, and the section short enough, for the reader not to need help to find the subsection where the label is applied to the concept. Therefore labels should not be asterisked when they are used in the section in which they are applied to a concept, and a label that is used only in the section where it is applied should not be signposted in the Dictionary.

46. The principles in paragraphs 43 to 45 apply only to labels (which are simply short tags to save repetition of text), and not to genuine defined terms (for which the definitions clearly establish concepts).

There will be some circumstances in which it is desirable to asterisk labels where they are used. (One example of this is the company tax losses provisions in Division 165, where labels are used in provisions a considerable distance from the provisions where the labels are applied, and where some labels are used in different places to tag different concepts.)

TLIP Note 3 (Edited extracts)

What counts as a definition

3 This Drafting Note covers not only definitions in the narrower sense, but also interpretation provisions of all kinds. A distinction is drawn between definitions of *concepts* and definitions of tags or labels, because different rules apply to each of those 2 categories.

Principles governing the use of definitions in the new income tax law

When to use them

- 4 Definitions should be used for 2 purposes only:
- to clarify meaning;
 - to “bunch” concepts.

To clarify meaning

5 Wherever possible, rely on the natural meaning of a term. This is consistent with TLIP’s aim of writing the tax law in language that is familiar to its target audience.

6 Where the meaning of a term is unclear on some point, it is appropriate to deal with the point in a definition. It may even be necessary to define a term exhaustively because its ordinary meaning is unacceptably vague.

7 Here are some examples of definitions that clarify meaning:

adopted child of a person means someone the person has adopted:

- (a) under the law of a State or Territory about adoption of children; or
- (b) under a *foreign law about adoption of children, if the adoption would be recognised as valid under the law of a State or Territory.

friendly society means a society registered as a friendly society under an *Australian law.

motor vehicle means any motor-powered road vehicle (including a 4 wheel drive vehicle).

To “bunch” concepts

8 Tony Golsby-Smith describes bunching as a “useful, even necessary skill to absorb lots of information” and “a powerful tool to turn a long list into something useful”. Concepts that bunch provide a convenient way of talking about groups of things that share a relevant characteristic. Here are some examples:

housing and welfare means:

- (a) residential accommodation; or
- (b) health, education, recreation or similar facilities, or facilities for meals; or
- (c) works carried out directly in connection with such accommodation or facilities, including works for providing water, light, power, access or communications.

quasi-ownership right over land means:

- (a) a lease of the land; or
- (b) an easement in connection with the land; or
- (c) any other right, power or privilege over the land, or in connection with the land.

recognised tax adviser means:

- (a) a *registered tax agent; or
- (b) a *legal practitioner; or
- (c) an entity which is not a *registered tax agent but who is exempted under subsection 251L(2) of the *Income Tax Assessment Act 1936* from the operation of section 251L (Unregistered tax agents not to charge fees) of that Act.

Notice how the defined term **quasi-ownership right**, although somewhat artificial, attempts to give some sense of the underlying content of the concept. Contrast the use of modifiers such as “eligible” or “qualifying”, which should be avoided wherever possible.

9 Readers will find a “bunching” concept easier to understand the more obvious the bunching criterion is to them. This will depend on the nature of their experience with the subject matter. Often, the drafter needs to bunch for purposes that derive from the policy of the legislation and are not based on the reader’s previous experience. This can lead to concepts that are non-intuitive or artificial. The position can be made worse if the name chosen for the concept is artificial or meaningless.

10 Wherever possible, bunch in a way that is intuitive to the reader, and avoid terms that are artificial in their content or their names. However, there will be cases where a certain amount of artificiality can be tolerated to get the benefits of using the bunching concept. Remember that a new item of terminology can become familiar quite quickly, especially if it fits well into the overall conceptual scheme of the legislation. An example is the concept of CGT event in the capital gains tax rewrite.

11 On the other hand, there are situations where the only characteristic that a list of items have in common is the fact that the legislation deals with all of them in the same way for certain purposes. This may be enough to produce a meaningful bunching concept (for example, CGT event), but it may not be. In that case it is better to resort to other strategies.

Don’t use them to artificially restrict or extend the reach of a concept or set of rules

12 It is very common in the *Income Tax Assessment Act 1936* for artificial concepts to be used to determine the scope of operative provisions. For example, a set of provisions about leases of certain kinds will define the term “eligible lease” to cover leases of that kind. It is also common for a term with a natural meaning to be defined so as to exclude part of that meaning for the purposes of particular provisions: for example “*car* does not include a motor cycle”.

