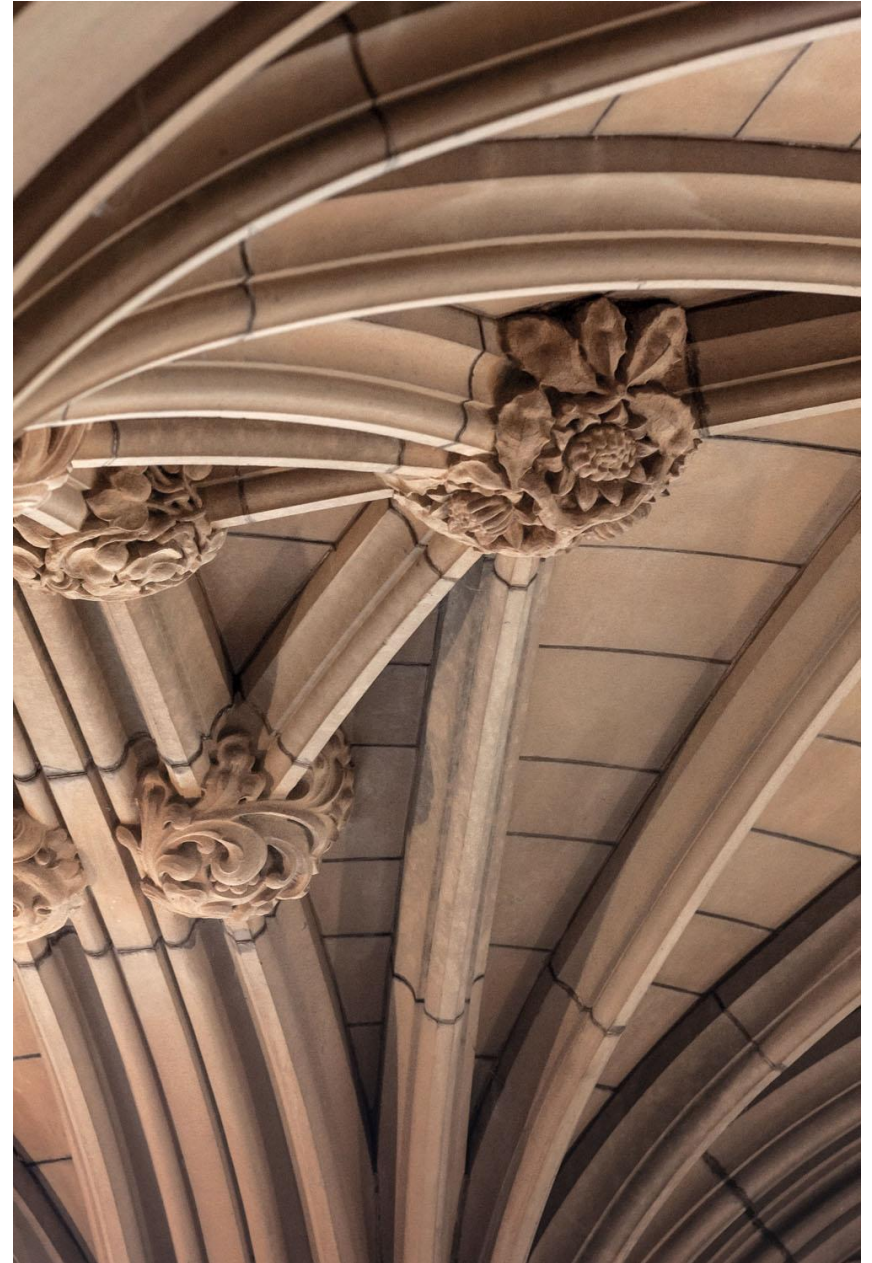


The problems with the income tax

and why they have little to do with the income tax

Presented by
Professor Graeme Cooper
Faculty of Law



‘Words, words, words. I’m so sick of words ...’

