



Taxation Administration Act 1953

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This compilation has been split into 3 volumes

Volume 1: sections 1–18

Volume 2: Schedule

Volume 3: Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Taxation Administration Act 1953* as in force on 30 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 30 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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Schedule 1—Collection and recovery of income tax and other liabilities

Note: See section 3AA.

Chapter 2—Collection, recovery and administration of income tax

Part 2-1—Introduction to the Pay as you go (PAYG) system

Division 6—Guide to Parts 2-5 and 2-10

6-1 What Parts 2-5 and 2-10 are about

To help taxpayers meet their annual income tax liability, they are required to pay amounts of their income at regular intervals as it is earned during the year. The system for collecting these amounts is called “Pay as you go”.

Amounts collected under this system also go towards meeting liability for Medicare levy, liability to repay contributions under the Higher Education Contribution Scheme (HECS), liability to repay debts under the Higher Education Loan Program (HELP) and liability to repay financial supplement debts under the Student Financial Supplement Scheme (SFSS).

Table of sections

6-5	The Pay as you go (PAYG) system
6-10	How the amounts collected are dealt with

6-5 The Pay as you go (PAYG) system

- (1) Parts 2-5 and 2-10 establish the PAYG system, which has 2 components:
- PAYG withholding (Part 2-5)
 - PAYG instalments (Part 2-10).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 6-10

PAYG withholding

- (2) Under PAYG withholding, amounts are collected in respect of particular kinds of payments or transactions. Usually, someone who makes a payment to you is required to *withhold* an amount from the payment, and then to pay the amount to the Commissioner.

For a list of the payments and other transactions to which PAYG withholding applies, see Division 10

PAYG instalments

- (3) You pay PAYG instalments directly to the Commissioner. These are usually based on your GDP-adjusted notional tax or your ordinary income for a past period, but excluding:
- income subject to PAYG withholding (with certain exceptions)
 - exempt income, or income that is otherwise not assessable.
- An instalment is usually paid after a quarter, but some taxpayers are eligible to pay an annual instalment after the end of the income year.

6-10 How the amounts collected are dealt with

You are entitled to credits for the amounts of your income that are collected under the PAYG system. The credits are applied under Division 3 of Part IIB against your tax debts, and any excess is refunded to you.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 2-5—Pay as you go (PAYG) withholding

Division 10—Guide to Part 2-5

10-1 What this Part is about

Under PAYG withholding, amounts are collected in respect of particular kinds of payments or transactions. Usually, someone who makes a payment to you is required to *withhold* an amount from the payment, and then to pay the amount to the Commissioner. If the payment is personal services income that is included in the assessable income of someone else under Division 86 of the *Income Tax Assessment Act 1997*, the payer must pay such an amount to the Commissioner at a later date.

If a non-cash benefit is provided instead of a payment, the provider must first pay to the Commissioner the amount that would have been withheld from the payment.

This Part also contains provisions about the obligations and rights of payers and recipients.

10-5 Summary of withholding payments

- (1) The payments and other transactions covered by PAYG withholding are called withholding payments. They are summarised in the table.

Note: The obligation to pay an amount to the Commissioner is imposed on the entity making the withholding payment (except for items 17, 19 and 22, and 26 (to the extent that it covers subsection 12-390(4))).

Summary of withholding payments		
Item	Withholding payment	Section
1	A payment of salary etc. to an employee	12-35
2	A payment of remuneration to the director of a company	12-40
3	A payment of salary etc. to an office holder (e.g. a member of the Defence Force)	12-45

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 2 Collection, recovery and administration of income tax

Part 2-5 Pay as you go (PAYG) withholding

Section 10-5

Summary of withholding payments		
Item	Withholding payment	Section
3A	a payment to a *religious practitioner	12-47
4	A return to work payment to an individual	12-50
5	A payment that is covered by a voluntary agreement	12-55
6	A payment under a labour hire arrangement or a payment specified by regulations	12-60
7	A *superannuation income stream or an annuity	12-80
8	A *superannuation lump sum or a payment for termination of employment	12-85
9	An unused leave payment	12-90
10	A social security or similar payment (e.g. old age pension)	12-110
11	A Commonwealth education or training payment	12-115
12	A compensation, sickness or accident payment	12-120
13	A payment arising from an investment where the recipient does not quote its tax file number, or in some cases, its ABN	12-140
14	Investor becoming presently entitled to income of a unit trust	12-145
14A	A trustee of a closely held trust distributing an amount from the trust income to a beneficiary, where the beneficiary does not quote its tax file number	12-175
14B	A beneficiary of a closely held trust becoming presently entitled to income of the trust, where the beneficiary does not quote its tax file number	12-180
15	A payment for a supply where the recipient of the payment does not quote its ABN	12-190
16	A dividend payment to an overseas person	12-210
17	A dividend payment received for a foreign resident	12-215
18	An interest payment to an overseas person	12-245
19	An interest payment received for a foreign resident	12-250
20	An interest payment derived by a lender in carrying on business through overseas permanent establishment	12-255
21	A royalty payment to an overseas person	12-280
22	A royalty payment received for a foreign resident	12-285
22A	A departing Australia superannuation payment	12-305

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 10-5

Summary of withholding payments		
Item	Withholding payment	Section
22AA	An *excess untaxed roll-over amount	12-312
22B	A payment (of a kind set out in the regulations) to a foreign resident	12-315
22C	A payment (of a kind set out in the regulations) received for a foreign resident	12-317
22D	A payment of salary, wages etc. to an employee under the Seasonal Labour Mobility Program	12-319A
23	A mining payment	12-320
24	A natural resource payment	12-325
25	A payment by a managed investment trust	12-385
26	A payment by a *custodian or other entity	12-390

- (2) These can also be treated as withholding payments:
- (a) alienated personal services payments (see Division 13);
 - (b) non-cash benefits (see Division 14).

Note: The obligation to pay an amount to the Commissioner is imposed on the entity receiving the alienated personal services payment or providing the non-cash benefit.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 11-1

Division 11—Preliminary matters

Table of sections

11-1	Object of this Part
11-5	Constructive payment

11-1 Object of this Part

The object of this Part is to ensure the efficient collection of:

- (a) income tax; and
- (b) *Medicare levy; and
- (ca) amounts of liabilities to the Commonwealth under Chapter 4 of the *Higher Education Support Act 2003*; and
- (da) amounts of liabilities to the Commonwealth under Part 2B.3 of the *Social Security Act 1991*; and
- (db) amounts of liabilities to the Commonwealth under Division 6 of Part 4A of the *Student Assistance Act 1973*; and
- (d) *withholding tax; and
- (e) *mining withholding tax; and
- (f) *TFN withholding tax; and
- (g) *MRRT; and
- (h) *petroleum resource rent tax.

11-5 Constructive payment

- (1) In working out whether an entity has paid an amount to another entity, and when the payment is made, the amount is taken to have been paid to the other entity when the first entity applies or deals with the amount in any way on the other's behalf or as the other directs.
- (2) An amount is taken to be payable by an entity to another entity if the first entity is required to apply or deal with it in any way on the other's behalf or as the other directs.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 12—Payments from which amounts must be withheld

Table of Subdivisions

12-A	General rules
12-B	Payments for work and services
12-C	Payments for retirement or because of termination of employment
12-D	Benefit and compensation payments
12-E	Payments where TFN or ABN not quoted
12-F	Dividend, interest and royalty payments
12-FA	Departing Australia superannuation payments
12-FAA	Excess untaxed roll-over amount
12-FB	Payments to foreign residents etc.
12-FC	Seasonal Labour Mobility Program
12-G	Payments in respect of mining on Aboriginal land, and natural resources
12-H	Distributions of managed investment trust income

Subdivision 12-A—General rules

Table of sections

12-1	General exceptions
12-5	What to do if more than one provision requires a withholding
12-7	Division does not apply to alienated personal services payments
12-10	Division does not apply to non-cash benefits
12-20	Application of Division and regulations to non-share dividends

12-1 General exceptions

Exempt income of recipient

- (1) An entity need not withhold an amount under section 12-35, 12-40, 12-45, 12-47, 12-50, 12-55, 12-60, 12-80, 12-85, 12-90, 12-120 or 12-190 from a payment if the whole of the payment is *exempt income of the entity receiving the payment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-5

Non-assessable non-exempt income of recipient

- (1A) An entity need not withhold an amount under Subdivision 12-B, Subdivision 12-C or section 12-120 or 12-190 from a payment if the whole of the payment is not assessable income and is not *exempt income of the entity receiving the payment.

Living-away-from-home allowance benefit

- (2) In working out how much to withhold under section 12-35, 12-40, 12-45, 12-47, 12-115, 12-120, 12-315 or 12-317 from a payment, disregard so much of the payment as is a living-away-from-home allowance benefit as defined by section 136 of the *Fringe Benefits Tax Assessment Act 1986*.

Expense payment benefit

- (3) In working out how much to withhold under section 12-35, 12-40, 12-45, 12-47, 12-115, 12-120, 12-315 or 12-317 from a payment, disregard so much of the payment as:
- (a) is an expense payment benefit as defined by section 136 of the *Fringe Benefits Tax Assessment Act 1986*; and
 - (b) is not any of the following:
 - (i) an exempt benefit under section 22 of that Act (about reimbursement of car expenses on the basis of distance travelled);
 - (ii) an expense payment benefit in relation to a contribution to an *FHSA.

12-5 What to do if more than one provision requires a withholding

- (1) If more than one provision in this Division covers a payment, only one amount is to be withheld from the payment.
- (2) The provision to apply is the one that is most specific to the circumstances of the payment. However, this general rule is subject to the specific rules in the table, and the specific rule in subsection (3).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-5

Specific rules for determining priority among withholding provisions			
Item	Apply:	Which is about:	In priority to:
1AA	section 12-385 or 12-390	distributions to foreign residents from *managed investment trusts	each other withholding provision
1	section 12-35, 12-40, 12-45, 12-47 or 12-50	a payment for work or services	section 12-60 (payment under a labour hire arrangement or specified by regulations); or section 12-190 (payment for a supply where recipient does not quote its ABN)
1A	section 12-35 or 12-45	a payment for work or services	section 12-47 (a payment to a *religious practitioner)
2	section 12-80, 12-85 or 12-90	a *superannuation benefit, an annuity, a payment for termination of employment or an unused leave payment	section 12-60 (payment under a labour hire arrangement or specified by regulations); or section 12-190 (payment for a supply where recipient does not quote its ABN)
3	section 12-110, 12-115 or 12-120	a payment of benefit or compensation	section 12-60 (payment under a labour hire arrangement or specified by regulations); or section 12-190 (payment for a supply where recipient does not quote its ABN)
4	section 12-60	a payment under a labour hire arrangement or specified by regulations	section 12-190 (payment for a supply where recipient does not quote its ABN)
5	section 12-140 or 12-145	a payment arising from investment where the recipient does not quote tax file number	section 12-175 or 12-180 (Payment of income of closely held trust where TFN not quoted) or section 12-210, 12-215, 12-245, 12-250 or 12-255 (payment of a dividend or interest)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-7

Specific rules for determining priority among withholding provisions

Item	Apply:	Which is about:	In priority to:
6	section 12-280 or 12-285	a payment of royalty	section 12-325 (natural resource payment)

- (3) Apply a provision in this Division (apart from a provision in Subdivision 12-FB) that covers a payment in priority to a provision in Subdivision 12-FB that also covers the payment.

Note: Some provisions of this Division clearly do not cover a payment covered by some other provisions. For example:

- Section 12-55 (about voluntary agreements) covers a payment only if no other provision requires the payer to withhold an amount from the payment.

12-7 Division does not apply to alienated personal services payments

- (1) This Division (other than the provisions mentioned in subsection (2)) does not apply to a payment in so far as the payment:

- (a) is an *alienated personal services payment; or
- (b) was received, by the entity making the payment, as an *alienated personal services payment.

Note: An entity that receives an alienated personal services payment may be obliged to pay an amount to the Commissioner: see Division 13.

- (2) The provisions are:
- (a) Subdivision 12-FB; and
 - (b) any other provisions in this Division to the extent that they apply in relation to that Subdivision.

12-10 Division does not apply to non-cash benefits

This Division does not apply to a payment in so far as it consists of providing a *non-cash benefit.

Note: If a non-cash benefit is provided in circumstances where a payment would give rise to a withholding obligation, the provider must pay an amount to the Commissioner: see Division 14.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

12-20 Application of Division and regulations to non-share dividends

This Division and the regulations made for the purposes of this Division:

- (a) apply to a non-share equity interest in the same way as it applies to a share; and
- (b) apply to an equity holder in the same way as it applies to a shareholder; and
- (c) apply to a non-share dividend in the same way as it applies to a dividend.

Subdivision 12-B—Payments for work and services

Table of sections

12-35	Payment to employee
12-40	Payment to company director
12-45	Payment to office holder
12-47	Payment to religious practitioners
12-50	Return to work payment
12-55	Voluntary agreement to withhold
12-60	Payment under labour hire arrangement, or specified by regulations

12-35 Payment to employee

An entity must withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual as an employee (whether of that or another entity).

For exceptions, see section 12-1.

12-40 Payment to company director

A company must withhold an amount from a payment of remuneration it makes to an individual:

- (a) if the company is incorporated—as a director of the company, or as a person who performs the duties of a director of the company; or
- (b) if the company is not incorporated—as a member of the committee of management of the company, or as a person who performs the duties of such a member.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-45

For exceptions, see section 12-1.

12-45 Payment to office holder

- (1) An entity must withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual as:
- (a) a member of an *Australian legislature; or
 - (b) a person who holds, or performs the duties of, an appointment, office or position under the Constitution or an *Australian law; or
 - (c) a member of the Defence Force, or of a police force of the Commonwealth, a State or a Territory; or
 - (d) a person who is otherwise in the service of the Commonwealth, a State or a Territory; or
 - (e) a member of a *local governing body where there is in effect, in accordance with section 446-5, a unanimous resolution by the body that the remuneration of members of the body be subject to withholding under this Part.

For exceptions, see section 12-1.

- (2) This section does not require an amount to be withheld from a payment to an individual as a member of a *local governing body unless it is one to which paragraph (1)(e) applies.

12-47 Payment to religious practitioners

An entity must withhold an amount from a payment it makes to a *religious practitioner for an activity, or a series of activities, if:

- (a) the activity, or series of activities, is done by the religious practitioner in pursuit of his or her vocation as a religious practitioner; and
- (b) the activity, or series of activities, is done by the religious practitioner as a member of a religious institution; and
- (c) the payment is made by the entity in the course or furtherance of an *enterprise that the entity *carries on.

12-50 Return to work payment

An entity must withhold an amount from a payment it makes to an individual if the payment is included in the individual's assessable

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-55

income under section 15-3 of the *Income Tax Assessment Act 1997* (return to work payments).

For exceptions, see section 12-1.

12-55 Voluntary agreement to withhold

- (1) An entity must withhold an amount from a payment it makes to an individual if:
 - (a) the payment is made under an *arrangement the performance of which, in whole or in part, involves the performance of work or services (whether or not by the individual); and
 - (b) no other provision of this Division requires the entity to withhold an amount from the payment; and
 - (c) the entity and the individual are parties to an agreement (the **voluntary agreement**) that is in the *approved form and states that this section covers payments under the arrangement mentioned in paragraph (a), or under a series of such arrangements that includes that arrangement; and
 - (d) the individual has an *ABN that is in force and is *quoted in that agreement.

For exceptions, see section 12-1.

- (2) Each party must keep a copy of the voluntary agreement from when it is made until 5 years after the making of the last payment covered by the agreement.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2A) An offence under subsection (2) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) A party to the voluntary agreement may terminate it at any time by notifying the other party in writing.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-60

12-60 Payment under labour hire arrangement, or specified by regulations

- (1) An entity that *carries on an *enterprise must withhold an amount from a payment that it makes to an individual in the course or furtherance of the enterprise if:
- (a) the enterprise is a *business of arranging for persons to perform work or services directly for clients of the entity, or the enterprise includes a business of that kind that is not merely incidental to the main activities of the enterprise; and
 - (b) the payment is made under an *arrangement the performance of which, in whole or in part, involves the performance of work or services by the individual directly for a client of the entity, or directly for a client of another entity.

For exceptions, see section 12-1.

Example 1: Staffprovider Ltd keeps a database of skilled persons who are willing for their services to be provided to third parties. Staffprovider arranges with Corporate Pty Ltd to provide to it the services of a computer programmer in return for payment. Staffprovider arranges with Jane for her to do computer programming for Corporate. Staffprovider must withhold amounts under this section from payments it makes to Jane under the arrangement with her.

Example 2: Ian is a solicitor who regularly briefs barristers to represent his clients. Briefing barristers is merely incidental to Ian's main activities as a solicitor, so he does not have to withhold amounts under this section from payments he makes to barristers.

- (2) An entity that carries on an *enterprise must withhold an amount from a payment that it makes to an individual in the course or furtherance of the enterprise if the payment is, in whole or in part, for work or services and is of a kind prescribed by the regulations.

For exceptions, see section 12-1.

Subdivision 12-C—Payments for retirement or because of termination of employment

12-80 Superannuation income streams and annuities

An entity must withhold an amount from any of the following payments it makes to an individual:

- (a) a *superannuation income stream;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) an *annuity.

For exceptions, see section 12-1.

12-85 Superannuation lump sums and payments for termination of employment

An entity must withhold an amount from any of the following payments it makes to an individual:

- (a) a *superannuation lump sum;
- (b) a payment that is an *employment termination payment or would be one except that it is received more than 12 months after termination of employment.

For exceptions, see section 12-1.

12-90 Unused leave payments

An entity must withhold an amount from any of the following payments it makes to an individual:

- (a) an *unused annual leave payment;
- (b) an *unused long service leave payment, to the extent that the payment is included in the individual's assessable income.

For exceptions, see section 12-1.

Subdivision 12-D—Benefit and compensation payments

Table of sections

12-110	Social Security or other benefit payment
12-115	Commonwealth education or training payment
12-120	Compensation, sickness or accident payment

12-110 Social Security or other benefit payment

- (1) An entity must withhold an amount from a payment it makes to an individual if the payment is:
 - (a) specified in an item of the table in section 52-10 of the *Income Tax Assessment Act 1997* (Social Security payments); or
 - (b) specified in an item of the table in section 52-65 of that Act (Veterans' Affairs payments); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(ba) specified in an item of the table in section 52-114 of that Act (Military Rehabilitation and Compensation Act payments); or

(c) specified in section 52-105, 53-10, 55-5 or 55-10 of that Act; or

Note: Payments specified in those provisions of the *Income Tax Assessment Act 1997* are made under various Commonwealth laws.

(ca) *parental leave pay; or

(cb) *dad and partner pay; or

(d) made under Part 3.15A of the *Social Security Act 1991*.

(2) In working out the amount to be withheld, disregard so much of the payment as is *exempt income of the individual.

12-115 Commonwealth education or training payment

(1) An entity must withhold an amount from a *Commonwealth education or training payment it makes to an individual.

For exceptions, see subsection (2) and section 12-1.

(2) In working out the amount to be withheld, disregard so much of the payment as is *exempt income of the individual.

12-120 Compensation, sickness or accident payment

An entity must withhold an amount from a payment of compensation, or of sickness or accident pay, it makes to an individual if the payment:

(a) is made because of that or another individual's incapacity for work; and

(b) is calculated at a periodical rate; and

(c) is not a payment made under an insurance policy to the policy owner.

For exceptions, see section 12-1.

Subdivision 12-E—Payments where TFN or ABN not quoted

Table of sections

Payment in respect of investment

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- 12-140 Recipient does not quote tax file number
- 12-145 Investor becoming presently entitled to income of a unit trust
- 12-150 Limited application of section 12-140 to payment under financial arrangement
- 12-155 When investor may quote ABN as alternative
- 12-160 Investment body unaware that exemption from quoting TFN has stopped applying
- 12-165 Exception for fully franked dividend
- 12-170 Exception for payments below thresholds set by regulations

Payment of income of closely held trust where TFN not quoted

- 12-175 Trustee distributes income of closely held trust
- 12-180 Beneficiary becomes presently entitled to income of closely held trust
- 12-185 Exception for payments below thresholds set by regulations

Payment for a supply

- 12-190 Recipient does not quote ABN

Payment in respect of investment

12-140 Recipient does not quote tax file number

- (1) An *investment body must withhold an amount from a payment it makes to another entity in respect of a *Part VA investment if:
 - (a) all or some of the payment is *ordinary income or *statutory income of the other entity; and
 - (b) if the investment is non-transferable—the other entity did not *quote its *tax file number in connection with the investment before the time when the payment became payable; and
 - (c) if the investment is transferable—the other entity did not quote its tax file number in connection with the investment before the time when the other entity had to be registered with the investment body as the *investor to be entitled to the payment.

Payment in respect of units in a trust or investment-related betting chance

- (2) If a *Part VA investment consists of:
 - (a) units in a unit trust (as defined in section 202A of the *Income Tax Assessment Act 1936*); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(b) an investment-related betting chance;
an entity (including the *investment body) must withhold an amount from a payment it makes to another entity in respect of the investment if the conditions in subsection (1) of this section are met.

For exceptions to the rules in this section, see sections 12-150 to 12-170.

12-145 Investor becoming presently entitled to income of a unit trust

- (1) This section applies if:
- (a) a *Part VA investment consists of units in a unit trust (as defined in section 202A of the *Income Tax Assessment Act 1936*); and
 - (b) the *investor becomes presently entitled, for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*, to a share of income of the trust at a time (the **entitlement time**) before any of that share is paid to the investor.
- (2) The entity (including the *investment body) that would have to pay that share to the *investor if the share were due and payable at the entitlement time must withhold from the share, at that time, the amount (if any) that subsection 12-140(2) would have required it to withhold if it had paid the share to the investor at that time.

For exceptions to the rules in this section, see sections 12-155 to 12-170.

- (3) This Part (except section 12-140 and this section) applies as if that entity had paid that share to the *investor at the entitlement time.
- (4) If that entity withholds an amount from that share as required by subsection (2), subsection 12-140(2) does not require an amount to be withheld from a payment of all or part of that share to the *investor.

12-150 Limited application of section 12-140 to payment under financial arrangement

- (1) This section limits the extent to which section 12-140 applies to a payment in respect of a *Part VA investment if the investment is a qualifying security (within the meaning of Division 16E of Part III

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

of the *Income Tax Assessment Act 1936* (about gains accruing on securities)) and:

- (a) is of a kind mentioned in item 1 or 2 of the table in subsection 202D(1) of that Act; or
- (b) is of a kind mentioned in item 3 of that table and is non-transferable.

Note: Section 202D of the *Income Tax Assessment Act 1936* lists the investments in connection with which tax file numbers are to be quoted.

- (2) Section 12-140 applies to the payment only to the extent that is covered by one or both of these paragraphs:
 - (a) so much of the payment as consists of periodic interest (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*);
 - (b) if the payment became payable at the end of the term (within the meaning of that Division) of the investment—so much of the payment as does *not* exceed what section 159GQ of that Act would include in the *investor's assessable income for the income year in which that term ended.
- Note: This limitation ensures that an amount is not withheld from payment of an amount in respect of which TFN withholding tax is payable. See Subdivision 14-B.
- (3) The adoption (under section 18 of the *Income Tax Assessment Act 1936*) of an accounting period ending on a day other than 30 June is disregarded for the purposes of:
 - (a) paragraph (2)(b) of this section; and
 - (b) the application of Division 16E of Part III of that Act for the purposes of that paragraph.