- 13 From the readability point of view, these practices are undesirable because:
- they lead to a proliferation of defined terms relating to the same basic concept; these terms are often identical or closely similar in wording;
 - they involve definitions being used to do work that is better done by an application provision or substantive rule.

Don't use them to create exceptions

Use them as sparingly as possible

The fewer there are, the less trouble they are to manage.

Especially avoid hierarchies of defined terms

Don't use them to extend the application of rules

Don't use them in place of a substantive rule

Be wary of using sets of defined concepts in place of a step-by-step procedure

Don't define a word in a way that conflicts with its ordinary meaning

Don't change the scope of a defined concept by deeming provisions

22 It has always been considered bad drafting practice to define an expression to include something that is quite outside its natural meaning. Despite this, it is still extremely common for provisions to deem something to be something quite different.

23 We have gone to considerable lengths to avoid this practice in the rewrite.

The principle of one expression, one meaning

15 It is a fundamental principle of the rewrite that terminology must have a consistent meaning throughout the income tax law. It follows that:

- the same term should not be defined in different ways in different areas of the law;
- if a term is used in its ordinary meaning in one area of the law it should not be defined in another part of the law;
- definitions should never include phrases such as “for the purposes of this section/Subdivision/Division etc”.

16 Related to this is a principle that if a term has a well-known meaning in another area of law (for example, the Corporations Law) that is familiar to readers of the income tax law, one should avoid giving the term a different meaning in the income tax law.

17 However, it is recognised that a word can have different meanings when used in relation to different subject matters. (This point and its implications are discussed in Drafting note 2.)

How to maintain the principle in practice

18 For a drafter to observe the one term, one meaning principle, he or she needs to know:

- what terms have been already defined in the *Income Tax Assessment Act 1997*;
- what terms have already been used in that Act in their ordinary meaning.

.....

20 Ideally, the drafter who wants to define a term in the 1997 Act should also consider how that term will affect future rewrites of provisions of the *Income Tax Assessment Act 1936*. Within TLIP this consideration is aided by the instructors preparing what are called Dictionary templates for terminology in areas of the 1936 Act that are in the course of being rewritten.

21 When drafting a definition of a term for insertion in the 1997 Act, follow these steps:

- (1) Check to see if the term is already defined in the Act or an amending Bill.
- (2) If the term has already been defined, consider whether the definition is suitable for your purpose.
- (3) If (2) does not apply, you need to check whether the term has already been used in the *Income Tax Assessment Act 1997* (in which case it bears its ordinary meaning). If it has, you may decide not to disturb that use of the term, in which case, proceed as for (2). If you decide to define the term anyway, you need to:
 - (a) clear with your instructors that it is OK for the existing occurrences of the term to be caught by the definition; and
 - (b) amend the provisions containing those occurrences, so as to asterisk the term in accordance with the normal asterisking rules.

.....

The form of definitions

General

25 It follows from the “one expression, one meaning rule” that definitions do not need to include a statement of scope. Their scope is implicitly the whole of the *Income Tax Assessment Act 1997*. One of the major purposes behind the rule, and its principal benefit, is that the reader of the law (and its drafters!) can rely on stable meanings for terminology throughout.

“Referential” style definitions not to be used

26 Definitions in the form “a reference to X is/includes a reference to Y” are not to be used under any circumstances. The form is long-winded and makes it difficult to identify the defined term. The supposed benefits of this type of definition are adequately achieved by section 18A of the *Acts Interpretation Act 1901*.

Where to put definitions

“Just in time” definitions

27 A “just in time” definition is one that is essential to the flow of information to the reader in a particular area of the law. It will be located at an appropriate point in that area.

Drafting Direction No. 1.8
Special rules for Tax Code drafting

28 The fact that a term defined by a “just in time” definition is used in other areas of the law is *not* a sufficient reason for putting the definition somewhere else than in the area to which it is integral.

29 If the definition is integral to 2 or more areas, it should be put in the area that is most commonly used or with which it has the closest connection.

Ordinary definitions

30 All other definitions are ordinary definitions.

31 These will be located in Chapter 6—the “Dictionary”.

TLIP Note 11 (Edited extract)

Exception 1: when “you” would refer to a person who is not an individual

“You” should not be used where, on the face of the text, the only entity it would refer to is an artificial entity (eg: “If you are a company...”). Instead, the provision should be drafted in the third person:

Example:

165-10 To deduct a tax loss

A company cannot deduct a *tax loss unless either:

- (a) it meets the conditions in section 165-12 (Company must maintain the same owners); or
- (b) it meets the condition in section 165-13 (Alternatively, company must carry on same business).