Alan Jay Lerner

- *Re:think* p. 176

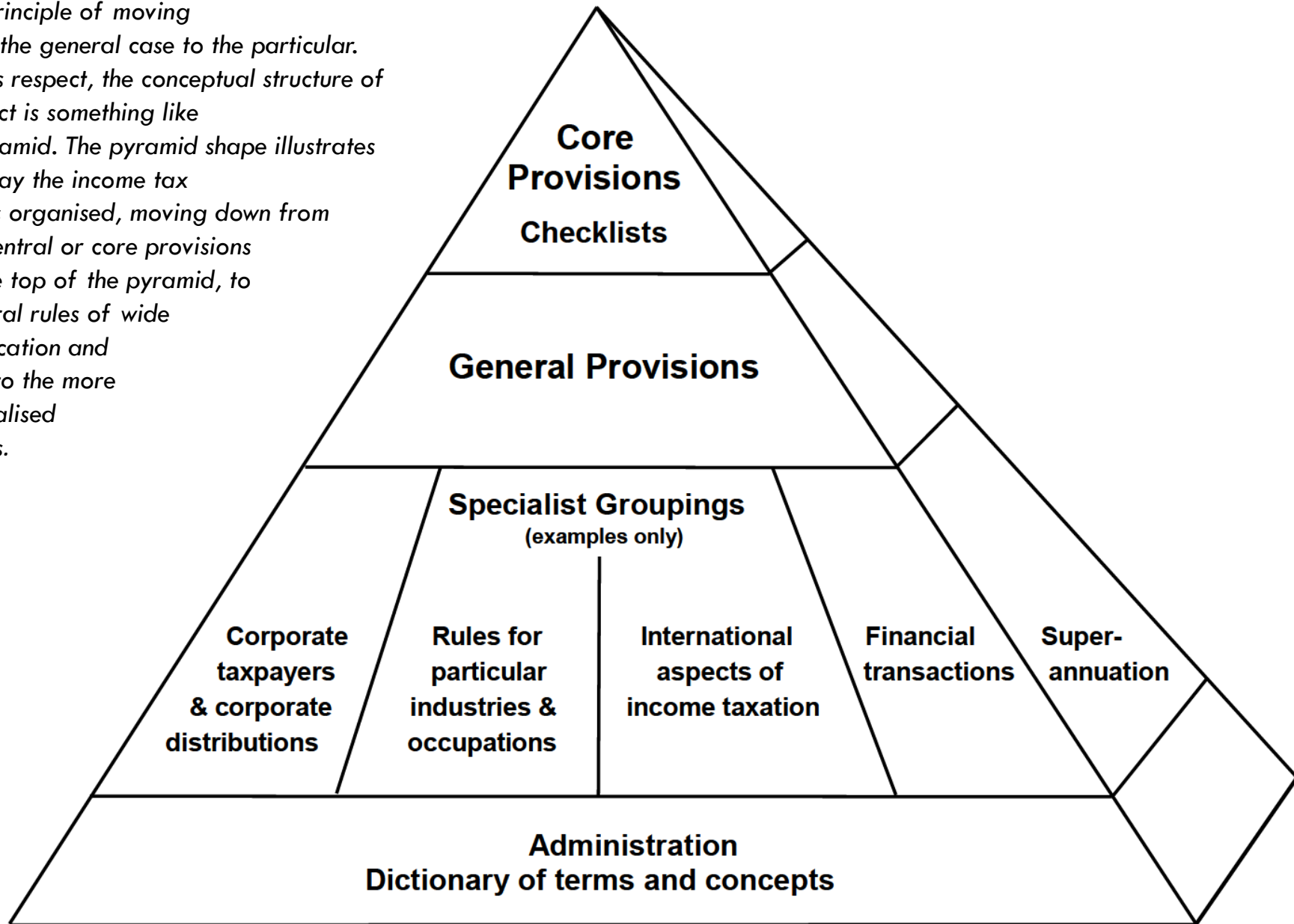
While useful in addressing a particular aspect of complexity, the overall value of simplifying the drafting of legislation without any change in underlying outcomes is questionable.