12-155 When investor may quote ABN as alternative

Section 12-140 or 12-145 does not require an amount to be withheld if:

- (a) the other entity made the investment in the course or furtherance of an *enterprise *carried on by it; and
- (b) the other entity has an *ABN, and has *quoted it to the investment body, by the time referred to in paragraph 12-140(1)(b) or (c).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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12-160 Investment body unaware that exemption from quoting TFN has stopped applying

Section 12-140 or 12-145 does not require an amount to be withheld if:

- (a) a provision of Division 5 of Part VA of the *Income Tax Assessment Act 1936* has applied to the other entity in relation to the investment, but no longer applies when the payment is made; and
- (b) when the payment is made, the *investment body has not been informed of anything that resulted in the provision no longer applying.

Note: Division 5 of Part VA of that Act provides, in certain cases, that even though an entity has not quoted its tax file number it is taken to have done so.

12-165 Exception for fully franked dividend

Section 12-140 does not require an amount to be withheld if:

- (a) the investment consists of *shares in a public company (as defined in section 202A of the *Income Tax Assessment Act 1936*); and
- (b) the payment is a *distribution that has been franked in accordance with section 202-5 of the *Income Tax Assessment Act 1997*; and
- (c) the *franking percentage for the distribution is 100%.

12-170 Exception for payments below thresholds set by regulations

- (1) Section 12-140 or 12-145 does not require an amount to be withheld if the payment is less than the amount worked out under the regulations.
- (2) Regulations made for the purposes of this section may deal differently with different payments.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Payment of income of closely held trust where TFN not quoted

12-175 Trustee distributes income of closely held trust

Scope

- (1) This section applies if:
- (a) the trustee of a trust makes a distribution to a beneficiary of the trust at a time (the ***distribution time***) during an income year of the trust; and
 - (b) some or all of the distribution is from the *ordinary income or *statutory income of the trust; and
 - (c) the trust is:
 - (i) a resident trust estate (within the meaning of subsection 95(2) of the *Income Tax Assessment Act 1936*) in relation to the income year; and
 - (ii) a closely held trust (within the meaning of section 102UC of that Act, disregarding paragraphs (c), (d) and (e) of the definition of ***excluded trust*** in subsection (4) of that section); and
 - (iii) not prescribed by the regulations for the purposes of this subparagraph; and
 - (d) the beneficiary is:
 - (i) an Australian resident; and
 - (ii) not an *exempt entity; and
 - (iii) not under a legal disability for the purposes of section 98 of that Act.

Trustee must withhold

- (2) The trustee must withhold an amount from the distribution, if:
- (a) the beneficiary did not *quote the beneficiary's *tax file number to the trustee before the distribution time; and
 - (b) the trustee is not liable to pay tax under section 98 of the *Income Tax Assessment Act 1936* in connection with the distribution; and
 - (c) the trustee is not required to make a correct TB statement under Division 6D of Part III of that Act (about trustee

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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beneficiary non-disclosure tax) in connection with the distribution; and

- (d) family trust distribution tax is not payable under Schedule 2F to that Act in connection with the distribution.

Note 1: If the trust is a unit trust, the trustee may be required to withhold under section 12-140 in priority to this section: see section 12-5.

Note 2: The trustee commits an offence if the trustee fails to withhold an amount as required by this section: see section 16-25.

Application of rest of Part

- (3) If the distribution is not a payment, this Part applies as if the trustee paid the amount of the distribution to the beneficiary at the distribution time.

Trust income of earlier income years

- (4) Subsections (2) and (3) do not apply to the distribution, to the extent that:

- (a) the beneficiary is presently entitled, for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*, to a share of the income of the trust of an earlier income year; and
- (b) the distribution is a distribution of some or all of that share.

Note: The trustee may have been required to withhold from that share under section 12-180.

12-180 Beneficiary becomes presently entitled to income of closely held trust

Scope

- (1) This section applies if:
- (a) at the end of an income year of a trust, a beneficiary of the trust is presently entitled, for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*, to a share of the income of the trust of that year; and
- (b) paragraph 12-175(1)(c) in this Schedule applies to the trustee of the trust; and
- (c) paragraph 12-175(1)(d) applies to the beneficiary.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Trustee must withhold

- (2) The trustee must withhold an amount from that share of the *net income of the trust, if:
- (a) the beneficiary did not *quote the beneficiary's *tax file number to the trustee before the end of the year; and
 - (b) the trustee is not liable to pay tax in respect of that share under section 98 of the *Income Tax Assessment Act 1936*; and
 - (c) the trustee is not required to make a correct TB statement about that share under Division 6D of Part III of that Act (about trustee beneficiary non-disclosure tax); and
 - (d) family trust distribution tax is not payable on that share of the income of the trust under Schedule 2F to that Act.

Note 1: If the trust is a unit trust, the trustee may be required to withhold under section 12-145 in priority to this section: see section 12-5.

Note 2: The trustee commits an offence if the trustee fails to withhold an amount as required by this section: see section 16-25.

Application of rest of Part

- (3) This Part (other than section 12-175) applies as if the trustee had paid that share of the *net income of the trust to the beneficiary at the end of the income year.

Entitlements already paid

- (4) Subsections (2) and (3) do not apply to that share of the *net income of the trust to the extent that the trustee distributed any of that share to the beneficiary during the income year.

Note: The trustee may have been required to withhold from that distribution under section 12-175.

Trusts that end during the year

- (5) This section applies as if each reference to the end of an income year were a reference to the time occurring just before the trust ends, if the trust ends during the income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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12-185 Exception for payments below thresholds set by regulations

- (1) Section 12-175 or 12-180 does not require an amount to be withheld if the payment (including the payment mentioned in subsection 12-180(3)) is less than the amount worked out under the regulations.
- (2) Regulations made for the purposes of this section may deal differently with different payments.

Payment for a supply

12-190 Recipient does not quote ABN

- (1) An entity (the *payer*) must withhold an amount from a payment it makes to another entity if:
 - (a) the payment is for a *supply that the other entity has made, or proposes to make, to the payer in the course or furtherance of an *enterprise *carried on in Australia by the other entity; and
 - (b) none of the exceptions in this section applies.

ABN correctly quoted

- (2) The payer need not withhold an amount under this section if, when the payment is made:
 - (a) the other entity has given the payer an *invoice that relates to the *supply and *quotes the other entity's *ABN; or
 - (b) the payer has some other document relating to the supply on which the other entity's ABN is *quoted.
- (2A) The payer need not withhold an amount under this section if the other entity has made the *supply, or proposes to make the supply, through an agent and, when the payment is made:
 - (a) the agent has given the payer an *invoice that relates to the supply and *quotes the agent's *ABN; or
 - (b) the payer has some other document relating to the supply on which the agent's ABN is *quoted.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Payer has no reason to believe that ABN has been incorrectly quoted

- (3) The payer need not withhold an amount under this section if, when the payment is made:
- (a) the other entity has given the payer an *invoice that relates to the *supply and purports to *quote the other entity's *ABN, or the payer has some other document that relates to the supply and purports to *quote the other entity's ABN; and
 - (b) the other entity does not have an ABN, or the invoice or other document does not in fact quote the other entity's ABN; and
 - (c) the payer has no reasonable grounds to believe that the other entity does not have an ABN, or that the invoice or other document does not quote the other entity's ABN.
- (3A) The payer need not withhold an amount under this section if the other entity has made the *supply, or proposes to make the supply, through an agent and, when the payment is made:
- (a) the agent has given the payer an *invoice that relates to the supply and purports to *quote the agent's *ABN, or the payer has some other document that relates to the supply and purports to *quote the agent's ABN; and
 - (b) the agent does not have an ABN, or the invoice or other document does not in fact quote the agent's ABN; and
 - (c) the payer has no reasonable grounds to believe that the agent does not have an ABN, or that the invoice or other document does not quote the agent's ABN.

No need to quote ABN

- (4) The payer need not withhold an amount under this section if:
- (a) the payment is made otherwise than in the course or furtherance of an *enterprise *carried on in Australia by the payer; or
 - (b) the payment (disregarding so much of it as relates to *GST payable on the *supply) or, if the payer has also made, or proposes to make, one or more other payments to the other entity for the supply, the total of all the payments (disregarding so much of them as relates to *GST payable on

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- the supply) does not exceed \$50 or such higher amount as is specified in regulations in force for the purposes of subsection 29-80(1) of the *GST Act; or
- (c) the supply is made in the course or furtherance of an activity, or series of activities, done as a member of a local governing body established by or under a *State law or *Territory law; or
- (d) the supply is wholly *input taxed.
- (5) The payer need not withhold an amount under this section if the payment:
- (a) is covered by section 12-140 or 12-145 (about not quoting *tax file number in respect of an investment in respect of which the payment is made); or
 - (b) would be covered by section 12-140 or 12-145 if the other entity had not quoted as mentioned in subsection 12-140(1) or section 12-155; or
 - (c) would be covered by section 12-140 or 12-145 apart from section 12-160, 12-165 or 12-170 (which are exceptions to sections 12-140 and 12-145); or
 - (d) is covered by section 12-175 or 12-180 (Payment of income of closely held trust where TFN not quoted); or
 - (e) would be covered by section 12-175 or 12-180 if the other entity had not quoted as mentioned in paragraph 12-175(2)(a) or 12-180(2)(a); or
 - (f) would be covered by section 12-175 or 12-180 apart from section 12-185 (which is an exception to sections 12-175 and 12-180).
- (6) The payer need not withhold an amount under this section if, when the payment is made:
- (a) the other entity is an individual and has given the payer a written statement to the effect that:
 - (i) the *supply is made in the course or furtherance of an activity, or series of activities, done as a private recreational pursuit or hobby; or
 - (ii) the supply is, for the other entity, wholly of a private or domestic nature; and
 - (b) the payer has no reasonable grounds to believe that the statement is false or misleading in a material particular.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (7) In working out, for the purposes of this section, whether an enterprise is *carried on in Australia:
- (a) ignore the external Territories; and
 - (b) treat an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia, as part of Australia.

Note: The effect of this subsection is to treat an enterprise as carried on in Australia only where it would be treated as carried on in Australia under the *A New Tax System (Australian Business Number) Act 1999*.

Subdivision 12-F—Dividend, interest and royalty payments

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- 12-300 Limits on amount withheld under this Subdivision

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Dividends

12-210 Dividend payment to overseas person

A company that is an Australian resident must withhold an amount from a *dividend it pays if:

- (a) according to the register of the company's members, the entity, or any of the entities, holding the *shares on which the dividend is paid has an address outside Australia; or
- (b) that entity, or any of those entities, has authorised or directed the company to pay the dividend to an entity or entities at a place outside Australia.

For limits on the amount to be withheld, see section 12-300.

12-215 Dividend payment received for foreign resident

- (1) An entity that receives a payment of a *dividend of a company that is an Australian resident must withhold an amount from the dividend if:

- (a) the entity is a person in Australia or an *Australian government agency; and
- (b) a foreign resident is or becomes entitled:
 - (i) to receive the dividend or part of it from the entity, or to receive the amount of the dividend or of part of it from the entity; or
 - (ii) to have the entity credit to the foreign resident, or otherwise deal with on the foreign resident's behalf or as the foreign resident directs, the dividend or part of it, or the amount of the dividend or of part of it.

For limits on the amount to be withheld, see section 12-300.

- (2) The entity must withhold the amount:

- (a) if the foreign resident is so entitled when the entity receives the payment—immediately after the entity receives the payment; or
- (b) if the foreign resident becomes so entitled after the entity receives the payment—immediately after the foreign resident becomes so entitled.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

12-220 Application to part of a dividend

This Part applies to a part of a *dividend in the same way as to a dividend.

12-225 Application to distribution by a liquidator or other person

This Part applies to a distribution that section 47 of the *Income Tax Assessment Act 1936* treats as a *dividend paid by a company, in the same way as this Part applies to a dividend paid by the company, and as if the liquidator or other person making the distribution were the company.

Interest

12-245 Interest payment to overseas person

An entity must withhold an amount from interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) it pays to an entity, or to entities jointly, if:

- (a) the recipient or any of the recipients has an address outside Australia according to any record that is in the payer's possession, or is kept or maintained on the payer's behalf, about the transaction to which the interest relates; or
- (b) the payer is authorised to pay the interest at a place outside Australia (whether to the recipient or any of the recipients or to anyone else).

For limits on the amount to be withheld, see section 12-300.

12-250 Interest payment received for foreign resident

- (1) An entity that receives a payment of interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) must withhold an amount from the payment if:
 - (a) the entity is a person in Australia or an *Australian government agency; and
 - (b) a foreign resident is or becomes entitled:
 - (i) to receive the interest or part of it from the entity, or to receive the amount of the interest or of part of it from the entity; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) to have the entity credit to the foreign resident, or otherwise deal with on the foreign resident's behalf or as the foreign resident directs, the interest or part of it, or the amount of the interest or of part of it.

For limits on the amount to be withheld, see section 12-300.

- (2) The entity must withhold the amount:
 - (a) if the foreign resident is so entitled when the entity receives the payment—immediately after the entity receives the payment; or
 - (b) if the foreign resident becomes so entitled after the entity receives the payment—immediately after the foreign resident becomes so entitled.

12-255 Interest payment derived by lender in carrying on business through overseas permanent establishment

An entity must withhold an amount from interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) it pays if it has been notified under section 12-260 of this Act that this section applies to the interest.

Note: For limits on the amount to be withheld, see section 12-300.

12-260 Lender to notify borrower if interest derived through overseas permanent establishment

- (1) If:
 - (a) interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) is payable to:
 - (i) an entity that is, or entities at least one of whom is, an Australian resident; or
 - (ii) an *Australian government agency; and
 - (b) the entity liable to pay the interest is authorised to pay it at a place in Australia (whether to any of those entities or the agency, or to anyone else); and
 - (c) the interest is or will be *derived by any of those entities or the agency in carrying on business in a country outside Australia at or through a *permanent establishment it has in that country;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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those entities, or the agency, must notify the entity liable to pay the interest that section 12-255 applies to the interest.

- (2) The notice must be given in writing, before the entities, or the agency, enter into the transaction in relation to which the interest is payable, or within one month afterwards.
- (3) Immediately after giving the notice, those entities, or the agency, must notify the Commissioner of:
 - (a) the particulars of the transaction (including the dates on which interest is payable under it); and
 - (b) the day when the notice was given to the entity liable to pay the interest.

Failure to comply with this section may contravene section 8C of this Act.

Royalties

12-280 Royalty payment to overseas person

An entity must withhold an amount from a *royalty it pays to an entity, or to entities jointly, if:

- (a) the recipient or any of the recipients has an address outside Australia according to any record that is in the payer's possession, or is kept or maintained on the payer's behalf, about the transaction to which the royalty relates; or
- (b) the payer is authorised to pay the royalty at a place outside Australia (whether to the recipient or any of the recipients or to anyone else).

For limits on the amount to be withheld, see section 12-300.

12-285 Royalty payment received for foreign resident

- (1) An entity that receives a payment of a *royalty must withhold an amount from the payment if:
 - (a) the entity is a person in Australia or an *Australian government agency; and
 - (b) a foreign resident is or becomes entitled:
 - (i) to receive the royalty or part of it from the entity, or to receive the amount of the royalty or of part of it from the entity; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) to have the entity credit to the foreign resident, or otherwise deal with on the foreign resident's behalf or as the foreign resident directs, the royalty or part of it, or the amount of the royalty or of part of it.

For limits on the amount to be withheld, see section 12-300.

- (2) The entity must withhold the amount:
 - (a) if the foreign resident is so entitled when the entity receives the payment—immediately after the entity receives the payment; or
 - (b) if the foreign resident becomes so entitled after the entity receives the payment—immediately after the foreign resident becomes so entitled.

General

12-300 Limits on amount withheld under this Subdivision

This Subdivision does not require an entity:

- (a) to withhold an amount from a *dividend, from interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or from a *royalty if no *withholding tax is payable in respect of the dividend, interest or royalty; or
- (b) to withhold from a dividend, from interest (within the meaning of that Division) or from a royalty more than the withholding tax payable in respect of the dividend, interest or royalty (reduced by each amount already withheld from it under this Subdivision).

Note: Section 128B of the *Income Tax Assessment Act 1936* deals with withholding tax liability.

Subdivision 12-FA—Departing Australia superannuation payments

Table of sections

12-305	Departing Australia superannuation payment
12-310	Limits on amount withheld under this Subdivision

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

12-305 Departing Australia superannuation payment

An entity must withhold an amount from a *departing Australia superannuation payment it pays to an entity.

12-310 Limits on amount withheld under this Subdivision

This Subdivision does not require an entity:

- (a) to withhold an amount from a *departing Australia superannuation payment if no *withholding tax is payable in respect of the payment; or
- (b) to withhold from a departing Australia superannuation payment more than the withholding tax payable in respect of the payment (reduced by each amount already withheld from it under this Subdivision).

Note: Section 301-175 of the *Income Tax Assessment Act 1997* deals with the withholding tax liability.

Subdivision 12-FAA—Excess untaxed roll-over amount

Table of sections

12-312	Untaxed roll-over superannuation benefits
12-313	Limits on amount withheld under this Subdivision

12-312 Untaxed roll-over superannuation benefits

An entity must withhold an amount from an *excess untaxed roll-over amount it pays to an entity.

Note: An excess untaxed roll-over amount is an amount that may form part of a roll-over superannuation benefit that includes an element untaxed in the fund: see section 306-15 of the *Income Tax Assessment Act 1997*.

12-313 Limits on amount withheld under this Subdivision

This Subdivision does not require an entity:

- (a) to withhold an amount from an *excess untaxed roll-over amount if no *withholding tax is payable on the amount; or
- (b) to withhold from an excess untaxed roll-over amount more than the withholding tax payable on the amount (reduced by

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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each amount already withheld from the excess untaxed roll-over amount under this Subdivision).

Note: Section 306-15 of the *Income Tax Assessment Act 1997* deals with liability to this form of withholding tax.

Subdivision 12-FB—Payments to foreign residents etc.

Table of sections

12-315	Payment to foreign resident etc.
12-317	Payment received for foreign resident etc.
12-319	Exemptions from withholding obligations under this Subdivision

12-315 Payment to foreign resident etc.

- (1) An entity (the *payer*) that *carries on an *enterprise must withhold an amount from a payment it makes to another entity, or to other entities jointly, in the course or furtherance of the enterprise if:
- (a) the entity receiving the payment, or any of the entities receiving the payment, is an entity covered by subsection (2); and
 - (b) the payment is of a kind set out in the regulations; and
 - (c) the payment is not:
 - (i) a *dividend of a company; or
 - (ii) interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*); or
 - (iii) a *royalty; or
 - (iv) a *departing Australia superannuation payment; or
 - (v) a payment worked out wholly or partly by reference to the value or quantity of *natural resources produced or recovered in Australia; or
 - (vi) a *mining payment; or
 - (vii) an amount represented by or reasonably attributable to a *fund payment; and
 - (d) the entity receiving the payment is not covered by an exemption in force under subsection 12-319(1), or at least one of the entities receiving the payment is not covered by an exemption in force under that subsection.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) An entity is covered by this subsection if any of the following conditions is satisfied:
- (a) the entity is a foreign resident;
 - (b) the payer believes, or has reasonable grounds to believe, that the entity is a foreign resident;
 - (c) the payer has no reasonable grounds to believe that the entity is an Australian resident, and either:
 - (i) the entity has an address outside Australia (according to any record that is in the payer's possession, or is kept or maintained on the payer's behalf, about the transaction to which the payment relates); or
 - (ii) the payer is authorised to make the payment at a place outside Australia (whether to the entity or to anyone else);
 - (d) the entity has a connection outside Australia of a kind set out in the regulations.
- (3) Before the Governor-General makes a regulation for the purposes of paragraph (1)(b), the Minister must be satisfied that each payment set out in the regulation is a payment of a kind that could reasonably be related to assessable income of foreign residents.

12-317 Payment received for foreign resident etc.

- (1) An entity (the *intermediary*) that receives a payment meeting the requirements set out in paragraphs 12-315(1)(b) and (c) must withhold an amount from the payment if:
- (a) the intermediary is a person in Australia or an *Australian government agency; and
 - (b) another entity (the *likely foreign recipient*) is or becomes entitled:
 - (i) to receive the payment or part of it from the intermediary, or to receive the amount of the payment or of part of it from the intermediary; or
 - (ii) to have the intermediary credit to the likely foreign recipient, or otherwise deal with on the likely foreign recipient's behalf or as the likely foreign recipient directs, the payment or part of it, or the amount of the payment or of part of it; and
 - (c) the likely foreign recipient is covered by subsection (3); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (d) the likely foreign recipient is not covered by an exemption in force under subsection 12-319(1).
- (2) The intermediary must withhold the amount:
 - (a) if the likely foreign recipient is so entitled when the intermediary receives the payment—just after the intermediary receives the payment; or
 - (b) if the likely foreign recipient becomes so entitled after the intermediary receives the payment—just after the likely foreign recipient becomes so entitled.
- (3) The likely foreign recipient is covered by this subsection if any of the following conditions is satisfied:
 - (a) the likely foreign recipient is a foreign resident;
 - (b) the intermediary believes, or has reasonable grounds to believe, that the likely foreign recipient is a foreign resident;
 - (c) the intermediary has no reasonable grounds to believe that the likely foreign recipient is an Australian resident, and either:
 - (i) the likely foreign recipient has an address outside Australia (according to any record that is in the intermediary's possession, or is kept or maintained on the intermediary's behalf); or
 - (ii) the intermediary is authorised to forward the payment to a place outside Australia (whether to the likely foreign recipient or to anyone else);
 - (d) the likely foreign recipient has a connection outside Australia of a kind set out in the regulations.

12-319 Exemptions from withholding obligations under this Subdivision

- (1) The Commissioner may grant an entity an exemption in writing for the purposes of paragraphs 12-315(1)(d) and 12-317(1)(d) if the Commissioner is satisfied that:
 - (a) the entity has an established history of compliance with its obligations under *taxation laws; and
 - (b) the entity is likely to continue to comply with those obligations in the future.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) The exemption is in force during the period:
 - (a) beginning when the Commissioner grants the exemption; and
 - (b) ending at the time specified in the exemption.
- (3) Without limiting the matters to which the Commissioner may have regard in deciding whether to grant an entity an exemption, the Commissioner may have regard to the following:
 - (a) whether the entity is or was liable to pay an instalment under Division 45 at any time in:
 - (i) the income year in which the exemption is proposed to be granted; and
 - (ii) the previous 2 income years;
 - (b) the amount (if any) of the entity's *tax-related liabilities that are currently due and payable;
 - (c) the extent to which the entity and its *associates (if any) have complied with their obligations under *taxation laws during:
 - (i) the income year in which the exemption is proposed to be granted; and
 - (ii) the previous 2 income years.
- (4) The Commissioner must give a copy of the exemption to the entity to which it relates.
- (5) A failure to comply with subsection (4) does not affect the validity of the exemption.