However, “you” should still be used even though the only entity it refers to *in fact* is an artificial entity.

Exception 2: when “you” would refer to a person who is dead

“You” should not be used where it would refer to an individual who is dead (eg: “If you are dead...”). Generally, these type of provisions should be drafted in the third person (eg: 165-205 (Death of beneficial owner)). However, in cases where the provision is referring to events that occur after a person dies, it is possible to draft these types of provisions in the second person (see TLIP/OPC/MANUALS/S96BM6.DOC).

Exception 3: when there are a number of key players

Generally “you” is used instead of “the taxpayer”.

In a provision that:

- refers to a number of entities; but
- only affects the tax position of one of those entities;

“you” is only used to refer to the entity whose tax position is affected.

An example of this is found in Division 34 of the 1997 Act (Non-compulsory uniforms). That Division is about deductions for employees for their non-compulsory uniforms. “You” is used when referring to those employees, because they are the taxpayers for the purposes of the Division. The Division also spells out some things that the employers of those employees need to do so that those employees can claim the deduction. Those employers are not referred

to as “you”. Nor are they referred to as “your employer” in the provisions dealing just with the things the employers need to do.

Example:

34-10 What you can deduct

If you are an employee, you can deduct expenditure you incur in respect of your *non-compulsory uniform if:

- (a) you can deduct the expenditure under another provision of this Act; and
- (b) the *design of the uniform is registered under this Division when you incur the expenditure.

Note: Only your employer can apply to register the design of the uniform.

34-15 What is a non-compulsory uniform?

What is a uniform?

A *uniform* is one or more items of clothing (including accessories) which, when considered as a set, distinctively identify you as a person associated (directly or indirectly) with:

- (a) your employer; or
- (b) a group consisting of your employer and one or more of your employer’s *associates.

34-25 Application to register the design

The employer of an employee who has, or will have, a non-compulsory uniform can apply to the Secretary to the Department of Industry, Science and Technology (the Industry Secretary) for the *design of the *uniform to be registered. No-one else can apply.

Exception 4: when the provision affects the tax position of more than one entity

“You” should not be used in a provision that:

- refers to a number of entities; and
- affects the tax position of a number of those entities.

(Contrast this situation with that in exception 3 where only one entity’s tax position is affected by the provision.)

Provisions of this kind should be drafted in the third person (eg: Division 41 of the 1997 Act — Common rules for capital allowances.)

Example:

41-15 When is roll-over relief available?

This Common rule applies in relation to the disposal of property in the 1996-97 income year or a later income year by a taxpayer (the *transferor*) to another taxpayer (the *transferee*) in the circumstances set out in section 41-20.

41-20 Disposals of property

- (1) Roll-over relief is available if:
 - (a) amounts are or have been deductible by the transferor in respect of the property under the rules for the *capital allowance; and
 - (b) if the transferor is not a partnership—section 160ZZM, 160ZZMA, 160ZZN or 160ZZO of the *Income Tax Assessment Act 1936*:
 - (i) applies to the disposal; or
 - (ii) if the property is a *motor vehicle covered by paragraph 82AF(2)(a) of that Act—would apply to the disposal if a reference in those sections to an asset included a reference to a *motor vehicle of that kind; and

TLIP Note 43

4. Examples of amending forms for headings follow:

777 Group heading before section 165-10

Repeal the heading, substitute:

Conditions for deducting a tax loss

(Note that a group heading is always identified by reference to the section that comes immediately after it (because a group heading is not numbered, but is always followed immediately by a section).)