Simplifying language can only do so much if the underlying policy remains highly complex. In many cases, it will simply make the complexity of the policy more apparent and, in practice, only benefits the very small section of society using the tax legislation itself or related guidance material.

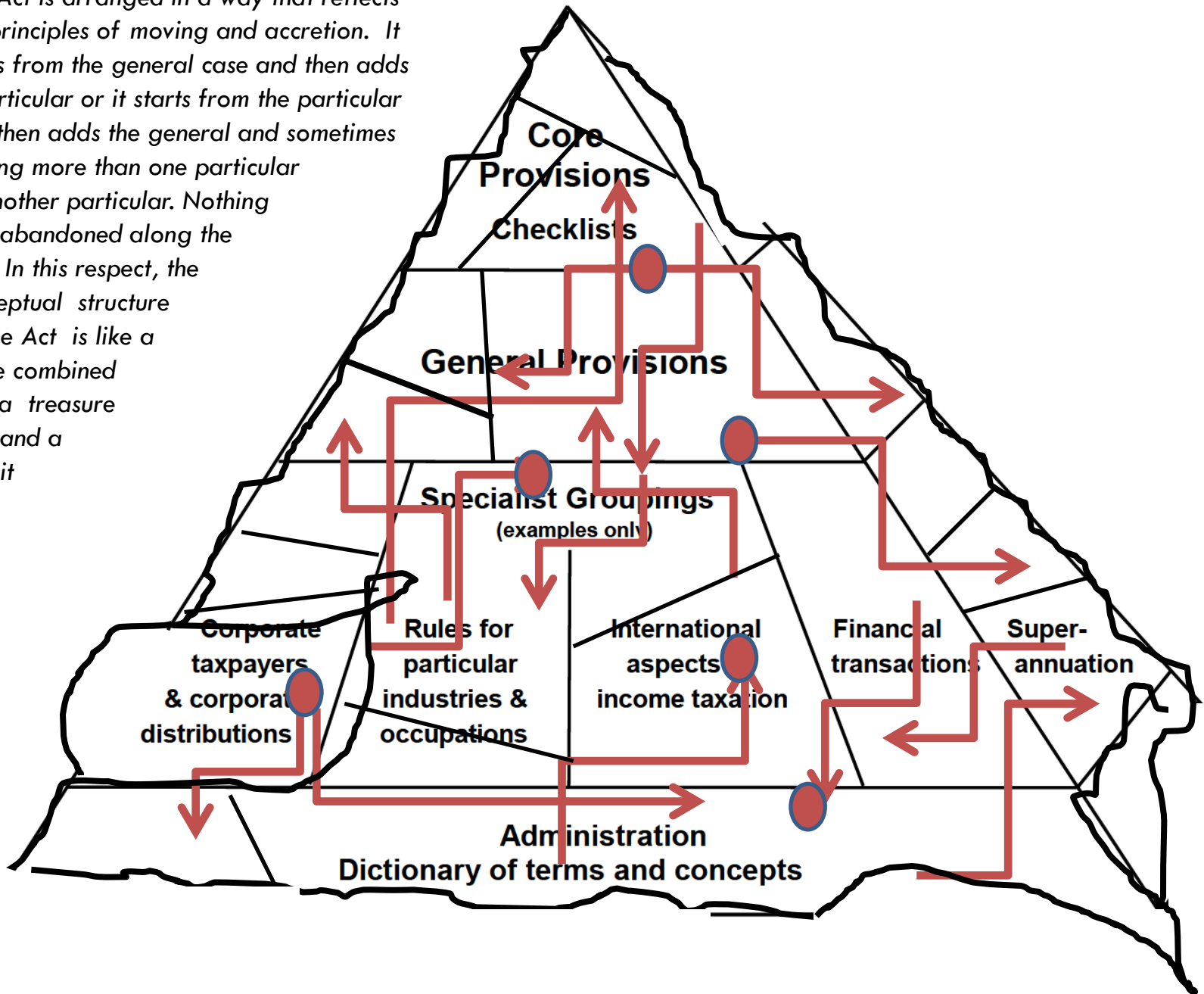
Better architecture, not just prettier door handles

- The case for better regime interactions is almost never discussed
- Navigating between regimes

This Act is arranged in a way that reflects the principle of moving from the general case to the particular. In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.