Subdivision 12-FC—Seasonal Labour Mobility Program

Table of sections

12-319A Payment to employee

12-319A Payment to employee

An entity must withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual:

- (a) as an employee of an Approved Employer (whether the entity or another entity) under the Seasonal Labour Mobility Program; and
- (b) at a time when:
 - (i) the employee is a foreign resident; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) the employee holds a Special Program Visa (subclass 416).

**Subdivision 12-G—Payments in respect of mining on
Aboriginal land, and natural resources**

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Mining on Aboriginal land

12-320 Mining payment

Natural resources

12-325 Natural resource payment

12-330 Payer must ask Commissioner how much to withhold

12-335 Commissioner may exempt from section 12-330, subject to conditions

Mining on Aboriginal land

12-320 Mining payment

- (1) An entity must withhold an amount from a *mining payment that:
- (a) it makes to another entity; or
 - (b) it applies for the benefit of another entity.
- (2) Subsection (1) does not require the entity to withhold more than the *mining withholding tax payable in respect of the *mining payment.

Note: Section 128V of the *Income Tax Assessment Act 1936* deals with mining withholding tax liability.

Natural resources

12-325 Natural resource payment

- (1) An entity must withhold an amount from a payment it makes to a foreign resident, or to 2 or more entities at least one of which is a foreign resident, if the payment is worked out wholly or partly by reference to the value or quantity of *natural resources produced or recovered in Australia.
- (2) The amount to be withheld is:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) the amount notified by the Commissioner under section 12-330; or
 - (b) the amount worked out under a certificate in force under section 12-335 that covers the payment;
- as appropriate.

Exception

- (3) Subsection (1) does not apply if:
 - (a) the Commissioner has notified the entity under section 12-330 that the entity does not need to withhold an amount from the payment; or
 - (b) a certificate in force under section 12-335 covers the payment and does not require the entity to withhold an amount from it.

12-330 Payer must ask Commissioner how much to withhold

- (1) An entity must not intentionally make a payment from which section 12-325 requires it to withhold an amount, unless:
 - (a) the entity has notified the Commissioner in writing of the amount of the proposed payment; and
 - (b) the Commissioner has later notified the entity in writing of the amount (if any) that the entity must withhold from the payment in respect of tax, *MRRT or *petroleum resource rent tax that is or may become payable by a foreign resident to whom the payment is made;or the payment is covered by a certificate in force under section 12-335.

Penalty: 20 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Failure to notify not an offence against section 8C

- (2) An entity that fails to notify the Commissioner as required by subsection (1) does not commit an offence against section 8C.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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12-335 Commissioner may exempt from section 12-330, subject to conditions

- (1) The Commissioner may give an entity a written certificate exempting the entity from complying with section 12-330 for specified payments.
- (2) A certificate is subject to:
 - (a) a condition that the entity must withhold from a payment covered by the certificate the amount (if any) worked out in accordance with the certificate in respect of tax,*MRRT or *petroleum resource rent tax that is or may become payable by a foreign resident to whom the payment is made; and
 - (b) such other conditions as the certificate specifies.However, the entity does not contravene subsection 12-330(1) because it contravenes a condition.
- (3) The Commissioner may, by written notice given to the entity:
 - (a) revoke a certificate, whether or not a condition of it has been contravened; or
 - (b) vary a certificate by revoking, changing or adding to its conditions.

Note: A person who is dissatisfied with a decision under this section may object against the decision in the manner set out in Part IVC.

Subdivision 12-H—Distributions of managed investment trust income

Guide to Subdivision 12-H

12-375 What this Subdivision is about

A managed investment trust may be required to withhold an amount from a payment of its Australian sourced net income (other than dividends, interest and royalties) if the payment is made to an entity whose address, or place for payment, is outside Australia. If the payment is made to another entity, the managed investment trust is required to make information available to the recipient outlining certain details in relation to the payment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

If a custodian receives a payment that is covered by that information, it is required to withhold an amount from any related later payment to an entity whose address, or place for payment, is outside Australia. If the later payment is made to another entity, the custodian is required to make information available in relation to that later payment.

If an entity that is not a custodian receives a payment that is covered by that information, it is required to withhold an amount from that payment if a foreign resident becomes entitled to that payment. If a resident becomes entitled to the payment, the entity must make information available in relation to that payment.

Where there is an obligation to withhold, the applicable withholding rate is determined by the nature of the country or territory in which the recipient's address, place for payment or residency is located and whether the trust is a clean building managed investment trust.

A managed investment trust is a clean building managed investment trust if it is a managed investment trust that holds one or more clean buildings and does not derive assessable income from any other taxable Australian property (other than certain assets that are reasonably incidental to a clean building).

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Operative provisions

12-385 Withholding by managed investment trusts

- (1) A trustee of a trust that is a *managed investment trust in relation to an income year that makes a *fund payment in relation to that income year to an entity covered by section 12-410 must withhold an amount from the payment.

Note 1: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

Note 2: If the payment is made to a recipient not covered by section 12-410, the trustee is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see section 12-395.

- (2) The amount the trustee must withhold is:

*Fund payment × Rate applicable under subsection (3)

- (3) The rate is:

- (a) if the address or place for payment of the recipient is in an *information exchange country:
 - (i) 22.5% for *fund payments (except to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust) in relation to the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent; or
 - (ii) 15% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to the following income year; or
 - (iii) 7.5% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- building managed investment trust) in relation to later income years starting before 1 July 2012; or
- (iv) 15% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to later income years starting on or after 1 July 2012; or
 - (v) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust in relation to the income years starting on or after 1 July 2012; or
- (b) otherwise—30%.
- (4) An **information exchange country** is a foreign country or foreign territory specified in the regulations for the purposes of this section.
- (5) This section does not apply to an amount paid by a *managed investment trust to the extent that no *managed investment trust withholding tax is payable in respect of the payment or an amount reasonably attributable to the payment.

12-390 Withholding by custodians and other entities

Withholding by custodians

- (1) A *custodian must withhold an amount from a payment (the **later payment**) it makes if:
- (a) all or some of the later payment (the **covered part**) is reasonably attributable to the part of an earlier payment received by the custodian that was covered by a notice or information under section 12-395; and
 - (b) the later payment is made to an entity covered by section 12-410.

Note 1: The covered part referred to in paragraph (1)(a) is attributable to a fund payment made by a managed investment trust, or 2 or more fund payments made by one or more managed investment trusts.

Note 2: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

Note 3: If the payment is made to a recipient not covered by section 12-410, the custodian is required to give a notice to the recipient or publish

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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information on a website setting out certain details about the payment:
see section 12-395.

- (2) The amount the *custodian must withhold is:

Covered part × Rate applicable under subsection (3)

- (3) The rate is:

- (a) if the address or place for payment of the recipient is in an
*information exchange country:

- (i) 22.5% for *fund payments (except to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust) in relation to the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent; or
- (ii) 15% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to the following income year; or
- (iii) 7.5% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to later income years starting before 1 July 2012; or
- (iv) 15% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to later income years starting on or after 1 July 2012; or
- (v) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust in relation to the income years starting on or after 1 July 2012; or

- (b) otherwise—30%.

Withholding by other entities

- (4) An entity that is not a *managed investment trust or a *custodian must withhold an amount from a payment it receives if:
- (a) the payment or part of it (the **covered part**) was covered by a notice or information under section 12-395; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(b) a foreign resident (the **recipient**) is or becomes entitled:

- (i) to receive from the entity; or
- (ii) to have the entity credit to the recipient, or otherwise deal with on the recipient's behalf or as the recipient directs;

an amount (the **attributable amount**) reasonably attributable to the covered part.

Note: If the recipient not a foreign resident, the entity is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see section 12-395.

(5) The amount the entity must withhold is:

Attributable amount × Rate applicable under subsection (6)

(6) The rate is:

(a) if the recipient is a resident of an *information exchange country:

- (i) 22.5% for *fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent; or
- (ii) 15% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to the following income year; or
- (iii) 7.5% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to later income years starting before 1 July 2012; or
- (iv) 15% for fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust) in relation to later income years starting on or after 1 July 2012; or
- (v) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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managed investment trust in relation to the income years starting on or after 1 July 2012; or

(b) otherwise—30%.

- (7) An entity is a resident of an *information exchange country if:
- (a) the entity is a resident of that country for the purposes of the taxation laws of that country; or
 - (b) if there are no taxation laws of that country applicable to the entity or the entity's residency status cannot be determined under those laws:
 - (i) for an individual—the individual is ordinarily resident in that country; or
 - (ii) for another entity—the entity is incorporated or formed in that country and is carrying on a business in that country.
- (8) An amount required to be withheld under subsection (4) must be withheld:
- (a) if the recipient is so entitled when the entity receives the payment—immediately after receipt; or
 - (b) if the recipient becomes so entitled at a later time—immediately after the later time.

Meaning of custodian

- (9) An entity is a ***custodian*** if the entity is *carrying on a *business that consists predominantly of providing a custodial or depository service (as defined by section 766E of the *Corporations Act 2001*) pursuant to an *Australian financial services licence.

Exceptions

- (10) This section does not apply:
- (a) to a company unless the company would, apart from section 12-420, be acting in the capacity as *agent for the recipient; or
 - (b) to an amount paid or received by an entity to the extent that no *managed investment trust withholding tax is payable in respect of the amount or an amount reasonably attributable to the amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

12-395 Requirement to give notice or make information available

Managed investment trusts and custodians

- (1) An entity that is a *managed investment trust or a *custodian must comply with subsection (2) if:
- (a) the entity makes a payment to another entity (the **recipient**) from which an amount would have been required to be withheld under section 12-385 or subsection 12-390(1) if the payment had been made to an entity covered by section 12-410; and
 - (b) an amount is not required to be withheld from the payment because the recipient is not an entity covered by section 12-410.

Note: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

- (2) The entity must:
- (a) give to the recipient a written notice containing the details specified in subsection (3); or
 - (b) make those details available on a website in a way that the details are readily accessible to the recipient for not less than 5 continuous years.
- (3) The notice must be given, or the details must be made available on a website, before or at the time when the payment is made and:
- (a) must specify the part of the payment from which an amount would have been so required to have been withheld; and
 - (aa) must specify the extent (if any) to which the payment is, or is attributable to, a *fund payment from a *clean building managed investment trust; and
 - (b) must specify the income year of the *managed investment trust to which that part relates.

Note: Failure to give the notice or make the details available as required by this section incurs an administrative penalty: see section 12-415.

Other entities

- (4) An entity that is not a *managed investment trust or a *custodian must comply with subsection (5) if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-395

- (a) the entity receives a payment; and
 - (b) another entity (also the *recipient*) is or becomes entitled:
 - (i) to receive from the entity; or
 - (ii) to have the entity credit to the recipient, or otherwise deal with on the recipient's behalf or as the recipient directs;

an amount attributable to the payment; and

 - (c) the entity would have been required to withhold an amount from the payment under subsection 12-390(4) if the recipient had been a foreign resident; and
 - (d) an amount is not required to be withheld from the payment because the recipient is not a foreign resident.
- (5) The entity must:
- (a) give to the recipient a written notice containing the details specified in subsection (6); or
 - (b) make those details available on a website in a way that the details are readily accessible to the recipient for not less than 5 continuous years.
- (6) The notice must be given, or the details must be made available on a website, before or at the time when the amount is paid or credited to the recipient, or is dealt with on the recipient's behalf or as the recipient directs, and:
- (a) must specify the part of the payment referred to in paragraph (4)(a) from which an amount would have been so required to have been withheld; and
 - (aa) must specify the extent (if any) to which the payment is, or is attributable to, a *fund payment from a *clean building managed investment trust; and
 - (b) must specify the income year of the *managed investment trust to which that part relates.

Note: Failure to give the notice or make the details available as required by this section incurs an administrative penalty: see section 12-415.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

12-400 Meaning of *managed investment trust*

- (1) A trust is a ***managed investment trust*** in relation to an income year if:
- (a) at the time the trustee of the trust makes the first *fund payment in relation to the income year, or at an earlier time in the income year:
 - (i) the trustee of the trust was an Australian resident; or
 - (ii) the central management and control of the trust was in Australia; and
 - (b) the trust is not a trust covered by subsection (2) (trading trust etc.) in relation to the income year; and
 - (c) a substantial proportion of the investment management activities carried out in relation to the trust in respect of all of the following assets of the trust are carried out in Australia throughout the income year:
 - (i) assets that are situated in Australia at any time in the income year;
 - (ii) assets that are *taxable Australian property at any time in the income year;
 - (iii) assets that are *shares, units or interests listed for quotation in the official list of an *approved stock exchange in Australia at any time in the income year; and
 - (d) at the time the payment is made, the trust is a managed investment scheme (within the meaning of section 9 of the *Corporations Act 2001*); and
 - (e) at the time the payment is made:
 - (i) the trust is covered by section 12-401 (trusts with wholesale membership); or
 - (ii) if the trust is *not* covered by section 12-401—the trust is registered under section 601EB of the *Corporations Act 2001*; and
 - (f) the trust satisfies, in relation to the income year:
 - (i) if, at the time the payment is made, the trust is registered under section 601EB of the *Corporations Act 2001* and is covered by section 12-401—either or both of the widely-held requirements in subsections 12-402(1) and 12-402A(1); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) if, at the time the payment is made, the trust is so registered and is *not* covered by section 12-401—either or both of the widely-held requirements in subsections 12-402(1A) and 12-402A(1); or
- (iii) if, at the time the payment is made, the trust is *not* so registered and is covered by section 12-401—the widely-held requirements in subsection 12-402(1); and
- (g) the trust satisfies the closely-held restrictions in subsection 12-402B(1) in relation to the income year; and
- (h) if the trust is covered by section 12-401 at the time the payment is made—it satisfies the licensing requirements in section 12-403 in relation to the income year.

Trading unit trust or other trust carrying on trading business etc. cannot be managed investment trust

- (2) A trust is covered by this subsection in relation to an income year if:
 - (a) in the case of a unit trust—the trust is a trading trust for the purposes of Division 6C in Part III of the *Income Tax Assessment Act 1936* in relation to the income year; or
 - (b) in any other case—the trust at any time in the income year:
 - (i) carried on a trading business (within the meaning of that Division); or
 - (ii) controlled, or was able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division).

Crown entities, etc.

- (3) For the purposes of paragraphs (1)(e) and (f), treat an entity as registered under section 601EB of the *Corporations Act 2001* at the time the payment is made if at that time the trust is operated by:
 - (a) an entity that would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) an entity that:
 - (i) is a *wholly-owned subsidiary of an entity of a kind mentioned in paragraph (a); and
 - (ii) would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and operation of the scheme mentioned in paragraph 12-400(1)(d), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme.

Start-up and wind-down phases

- (4) Treat the requirements in paragraphs (1)(f) and (g) as being satisfied if:
 - (a) the trust is created during the period:
 - (i) starting 6 months before the start of the income year; and
 - (ii) ending at the end of the income year; or
 - (b) the trust ceases to exist during the income year, and was a *managed investment trust (disregarding paragraph (a)) in relation to the previous income year.

12-401 Trusts with wholesale membership

A trust is covered by this section at a time if, at that time:

- (a) the trust is not required to be registered in accordance with section 601ED of the *Corporations Act 2001* (whether or not it is actually so registered) because of subsection 601ED(2) of that Act (no product disclosure statement required) or because it is operated or managed by an entity covered by subsection 12-403(2) (Crown entities); and
- (b) the total number of entities that had become a *member of the trust because a financial product or a financial service was provided to, or acquired by, the entity as a retail client (within the meaning of sections 761G and 761GA of the *Corporations Act 2001*) is no more than 20; and
- (c) the entities mentioned in paragraph (b) have a total *MIT participation interest in the trust of no more than 10%.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-402

12-402 Widely-held requirements—ordinary case

- (1) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 12-400(1)(a) is made, the trust has at least 25 *members.
- (1A) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 12-400(1)(a) is made:
 - (a) units in the trust are listed for quotation in the official list of an *approved stock exchange in Australia; or
 - (b) the trust has at least 50 *members (ignoring objects of a trust).
- (2) For the purposes of subsection (1) and paragraph (1A)(b), determine the number of *members of the trust as follows:
 - (a) first, by applying the rules in subsection (4), identify:
 - (i) the members of the trust that are not entities covered by subsection (3); and
 - (ii) the members of the trust that are entities covered by subsection (3);
 - (b) next, work out the number of members mentioned in subparagraph (a)(i);
 - (c) next:
 - (i) work out the *MIT participation interest in the trust of each entity mentioned in subparagraph (a)(ii); and
 - (ii) for each of those entities, multiply the total of its MIT participation interest in the trust by 50 and round the result upwards to the nearest whole number; and
 - (iii) work out the total of the results of subparagraph (ii) for all of those entities;
 - (d) next, work out the total of the results of paragraphs (b) and (c).
- (3) This subsection covers the following kinds of entity:
 - (a) a *life insurance company;
 - (b) a *complying superannuation fund, a *complying approved deposit fund or a *foreign superannuation fund, being a fund that has at least 50 *members;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) a *pooled superannuation trust that has at least one member that is a complying superannuation fund that has at least 50 members;
- (d) a *managed investment trust in relation to the income year;
- (e) an entity:
 - (i) that is recognised under a *foreign law as being used for collective investment by pooling the contributions of its members as consideration to acquire rights to benefits produced by the entity; and
 - (ii) that has at least 50 members; and
 - (iii) the contributing members of which do not have day-to-day control over the entity's operation;
- (f) an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:
 - (i) the entity is a fund established by an *exempt foreign government agency; or
 - (ii) the entity is established under a foreign law for an exempt foreign government agency; or
 - (iii) the entity is a *wholly-owned subsidiary of an entity mentioned in subparagraph (i) or (ii);
- (g) an investment entity that satisfies all of these requirements:
 - (i) the entity is wholly-owned by one or more *foreign government agencies, or is a wholly-owned subsidiary of one or more foreign government agencies;
 - (ii) the entity is established using only the public money or public property of the foreign government concerned;
 - (iii) all economic benefits obtained by the entity have passed, or are expected to pass, to the foreign government concerned;
- (h) an entity established and wholly-owned by an *Australian government agency, if the capital of the entity, and returns from the investment of that capital, are used for the primary purpose of meeting statutory government liabilities or obligations (such as superannuation liabilities and liabilities arising from compensation or workcover claims);
- (i) an entity of a kind similar to an entity mentioned in the preceding paragraphs of this subsection as specified in the regulations.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-402A

- (4) The rules are as follows:
 - (a) if an entity that is not a trust holds interests in the trust indirectly, through a *chain of trusts:
 - (i) treat the entity as a member of the trust; and
 - (ii) do not treat a trust in the chain of trusts as a member of the trust;
 - (b) do not treat an object of the trust as a member of the trust;
 - (ba) if the trust is mentioned in subparagraph 12-400(1)(e)(i) (trusts with wholesale membership)—do not treat an individual as a member of the trust (other than an individual who became a member of the trust because a financial product or a financial service was provided to, or acquired by, the individual as a wholesale client (within the meaning of section 761G of the *Corporations Act 2001*));
 - (c) the rules in subsection (6).
- (5) For the purposes of paragraph (4)(a), treat an entity covered by subsection (3) as an entity that is not a trust.
- (6) The rules are as follows:
 - (a) treat the following entities as together being one entity:
 - (i) an individual;
 - (ii) each of his or her relatives;
 - (iii) each entity acting in the capacity of nominee of an individual mentioned in subparagraph (i) or (ii);
 - (b) treat the following entities as together being one entity (the **notional entity**):
 - (i) an entity that is not an individual;
 - (ii) each entity acting in the capacity of nominee of the entity mentioned in subparagraph (i).
- (7) For the purposes of subsection (4), if the entity mentioned in subparagraph (6)(b)(i) is an entity covered by subsection (3), treat the notional entity as an entity covered by subsection (3).

12-402A Widely-held requirements for registered MIT—special case for entities covered by subsection 12-402(3)

- (1) The trust satisfies the requirements in this subsection in relation to the income year if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) one or more entities covered by subsection 12-402(3) have a total *MIT participation interest in the trust of more than 25% at the time the payment mentioned in paragraph 12-400(1)(a) is made; and
 - (b) at no time in the income year does an entity (other than an entity covered by subsection 12-402(3)) have a MIT participation interest in the trust of more than 60%.
- (2) For the purposes of paragraphs (1)(a) and (b):
- (a) if:
 - (i) an entity covered by subsection 12-402(3) has a *MIT participation interest (the **first interest**) in the trust; and
 - (ii) another entity covered by subsection 12-402(3) also has a MIT participation interest (the **second interest**) in the trust;
disregard the second interest to the extent that it arises through the existence of the first interest; and
 - (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a *chain of trusts—do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.
- (3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 12-402(3) as an entity that is not a trust.
- (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 12-402(6).

12-402B Closely-held restrictions

- (1) The trust satisfies the requirements in this subsection in relation to the income year unless, at any time in the income year, any of the following situations exist:
- (a) for a trust mentioned in subparagraph 12-400(1)(e)(i) (trusts with wholesale membership)—10 or fewer persons have a total *MIT participation interest in the trust of 75% or more;
 - (b) if paragraph (a) does not apply—20 or fewer persons have a total MIT participation interest in the trust of 75% or more;
 - (c) a foreign resident individual has a MIT participation interest in the trust of 10% or more.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-403

- (2) For the purposes of paragraphs (1)(a) and (b):
 - (a) if an entity covered by subsection 12-402(3) has a *MIT participation interest in the trust—treat that entity as *not* having a MIT participation interest in the trust; and
 - (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a *chain of trusts:
 - (i) if the entity is covered by subsection 12-402(3)—do not treat it as having a MIT participation interest in the trust; and
 - (ii) do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.
- (3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 12-402(3) as an entity that is not a trust.
- (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 12-402(6).

12-403 Licensing requirements for unregistered MIS

- (1) The trust satisfies the requirements in this section in relation to the income year if, at the time the payment mentioned in paragraph 12-400(1)(a) is made (the time of the first fund payment for the income year):
 - (a) the trust is operated or managed by:
 - (i) a financial services licensee (within the meaning of section 761A of the *Corporations Act 2001*) holding an Australian financial services licence whose licence covers it providing financial services (within the meaning of section 766A of that Act) to wholesale clients (within the meaning of section 761G of that Act); or
 - (ii) an authorised representative (within the meaning of section 761A of that Act) of such a financial services licensee; or
 - (b) the trust is operated or managed by an entity covered by subsection (2); or
 - (c) the trust is operated or managed by an entity that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) is a *wholly-owned subsidiary of an entity covered by subsection (2); and
 - (ii) is an entity covered by subsection (3).
- (2) An entity is covered by this subsection if it would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under the *Corporations Act 2001* to be a financial services licensee (within the meaning of section 761A of that Act).
- (3) An entity is covered by this subsection if it would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and the operation of the scheme mentioned in paragraph 12-400(1)(d), be required under the *Corporations Act 2001* to be a financial services licensee (within the meaning of section 761A of that Act).