777 Section 165-10 (heading)

Repeal the heading, substitute:

165-10 Company must meet conditions to deduct a tax loss

777 Subsection 165-12(1) (heading)

Repeal the heading, substitute:

Same persons must have more than 50% of voting power for loss year and income year

PARLIAMENTARY COUNSEL

Attachment C—TLIP Features used in Tax Code Acts

TLIP Features used in Tax Code Acts							
Item	Feature	Tax Code Act					
		ITAA 97 ¹	Schedule 1 to TAA ²	Transitionals Act ³	Indirect tax Acts ⁴	ABN Act ⁵	Venture Capital Act ⁶
1	Decentralised tables of Contents	Yes	Yes	Yes	Yes	No	Yes
	Table of Subdivisions	Yes	Yes	Yes	Yes	No	Yes ⁷
	Table of Sections	Yes	Yes	Yes	No	No	Yes
2	Guides	Yes	Yes	No	No	No	Yes
	Theme statement	Yes	Yes	No	No	No	Yes
	Balancing group heading (eg: Operative provisions)	Yes	Yes	No ⁸	No	No	Yes
3	Explanatory sections	No	No	No	Yes	No	No
4	One expression/one meaning rule	Yes	Yes	Yes	Yes	Yes	Yes
5	Definitions form part of the Tax Code's common dictionary	Yes	Yes ⁹	Yes ¹⁰	Yes ¹¹	Yes ¹²	Yes ¹³

¹ *Income Tax Assessment Act 1997*

² *Schedule 1 to the Taxation Administration Act 1953*

³ *Income Tax (Transitional Provisions) Act 1997*

⁴ *A New Tax System (Goods and Services Tax) Act 1999, A New Tax System (Luxury Car Tax) Act 1999 and A New Tax System (Wine Equalisation Tax) Act 1999*

⁵ *A New Tax System (Australian Business Number) Act 1999*

⁶ *Venture Capital Act 2002*

⁷ The Act does not currently contain any Subdivisions, but if any were inserted, a Table of Subdivisions would be required.

⁸ There is such a heading in Division 320 of the Act, but it should not be regarded as a precedent.

Drafting Direction No. 1.8
Special rules for Tax Code drafting

TLIP Features used in Tax Code Acts							
Item	Feature	Tax Code Act					
		ITAA 97 ¹	Schedule 1 to TAA ²	Transitionals Act ³	Indirect tax Acts ⁴	ABN Act ⁵	Venture Capital Act ⁶
6	Definitions asterisked	Yes	Yes	No	Yes	Yes	Yes
7	Other rules on definitions (for example, “just-in-time”)	Yes	Yes	Yes	Yes	Yes	Yes
8	Use of “you”	Yes	Yes	Yes	Yes	Yes	Yes ¹⁴
9	Headings to the following units all form part of the Act: <ul style="list-style-type: none"> • Chapters; • Parts; • Divisions; • Subdivisions; • sections; • subsections; • Group headings (including “Guide” heading). 	Yes	Yes	Yes	Yes	Yes, except group headings ¹⁵	Yes
10	Guides form part of the Act	Yes	Yes	Yes	Not applicable	Not applicable	Yes

⁹ See section 3AA of the *Taxation Administration Act 1953*. Terms not used in Schedule 1 are defined in section 2 of the Act.

¹⁰ See section 1-10 of the Act.

¹¹ The intention is that the definitions in the indirect tax Acts will ultimately form part of a single Dictionary for the entire Tax Code. If you are asked to give a term already defined in ITAA 97 a different meaning in the indirect tax Acts, you should raise the issue with the Manager of the Tax Code Unit within the Tax Design Division at the Treasury.

¹² The Act maintains consistency with the ITAA97 and the indirect tax Acts by replicating definitions in those Acts. There are, however, some differences in the meaning in some of key terms (see, for example, the definition of *entity*, which is the same as the definition in the indirect tax Acts, but differs from that in ITAA 97. See also the definition of *enterprise*, which differs from that in the indirect tax Acts.) You should maintain consistency between the definitions in this Act and those in the other Tax Code Acts. Where you cannot give the same term the same meaning, consider using a different term.

¹³ The Act relies on the definitions in ITAA 97 (see section 1-10 of the Act).

¹⁴ Yes, but in line with the TLIP rules on the use of “you”, not actually used in the Act.

¹⁵ Because there are none

TLIP Features used in Tax Code Acts							
Item	Feature	Tax Code Act					
		ITAA 97¹	Schedule 1 to TAA²	Transitionals Act³	Indirect tax Acts⁴	ABN Act⁵	Venture Capital Act⁶
11	Explanatory sections form part of the Act	Not applicable	Not applicable	Not applicable	Yes	Not applicable	Not applicable
12	Notes and examples form part of the Act	Yes	Yes	Yes	Yes	Yes	Yes
13	Tables of Subdivisions do not form part of the Act	Yes	Yes	Yes	Yes	Not applicable	Yes
14	Tables of sections do not form part of the Act	Yes	Yes	Yes	Not applicable	Not applicable	Yes