This Act is arranged in a way that reflects the principles of moving and accretion. It starts from the general case and then adds a particular or it starts from the particular and then adds the general and sometimes adding more than one particular to another particular. Nothing gets abandoned along the way. In this respect, the conceptual structure of the Act is like a maze combined with a treasure hunt and a tar pit



- Deliberate duplication v. dichotomous outcomes
 - The preferred model
 - The unsolved problems of solving overlap
- Regime incompatibility
 - Div 16E and TOFA v. 102CA
 - the pooling saga
- Institutional amnesia
 - Div 240 (Div 242, Div 250)
- Legislating by omission
 - FBT
- Circular hierarchies
 - TOFA v. CDF v. s. 6-5 v. TOFA v CDF v. s. 6-5

Architecture v. door handles – part 2

- Navigating within regimes

Division 276—Australian managed investment trusts: attribution managed investment trusts

276-A What is an attribution managed investment trust?

276-10 Meaning of *attribution managed investment trust (or AMIT)*

276-15 Clearly defined interests

276-B Fixed trust treatment

276-55 Member of AMIT taken to have vested and indefeasible interest in income and capital

276-C Taxation of member components

Taxation of member on taxable member components

276-80 Member taxed on taxable member components

276-85 Relationship between section 276-80 and withholding rules

276-90 Relationship between section 276-80 and other charging provisions in this Act

Taxation of trustee on taxable member components

276-95 Trustee taxed on foreign resident member's components—non-trustee beneficiary

276-100 Refundable tax offset for foreign resident member

276-105 Trustee taxed on foreign resident member's components—trustee beneficiary

276-110 Deduction from beneficiary's tax

276-D AMIT characters

AMIT character

276-150 The *AMIT characters*

276-E Member components

Member-level concepts

276-205 Meaning of *taxable member component*

276-210 Meaning of *determined member component*

276-215 Meaning of *member component*

276-F Trust components

Trust-level concepts

276-270 Meaning of *determined trust component*

276-275 Document that determines amounts

276-280 Meaning of *trust component*

276-285 Rules for working out trust components—general rules

276-290 Rules for working out trust components—allocation of deductions

276-G Unders and overs

Modified calculation of trust component for unders, overs and uplifts

276-340 Application

276-345 Modified calculation of trust component for unders, overs and uplifts

276-350 Trustee taxed on negative result for offset characters

Unders and overs

276-355 Meaning of *under* and *over* of an AMIT character

276-360 Reduction in over of income AMIT character and of under of offset AMIT character due to choice under paragraph 276-205(2)(a)

276-365 Limited discovery period for unders and overs

276-H Uplifts for unders and overs

276-415 Application

276-420 Affected base years—substantial overall base year shortfall

276-425 Unders/overs for which an uplift must be calculated—modification for trust with classes of interests

276-430 Unders/overs for which an uplift must be calculated

276-435 Amount of the uplift

276-440 Uplift takes effect in first available income year

276-J Shortfall taxation

Ensuring determined trust components are properly taxed

276-500 Trustee taxed on shortfall in single determined member component (income, exempt, NANE)

276-505 Trustee taxed on excess in single determined member component (offset)

276-510 No shortfall in relation to franking credit gross-up amount

276-515 Trustee taxed on amounts of trust component that cannot be reflected in member components

Ensuring unders and overs are properly taxed

276-520 Trustee taxed on amounts of under of income character not properly carried forward

276-525 Trustee taxed on amounts of over of offset character not properly carried forward

276-K AMMA statements

276-605 Obligation to give an AMMA statement

276-610 *AMIT member annual statement (or AMMA statement)*

276-L Modification for non-arm's length income

276-670 Trustee taxed on amount of non-arm's length income of AMIT

276-M Debt-like AMIT instruments

276-695 Meaning of *debt-like AMIT instrument*

276-700 Debt-like AMIT instruments treated as debt interests etc.