12-404 MIT participation interest

- (1) An entity has a ***MIT participation interest*** in a trust if the entity, directly or indirectly:
 - (a) holds, or has the right to *acquire, interests representing a percentage of the value of the interests in the trust; or
 - (b) has the control of, or the ability to control, a percentage of the rights attaching to *membership interests in the trust; or
 - (c) has the right to receive a percentage of any distribution of income that the trust may make.
- (2) The ***MIT participation interest*** of the entity in the trust is the greatest of the percentages mentioned in paragraphs (1)(a), (b) and (c).

12-405 Meaning of *fund payment*

- (1) The object of this section is to ensure that the total of the *fund payments that the trustee of a trust makes in relation to an income year equals, as nearly as practicable, the net income of the trust for the income year, disregarding these amounts (***excluded amounts***):
 - (a) a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to, or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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exempted from, a requirement to withhold under Subdivision 12-F;

- (b) interest (as so defined) that is subject to, or exempted from, such a requirement;
 - (c) a *royalty that is subject to, or exempted from, such a requirement;
 - (d) a *capital gain or *capital loss from a *CGT event that happens in relation to a *CGT asset that is not *taxable Australian property;
 - (e) amounts that are not from an *Australian source; and disregarding deductions relating to excluded amounts.
- (2) Work out as follows how much of a payment (the **actual payment**) made by the trustee of a trust in relation to an income year is a **fund payment** in relation to that year:

Method statement

- Step 1. Reduce the actual payment by so much of it that is attributable to excluded amounts.
- Step 2. Work out what it is reasonable to expect will be the *net income of the trust for the income year:
- (a) disregarding excluded amounts, expected excluded amounts and deductions relating to those amounts; and
 - (b) on the basis that a *capital gain from *taxable Australian property of the trust that was or would be reduced under step 3 of the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997* were double the amount it actually is.
- Step 3. The **fund payment** is so much of the step 2 amount as is reasonable having regard to:
- (a) the object of this section; and
 - (b) the step 1 amount; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- | | |
|-----|---|
| (c) | the amounts of any earlier fund payments made by the trustee in relation to the income year; and |
| (d) | the expected amounts of any later fund payments the trustee expects to make in relation to the income year. |
- (3) The expected *net income of the trust and the expected amounts of future *fund payments are to be worked out on the basis of the trustee's knowledge when the actual payment is made.
- (4) However, an amount is not a ***fund payment*** in relation to the income year unless it is paid:
- (a) during the income year; or
 - (b) within 3 months after the end of the income year; or
 - (c) within a longer period (starting at the end of the period referred to in paragraph (b) and not exceeding 3 months) allowed by the Commissioner.
- (5) The Commissioner may allow a longer period as mentioned in paragraph (4)(c) only if the Commissioner is of the opinion that the trustee was unable to make the payment during the income year, or within 3 months after the end of the income year, because of circumstances beyond the influence or control of the trustee.

12-410 Entity to whom payment is made

- (1) An entity (the ***recipient***) is covered by this section for a payment made to it by another entity (the ***payer***) if:
- (a) according to any record that is in the payer's possession, or is kept or maintained on the payer's behalf, the recipient has an address outside Australia; or
 - (b) the payer is authorised to make the payment to a place outside Australia.
- (2) However, a recipient is not covered by this section for a payment if, at the time the payment was made, a *business the recipient carries on is carried on at or through an *Australian permanent establishment and the payment is attributable to that establishment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-415

**12-415 Failure to give notice or make information available:
administrative penalty**

An entity that:

- (a) is required to give a notice, or make details available on a website, under section 12-395 in relation to:
 - (i) a payment made to another entity; or
 - (ii) an amount paid or credited to, or dealt with on behalf of or as directed by, another entity; and
- (b) fails to comply with that section;

is liable to pay to the Commissioner a penalty equal to the amount that would have been required to be withheld under this Subdivision (disregarding subsection 12-385(5) and paragraph 12-390(10)(b)) in relation to amounts attributable to the payment or amount if the notice had been given or the details had been made available.

Note: Division 298 in this Schedule contains machinery provisions for administrative penalties.

12-420 Agency rules

- (1) This section applies to:
 - (a) a payment (the ***first payment***) made to an entity (the ***first entity***) in the capacity as *agent for another entity; and
 - (b) another payment made by the first entity to the extent that it is reasonably attributable to the first payment.
- (2) This Subdivision has effect as if the first entity were not an *agent in relation to the payments.

Note: As a result of subsection (2), an agent may be required to withhold amounts under this Subdivision.

12-425 Meaning of *clean building managed investment trust*

- (1) A trust is a ***clean building managed investment trust*** in relation to an income year if during the income year:
 - (a) it is a *managed investment trust in relation to the income year; and
 - (b) it holds one or more *clean buildings (including the land on which the buildings are situated); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) it does not derive assessable income from any *taxable Australian property (other than from the clean buildings or assets that are reasonably incidental to those buildings).

5% safe harbour for certain income reasonably incidental to a clean building

- (2) A trust is not a *clean building managed investment trust in relation to an income year if the assessable income of the trust that is derived from assets that are reasonably incidental to *clean buildings is greater than 5% of the assessable income of the trust that is derived from clean buildings.
- (3) The regulations may specify kinds of assets that are, or are not, reasonably incidental to *clean buildings for the purposes of this section.

12-430 Meaning of *clean building*

- (1) A building is a ***clean building*** if:
 - (a) the construction of the building commenced on or after 1 July 2012; and
 - (b) it satisfies the requirements in subsections (3) and (4).
- (2) For the purpose of subsection (1):
 - (a) the construction of the building is taken to have commenced at the time the works on the lowest level (including any basement level) of the building commence; and
 - (b) the construction of the building is not taken to have commenced merely because works preparing the site for construction, or works undertaken below the lowest level of the building (including any basement level), have commenced.
- (3) A building satisfies the requirements in this subsection if:
 - (a) the building is a commercial building that is any of the following (or is a combination of any of the following):
 - (i) an office building;
 - (ii) a hotel for use wholly or mainly to provide short-term accommodation for travellers;
 - (iii) a shopping centre; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the building satisfies the requirements prescribed by the regulations for the purposes of this paragraph.
- (4) A building satisfies the requirements in this subsection if:
 - (a) the building:
 - (i) has, and continues to maintain at all times during the income year, at least a 5 Star Green Star rating as certified by the Green Building Council of Australia; or
 - (ii) has, and continues to maintain at all times during the income year, at least a 5.5 star energy rating as accredited by the National Australian Built Environment Rating System (**NABERS**); or
 - (b) the building satisfies the requirements prescribed by the regulations for the purposes of this paragraph.
- (5) For the purposes of subsection (4), if:
 - (a) a building has previously satisfied the requirements in that subsection; and
 - (b) the building then fails to satisfy the requirements for a period (the **non-compliance period**); and
 - (c) within 180 days after the first day of that failure, the building again satisfies the requirements;treat the building as having satisfied the requirements during the non-compliance period.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 13—Alienated personal services payments

Table of sections

13-1	Object of this Division
13-5	Payment to the Commissioner in respect of alienated personal services payments
13-10	Alienated personal services payments
13-15	Personal services payment remitters
13-20	Time for payments to Commissioner for alienated personal services payments made during 2000-01

13-1 Object of this Division

The object of this Division is to ensure the efficient collection of income tax (and other liabilities) on any *personal services income included in an individual's assessable income under Division 86 of the *Income Tax Assessment Act 1997* by:

- (a) putting *personal services entities receiving *alienated personal services payments in a position similar to their position if amounts were withheld from the payments under Division 12; but
- (b) doing so in a way that enables them to comply with their obligations without having to withhold amounts separately from each payment.

Note: Under Division 86 of the *Income Tax Assessment Act 1997* (about alienation of personal services income), an individual's personal services income that is gained or produced by another entity is in some cases included in the individual's assessable income. Payments of this income by the entity might not be caught by Division 12.

13-5 Payment to the Commissioner in respect of alienated personal services payments

Obligation to pay amounts

- (1) A *personal services entity must pay an amount of tax to the Commissioner if:
 - (a) it receives an *alienated personal services payment that relates to an individual's personal services income; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) it receives the payment during a *PAYG payment period for which it is a *personal services payment remitter.

Working out the amounts

- (2) Use this method statement to work out the amount:

Method statement

- Step 1. Identify the payments that the *personal services entity makes to the individual during the period mentioned in paragraph (1)(b) that are *withholding payments covered by section 12-35.
- Step 2. Identify the amounts that:
- (a) are included in the individual's assessable income under section 86-15 of the *Income Tax Assessment Act 1997*; and
 - (b) relate to *alienated personal services payments the entity receives during that period.
- Step 3. Work out the sum of all the amounts that Division 12 would require the entity to withhold in respect of that period if both of these were taken into account:
- (a) the payments identified in step 1; and
 - (b) the amounts identified in step 2, as if they were payments of salary covered by section 12-35.
- Step 4. Work out the sum of all the amounts withheld under section 12-35 from the payments identified in step 1.
- Step 5. Subtract the sum under step 4 from the sum under step 3.

Example: For the PAYG payment period of 1 April 2001 to 30 June 2001, NewIT Pty. Ltd. received amounts totalling \$18,000 that were Ron's personal services income. NewIT does not conduct a personal services business.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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During the period, NewIT paid Ron \$3,000 in salary. This is a withholding payment covered by section 12-35 (step 1).

\$15,000 of the amount NewIT received is included in Ron's assessable income under section 86-15 of the *Income Tax Assessment Act 1997* (step 2).

If NewIT had paid the \$15,000 in salary to Ron within 14 days after the end of the PAYG payment period, the amount that NewIT would have had to withhold under Division 12 on the total amount of \$18,000 would have been \$4,000 (step 3).

NewIT withheld \$500 from the salary payment of \$3,000, as required by section 12-35 (step 4).

On the basis of these facts, the amount NewIT must pay to the Commissioner (step 5) is:

$$\$4,000 - \$500 = \$3,500$$

- (3) Subject to subsections (4) and (5), the *personal services entity must pay the amount to the Commissioner by the end of the 21st day after the end of the *PAYG payment period.

Note: A different rule applies for alienated personal services payments that large withholders and medium withholders make during the 2000-01 income year. See section 13-20.

- (4) If:

- (a) the *personal services entity is a *deferred BAS payer on the 21st day after the end of the *PAYG payment period; and
(b) the personal services entity's PAYG payment period is a *quarter;

the entity must pay that amount to the Commissioner as shown in the table:

Payments by *deferred BAS payers		
Item	If paragraph (4)(a) applies to the *quarter ending on:	the amount for this quarter must be paid by the end of:
1	30 September	the following 28 October
2	31 December	the following 28 February
3	31 March	the following 28 April
4	30 June	the following 28 July

- (5) If:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) the *personal services entity is a *deferred BAS payer on the 21st day after the end of the *PAYG payment period; and
- (b) the personal services entity's PAYG payment period is a month;

the entity must pay that amount to the Commissioner:

- (c) by the end of the 28th day of the month following that period unless the PAYG payment period is a December; or
- (d) by the end of the 28th day of the next February if the PAYG payment period is a December.

13-10 Alienated personal services payments

An *alienated personal services payment* is a payment (including a payment in the form of a *non-cash benefit) that a *personal services entity receives and that relates to an amount that:

- (a) is included in an individual's assessable income under Division 86 of the *Income Tax Assessment Act 1997*; or
- (b) would be so included but for the fact that the entity received the income in the course of conducting a *personal services business.

For valuation of non-cash benefits, see sections 21 and 21A of the *Income Tax Assessment Act 1936*.

13-15 Personal services payment remitters

General

- (1) A *personal services entity is a *personal services payment remitter* for a *PAYG payment period if, in the income year preceding that period:
 - (a) the entity's *ordinary income or *statutory income included a person's *personal services income; and
 - (b) the entity was not conducting a *personal services business.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Businesses not previously receiving personal services income

- (2) A *personal services entity is a **personal services payment remitter** for a *PAYG payment period if:
- (a) the entity's *ordinary income or *statutory income did not include an individual's *personal services income in any income year preceding that period; and
 - (b) it is reasonable to expect that, in the income year during which the period occurs, the entity's income will include a person's *personal services income that the entity will not have received in the course of conducting a *personal services business.
- (3) It is not reasonable to expect that the *personal services entity will receive a person's *personal services income in the course of conducting a *personal services business if it is reasonable to expect that:
- (a) the entity will receive at least 80% of that income from the same entity (or one entity and its *associates); and
 - (b) the entity will not meet the results test under section 87-18 of the *Income Tax Assessment Act 1997*.

Personal services business determinations taking effect

- (4) However, a *personal services entity is *not* a **personal services payment remitter** for a *PAYG payment period if, during that period or an earlier PAYG payment period in the same income year, a *personal services business determination relating to the entity takes effect.

13-20 Time for payments to Commissioner for alienated personal services payments made during 2000-01

- (1) Subject to subsection (2), if:
- (a) a *personal services entity must, under section 13-5, pay an amount for *alienated personal services payments it received during a particular *PAYG payment period; and
 - (b) the period ends in a *quarter in the *financial year starting on 1 July 2000;
- the payment must be paid to the Commissioner by the end of the 21st day after the end of the quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(2) If:

- (a) the *personal services entity is a *deferred BAS payer on the 21st day after the end of the *quarter; and
 - (b) the quarter ends on 31st March or 30th June of 2001;
- the payment must be paid to the Commissioner by the end of the 28th day after the end of that quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 14—Non-cash benefits, and accruing gains, for which amounts must be paid to the Commissioner

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Subdivision 14-A—Non-cash benefits

14-1 Object of this Subdivision

The object of this Subdivision is:

- (a) to put entities that provide *non-cash benefits, and entities that receive them, in a position similar to their position under Division 12 if payments of money had been made instead of the non-cash benefits being provided; and
- (b) in that way, to prevent entities from avoiding their obligations under Division 12 by providing non-cash benefits.

14-5 Provider of non-cash benefit must pay amount to the Commissioner if payment would be subject to withholding

- (1) An entity (the *payer*) must pay an amount to the Commissioner before providing a *non-cash benefit to another entity (the *recipient*) if Division 12 would require the payer to withhold an amount (the *notionally withheld amount*) if, instead of providing the benefit to the recipient, the payer made a payment to the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 14-10

recipient in money equal to the *market value of the benefit when the benefit is provided.

- (2) The amount to be paid to the Commissioner is equal to the notionally withheld amount.

Example: Nick is a building contractor who has entered into a voluntary agreement with Mike for the purposes of section 12-55. Nick proposes to give Mike his old utility van (whose market value is \$1,000) as payment for work Mike has done for him over a fortnight.

If Nick were instead to pay Mike \$1,000, Nick would have had to withhold \$203 under Division 12 (in accordance with withholding rates current at the time).

This section requires Nick to pay \$203 to the Commissioner before giving the van to Mike.

- (3) This section does not apply to providing:
- (a) a *fringe benefit; or
 - (b) a benefit that is an exempt benefit under the *Fringe Benefits Tax Assessment Act 1986*; or
 - (c) a benefit that would be an exempt benefit under that Act if paragraphs (d) and (e) of the definition of **employer** in subsection 136(1) of that Act were omitted; or
 - (d) a benefit constituted by the acquisition of an *ESS interest *under an employee share scheme to which Subdivision 83A-B or 83A-C of the *Income Tax Assessment Act 1997* applies.

14-10 Dividend, interest or royalty received, for a foreign resident, in the form of a non-cash benefit

If:

- (a) an entity (the **payer**) receives in the form of a *non-cash benefit:
 - (i) a *dividend of a company; or
 - (ii) interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*); or
 - (iii) a *royalty; and
- (b) section 12-215, 12-250 or 12-285 would have required the payer to withhold an amount if the dividend, interest or royalty had been a payment in money;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

the payer must pay that amount to the Commissioner before providing the benefit (or part of it) to another entity.

14-15 Payer can recover amount paid to the Commissioner

- (1) The payer may recover from the recipient as a debt an amount that the payer has paid to the Commissioner under section 14-5.
- (2) If the payer has paid an amount to the Commissioner under section 14-10, the payer may:
 - (a) if the payer has provided all of the benefit to another entity—recover the amount from that other entity as a debt; or
 - (b) if the payer has provided a part of the benefit to another entity—recover from that other entity as a debt the corresponding proportion of the amount paid to the Commissioner.
- (3) If the payer can recover an amount from another entity under this section, the payer is entitled to set the amount off against debts due by the payer to the other entity.

Subdivision 14-B—Accruing gains

14-50 Object of this Subdivision

The object of this Subdivision is to put the parties to a *Part VA investment with an accruing gain in a position similar to what would have been their position under Subdivision 12-E (Payments where TFN or ABN not quoted) if the *investment body had paid the gain in money to the *investor at the end of the income year.

14-55 Liability for TFN withholding tax

- (1) *TFN withholding tax is payable if:
 - (a) in relation to a *Part VA investment, an amount (the ***accrued gain***) is included in the *investor's assessable income for an income year under section 159GQ of the *Income Tax Assessment Act 1936* (about gains accruing on securities); and
 - (b) the investment:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) is of a kind mentioned in item 1 or 2 of the table in subsection 202D(1) of that Act; or
- (ii) is of a kind mentioned in item 3 of that table and is non-transferable; and
- (c) the term of the investment does not end during the income year; and
- (d) section 12-140 would have required the *investment body to withhold an amount (the **TFN withholding amount**) from a payment of the accrued gain to the investor, if the investment body had made the payment at the end of the income year and section 12-150 had not been enacted.

Note: Section 202D of the *Income Tax Assessment Act 1936* lists the investments in connection with which tax file numbers are to be quoted.

- (2) The amount of *TFN withholding tax is equal to the TFN withholding amount.
- (3) The *TFN withholding tax is payable jointly and severally by the *investor and the *investment body.
- (4) However, if the *investment body is the Commonwealth or an *untaxable Commonwealth entity:
 - (a) the *TFN withholding tax is payable by the *investor; and
 - (b) the investor is taken to have authorised the investment body to pay the TFN withholding tax on the investor's behalf.
- (5) The *TFN withholding tax is due and payable at the end of 21 days after the end of the income year referred to in paragraph (1)(a).
 - Note 1: When it is due and payable, the TFN withholding tax is payable to the Commissioner: see paragraph 255-5(1)(b).
 - Note 2: An entity by whom it is payable must pay it to the Commissioner in accordance with Subdivision 16-B: see subsection 16-70(3). If any of it remains unpaid, the entity is liable to pay general interest charge: see section 16-80.
 - Note 3: The Commissioner may defer the time at which TFN withholding tax becomes due and payable: see section 255-10.
- (6) The adoption (under section 18 of the *Income Tax Assessment Act 1936*) of an accounting period ending on a day other than 30 June is disregarded for the purposes of:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) this section; and
- (b) the application of Division 16E of Part III of that Act for the purposes of this section.

14-60 Investment body may recover TFN withholding tax from investor

- (1) The *investment body may recover from the *investor as a debt any of the *TFN withholding tax that it pays.
- (2) The *investment body is entitled to set off an amount that it can recover from the *investor under this section against:
 - (a) a debt due by it to the investor; or
 - (b) an amount that is accruing to the investor, or stands to the investor's credit, in respect of the *Part VA investment, even if the amount is not yet due.

14-65 Application of rules in Division 18

These provisions:

- (a) subsection 18-15(1) and sections 18-20 and 18-25 (about credits for amounts withheld from withholding payments); and
- (b) section 18-80 (about refunds when exemption declaration not given);

apply as if any of the *TFN withholding tax that has been paid were an amount withheld under subsection 12-140(1) from a *withholding payment covered by that subsection and made to the *investor during:

- (c) unless the *investor has adopted (under section 18 of the *Income Tax Assessment Act 1936*) an accounting period ending on a day other than 30 June—the income year referred to in paragraph 14-55(1)(a); or
- (d) if the investor has adopted such an accounting period—the income year in which the TFN withholding tax is paid.

Note: Unless the investor has adopted such an accounting period, the credit under section 18-15, 18-20 or 18-25 will be in respect of the income year before the one in which the TFN withholding tax is paid.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 14-75

14-75 Overpayment of TFN withholding tax

If *TFN withholding tax has been overpaid:

- (a) the Commissioner must refund the amount overpaid; and
- (b) the *investor is not entitled to a credit under section 18-15, 18-20 or 18-25 in respect of the amount overpaid.

14-85 Other laws do not exempt from TFN withholding tax

- (1) A provision of a law passed before the commencement of this section that purports to exempt an entity from liability to pay *TFN withholding tax, or to pay taxes that include TFN withholding tax, does not exempt that entity from liability to pay TFN withholding tax.
- (2) A provision of a law passed at or after the commencement of this section that purports to exempt an entity from liability to pay taxes under the laws of the Commonwealth, or to pay certain taxes under those laws that include *TFN withholding tax, is not to be interpreted as exempting the entity from liability to pay TFN withholding tax, unless it specifically mentions TFN withholding tax.

Subdivision 14-C—Shares and rights under employee share schemes

Table of sections

14-155	Liability for TFN withholding tax (ESS)
14-160	Employer may give individual tax file numbers to provider
14-165	Provider may recover TFN withholding tax (ESS) from individual
14-170	Application of rules in Division 18
14-175	Overpayment of TFN withholding tax (ESS)
14-180	Application of certain provisions of Division 83A of the <i>Income Tax Assessment Act 1997</i>

14-155 Liability for TFN withholding tax (ESS)

- (1) Tax (***TFN withholding tax (ESS)***) imposed by the *Income Tax (TFN Withholding Tax (ESS)) Act 2009* is payable if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) a company (the *provider*) provides one or more *ESS interests to an individual under an *employee share scheme; and
 - (b) as a result, an amount is included in the individual's assessable income under Division 83A of the *Income Tax Assessment Act 1997* for an income year (taking into account subsection (2) of this section); and
 - (c) the individual has quoted neither of the following to the provider before the end of the income year:
 - (i) if the individual acquired the interests in relation to any services provided to the provider, or to a *subsidiary of the provider, in the course or furtherance of an *enterprise *carried on by the individual—the individual's *ABN;
 - (ii) in any case—the individual's *tax file number.
- (2) For the purposes of paragraph (1)(b), disregard section 83A-35 of the *Income Tax Assessment Act 1997* (about reducing the amount included in the individual's assessable income).

Note: Disregard the 30 day rule in subsections 83A-115(3) and 83A-120(3) of the *Income Tax Assessment Act 1997* for the purposes of this Subdivision: see subsection 392-5(6) in this Schedule.

- (3) The *TFN withholding tax (ESS) is payable by the provider.
- (4) The *TFN withholding tax (ESS) is due and payable at the end of 21 days after the end of the income year referred to in paragraph (1)(b).
- Note 1: When it is due and payable, the TFN withholding tax (ESS) is payable to the Commissioner: see paragraph 255-5(1)(b).
- Note 2: The provider must pay the TFN withholding tax (ESS) to the Commissioner in accordance with Subdivision 16-B: see subsection 16-70(4). If any of it remains unpaid, the provider is liable to pay general interest charge: see section 16-80.
- Note 3: The Commissioner may defer the time at which TFN withholding tax (ESS) becomes due and payable: see section 255-10.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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14-160 Employer may give individual tax file numbers to provider

- (1) The individual is taken to have authorised a *subsidiary (the **employer**) of the provider to inform the provider of the individual's *tax file number if:
 - (a) the individual has made a *TFN declaration in relation to the employer; and
 - (b) some or all of the *ESS interests mentioned in paragraph 14-155(1)(a) were provided to the individual in relation to the individual's employment by the employer.
- (2) If the employer does so, the individual is taken, for the purposes of this Subdivision and Division 392 (Employee share scheme reporting), to have quoted his or her *tax file number to the provider.

14-165 Provider may recover TFN withholding tax (ESS) from individual

- (1) The provider may recover from the individual as a debt any of the *TFN withholding tax (ESS) the provider pays.
- (2) The provider is entitled to set off an amount that the provider can recover from the individual under this section against a debt due by the provider to the individual.

14-170 Application of rules in Division 18

These provisions:

- (a) subsection 18-15(1) (about credits for amounts withheld from withholding payments); and
- (b) sections 18-65 and 18-70 (about refunds of amounts withheld in error);

apply as if any of the *TFN withholding tax (ESS) that has been paid were an amount withheld under section 12-35 from a *withholding payment made to the individual and covered by that section.

14-175 Overpayment of TFN withholding tax (ESS)

If *TFN withholding tax (ESS) has been overpaid:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the Commissioner must refund the amount overpaid; and
- (b) the individual is not entitled to a credit under section 18-15 in respect of the amount overpaid.

**14-180 Application of certain provisions of Division 83A of the
*Income Tax Assessment Act 1997***

The following provisions of the *Income Tax Assessment Act 1997* have effect for the purposes of this Subdivision in the same way as they have for the purposes of Division 83A of that Act:

- (a) section 83A-130 (about takeovers and restructures);
- (b) section 83A-305 (about associates);
- (c) section 83A-320 (about trusts);
- (d) section 83A-325 (about relationships similar to employment);
- (e) section 83A-335 (about stapled securities);
- (f) section 83A-340 (about indeterminate rights).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 15-1

Division 15—Working out the amount to withhold

Table of Subdivisions

	Guide to Division 15
15-A	Working out how much to withhold
15-B	Withholding schedules and regulations
15-C	Declarations

Guide to Division 15

15-1 What this Division is about

This Division is mainly about how to work out how much an entity must withhold under Division 12.

In most cases, the entity will need to use either the Commissioner's withholding schedules or the regulations.

The entity will also need to take into account a TFN declaration or declaration under section 15-50 it has been given because, under the schedules and regulations, the declaration may affect how to calculate the amount to withhold.

This Division also deals with when an individual can make such a declaration (other than a TFN declaration) so as to change the amount that must be withheld from payments to the individual.

Subdivision 15-A—Working out how much to withhold

Table of sections

15-10	How much to withhold
15-15	Variation of amounts required to be withheld

15-10 How much to withhold

- (1) The amount that Subdivision 12-B, 12-C or 12-D requires to be withheld from a payment is to be worked out under the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 15-15

withholding schedules made under section 15-25. However, if the regulations prescribe how the amount is to be worked out, then it is to be worked out under the regulations.

Note 1: A TFN declaration, declaration under section 15-50 or voluntary agreement may affect how much is required to be withheld under the withholding schedules or regulations.

Note 2: The Commissioner may vary an amount required to be withheld. See section 15-15.

- (2) The amount that Subdivision 12-E, 12-F, 12-FA, 12-FAA, 12-FB or 12-G (except one covered by section 12-325) requires to be withheld from a payment is to be worked out under the regulations.

Note 1: The amount that section 12-325 requires to be withheld is worked out under that section.

Note 2: The Commissioner may vary an amount required to be withheld. See section 15-15.

- (3) The amount that Subdivision 12-H requires to be withheld from a payment or receipt is worked out under subsection 12-385(2), 12-390(2) or 12-390(5).

15-15 Variation of amounts required to be withheld

- (1) The Commissioner may, for the purposes of meeting the special circumstances of a particular case or class of cases, vary the *amount required to be withheld by an entity from a *withholding payment (except a withholding payment covered by section 12-140, 12-145, 12-175 or 12-180 or Subdivision 12-FC or 12-H). If the Commissioner does so, the amount is varied accordingly.

Note 1: Section 12-140 is about a payment arising from an investment where the recipient does not quote its tax file number (or, in some cases, its ABN).

Note 2: Sections 12-175 and 12-180 are about a payment of the income of a closely held trust to a beneficiary, where the beneficiary does not quote the beneficiary's tax file number.

Note 3: Section 12-145 is about an investor becoming presently entitled to income of a unit trust.

Note 3A: Subdivision 12-FC is about the Seasonal Labour Mobility Program.

Note 4: Subdivision 12-H is about distributions of managed investment trust income.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 15-25

- (2) The Commissioner's power to vary an amount includes the power to reduce the amount to nil.
- (3) A variation must be made by a written notice:
 - (a) if it applies to a particular entity—that is given to that entity;
or
 - (b) if it applies to a class of entities—that is given to each of the entities, or a copy of which is published in the *Gazette*.

Subdivision 15-B—Withholding schedules and regulations

Table of sections

15-25	Commissioner's power to make withholding schedules
15-30	Matters to be considered when making withholding schedules
15-35	Regulations about withholding

15-25 Commissioner's power to make withholding schedules

- (1) For the purposes of collecting income tax and the other liabilities referred to in paragraphs 11-1(b), (ca), (da) and (db), the Commissioner may make one or more withholding schedules specifying the amounts, formulas and procedures to be used for working out the *amount required to be withheld by an entity:
 - (a) from a *withholding payment covered by Subdivision 12-B, 12-C or 12-D; or
 - (b) an *alienated personal services payment to which Division 13 applies.
- (2) A withholding schedule may deal differently with:
 - (a) different payments; and
 - (b) different circumstances of the recipients of those payments; and
 - (c) different periods in respect of which those payments are made.

This subsection does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (3) The Commissioner may withdraw a withholding schedule.
- (4) A withholding schedule, or the withdrawal of a withholding schedule:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) only applies if a notice of it is published in the *Gazette*; and
 - (b) only applies in relation to payments made after the day the notice is published, or after such later day as is specified by the Commissioner in the notice.
- (5) The Commissioner must make each withholding schedule publicly available.

15-30 Matters to be considered when making withholding schedules

The Commissioner must have regard to the following matters when making a withholding schedule:

- (a) the rates of income tax as specified in the *Income Tax Rates Act 1986*;
- (b) the rates of *Medicare levy as specified in the *Medicare Levy Act 1986*;
- (ca) the percentages specified in section 154-20 (about repayments of accumulated HELP debt) of the *Higher Education Support Act 2003* for any financial year starting on or after 1 July 2005;
- (da) the percentages specified in section 1061ZZFD (about repayments of accumulated FS debts) of the *Social Security Act 1991* for any financial year starting on or after 1 July 2006;
- (db) the percentages specified in section 12ZLC (about repayments of accumulated FS debts) of the *Student Assistance Act 1973* for any financial year starting on or after 1 July 2006;
- (d) any prescribed *tax offsets;
- (e) the family tax benefit (within the meaning of the *A New Tax System (Family Assistance) Act 1999*);
- (f) the periods in respect of which *withholding payments are made;
- (g) any other prescribed matter.

15-35 Regulations about withholding

- (1) For the purposes of collecting income tax and the other liabilities referred to in section 11-1, the regulations may specify the amounts, formulas and procedures to be used for working out the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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*amount required to be withheld by an entity from a *withholding payment covered by Division 12 (except one covered by section 12-325).

- (2) The regulations may deal differently with:
- (a) different payments; and
 - (b) different circumstances of the recipients of those payments; and
 - (c) different periods in respect of which those payments are made.

This subsection does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Subdivision 15-C—Declarations

Table of sections

15-50 Declarations

15-50 Declarations

Declarations about prescribed matters

- (1) An individual who:
- (a) expects to receive a *withholding payment covered by Subdivision 12-B, 12-C or 12-D, or an *alienated personal services payment to which Division 13 applies, from an entity; and
 - (b) wishes to have a prescribed matter relating to the individual's income tax or other liability referred to in paragraph 11-1(b), (ca), (da) or (db) taken into account by the entity in working out the *amount required to be withheld from the payment;
- may give the entity a declaration about the matter in the *approved form.

When declarations under subsection (1) can't be given

- (2) The individual cannot give a declaration under subsection (1) unless:
- (a) a *TFN declaration is in effect between the individual and the entity, or a *voluntary agreement covers the payment; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) if the individual has given another entity a declaration on a prescribed matter—that declaration is not in effect.

Declarations changing information given in TFN declaration

- (3) If:
 - (a) an individual has given a *TFN declaration to an entity; and
 - (b) the individual made a statement about a prescribed matter in the TFN declaration; and
 - (c) the individual's circumstances change in relation to the matter;the individual may give the entity a declaration about the matter in the *approved form.

Regulations

- (4) The regulations may prescribe:
 - (a) the matters about which a declaration under subsection (1) or (3) may be given; and
 - (b) when a declaration under subsection (1) or (3) starts or ceases to be in effect; and
 - (c) when a declaration under subsection (1) or (3) is taken to have been given.
- (5) If:
 - (a) an individual gives an entity a declaration under subsection (1) or (3) about a matter; and
 - (b) the individual's circumstances change in relation to the matter;the regulations may also prescribe when the individual must give the entity a new declaration about the matter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 16-1

Division 16—Payer’s obligations and rights

Table of Subdivisions

	Guide to Division 16
16-A	To withhold
16-B	To pay withheld amounts to the Commissioner
16-BA	To be registered
16-C	To provide information
16-D	Additional rights and obligations of entity that makes a payment

Guide to Division 16

16-1 What this Division is about

This Division sets out the obligations and rights of an entity required to withhold an amount under Division 12, or to pay an amount to the Commissioner under Division 13 or 14.

Note: The entity may also have obligations under other legislation. See, for example, the obligation to keep records under section 262A of the *Income Tax Assessment Act 1936*.

Subdivision 16-A—To withhold

Table of sections

When to withhold

16-5	When to withhold an amount
16-20	Payer discharged from liability to recipient for amount withheld

Penalties for not withholding

16-25	Failure to withhold: offence
16-30	Failure to withhold: administrative penalty for entity other than exempt Australian government agency

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- 16-35 Failure to withhold: administrative penalty for exempt Australian government agency in relation to payment other than dividend, interest or royalty
- 16-40 Failure to withhold: administrative penalty for exempt Australian government agency in relation to dividend, interest or royalty payment
- 16-43 Failure to withhold: administrative penalty for exempt Australian government agency in relation to payment to foreign resident etc.

When to withhold

16-5 When to withhold an amount

If Division 12 requires an entity to withhold an amount from a payment, the entity must do so when making the payment.

Note 1: An entity is required to withhold an amount under section 12-145 when an investor becomes presently entitled to income of a unit trust.

Note 1A: A trustee of a closely held trust is required to withhold an amount under section 12-180 when a beneficiary is presently entitled to unpaid income of the trust.

Note 2: If section 12-215, 12-250 or 12-285, or subsection 12-390(4), requires an entity to withhold an amount from a payment received by the entity, the entity must do so at the time required by that provision.

16-20 Payer discharged from liability to recipient for amount withheld

An entity that:

- (a) withholds an amount as required by Division 12; or
- (b) pays to the Commissioner an amount as required by Division 13 or 14;

is discharged from all liability to pay or account for that amount to any entity except the Commissioner.

Note: The entity may be required to refund the amount in some circumstances. See Subdivision 18-B.

Penalties for not withholding

16-25 Failure to withhold: offence

- (1) An entity must not fail to withhold an amount as required by Division 12.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 16-30

Penalty: 10 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: See sections 16-30, 16-35, 16-40 and 16-43 for an alternative administrative penalty.

- (2) An entity must not fail to pay to the Commissioner an amount as required by Division 13 or 14.

Penalty: 10 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: See sections 16-30, 16-35, 16-40 and 16-43 for an alternative administrative penalty.

- (3) An offence against subsection (1) or (2) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) If a person is convicted of an offence in relation to:

- (a) a failure by that person or someone else to withhold an amount as required by Division 12; or
- (b) a failure by that person or someone else to pay to the Commissioner an amount as required by Division 13 or 14;

the court may order the convicted person to pay to the Commissioner an amount up to the *amount required to be withheld. The court may so order in addition to imposing a penalty on the convicted person.

16-30 Failure to withhold: administrative penalty for entity other than exempt Australian government agency

An entity (except an *exempt Australian government agency) that:

- (a) fails to withhold an amount as required by Division 12; or
- (b) fails to pay an amount to the Commissioner as required by Division 13 or 14;

is liable to pay to the Commissioner a penalty equal to that amount.

Note 1: An entity may become liable under this section in respect of a payment it made or received that is taken to have been subject to withholding tax as a result of a Commissioner's determination under subsection 177F(2A) of the *Income Tax Assessment Act 1936* (see also subsection 177F(2F) of that Act).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note 2: Division 298 in this Schedule contains machinery provisions for administrative penalties.

16-35 Failure to withhold: administrative penalty for exempt Australian government agency in relation to payment other than dividend, interest or royalty

- (1) An *exempt Australian government agency that:
- (a) fails to withhold an amount as required by Division 12; or
 - (b) fails to pay to the Commissioner an amount as required by Division 14;
- is liable to pay to the Commissioner a penalty of 20 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 in this Schedule contains machinery provisions for administrative and civil penalties.

Exception

- (4) This section does not apply in relation to an *amount required to be withheld from a *withholding payment covered by Subdivision 12-F (about dividend, interest or royalty payment) or by Subdivision 12-FB (about payments to foreign residents).

16-40 Failure to withhold: administrative penalty for exempt Australian government agency in relation to dividend, interest or royalty payment

- An *exempt Australian government agency that:
- (a) fails to withhold an amount as required by Division 12 from a *withholding payment covered by Subdivision 12-F (about dividend, interest or royalty payment); or
 - (b) fails to pay to the Commissioner an amount as required by Division 14 in respect of a withholding payment covered by that Subdivision;
- is liable to pay to the Commissioner a penalty equal to that amount.

Note 1: An exempt Australian government agency may become liable under this section in respect of a payment it made or received that is taken to have been subject to withholding tax as a result of a Commissioner's determination under subsection 177F(2A) of the *Income Tax Assessment Act 1936* (see also subsection 177F(2F) of that Act).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 16-43

Note 2: Division 298 in this Schedule contains machinery provisions for administrative penalties.

16-43 Failure to withhold: administrative penalty for exempt Australian government agency in relation to payment to foreign resident etc.

An *exempt Australian government agency that:

- (a) fails to withhold an amount as required by Division 12 from a *withholding payment covered by Subdivision 12-FB (about payments to foreign residents); or
- (b) fails to pay to the Commissioner an amount as required by Division 14 in respect of a withholding payment covered by that Subdivision;

is liable to pay to the Commissioner a penalty equal to that amount.

Note: Division 298 in this Schedule contains machinery provisions for administrative penalties.

Subdivision 16-B—To pay withheld amounts to the Commissioner

Table of sections

When and how to pay amounts to the Commissioner

16-70	Entity to pay amounts to Commissioner
16-75	When amounts must be paid to Commissioner
16-80	Penalty for failure to pay within time
16-85	How amounts are to be paid

Who is a large, medium or small withholder

16-95	Meaning of <i>large withholder</i>
16-100	Meaning of <i>medium withholder</i>
16-105	Meaning of <i>small withholder</i>
16-110	Commissioner may vary withholder's status downwards
16-115	Commissioner may vary withholder's status upwards

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

When and how to pay amounts to the Commissioner

16-70 Entity to pay amounts to Commissioner

- (1) An entity that withholds an amount under Division 12 must pay the amount to the Commissioner in accordance with this Subdivision.
- (2) An entity that must pay an amount to the Commissioner under Division 13 or Subdivision 14-A must do so in accordance with section 16-85.
- (3) An entity that must pay an amount to the Commissioner under Subdivision 14-B must do so in accordance with sections 16-80 and 16-85.
- (4) An entity that must pay an amount to the Commissioner under Subdivision 14-C must do so in accordance with sections 16-80 and 16-85.

Note: For provisions about collection and recovery of amounts payable to the Commissioner under this Part, see Part 4-15.

16-75 When amounts must be paid to Commissioner

Large withholder

- (1) A *large withholder must pay to the Commissioner as shown in the table an amount it withholds under Division 12 (other than section 12-175 or 12-180) during a month.

Payments by large withholders		
Item	If the amount is withheld on this day of week:	It must be paid to the Commissioner on or before:
1	Saturday or Sunday	The second Monday after that day
2	Monday or Tuesday	The first Monday after that day
3	Wednesday	The second Thursday after that day
4	Thursday or Friday	The first Thursday after that day

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Medium withholders

- (2) Subject to subsection (2A), a *medium withholder must pay to the Commissioner an amount that it withholds during a month under Division 12 (other than section 12-175 or 12-180) by the end of the 21st day of the next month.
- (2A) If a *medium withholder:
- (a) withholds an amount during a month under Division 12 (other than section 12-175 or 12-180); and
 - (b) is a *deferred BAS payer on the 21st day of the month (the **next month**) following that month;
- the medium withholder must pay that amount to the Commissioner by the end of the 28th day of:
- (c) the next month unless the amount is withheld during December; or
 - (d) the next February if the amount is withheld during December.

Small withholders

- (3) Subject to subsection (4), if a *small withholder withholds an amount under Division 12 (other than section 12-175 or 12-180) during a month in a *quarter, it must pay the amount to the Commissioner by the end of the 21st day of the month after the end of that quarter.
- (4) If a *small withholder:
- (a) withholds an amount under Division 12 (other than section 12-175 or 12-180) during a month in a *quarter; and
 - (b) is a *deferred BAS payer on the 21st day of the month after the end of that quarter;
- the small withholder must pay that amount to the Commissioner as shown in the table:

Payments by *deferred BAS payers		
Item	If the amount is withheld during the *quarter ending on:	the amount must be paid to the Commissioner by the end of:
1	30 September	the following 28 October

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Payments by *deferred BAS payers		
Item	If the amount is withheld during the *quarter ending on:	the amount must be paid to the Commissioner by the end of:
2	31 December	the following 28 February
3	31 March	the following 28 April
4	30 June	the following 28 July

Payment of income of closely held trust

- (5) A trustee must pay to the Commissioner an amount the trustee withholds under section 12-175 or 12-180 from a payment made during an income year. The trustee must do so:
- (a) by the end of the 28th day of the next month following the day by which the trustee was required to give to the Commissioner a report under subsection 16-152(1) for the income year; or
 - (b) within a longer period allowed by the Commissioner.

16-80 Penalty for failure to pay within time

If an amount that an entity must pay to the Commissioner under subsection 16-70(1), (3) or (4) remains unpaid after the time by which it is due to be paid, the entity is liable to pay *general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the day by which the unpaid amount was due to be paid; and
- (b) finishes at the end of the last day, at the end of which, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on any of the unpaid amount.

16-85 How amounts are to be paid

Large withholder

- (1) A *large withholder must pay to the Commissioner by a means of *electronic payment:
- (a) an amount that it withholds under Division 12; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) an amount that it pays to the Commissioner under Division 13 or 14.

Note 1: A different rule applies for some large withholders for July and August 2000. See section 16-130.

Note 2: A penalty applies if a large withholder fails to pay electronically as required—see section 288-20.

Note 3: A large withholder must also pay other tax debts electronically—see section 8AAZMA.

Medium or small withholder

- (2) A *medium withholder or *small withholder must pay to the Commissioner:

- (a) any amount that it withholds under Division 12; and
- (b) any amount that it pays to the Commissioner under Division 13 or 14;

by a means of *electronic payment, or any other means approved in writing by the Commissioner.

Commissioner may vary payment method

- (3) The Commissioner may, with an entity's agreement, vary the means by which the withholder pays amounts to the Commissioner under this Subdivision. The variation must be by written notice given to the entity.

Who is a large, medium or small withholder

16-95 Meaning of *large withholder*

- (1) An entity is a ***large withholder*** for a particular month (the ***current month***) in a *financial year starting on or after 1 July 2001 if:
- (a) it was a *large withholder for June 2001; or
 - (b) the *amounts withheld by the entity during a financial year ending at least 2 months before the current month exceeded \$1 million; or
 - (c) both of the following apply:
 - (i) at the end of a financial year (the ***threshold year***) ending at least 2 months before the current month, the entity

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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was one of a number of companies that were at that time all members of the same *wholly-owned group;

- (ii) the amounts withheld by those companies during the threshold year exceeded \$1 million; or
- (d) the Commissioner determines under section 16-115 that the entity is a large withholder for the current month.

Note: Different rules apply for working out who is a large withholder for a month in 2000-01. See section 16-125.

Exception

- (2) However, the entity is not a *large withholder if the Commissioner determines under section 16-110 that it is a *medium withholder or a *small withholder for the current month.

16-100 Meaning of *medium withholder*

- (1) An entity is a ***medium withholder*** for a particular month (the ***current month***) in a *financial year starting on or after 1 July 2001 if it is not a *large withholder for that month and:
 - (a) it was a *medium withholder for June 2001; or
 - (b) the *amounts withheld by the entity during a financial year ending before the current month exceeded \$25,000; or
 - (c) the Commissioner determines under section 16-110 or 16-115 that the entity is a medium withholder for the current month.

Note: Different rules apply for working out who is a large withholder for a month in 2000-01. See section 16-125.

- (2) However, the entity is not a *medium withholder if the Commissioner determines under section 16-110 or 16-115 that the entity is a *large withholder or a *small withholder for the current month.

16-105 Meaning of *small withholder*

An entity is a ***small withholder*** for a particular month if:

- (a) there is at least one *amount withheld by the entity during that month; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the entity is neither a *large withholder nor a *medium withholder for that month.

16-110 Commissioner may vary withholder's status downwards

- (1) The Commissioner may, by giving written notice to a *withholder:
 - (a) make the following determinations:
 - (i) a determination that a *large withholder is a *medium withholder or a *small withholder;
 - (ii) a determination that a medium withholder is a small withholder; or
 - (b) revoke or vary any such determination.
- (2) The notice must state that the determination applies:
 - (a) for specified months; or
 - (b) for all months from and including a specified month.
- (3) The determination has no effect for a particular month unless the notice is given before that month.
- (4) An entity that would otherwise be a *large withholder or a *medium withholder for a particular month may apply in writing to the Commissioner for a determination under this section.

Note: A person who is dissatisfied with a decision under this section may object against the decision in the manner set out in Part IVC.