276-710 Distribution on debt-like AMIT instrument is deductible in working out trust components

276-N Ceasing to be an AMIT

276-755 Application of Subdivision to former AMIT

276-760 Continue to work out trust components, unders, overs, etc.

276-765 Effect of increase

276-770 Effect of decrease

Division 276—Australian managed investment trusts: attribution managed investment trusts

276-A What is an attribution managed investment trust?

276-10 Meaning of *attribution managed investment trust (or AMIT)*

276-15 Clearly defined interests

276-B Fixed trust treatment

276-55 Member of AMIT taken to have vested and indefeasible interest in income and capital

276-C Taxation of member components

Taxation of member on taxable member components

276-80 Member taxed on taxable member components

276-85 Relationship between section 276-80 and withholding rules

276-90 Relationship between section 276-80 and other charging provisions in this Act

Taxation of trustee on taxable member components

276-95 Trustee taxed on foreign resident member's components—non-trustee beneficiary

276-100 Refundable tax offset for foreign resident member

276-105 Trustee taxed on foreign resident member's components—trustee beneficiary

276-110 Deduction from beneficiary's tax

276-D AMIT characters

AMIT character

276-150 The *AMIT characters*

276-E Member components

Member-level concepts

276-20 Meaning of *taxable member component*

276-21 Meaning of *determined member component*

276-21 Meaning of *member component*

276-F Trust components

Trust-level concepts

276-270 Meaning of *determined trust component*

276-275 Document that determines amounts

276-280 Meaning of *trust component*

276-285 Rules for working out trust components—general rules

276-290 Rules for working out trust components—allocation of deductions

276-G Unders and overs

Modified calculation of trust component for unders, overs and uplifts

276-340 Application

276-345 Modified calculation of trust component for unders, overs and uplifts

276-350 Trustee taxed on negative result for offset characters

Unders and overs

276-355 Meaning of *under* and *over* of an AMIT character

276-360 Reduction in over of income AMIT character and of under of offset AMIT character due to choice under paragraph 276-205(2)(a)

276-365 Limited discovery period for unders and overs

276-H Uplifts for unders and overs

276-415 Application

276-420 Affected base years—substantial overall base year shortfall

276-425 Unders/overs for which an uplift must be calculated—modification for trust with classes of interests

276-430 Unders/overs for which an uplift must be calculated

276-435 Amount of the uplift

276-440 Uplift takes effect in first available income year

276-J Shortfall taxation

Ensuring determined trust components are properly taxed

276-500 Trustee taxed on shortfall in single determined member component (income, exempt, NANE)

276-505 Trustee taxed on excess in single determined member component (offset)

276-510 No shortfall in relation to franking credit gross-up amount

276-515 Trustee taxed on amounts of trust component that cannot be reflected in member components

Ensuring unders and overs are properly taxed

276-520 Trustee taxed on amounts of under of income character not properly carried forward

276-525 Trustee taxed on amounts of over of offset character not properly carried forward

276-K AMMA statements

276-605 Obligation to give an AMMA statement

276-610 *AMIT member annual statement (or AMMA statement)*

276-L Modification for non-arm's length income

276-670 Trustee taxed on amount of non-arm's length income of AMIT

276-M Debt-like AMIT instruments

276-695 Meaning of *debt-like AMIT instrument*

276-700 Debt-like AMIT instruments treated as debt interests etc.

276-710 Distribution on debt-like AMIT instrument is deductible in working out trust components

276-N Ceasing to be an AMIT

276-755 Application of Subdivision to former AMIT

276-760 Continue to work out trust components, unders, overs, etc.

276-765 Effect of increase

276-770 Effect of decrease