16-115 Commissioner may vary withholder's status upwards

- (1) The Commissioner may, by giving written notice to a *withholder:
 - (a) make the following determinations:
 - (i) a determination that a *small withholder is a *medium withholder or a *large withholder;
 - (ii) a determination that a medium withholder is a large withholder; or
 - (b) revoke or vary any such determination.
- (2) The notice must state that the determination applies:
 - (a) for specified months; or
 - (b) for all months from and including a specified month.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) A determination that a *small withholder is a *medium withholder has no effect for a particular month unless the notice is given before that month.
- (4) Any other determination under this section has no effect for a month that is earlier than the second month after the month in which the notice is given.
- (5) The Commissioner may, in making a determination under this section, have regard to the following:
 - (a) the sum of the amounts that the Commissioner considers to be likely to be the *amounts required to be withheld by the entity in the following 12 months;
 - (b) the extent (if any) to which the entity makes or receives *withholding payments that were previously made or received by another entity;
 - (c) any failure by the entity to comply with its obligations under this Part;
 - (d) any *arrangement that was entered into or carried out for the purpose of lengthening the intervals at which the entity is required to pay to the Commissioner amounts withheld from withholding payments;
 - (e) such other matters as the Commissioner considers relevant.

Note: A person who is dissatisfied with a decision under this section may object against the decision in the manner set out in Part IVC.

Subdivision 16-BA—To be registered

Table of sections

Registration of withholders

- 16-140 Withholders must be registered
- 16-141 Registration and cancellation

Branch registration

- 16-142 Branches may be registered
- 16-143 Separate amounts for entities and branches
- 16-144 Cancellation of branch registration
- 16-145 Effect on branches of cancelling the entity's registration

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Registration of withholders

16-140 Withholders must be registered

- (1) An entity that must pay an amount to the Commissioner under:
 - (a) subsection 16-70(1) (about amounts withheld under Division 12); or
 - (aa) Division 13 (about payments in respect of alienated personal services payments); or
 - (b) Division 14 (about payments in respect of non-cash benefits);must apply to register with the Commissioner.
- (2) The entity must apply in the *approved form by the day on which the entity is first required:
 - (a) to withhold an amount under Division 12; or
 - (b) to pay an amount to the Commissioner under Division 13 or 14.

However, the Commissioner may allow a longer period for applying.

- (3) An entity that contravenes this section is liable to an administrative penalty of 5 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

16-141 Registration and cancellation

The Commissioner may register an entity or cancel the registration of an entity at any time.

Branch registration

16-142 Branches may be registered

- (1) The Commissioner may register a branch of a registered entity if:
 - (a) the entity applies, in the *approved form, for registration of the branch; and
 - (b) the entity has an *ABN or has applied for one; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) the Commissioner is satisfied that the branch maintains an independent system of accounting, and can be separately identified by reference to:
 - (i) the nature of the activities carried on through the branch; or
 - (ii) the location of the branch; and
- (d) the Commissioner is satisfied that the entity is *carrying on an enterprise through the branch, or intends to carry on an enterprise through the branch, from a particular date specified in the application.

A branch that is so registered is a **PAYG withholding branch**.

Note: A branch may be both a PAYG withholding branch under this Subdivision and a GST branch under the GST Act.

- (2) The Commissioner may register a branch of a *government entity or a *non-profit sub-entity if:
 - (a) the branch or sub-entity applies, in the *approved form, for registration; and
 - (b) the branch or sub-entity has an *ABN or has applied for one.

A branch or sub-entity that is so registered is also a **PAYG withholding branch**.

16-143 Separate amounts for entities and branches

- (1) If an entity has a *PAYG withholding branch, this Part applies to the entity as if the amounts that it must pay to the Commissioner under this Part were separated into the following classes:
 - (a) for each such branch of the entity, a class of amounts that relate to the branch; and
 - (b) a class of amounts that do not relate to any of the entity's branches.
- Note: This section does not impose any legal obligations on the branches. The entity remains legally responsible under this Part for all amounts that relate to its branches.
- (2) Those amounts are worked out as if the branch were a separate entity and as if:
 - (a) all payments made through the branch, from which amounts are required to be withheld under Division 12, were made by that separate entity; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (aa) all *alienated personal services payments received through the branch, in respect of which Division 13 requires an amount to be paid to the Commissioner, were received by that separate entity; and
- (b) all non-cash benefits provided through the branch, in respect of which Division 14 requires an amount to be paid to the Commissioner, were provided by that separate entity.

16-144 Cancellation of branch registration

The Commissioner must cancel the registration of a *PAYG withholding branch of an entity if the Commissioner is satisfied that the branch does not satisfy paragraph 16-142(c) or (d).

16-145 Effect on branches of cancelling the entity's registration

If an entity's registration is cancelled, the registration of any *PAYG withholding branches of the entity ceases to have effect.

Subdivision 16-C—To provide information

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To the Commissioner

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- 16-182 Definition of *reportable employer superannuation contribution*

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

To the Commissioner

16-150 Commissioner must be notified of amounts

An entity that must pay an amount (even if it is a nil amount) to the Commissioner under:

- (a) subsection 16-70(1) (about amounts withheld under Division 12); or
 - (aa) Division 13 (about payments in respect of alienated personal services payments); or
 - (b) Division 14 (about payments in respect of non-cash benefits);
- must notify the Commissioner of the amount on or before the day on which the amount is due to be paid (regardless of whether it is paid). The notification must be in the *approved form and lodged with the Commissioner.

16-152 Annual reports—Withholding payments covered by section 12-175

Reports about withholding payments

- (1) A trustee must give a report to the Commissioner in the *approved form if the trustee made any *withholding payments covered by section 12-175 or 12-180 (about payments from the income of certain closely held trusts) during an income year.
- (2) The trustee must give the report under subsection (1) to the Commissioner:
 - (a) not later than 3 months after the end of the income year; or
 - (b) within such further period (if any) as the Commissioner allows.

Reports about trust distributions

- (3) A trustee must give a report to the Commissioner in the *approved form if the trustee would be taken to have made any *withholding payments covered by section 12-175 or 12-180 during an income year if the relevant beneficiary had not *quoted the beneficiary's *tax file number as mentioned in paragraph 12-175(2)(a) or 12-180(2)(a).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: The effect of subsection (3) is that the trustee must report amounts distributed to beneficiaries even if the trustee was not required to withhold from those distributions.

- (4) The trustee must give the report under subsection (3) to the Commissioner:
- (a) by the end of the day on which the trustee lodges the trust's *income tax return for the income year; or
 - (b) within such further period (if any) as the Commissioner allows.

Miscellaneous

- (5) Subsections 16-153(5), (6) and (7) apply to this section in the same way as they apply to section 16-153.

16-153 Annual reports—other payments

- (1) An entity must give a report to the Commissioner in the *approved form, not later than 31 October after the end of a *financial year, if during the financial year:
- (a) the entity made any payment from which an amount was required to be withheld under section 12-190, Subdivision 12-F (other than section 12-215, 12-250 or 12-285), Subdivision 12-FA, section 12-315 or Subdivision 12-FC or 12-G; or
 - (b) the entity provided any *non-cash benefit in respect of which an amount was required to be paid to the Commissioner under Division 14 because of the application of that Division in relation to section 12-190, Subdivision 12-F (other than section 12-215, 12-250 or 12-285), Subdivision 12-FA, section 12-315 or Subdivision 12-G; or
 - (c) the entity received any payment from which an amount was required to be withheld under section 12-215, 12-250, 12-285 or 12-317; or
 - (d) the entity received any non-cash benefit in respect of which an amount was required to be paid to the Commissioner under Division 14 because of the application of that Division in relation to section 12-215, 12-250, 12-285 or 12-317.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) An entity must give a report to the Commissioner in the form required by subsection (3), not later than 14 August after the end of a *financial year, if during the financial year:
- (a) the entity made any payment from which an amount was required to be withheld under Subdivision 12-B, 12-C or 12-D; or
 - (aa) the entity received any *alienated personal services payment in respect of which an amount was required to be paid to the Commissioner under Division 13; or
 - (b) the entity provided any *non-cash benefit in respect of which an amount was required to be paid to the Commissioner under Division 14 because of the application of that Division in relation to Subdivision 12-B, 12-C or 12-D; or
 - (c) any person has a *reportable fringe benefits amount for the income year ending at the end of the financial year in respect of the person's employment by the entity; or
 - (d) the entity made *reportable employer superannuation contributions in respect of a person's employment.
- (3) The report under subsection (2) must be either:
- (a) a report in the *approved form; or
 - (b) a report consisting of:
 - (i) copies of all the summaries that the entity gave in relation to the *financial year under section 16-155 in respect of payments, *non-cash benefits, *alienated personal services payments, *reportable fringe-benefit amounts and *reportable employer superannuation contributions covered by subsection (2) of this section; and
 - (ii) an accompanying statement in the approved form.
- (4) An entity must give a report to the Commissioner in the *approved form if the entity is required to withhold amounts under Subdivision 12-H in relation to *fund payments made by a particular *managed investment trust (the ***paying trust***) in relation to an income year of that trust.

Note: The entity may be the managed investment trust itself or a custodian or other entity.

- (4A) The report under subsection (4) must be given:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) not later than 14 days after the end of 6 months after the end of the income year of the *managed investment trust in relation to which the relevant *fund payments were made; or
 - (b) within a longer period allowed by the Commissioner.
- (5) In applying this section:
 - (a) a requirement to pay a nil amount to the Commissioner is to be treated as a requirement to pay an amount to the Commissioner; and
 - (b) a requirement to withhold a nil amount is to be treated as a requirement to withhold an amount.
- (6) The Commissioner may, to meet the special circumstances of a particular case or class of cases, vary the requirements of this section.
- (7) A variation must be made by a written notice:
 - (a) if it applies to a particular entity— that is given to that entity; or
 - (b) if it applies to a class of entities—that is given to each of the entities, or a copy of which is published in the *Gazette*.

To recipients of withholding payments

16-155 Annual payment summary

- (1) Within 14 days after the end of a *financial year, an entity (the **payer**) must give a *payment summary (and a copy of it) to another entity (the **recipient**) if:
 - (a) during the year the payer made one or more *withholding payments (other than withholding payments covered by section 12-85, 12-175, 12-180, 12-190, 12-215, 12-250, 12-285, 12-317, 12-385 or 12-390) to the recipient; or
 - (b) during the year the payer received one or more withholding payments covered by section 12-215, 12-250 or 12-285 and, in relation to each of them, the recipient is the foreign resident mentioned in the section; or
 - (baa) during the year the payer received one or more withholding payments covered by section 12-317 and, in relation to each of them, the recipient is the likely foreign recipient mentioned in the section; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ba) during the year the payer received one or more withholding payments covered by Division 13 and, in relation to each of them, an amount is included in the recipient's assessable income under Division 86 of the *Income Tax Assessment Act 1997*; or
 - (bb) because of section 86-40 of the *Income Tax Assessment Act 1997*, the payer is taken to have paid salary to the recipient on the last day of the year; or
 - (c) the recipient is an individual and has a *reportable fringe benefits amount, for the income year ending at the end of that financial year, in respect of his or her employment (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) by the payer; or
 - (d) the recipient is an individual and *reportable employer superannuation contributions have been made by the payer, in respect of the individual's employment, during the year.
- (2) The *payment summary must cover:
- (a) if paragraph (1)(a), (b) or (ba) applies—each of the *withholding payments mentioned in that paragraph, except one covered by a previous payment summary (and a copy of it) given by the payer to the recipient under section 16-160; and
 - (aa) if paragraph (1)(bb) applies—each of the withholding payments constituted by the salary mentioned in that paragraph, except one covered by a previous payment summary (and a copy of it) given by the payer to the recipient under section 16-160; and
 - (b) if paragraph (1)(c) applies—the *reportable fringe benefits amount, except so much of it as is covered by a previous payment summary (and a copy of it) given by the payer to the recipient under this section; and
 - (c) if paragraph (1)(d) applies—the total of the *reportable employer superannuation contributions, except so much of those contributions as are covered by a previous payment summary given by the payer to the recipient under section 16-160.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Parental leave pay or dad and partner pay paid in error

- (3) Despite subsection (2), the *payment summary must not cover a *withholding payment if:
 - (a) the withholding payment is a payment of an amount purported to have been paid by way of *parental leave pay or *dad and partner pay; and
 - (b) the amount was not lawfully so payable.
- (4) The payer must, within 28 days of becoming aware that the *payment summary covers a *withholding payment to which subsection (3) applies:
 - (a) give the recipient an amended payment summary that does not cover the withholding payment; or
 - (b) give the recipient notice in the *approved form; or
 - (c) give the Secretary (within the meaning of the *Paid Parental Leave Act 2010*) notice in writing that the payer does not intend to give the recipient an amended payment summary or notice under this subsection.

16-156 Annual payment summary for sections 12-175 and 12-180

- (1) A trustee must give a *payment summary to a beneficiary of the trust, if the trustee made any *withholding payments covered by section 12-175 or 12-180 to the beneficiary during the income year.
- (2) The *payment summary:
 - (a) must cover each of the *withholding payments mentioned in subsection (1); and
 - (b) may be in electronic form; and
 - (c) must be given:
 - (i) not later than 14 days after the day by which the trustee was required to give the Commissioner a report under subsection 16-152(1) for the income year; or
 - (ii) within a longer period allowed by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

16-157 Payment summary for Subdivision 12-H

- (1) An entity (the *payer*) must give a *payment summary to another entity (the *recipient*) if the payer made *withholding payments covered by section 12-385 or 12-390 to the recipient in relation to *fund payments made by a particular *managed investment trust (the *paying trust*) in relation to an income year of that trust.

Note: The entity may be the managed investment trust itself or a custodian or other entity.

- (2) The *payment summary:
- (a) must cover each of the *withholding payments mentioned in subsection (1); and
 - (b) may be in electronic form; and
 - (c) must be given:
 - (i) not later than 14 days after the end of 6 months after the end of the income year of the *managed investment trust in relation to which the relevant *fund payments were made; or
 - (ii) within a longer period allowed by the Commissioner.

16-160 Part-year payment summary

- (1) An entity (the *payer*) must give a *payment summary (and a copy of it) to another entity (the *recipient*) if, not later than 21 days before the end of a *financial year, the recipient asks in writing for a payment summary covering:
- (a) one or more *withholding payments (other than withholding payments covered by section 12-85, 12-190, 12-215, 12-250, 12-285, 12-317, 12-385 or 12-390) that the payer made to the recipient during the year; or
 - (b) one or more withholding payments covered by section 12-215, 12-250 or 12-285, or a part of each such payment, that the payer received during the year for the recipient, if the recipient is the foreign resident mentioned in the section; or
 - (ba) one or more withholding payments covered by section 12-317, or a part of each such payment, that the payer received during the year for the recipient, if the recipient is the likely foreign recipient mentioned in that section; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) one or more withholding payments covered by Division 13 that the payer received during the year and that are included in the recipient's assessable income for the income year under section 86-15 of the *Income Tax Assessment Act 1997*; or
 - (d) *reportable employer superannuation contributions made by the payer, in respect of the recipient's employment, during the financial year;
- other than a payment covered by a previous payment summary (and a copy of it) given under this section.
- (2) The payer must comply with the request within 14 days after receiving it, unless the recipient is an individual and has a *reportable fringe benefits amount, for the income year ending at the end of that *financial year, in respect of his or her employment (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) by the payer.
- (3) Despite subsection (1), the *payment summary must not cover a *withholding payment if:
 - (a) the withholding payment is a payment of an amount purported to have been paid by way of *parental leave pay or *dad and partner pay; and
 - (b) at the time the recipient asks for the payment summary, the payer is aware that the amount was not lawfully so payable.

16-165 Payment summaries for superannuation lump sums and payments for termination of employment

- (1) Within 14 days after an entity (the **payer**) makes a payment covered under subsection (2) to a person (the **recipient**), the entity must:
 - (a) give a *payment summary to the recipient that covers the payment (and no other payments); and
 - (b) give a copy of the summary to the Commissioner.
- (2) The following payments are covered under this subsection if they are *withholding payments:
 - (a) a *superannuation lump sum;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) a payment that is an *employment termination payment or would be one except that it is received more than 12 months after termination of employment, other than a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

16-166 Payment summary for a departing Australia superannuation payment

Within 14 days after an entity (the *payer*) makes a *departing Australia superannuation payment, the payer must:

- (a) give a *payment summary that covers the payment to the recipient of the payment; and
- (b) give a copy of the summary to the Commissioner.

16-167 Payment summary for payment to recipient who does not quote ABN

- (1) An entity (the *payer*) that makes a *withholding payment covered by section 12-190 (about payments to recipients who do not quote their ABN) to another entity (the *recipient*) must give the recipient a *payment summary (and a copy of it) that covers that payment, unless the *amount required to be withheld from the payment is nil.
- (2) The summary must cover only that payment.
- (3) The payer must give the summary to the recipient when making the payment, or as soon as practicable afterwards.

16-170 Form and content of payment summary

- (1) A *payment summary* (except one relating to section 12-175 or 12-180 or Subdivision 12-H) is a written statement that:
 - (a) names the payer and the recipient; and
 - (b) if the recipient has given the recipient's *tax file number or *ABN to the payer—states the tax file number or ABN; and
 - (c) states the total of the *withholding payments (if any) that it covers, and the total of the *amounts withheld by the payer from those withholding payments; and
 - (d) specifies the *financial year in which the withholding payments were made; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (e) specifies the *reportable fringe benefits amount (if any) that it covers and the income year to which that amount relates; and
 - (f) specifies the *reportable employer superannuation contributions (if any) that it covers and the income year to which those contributions relate; and
 - (g) is in the *approved form.
- (1AAA) A **payment summary** relating to section 12-175 or 12-180 is a statement that:
 - (a) names the trustee and the beneficiary; and
 - (b) states the total of the *withholding payments (if any) that it covers, and the total of the *amounts withheld by the trustee from those withholding payments; and
 - (c) specifies the income year of the trust to which it relates; and
 - (d) is in the *approved form.
- (1AA) A **payment summary** relating to Subdivision 12-H is a statement that:
 - (a) names the payer and the recipient; and
 - (b) if the recipient has given the recipient's *tax file number or *ABN to the payer—states the tax file number or ABN; and
 - (c) states the total of the *withholding payments (if any) that it covers, and the total of the *amounts withheld by the payer from those withholding payments; and
 - (d) specifies the income year of the relevant *managed investment trust to which it relates.
- (1A) For any of the *withholding payments to which paragraph 16-155(2)(aa) applies, paragraph (1)(d) is taken to refer to the *financial year preceding the financial year in which the withholding payments were received.
- (2) The Commissioner may, in writing, require particular information to be included in a *payment summary or a class of payment summaries.
- (3) A *payment summary may consist of 2 or more statements that each complies with subsection (1) and together cover what section 16-155, 16-156, 16-160, 16-165, 16-166 or 16-167 (as appropriate) requires the payment summary to cover.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (4) The Commissioner may vary any requirements under subsection (1), (1AAA), (2) or (3) by written notice given to an entity. The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

16-175 Penalty for not providing payment summary

- (1) An entity must not fail to comply with any requirements under section 16-155, 16-156, 16-157, 16-160, 16-165, 16-166 or 16-167, or subsection 16-170(1), (1AAA), (1AA), (2) or (3) (including any requirements varied by the Commissioner under subsection 16-170(4)).

Penalty: 20 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

16-180 Commissioner may exempt entity from giving payment summary

- (1) The Commissioner may, having regard to the circumstances of a particular case or class of cases, exempt an entity from specified requirements of any of sections 16-155 to 16-167. If the Commissioner does so, the exemption has effect accordingly.
- (2) An exemption must be made by a written notice:
- (a) if it applies to a particular entity—that is given to that entity; or
 - (b) if it applies to a class of entities—that is given to each of the entities, or a copy of which is published in the *Gazette*.

16-182 Definition of *reportable employer superannuation contribution*

- (1) A ***reportable employer superannuation contribution***, for an individual for an income year, is an amount that has been, is, or will be contributed in respect of the income year:
- (a) by an employer of the individual, or an *associate of the employer, for the individual's benefit; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) to a *superannuation fund or an *RSA;
- to the extent that either or both of the following paragraphs apply:
 - (c) the individual has or has had, or might reasonably be expected to have or have had, the capacity to influence the size of the amount;
 - (d) the individual has or has had, or might reasonably be expected to have or have had, the capacity to influence the way the amount was, is or will be contributed so that his or her assessable income is reduced.
- (2) However, an amount is not a ***reportable employer superannuation contribution*** to the extent that it is included in the individual's assessable income for the income year.
- (3) For the purposes of this section, ***employer*** has the expanded meaning given by section 12 of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).
- (4) For the purposes of this section, disregard whether any *superannuation benefits arising from a contribution are payable to a *SIS dependant of the individual if the individual dies before or after becoming entitled to receive the benefits.
- (5) For the purposes of paragraph (1)(c), treat the individual as neither having, nor being able reasonably to be expected to have, the capacity to influence the size of the amount if:
 - (a) the employer or *associate is required to contribute the amount by:
 - (i) an *industrial instrument; or
 - (ii) the rules of a *superannuation fund; and
 - (b) the individual does not and did not have, and is not able reasonably to be expected to have or have had, the capacity to influence the content of that instrument or those rules, to the extent that the instrument or rules relate to:
 - (i) the requirement to contribute the amount; or
 - (ii) the size of the amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 16-D—Additional rights and obligations of entity that makes a payment

Table of sections

16-195 Payer's right to recover amounts of penalty: certain withholding taxes

16-195 Payer's right to recover amounts of penalty: certain withholding taxes

- (1) An entity that has paid an amount of penalty under section 16-30, 16-35 or 16-40 for a *withholding payment covered by:
 - (a) Subdivision 12-F (about a dividend, interest or royalty payment); or
 - (aa) section 12-305 (about a departing Australia superannuation payment); or
 - (ab) Subdivision 12-FC (Seasonal Labour Mobility Program); or
 - (b) section 12-320 (about a mining payment); or
 - (c) Subdivision 12-H (about distributions of managed investment trust income);

may recover an amount equal to the amount of penalty from the person liable to pay the *withholding tax, or *mining withholding tax, for the withholding payment.

Note Sections 16-30, 16-35 and 16-40 provide for an administrative penalty for failing to comply with Division 12 or 14.

- (2) Subsection (3) applies if an entity has paid an amount of penalty under section 12-415 to the Commissioner for a failure to give a notice, or to make details available on a website, as required by section 12-395 in relation to an amount (the *relevant amount*).
- (3) The entity may recover from another entity that is liable to pay *managed investment trust withholding tax in relation to an amount attributable to the relevant amount the lesser of:
 - (a) an amount equal to the amount of that tax that the other entity is liable to pay; and
 - (b) the amount of the penalty.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 18-1

Division 18—Recipient’s entitlements and obligations

Table of Subdivisions

- 18-A Crediting withheld amounts
- 18-B Refund of certain withheld amounts
- 18-C Recipient’s obligations
- 18-D Directors etc. of non-complying companies

Subdivision 18-A—Crediting withheld amounts

Guide to Subdivision 18-A

18-1 What this Subdivision is about

In general, an entity:

- that receives a withholding payment (except one covered by section 12-215, 12-250 or 12-285, Subdivision 12-FC, or subsection 12-390(4)); or
- that is the foreign resident for which a withholding payment covered by section 12-215, 12-250 or 12-285, Subdivision 12-FC, or subsection 12-390(4), (or a part of it) is received;

is entitled to a credit for the amount withheld from the withholding payment.

However, if that entity is a partnership or trust, a partner, beneficiary or trustee may be entitled to the credit.

This Subdivision tells you:

- who is entitled to a credit; and
- how to work out the amount of the credit.

How a credit is applied is set out in Division 3 of Part IIB.

Table of sections

General exception

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

18-5 No credit for refunded amount

Entitlement to credits: income tax liability

- 18-10 Application of sections 18-15, 18-20 and 18-25
- 18-15 Tax credit for recipient of withholding payments
- 18-20 Tax credit where recipient is a partnership
- 18-25 Tax credit where recipient is a trust
- 18-27 Tax credit for alienated personal services payments

Entitlement to credits: dividend, interest or royalty, amount attributable to fund payment or Seasonal Labour Mobility Program

- 18-30 Credit: dividend, interest or royalty
- 18-32 Credit: amount attributable to fund payment
- 18-33 Credit: Seasonal Labour Mobility Program
- 18-35 Credit: penalty under section 12-415, 16-30, 16-35 or 16-40 or related general interest charge
- 18-40 Credit: liability under Part 4-25

Entitlement to credit: departing Australia superannuation payment

- 18-42 Credit—departing Australia superannuation payment

Entitlement to credit: mining payment

- 18-45 Credit—mining payment

Entitlement to credit: Minerals resource rent tax

- 18-49 Credit—Natural resource payments

Entitlement to credit: Petroleum resource rent tax

- 18-55 Credit—Natural resource payments

General exception

18-5 No credit for refunded amount

An entity is *not* entitled to a credit under this Subdivision for an *amount withheld from a *withholding payment to the extent that the amount must be refunded under Subdivision 18-B.

Note: See also Subdivision 18-D (PAYG withholding non-compliance tax, which can reverse the economic benefit of a credit of a director, or an associate of a director, of a company that does not comply with its obligations under subsection 16-70(1)).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Entitlement to credits: income tax liability

18-10 Application of sections 18-15, 18-20 and 18-25

- (1) The rules set out in sections 18-15, 18-20 and 18-25 do *not* apply to an *amount withheld from a *withholding payment that is covered by Subdivision 12-F (about dividend, interest or royalties), Subdivision 12-FA (about departing Australia superannuation payments), Subdivision 12-FC (Seasonal Labour Mobility Program), section 12-320 (about mining payments), Subdivision 12-H (about distributions of managed investment trust income) or Division 13 (about alienated personal services payments).
- (2) If an entity withholds an amount from a *withholding payment as required by section 12-317, apply sections 18-15, 18-20 and 18-25 in relation to the payment as if the payment had been made to the likely foreign recipient mentioned in section 12-317 (instead of to the intermediary mentioned in that section).
- (3) If an entity withholds an amount from a *withholding payment as required by section 12-325 (natural resource payments), apply sections 18-15, 18-20 and 18-25 to the payment as if the entity had withheld only so much of that amount as was withheld in respect of tax.

Note 1: Section 18-49 provides a credit for amounts withheld in respect of MRRT.

Note 2: Section 18-55 provides a credit for amounts withheld in respect of petroleum resource rent tax.

18-15 Tax credit for recipient of withholding payments

- (1) An entity is entitled to a credit equal to the total of the *amounts withheld from *withholding payments made to the entity during an income year if an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the entity for the income year.
- (2) To the extent that the entitlement to a credit is in respect of an *amount withheld from a *withholding payment to which paragraph 16-155(2)(aa) applies, the entitlement is treated as

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

arising for the income year preceding the income year in which the withholding payment is made.

18-20 Tax credit where recipient is a partnership

- (1) An entity is entitled to a credit in respect of *amounts withheld from *withholding payments made to a partnership during an income year if:
 - (a) the entity has an individual interest in the net income or partnership loss of the partnership for that income year that is wholly or partly attributable to those withholding payments; and
 - (b) the *income tax return of the partnership for the income year has been lodged with the Commissioner; and
 - (c) an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the entity for the income year.
- (2) The amount of the credit is worked out using the formula:

$$\text{Amounts withheld} \times \frac{\text{Individual interest}}{\text{Net income/partnership loss}}$$

where:

amounts withheld means the sum of the *amounts withheld from the *withholding payments.

individual interest means so much of the individual interest of the partner as is attributable to the *withholding payments.

net income/partnership loss means so much of the net income or partnership loss for that income year as is attributable to the *withholding payments.

18-25 Tax credit where recipient is a trust

- (1) An entity is entitled under subsection (2), (4), (6) or (8) to a credit in respect of *amounts withheld (the **amounts withheld**) from *withholding payments made to the trustee of a trust during an income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Trust—section 97

- (2) A beneficiary of the trust is entitled to a credit if:
- (a) an amount is included in the assessable income of the beneficiary under section 97 of the *Income Tax Assessment Act 1936* in respect of a share of the net income of the trust; and
 - (b) the share is wholly or partly attributable to the *withholding payments; and
 - (c) an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the beneficiary for the income year.
- (3) The amount of the credit is worked out using the formula:

$$\text{Amounts withheld} \times \frac{\text{Share of net income}}{\text{Net income}}$$

where:

net income means so much of the net income as is attributable to the *withholding payments.

share of net income means so much of that share of the net income as is attributable to the *withholding payments.

Trust—section 98

- (4) The trustee of the trust is entitled to a credit if:
- (a) under section 98 of the *Income Tax Assessment Act 1936* the trustee is liable to be assessed, and to pay income tax, on an amount in respect of a share of the net income of the trust to which a beneficiary is presently entitled; and
 - (b) the share is wholly or partly attributable to the *withholding payments; and
 - (c) an assessment has been made of that income tax or an assessment has been made that no income tax is payable.
- (5) The amount of the credit is worked out using the formula:

$$\text{Amounts withheld} \times \frac{\text{Share of net income}}{\text{Net income}}$$

where:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

net income means so much of the net income as is attributable to the *withholding payments.

share of net income means so much of that share of the net income as is attributable to the *withholding payments.

Trust—section 99 or 99A

- (6) The trustee of the trust is entitled to a credit under this subsection if:
- (a) under section 99 or 99A of the *Income Tax Assessment Act 1936*, the trustee is liable to be assessed, and to pay income tax, on the net income of the trust, or on part of it; and
 - (b) the net income or that part of it is wholly or partly attributable to the *withholding payments; and
 - (c) an assessment has been made of that income tax or an assessment has been made that no income tax is payable.

- (7) The amount of the credit is worked out using the formula:

$$\text{Amounts withheld} \times \frac{\text{Part of net income}}{\text{Net income}}$$

where:

net income means so much of the net income as is attributable to the *withholding payments.

part of net income means so much of the net income, or of that part of it, as is attributable to the *withholding payments.

Trust—no net income

- (8) If there is no net income of the trust for the income year, the trustee is entitled to a credit equal to the sum of the *amounts withheld from the *withholding payments.

18-27 Tax credit for alienated personal services payments

An entity is entitled to a credit equal to the total of the amounts paid under Division 13 in respect of amounts included in the entity's assessable income for an income year under section 86-15 of the *Income Tax Assessment Act 1997* if an assessment has been

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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made of the income tax payable, or an assessment has been made that no income tax is payable, by the entity for the income year.

Entitlement to credits: dividend, interest or royalty, amount attributable to fund payment or Seasonal Labour Mobility Program

18-30 Credit: dividend, interest or royalty

- (1) An entity is entitled to a credit if:
 - (a) the entity's *ordinary income or *statutory income includes a *dividend (or a part of it), interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or a *royalty; and
 - (b) the entity has borne all or part of an *amount withheld from the dividend, interest or royalty.
- (2) The amount of the credit is that amount or part.

Note: A taxpayer may also be entitled to a credit in relation to payment of interest under, or in relation to the transfer of, a qualifying security. See section 128NBA of the *Income Tax Assessment Act 1936*.

18-32 Credit: amount attributable to fund payment

- (1) An entity is entitled to a credit if:
 - (a) the entity's *ordinary income or *statutory income includes an amount that is represented by or reasonably attributable to a *fund payment; and
 - (b) the entity has borne all or part of an *amount withheld from the payment under Subdivision 12-H.
- (2) The amount of the credit is that amount or part.

18-33 Credit: Seasonal Labour Mobility Program

- (1) An individual is entitled to a credit if:
 - (a) the individual's *ordinary income or *statutory income includes salary, wages, commission, bonuses or allowances; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) an amount is withheld from the salary, wages, commission, bonuses or allowances under Subdivision 12-FC (about the Seasonal Labour Mobility Program).

- (2) The amount of the credit is the *amount withheld.

18-35 Credit: penalty under section 12-415, 16-30, 16-35 or 16-40 or related general interest charge

- (1) If an entity has paid:
 - (a) an amount of penalty under section 16-30 or 16-40 to the Commissioner for a *withholding payment covered by Subdivision 12-F or 12-H; or
 - (b) an amount of *general interest charge under section 298-25 for the penalty;

the entity liable to pay the *withholding tax for the withholding payment is entitled to a credit equal to the amount of penalty, or general interest charge, as appropriate.

- (1AA) If an entity has paid:
 - (a) an amount of penalty under section 16-30 or 16-35 to the Commissioner for a *withholding payment covered by Subdivision 12-FC (Seasonal Labour Mobility Program); or
 - (b) an amount of *general interest charge under section 298-25 for the penalty;

the entity liable to pay the *Seasonal Labour Mobility Program withholding tax for the withholding payment is entitled to a credit equal to the lesser of:

- (c) the amount of the penalty, or general interest charge, as appropriate; and
- (d) the amount of Seasonal Labour Mobility Program withholding tax (and any general interest charge under section 840-910 of the *Income Tax Assessment Act 1997*) in relation to the withholding payment, reduced by:
 - (i) any credits from an application of section 18-33 in relation to the withholding payment; and
 - (ii) any credits from a previous application of this subsection in relation to the withholding payment.

- (1A) If an entity has paid:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) an amount of penalty under section 12-415 to the Commissioner for a failure to give a notice, or to make details available on a website, as required by section 12-395; or

- (b) an amount of *general interest charge under section 298-25 for the penalty;

the entity liable to pay the *managed investment trust withholding tax in relation to the amount (the **relevant amount**) giving rise to the penalty is entitled to a credit equal to the lesser of:

- (d) the amount of penalty, or general interest charge, as appropriate; and
- (e) the amount of managed investment trust withholding tax (and any general interest charge under section 840-810 of the *Income Tax Assessment Act 1997*) in relation to the relevant amount.

Remission

(2) If:

- (a) an entity has paid to the Commissioner an amount of penalty mentioned in paragraph (1)(a), (1AA)(a) or (1A)(a); and
- (b) the Commissioner remits the whole or a part of the amount of the penalty under section 298-20;

then:

- (c) any credit under subsection (1), (1AA) or (1A) relating to the amount paid to the Commissioner is reduced by the amount that is remitted; and
- (d) the Commissioner must pay to the entity an amount equal to the amount that is remitted.

(3) If:

- (a) an entity has paid to the Commissioner an amount of *general interest charge mentioned in paragraph (1)(b), (1AA)(b) or (1A)(b); and
- (b) the Commissioner remits the whole or a part of the amount of the charge under section 8AAG;

then:

- (c) any credit under subsection (1), (1AA) or (1A) relating to the amount is reduced by the amount that is remitted; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (d) the Commissioner must pay to the entity an amount equal to the amount that is remitted.

18-40 Credit: liability under Part 4-25

- (1) If an entity has paid to the Commissioner:
- (a) an amount of penalty under Subdivision 284-C in relation to a *scheme to which paragraph 177C(1)(bc) of the *Income Tax Assessment Act 1936* applies for a *withholding payment; or
 - (b) an amount of *general interest charge under section 298-25 in relation to that amount;
- the entity liable to pay the *withholding tax for that withholding payment is entitled to a credit equal to the amount paid by the entity.

Remission

- (2) If:
- (a) an entity has paid an amount under Subdivision 284-C in relation to a penalty mentioned in paragraph (1)(a); and
 - (b) the Commissioner remits the whole or a part of the amount of the penalty under section 298-20;
- then:
- (c) any credit under subsection (1) relating to the amount paid by the entity is reduced by the amount that is remitted; and
 - (d) the Commissioner must pay to the entity an amount equal to the amount that is remitted.
- (3) If:
- (a) an entity has paid to the Commissioner an amount of *general interest charge mentioned in paragraph (1)(b); and
 - (b) the Commissioner remits the whole or a part of the amount of the charge under section 8AAG;
- then:
- (c) any credit under subsection (1) relating to the amount is reduced by the amount that is remitted; and
 - (d) the Commissioner must pay to the entity an amount equal to the amount that is remitted.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Entitlement to credit: departing Australia superannuation payment

18-42 Credit—departing Australia superannuation payment

Credit—amount withheld

- (1) If there is an *amount withheld from a *withholding payment that is covered by section 12-305 (departing Australia superannuation payment), the entity liable to pay *withholding tax under section 301-175 of the *Income Tax Assessment Act 1997* on the payment is entitled to a credit of an amount equal to the amount withheld.

Credit—penalty amount

- (2) If an entity has paid to the Commissioner a penalty amount under section 16-30 or 16-35 in relation to an *amount required to be withheld under section 12-305 (departing Australia superannuation payment), the entity mentioned in subsection (1) is entitled to a credit equal to the penalty amount.

Remission

- (3) If the Commissioner remits the whole or a part of the amount of penalty under section 298-20 that has been paid to the Commissioner by the entity:
 - (a) any credit that relates to the amount is reduced by the amount that is remitted; and
 - (b) the Commissioner must pay to the entity an amount equal to the amount that is remitted.

Entitlement to credit: mining payment

18-45 Credit—mining payment

Credit—amount withheld

- (1) If there is an *amount withheld from a *withholding payment that is covered by section 12-320 (mining payment):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) if paragraph (b) does not apply— the entity liable to pay *mining withholding tax under section 128V of the *Income Tax Assessment Act 1936* on the payment is entitled to a credit of an amount equal to the amount withheld; or
- (b) if, under subsection 128U(4) of that Act, separate mining payments are taken to have been made to, or applied for the benefit of, 2 or more entities because of that payment—each of those entities is entitled to a credit equal to the amount worked out using the formula:

$$\text{The amount withheld} \times \frac{1}{\text{Number of those entities}}$$

Credit—penalty amount

- (2) If an entity has paid to the Commissioner a penalty amount under section 16-30 or 16-35 in relation to an *amount required to be withheld under section 12-320 (mining payment):
 - (a) if paragraph (1)(a) applies—the entity mentioned in that paragraph is entitled to a credit equal to the penalty amount; or
 - (b) if paragraph (1)(b) applies—each of the entities mentioned in that paragraph is entitled to a credit of an amount worked out using the formula:

$$\text{The penalty amount} \times \frac{1}{\text{Number of those entities}}$$

Remission

- (3) If the Commissioner remits the whole or a part of the amount of penalty under section 298-20 that has been paid to the Commissioner by the entity:
 - (a) any credit that relates to the amount is reduced by the amount that is remitted; and
 - (b) the Commissioner must pay to the entity an amount equal to the amount that is remitted.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Entitlement to credit: Minerals resource rent tax

18-49 Credit—Natural resource payments

- (1) An entity is entitled to a credit in an *MRRT year if:
 - (a) one or more *withholding payments covered by section 12-325 (natural resource payments) from which there are *amounts withheld in respect of *MRRT are made to the entity during the MRRT year; and
 - (b) an assessment has been made of the MRRT payable, or an assessment has been made that no MRRT is payable, by the entity for the MRRT year.
- (2) The amount of the credit is so much of the total of the *amounts withheld as is withheld in respect of *MRRT.

Entitlement to credit: Petroleum resource rent tax

18-55 Credit—Natural resource payments

- (1) An entity is entitled to a credit in a year of tax (within the meaning of the *Petroleum Resource Rent Tax Assessment Act 1987*) if:
 - (a) one or more *withholding payments covered by section 12-325 (natural resource payments) from which there are *amounts withheld in respect of *petroleum resource rent tax are made to the entity during the year of tax; and
 - (b) an assessment has been made of the petroleum resource rent tax payable, or an assessment has been made that no petroleum resource rent tax is payable, by the entity for the year of tax.
- (2) The amount of the credit is so much of the total of the *amounts withheld as is withheld in respect of *petroleum resource rent tax.

Subdivision 18-B—Refund of certain withheld amounts

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18-65	Refund of withheld amounts by the payer to the recipient
18-70	Refund of withheld amounts by the Commissioner to the recipient
18-80	Refund by Commissioner of amount withheld from payment in respect of investment

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

18-65 Refund of withheld amounts by the payer to the recipient

- (1) An entity (the *payer*) must refund to another entity (the *recipient*) an amount if:
 - (a) the payer:
 - (i) withheld the amount purportedly under Division 12 from a payment made to, or received for, the recipient (whether the amount has been paid to the Commissioner or not); or
 - (ia) paid the amount to the Commissioner purportedly under Division 13 for an *alienated personal services payment in relation to which an amount is included in the recipient's assessable income year under section 86-15 of the *Income Tax Assessment Act 1997*; or
 - (ii) paid the amount to the Commissioner purportedly under Division 14 for a *non-cash benefit provided to, or received for, the recipient; and
 - (b) either:
 - (i) the amount was so withheld, or paid to the Commissioner, in error; or
 - (ii) in the case of an amount withheld from a payment of an amount purported to have been paid by way of *parental leave pay or *dad and partner pay—the amount paid was not lawfully so payable; and
 - (c) either:
 - (i) the payer becomes aware of the matter mentioned in paragraph (b); or
 - (ii) the recipient applies to the payer for the refund; before the end of the *financial year in which the amount was so withheld or paid to the Commissioner; and
 - (d) any information requested by the payer under subsection (3) has been given to the payer, or the time for making the request (see subsection (4)) has passed without such a request being made.
- (2) The amount that must be refunded under subsection (1) is a debt recoverable by the recipient from the payer.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Request for tax file number (or in some cases, ABN)

- (3) The payer may request the recipient to give to the payer:
- (a) in any case—the recipient's *tax file number; or
 - (b) in any case—evidence of the basis on which the recipient is taken to have quoted its tax file number to the payer; or
 - (c) if the payment or *non-cash benefit was in respect of a *Part VA investment made by the recipient in the course or furtherance of an *enterprise carried on by it—the recipient's *ABN;
- if:
- (d) the payment, *alienated personal services payment or non-cash benefit was in respect of any of the following provisions:
 - (i) Subdivision 12-B (payments for work or services);
 - (ii) Subdivision 12-C (Payments for retirement or because of termination of employment);
 - (iii) Subdivision 12-D (benefits and compensation payments);
 - (iv) section 12-140 or 12-145 (recipient does not quote tax file number or ABN);
 - (v) section 12-175 or 12-180 (Payment of income of closely held trust where TFN not quoted); and
 - (e) when the application for the refund is made, or when the payer otherwise becomes aware of the matter mentioned in paragraph (1)(b) of this section, the payer has a record of none of the following:
 - (i) the recipient's tax file number;
 - (ii) the basis on which the recipient is taken to have quoted the tax file number to the payer;
 - (iii) if paragraph (c) applies—the recipient's ABN.

When must the request be made

- (4) The request must be made within 7 working days (of the payer) after the payer receives the application for the refund or after the payer otherwise becomes aware of the matter mentioned in paragraph (1)(b) (as appropriate).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Recovery of refunded amount

- (5) If a payer refunds an amount under subsection (1), the payer may recover from the Commissioner as a debt due to the payer so much of the amount:
- (a) which is withheld as mentioned in subparagraph (1)(a)(i) and paid to the Commissioner, or which is paid to the Commissioner as mentioned in subparagraph (1)(a)(ia) or (ii); and
 - (b) which the payer has not recorded as being offset under subsection (6).

Offsetting a refunded amount

- (6) If:
- (a) a payer refunds an amount (the **refunded amount**) under subsection (1); and
 - (b) the amount withheld as mentioned in subparagraph (1)(a)(i) that the payer has paid to the Commissioner, or the amount paid to the Commissioner as mentioned in subparagraph (1)(a)(ia) or (ii), is equal to all or a part of the refunded amount; and
 - (c) apart from this subsection, the payer would be required to pay to the Commissioner another amount or amounts under Division 13 or 14 or subsection 16-70(1) (the **payment to the Commissioner**); and
 - (d) the payer records in writing that it offsets all or a part of the amount paid to the Commissioner (as mentioned in paragraph (b)) against the payment to the Commissioner;
- the payment to the Commissioner is reduced by so much of the amount as the payer so recorded as being offset.
- (7) The payer must not record that it offsets any part of an amount that:
- (a) the payer has previously recorded under subsection (6); or
 - (b) the payer has sought to recover from the Commissioner under subsection (5).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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18-70 Refund of withheld amounts by the Commissioner to the recipient

- (1) An entity (the *recipient*) may apply in writing to the Commissioner for the refund of an amount if:
 - (a) another entity (the *payer*):
 - (i) withheld an amount purportedly under Division 12 from a payment made to, or received for, the recipient; or
 - (ia) paid the amount to the Commissioner purportedly under Division 13 for an *alienated personal services payment in relation to which an amount is included in the recipient's assessable income year under section 86-15 of the *Income Tax Assessment Act 1997*; or
 - (ii) paid to the Commissioner an amount purportedly under Division 14 for a *non-cash benefit provided to, or received for, the recipient; and
 - (b) either:
 - (i) the amount was so withheld, or paid to the Commissioner, in error; or
 - (ii) in the case of an amount withheld from a payment of an amount purported to have been paid by way of *parental leave pay or *dad and partner pay—the amount paid was not lawfully so payable; and
 - (c) section 18-65 does not apply because the payer did not become aware of the matter mentioned in paragraph (b), or the recipient did not apply for a refund, as mentioned in subsection 18-65(1); and
 - (d) if subparagraph (a)(i) applies—the payer has already paid the withheld amount to the Commissioner.
- (2) The Commissioner must refund the amount if the application sets out:
 - (a) if the recipient has a *tax file number—that tax file number; or
 - (b) if the recipient does not have a tax file number but was taken to have quoted a tax file number to the payer before the amount was withheld or paid to the Commissioner—the basis on which the recipient was taken to have quoted the tax file number; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) if the payment or *non-cash benefit was in respect of a
*Part VA investment made by the recipient in the course or
furtherance of an *enterprise carried on by it—the recipient’s
*ABN;

and the Commissioner is satisfied that it would be fair and
reasonable to refund the amount, having regard to:

- (d) the circumstances that gave rise to the withholding obligation
(if any); and
- (e) the nature of the matter mentioned in paragraph (1)(b); and
- (f) any other matter the Commissioner considers relevant.

Note: A person who is dissatisfied with a decision under this section may
object against the decision in the manner set out in Part IVC.

18-80 Refund by Commissioner of amount withheld from payment in respect of investment

The Commissioner must refund to an entity all or part of an
*amount withheld from a *withholding payment covered by
section 12-140 or 12-145 that was made to that entity if:

- (a) the entity applies in writing for the refund; and
- (b) the Commissioner is satisfied that the entity was entitled to
give *the investment body a declaration under Division 5 of
Part VA of the *Income Tax Assessment Act 1936* in relation
to the *Part VA investment in respect of which the
withholding payment was made, but did not do so; and
- (c) the Commissioner is also satisfied it is fair and reasonable to
make the refund, having regard to the purposes of this Part
and any other matters that the Commissioner considers
appropriate.

Note: A person who is dissatisfied with a decision under this section may
object against the decision in the manner set out in Part IVC.

Subdivision 18-C—Recipient’s obligations

18-100 Obligation to keep payment summary

- (1) An entity that is given a *payment summary and a copy of it in any
financial year under this Part must retain the copy for:
 - (a) 5 years after the end of that financial year; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(b) a shorter period determined by the Commissioner in writing for the entity; or

(c) a shorter period determined by the Commissioner by legislative instrument for a class of entities that includes the entity.

(1AA) A determination under paragraph (1)(c) may specify different periods for different classes of entities.

(1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Subdivision 18-D—Directors etc. of non-complying companies

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Object of Subdivision

18-120 Object of Subdivision

The object of this Subdivision is to reverse the economic benefit of a credit under section 18-15 (Tax credit for recipient of withholding payment) of a director, or an *associate of a director, of a company if:

- (a) the company does not comply with its obligations under subsection 16-70(1) (obligation to pay amounts withheld to the Commissioner); and
- (b) the credit is attributable to *amounts withheld from *withholding payments made by the company to the director or associate;

until the company complies with its obligations.

PAYG withholding non-compliance tax

18-125 Directors of non-complying companies

Liability to pay PAYG withholding non-compliance tax

- (1) An individual must pay *PAYG withholding non-compliance tax in relation to a company for an income year of the individual if:
 - (a) the individual is or has been a director (within the meaning of the *Corporations Act 2001*) of the company; and
 - (b) the company was required to pay to the Commissioner under subsection 16-70(1) in this Schedule amounts:
 - (i) the company withheld from *withholding payments the company made to any entities during the income year of the individual; and
 - (ii) to which subsection (2) applies; and
 - (c) the company did not pay the total of those amounts to the Commissioner on or before the last day (the **non-compliance day**) on or before which the company was required to pay any of those amounts to the Commissioner in accordance with subsection 16-70(1); and
 - (d) a credit to which the individual is entitled under section 18-15 is attributable to an extent to *amounts withheld by the company under Division 12 from

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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withholding payments made to the individual during the income year of the individual.

Note: For the purposes of paragraph (1)(d), it does not matter whether the company pays the amounts withheld from the withholding payments made to the individual to the Commissioner under subsection 16-70(1).

- (2) This subsection applies to *amounts withheld that the company was required to pay to the Commissioner on or before a particular day (the **payment day**) under subsection 16-70(1), if:
- (a) both of the following subparagraphs apply:
 - (i) the individual was a director (within the meaning of the *Corporations Act 2001*) of the company on the payment day;
 - (ii) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the payment day; or
 - (b) all of the following subparagraphs apply:
 - (i) the individual became a director of the company after the payment day;
 - (ii) the individual was still a director of the company 30 days after becoming a director;
 - (iii) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the last of those 30 days.

Amount of tax

- (3) The amount of the *PAYG withholding non-compliance tax the individual must pay is the lesser of:
- (a) the extent of the credit mentioned in paragraph (1)(d); and
 - (b) the total amount the company did not pay to the Commissioner as mentioned in paragraph (1)(c).

18-130 Directors of non-complying companies—tax reduced in certain circumstances

- (1) The amount of the *PAYG withholding non-compliance tax the individual must pay as mentioned in section 18-125 is reduced if

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

the Commissioner gives a notice to the individual under this section.

Notice

- (2) The Commissioner must give a written notice to the individual on a day (the **reduction notice day**) (whether before, on or after the day (if any) the Commissioner gives the individual the relevant notice under section 18-140), if the Commissioner is satisfied that:
 - (a) because of illness or for some other good reason, it would have been unreasonable to expect the individual to take part, and the individual did not take part, in the management of the company at any time during the period:
 - (i) starting on a day on or by which the company was required to pay any of the total mentioned in paragraph 18-125(1)(c) to the Commissioner under subsection 16-70(1); and
 - (ii) ending on the reduction notice day; or
 - (b) the individual took all reasonable steps to ensure that one of the following happened:
 - (i) the directors (within the meaning of the *Corporations Act 2001*) of the company caused the company to pay the total of the amounts mentioned in paragraph 18-125(1)(c) to the Commissioner;
 - (ii) the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (iii) the directors caused the company to begin to be wound up (within the meaning of that Act);or there were no reasonable steps the individual could have taken to ensure that any of those things happened.
- (3) In determining what are reasonable steps for the purposes of paragraph (2)(b), the Commissioner must have regard to:
 - (a) when, and for how long, the individual was a director and took part in the management of the company; and
 - (b) all other relevant circumstances.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Amount of reduction

- (4) The amount of the reduction is the amount stated in the notice.
- (5) In determining the amount to state in the notice, the Commissioner must have regard to:
 - (a) in a case to which paragraph (2)(a) applies—when, and for how long, the individual could not have been expected to take part, and did not take part, in the management of the company; and
 - (b) in a case to which paragraph (2)(b) applies—when, and for how long, the individual was a director and took part in the management of the company; and
 - (c) in either case—what is fair and reasonable in the circumstances.

Effect of reduction

- (6) The amount of the *PAYG withholding non-compliance tax the individual must pay is treated as always having been that amount as reduced under this section.

18-135 Associates of directors of non-complying companies

Liability to pay PAYG withholding non-compliance tax

- (1) An individual must pay *PAYG withholding non-compliance tax in relation to a company for an income year of the individual if:
 - (a) at a time when another individual (the **director**) was a director (within the meaning of the *Corporations Act 2001*) of the company, the first individual was an *associate of the director; and
 - (b) the company was required to pay to the Commissioner under subsection 16-70(1) in this Schedule amounts:
 - (i) the company withheld from *withholding payments the company made to any entities during the income year of the individual; and
 - (ii) to which subsection (2) of this section applies; and
 - (c) the company did not pay the total of those amounts to the Commissioner on or before the last day (the **non-compliance day**) on or before which the company was required to pay

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

any of those amounts to the Commissioner in accordance with subsection 16-70(1); and

- (d) subsection (3) or (6) of this section applies; and
- (e) a credit to which the individual is entitled under section 18-15 is attributable to an extent to *amounts withheld by the company under Division 12 from withholding payments made to the individual during the income year of the individual.

Note: For the purposes of paragraph (1)(e), it does not matter whether the company pays the amounts withheld from the withholding payments made to the individual to the Commissioner under subsection 16-70(1).

- (2) This subsection applies to *amounts withheld that the company was required to pay to the Commissioner on or before a particular day (the **payment day**) under subsection 16-70(1), if:
 - (a) all of the following subparagraphs apply:
 - (i) the director was a director (within the meaning of the *Corporations Act 2001*) of the company on the payment day;
 - (ii) the individual was an *associate of the director on the payment day;
 - (iii) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the payment day; or
 - (b) all of the following subparagraphs apply:
 - (i) the director became a director of the company after the payment day;
 - (ii) the director was still a director of the company 30 days after becoming a director;
 - (iii) the individual was an *associate of the director throughout that 30 day period;
 - (iv) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the last of those 30 days.
- (3) This subsection applies if the Commissioner is satisfied that:
 - (a) because of:
 - (i) the individual's relationship with the director; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(ii) a relationship of the individual with the company; the individual knew, or could reasonably have been expected to know, of the company's failure to pay the total of the amounts mentioned in paragraph (1)(c) to the Commissioner; and

(b) none of the following subparagraphs applies:

- (i) the individual took all reasonable steps to influence the director to cause the company to notify the Commissioner under Subdivision 18-C of the relevant *amounts withheld;
- (ii) the individual took all reasonable steps to influence the director to cause one of the events mentioned in subsection (4) to happen, or there were no reasonable steps the individual could have taken to influence the director to cause any of those events to happen;
- (iii) the individual reported the company's non-payment to the Commissioner or to another authority with responsibilities relevant to the operation of the company.

Example: Other authorities with responsibilities relevant to the operation of the company could include the Minister, the police, the Australian Securities and Investments Commission or the Building and Construction Industry Commissioner.

(4) The following are the events:

- (a) the company pays the total of the amounts mentioned in paragraph (1)(c) to the Commissioner;
- (b) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
- (c) the company begins to be wound up (within the meaning of that Act).

(5) In determining what are reasonable steps for the purposes of paragraph (3)(b), have regard to:

- (a) when, and for how long, the individual was an *associate of the director; and
- (b) when, and for how long, the director was a director and took part in the management of the company; and
- (c) all other relevant circumstances.

(6) This subsection applies if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the individual was an employee of the company; and
- (b) the Commissioner is satisfied that the company treated the individual more favourably than it treated other employees of the company.

Amount of tax

- (7) The amount of the *PAYG withholding non-compliance tax the individual must pay is the lesser of:
 - (a) the extent of the credit mentioned in paragraph (1)(e); and
 - (b) the total amount the company did not pay to the Commissioner as mentioned in paragraph (1)(c).

18-140 Notices

Notices

- (1) The Commissioner must not commence proceedings to recover:
 - (a) the *PAYG withholding non-compliance tax an individual must pay for an income year in relation to a company as mentioned in section 18-125 or 18-135; or
 - (b) any related *general interest charge payable under section 18-150;unless, after the non-compliance day mentioned in section 18-125 or 18-135, the Commissioner gives a written notice to the individual under this section.
- (2) The Commissioner may only give the notice if the Commissioner is satisfied, on the basis of information available to the Commissioner, that it is fair and reasonable for the individual to pay *PAYG withholding non-compliance tax in relation to the company for the income year.
- (3) The Commissioner must not give the notice on a day if, on that day:
 - (a) the individual; or
 - (b) in a case to which section 18-135 applies—the director mentioned in that section;is liable to pay to the Commissioner a penalty under Division 269 because the company has not complied with the obligation mentioned in item 1 of the table in subsection 269-10(1) to pay to

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the Commissioner an *amount withheld to which paragraph 18-125(1)(b) or 18-135(1)(b) applies.

- (4) The notice must specify:
- (a) the company; and
 - (b) the income year; and
 - (c) the amount of the *PAYG withholding non-compliance tax the individual must pay.

Effect of compliance between non-compliance day and notice day

- (5) Subsections (6) and (7) apply if:
- (a) the company's liability to pay the total of the amounts mentioned in paragraph 18-125(1)(c) or 18-135(1)(c) to the Commissioner is discharged to any extent during the period:
 - (i) starting on the day after the non-compliance day; and
 - (ii) ending on the day before the day the Commissioner gives the notice under this section to the individual; and
 - (b) had all discharges of the company's liability occurring during that period occurred before the non-compliance day:
 - (i) the individual would not have been required to pay the *PAYG withholding non-compliance tax in relation to the company for the income year; or
 - (ii) the amount of PAYG withholding non-compliance tax the individual would have been required to pay would have been less than the actual amount of PAYG withholding non-compliance tax.
- (6) The amount of the *PAYG withholding non-compliance tax the individual must pay is reduced:
- (a) in a case to which subparagraph (5)(b)(i) applies—to nil; or
 - (b) otherwise—to the amount of PAYG withholding non-compliance tax the individual would have been required to pay as mentioned in subparagraph (5)(b)(ii).
- (7) The amount of the *PAYG withholding non-compliance tax the individual must pay is treated as always having been that amount as reduced under subsection (6).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

18-145 When PAYG withholding non-compliance tax must be paid

- (1) The *PAYG withholding non-compliance tax an individual must pay for an income year is due and payable at the earliest time any of the income tax the individual must pay for the *financial year to which the income year relates is due and payable.

Note: Division 5 of the *Income Tax Assessment Act 1997* explains how to work out when to pay your income tax.

- (2) For the purposes of subsection (1), if the individual is not required to pay income tax for the *financial year:
- (a) treat the individual as being required to pay income tax for the financial year; and
 - (b) if the Commissioner has made an assessment that the income tax the individual is required to pay is nil—treat that assessment as being for an amount greater than nil.

Note: See Part 4-15 in this Schedule for collection and recovery provisions.

18-150 General interest charge payable on unpaid PAYG withholding non-compliance tax

If an amount of *PAYG withholding non-compliance tax that an individual must pay to the Commissioner remains unpaid after the time by which it is due to be paid, the individual is liable to pay *general interest charge on the unpaid amount of tax for each day in the period that:

- (a) started at the beginning of the day by which the unpaid amount of tax was due to be paid; and
- (b) finishes at the end of the last day, at the end of which, any of the following remains unpaid:
 - (i) the unpaid amount of tax;
 - (ii) general interest charge on any of the unpaid amount of tax.

18-155 Validity of decisions and evidence

- (1) Section 175 of the *Income Tax Assessment Act 1936* (validity) applies to a decision of the Commissioner under section 18-140 in this Schedule in the same way as it applies to an assessment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) Section 177 of the *Income Tax Assessment Act 1936* (Evidence) applies to a notice under section 18-140 in this Schedule in the same way as it applies to a notice of assessment.

18-160 Rights of indemnity and contribution

- (1) This section applies if an individual must pay *PAYG withholding non-compliance tax as mentioned in section 18-125 or 18-135 because a company did not pay an amount to the Commissioner as mentioned in paragraph 18-125(1)(c) or 18-135(1)(c).
- (2) The individual has the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against the company or anyone else as if:
- (a) the individual had made a payment equal to the amount of the *PAYG withholding non-compliance tax under a guarantee of the liability of the company to pay the amount to the Commissioner; and
 - (b) under the guarantee:
 - (i) the individual; and
 - (ii) every individual to whom subsection (3) applies; were jointly and severally liable as guarantors (but only, in the case of an individual to whom subparagraph (ii) of this paragraph applies, to the extent to which subsection (3) applies to the individual); and
 - (c) any credit to which the individual mentioned in subsection (1) is entitled under section 18-170 or 18-175 in relation to the amount of PAYG withholding non-compliance tax were a repayment of the payment mentioned in paragraph (a) of this subsection.
- (3) This subsection applies to an individual to the extent that:
- (a) the individual was a director (within the meaning of the *Corporations Act 2001*) of the company on the day (the **payment day**) on or by which the company was required to pay the amount mentioned in subsection (1) to the Commissioner; or
 - (b) both of the following subparagraphs apply:
 - (i) the individual became a director of the company after the payment day;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) the individual was still a director of the company 30 days after becoming a director.
- (4) However, subsection (3) does not apply to an individual to the extent that the amount of the *PAYG withholding non-compliance tax the individual must pay in relation to the company for the income year as mentioned in section 18-125 is reduced under section 18-130.

Credits for later compliance

18-165 Credits for later compliance—scope

Sections 18-170, 18-175 and 18-180 apply if:

- (a) an individual must pay *PAYG withholding non-compliance tax in relation to a company for an income year because the company did not pay to the Commissioner the total of the amounts mentioned in paragraph 18-125(1)(c) or 18-135(1)(c); and
- (b) the Commissioner gives to the individual a notice under section 18-140 on a particular day (the **tax notice day**) in relation to the PAYG withholding non-compliance tax the individual must pay; and
- (c) on or after the tax notice day, the company's liability to pay the total of the amounts to the Commissioner is discharged to any extent.

18-170 Credits for later compliance—Commissioner must give notice in certain circumstances

Commissioner must give notice to director or associate in certain circumstances

- (1) The Commissioner must give a written notice to the individual on a particular day (the **credit notice day**) if, had the discharge mentioned in paragraph 18-165(c) (and all previous discharges of the company's liability mentioned in that paragraph) occurred before the tax notice day:
 - (a) the individual would not have been required to pay the *PAYG withholding non-compliance tax in relation to the company for the income year; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the amount of PAYG withholding non-compliance tax the individual would have been required to pay would have been less than the actual amount of PAYG withholding non-compliance tax.

Note 1: Subsection 18-180(2) provides that the Commissioner must not give a notice to the individual in certain circumstances.

Note 2: The amount of PAYG withholding non-compliance tax may be limited by:

- (a) the conditions in subsections 18-125(1) and (2) or 18-135(1) to (6); or
- (b) the limits on the amount of the tax in subsection 18-125(3) or 18-135(7).

Note 3: In working out the actual amount of the tax for the purposes of paragraph (1)(b), have regard to other credits to which the individual is entitled under this section or section 18-175. See subsection 18-180(1).

Director or associate entitled to credit if Commissioner gives notice

- (2) The individual is entitled to a credit if the Commissioner gives a written notice to the individual under subsection (1).
- (3) The individual becomes entitled to the credit on the day the Commissioner gives the notice to the individual.

Amount of credit

- (4) The amount of the credit is the amount stated in the notice.
- (5) In a case to which paragraph (1)(a) applies, the amount stated must be the amount of the *PAYG withholding non-compliance tax.
- (6) In any other case, the amount stated:
 - (a) must not exceed the amount of the *PAYG withholding non-compliance tax; and
 - (b) must not exceed the amount of the discharge mentioned in paragraph 18-165(c); and
 - (c) must not be less than the amount by which:
 - (i) the amount of the PAYG withholding non-compliance tax; exceeds

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) the amount that would have been the amount of the PAYG withholding non-compliance tax had the discharge mentioned in paragraph 18-165(c) (and all previous discharges of the company's liability mentioned in that paragraph) occurred before the tax notice day.
- (7) In determining the amount to state in the notice in a case to which paragraph (1)(a) does not apply, the Commissioner must have regard to what is fair and reasonable in the circumstances.

18-175 Credits for later compliance—Commissioner may give notice

Commissioner may give notice to director or associate

- (1) The Commissioner may give a written notice to the individual on a particular day (the **credit notice day**).

Note: Subsection 18-180(2) provides that the Commissioner must not give a notice to the individual in certain circumstances.

Director or associate entitled to credit if Commissioner gives notice

- (2) The individual is entitled to a credit if the Commissioner gives a written notice to the individual under subsection (1).
- (3) The individual becomes entitled to the credit on the day the Commissioner gives the notice to the individual.

Amount of credit

- (4) The amount of the credit is the amount stated in the notice.
- (5) The amount stated:
 - (a) must not exceed the amount of the *PAYG withholding non-compliance tax; and

Note: In working out the amount of the tax for the purposes of paragraph (5)(a), have regard to other credits to which the individual is entitled under section 18-170 or this section. See subsection 18-180(1).

- (b) must not exceed the amount of the discharge mentioned in paragraph 18-165(c).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Commissioner's discretion

- (6) In determining:
- (a) whether to give a notice under this section; or
 - (b) the amount to state in the notice;
- the Commissioner must have regard to what is fair and reasonable in the circumstances.

18-180 Effect of earlier credits

- (1) A reference in section 18-170 or 18-175, or subsection (2) of this section, to the amount of the *PAYG withholding non-compliance tax is treated as being a reference to:
- (a) the amount of the PAYG withholding non-compliance tax; less
- Note: The amount of the PAYG withholding non-compliance tax may, in a case to which section 18-125 applies, be affected by reductions under section 18-130.
- (b) the total of any credits to which the individual is entitled in relation to the amount of PAYG withholding non-compliance tax because of notices given to the individual under section 18-170 or 18-175 before the credit notice day.
- (2) The Commissioner must not give a written notice to the individual under section 18-170 or 18-175 if, on the day before the credit notice day, the amount of the *PAYG withholding non-compliance tax is nil.

Other provisions

18-185 When Commissioner may give notice

The Commissioner may give a notice to the individual on a day (the *notice day*) under section 18-130, 18-140, 18-170 or 18-175 if:

- (a) on the notice day, the Commissioner has not given a notice of assessment to the individual for the income year mentioned in section 18-125 or 18-135; or
- (b) if the notice would:
 - (i) in the case of a notice under section 18-130—result in the individual being liable to pay *PAYG withholding

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

non-compliance tax or an increased amount of PAYG withholding non-compliance tax; or

- (ii) in the case of a notice under section 18-140—result in the Commissioner being able to commence proceedings to recover PAYG withholding non-compliance tax, or an increased amount of PAYG withholding non-compliance tax, from the individual; or
- (iii) in the case of a notice under section 18-170 or 18-175—reduce the amount of a credit or disentitle the individual to a credit;

the Commissioner gives the notice no later than 2 years after first giving a notice of assessment to the individual for the income year mentioned in section 18-125 or 18-135; or

(c) if the notice would:

- (i) in the case of a notice under section 18-130—result in the individual being liable to pay no PAYG withholding non-compliance tax, or a reduced amount of PAYG withholding non-compliance tax; or
- (ii) in the case of a notice under section 18-140—result in the Commissioner no longer being able to commence proceedings to recover PAYG withholding non-compliance tax, or result in the Commissioner being able to commence proceedings to recover a reduced amount of PAYG withholding non-compliance tax, from the individual; or
- (iii) in the case of a notice under section 18-170 or 18-175—increase the amount of a credit or entitle the individual to a credit;

the Commissioner gives the notice no later than 4 years after first giving a notice of assessment to the individual for the income year mentioned in section 18-125 or 18-135; or

(d) in any case—the Commissioner gives the notice:

- (i) to give effect to a decision on a review or appeal; or
- (ii) as a result of an objection made by the individual or pending a review or appeal.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 2 Collection, recovery and administration of income tax

Part 2-5 Pay as you go (PAYG) withholding

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18-190 Review of decisions

An individual to whom the Commissioner gives a notice under section 18-140 in relation to an amount of *PAYG withholding non-compliance tax may object, under Part IVC of this Act, against a decision of the Commissioner under section 18-130, 18-140, 18-170 or 18-175 in relation to the PAYG withholding non-compliance tax if the individual is dissatisfied with the decision.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 20—Other matters

Table of Subdivisions

20-B	Offences
20-D	Review of decisions

Subdivision 20-B—Offences

Table of sections

20-35	Offences
20-40	Joining of charges
20-45	Offences that would otherwise be committed by a partnership or unincorporated company

20-35 Offences

- (1) A person must not:
 - (a) present a document issued by the Commissioner that specifies a person (the *specified person*); and
 - (b) falsely pretend to be the specified person with the intention of obtaining under this Part a credit for, or a payment of, an *amount withheld from a *withholding payment.
- (2) A person must not attempt to obtain for the person a credit under this Part for an *amount withheld from a *withholding payment if:
 - (a) the payment is not covered by section 12-215, 12-250, 12-285 or 12-317, or subsection 12-390(4), and was made to another person; or
 - (b) the payment is covered by section 12-215, 12-250, 12-285 or 12-317, or subsection 12-390(4), and the person is not the foreign resident in respect of which all or a part of the payment is received as mentioned in that provision.
- (3) A person must not, with the intention of obtaining a credit, a payment or any other benefit, present:
 - (a) a copy of a *payment summary (except one relating to Subdivision 12-H); or
 - (b) a document purporting to be a copy of such a payment summary;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 20-40

which is not a copy duly given to the person.

Penalty: 60 penalty units, or imprisonment for 12 months, or both.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4) A person must not, with the intention of obtaining a credit, a payment or any other benefit, present:
- (a) a *payment summary relating to Subdivision 12-H, or a copy of such a payment summary; or
 - (b) a document purporting to be such a payment summary or a copy of such a payment summary;
- which is not a payment summary, or a copy of a payment summary, duly given to the person.

Penalty: 60 penalty units, or imprisonment for 12 months, or both.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

20-40 Joining of charges

- (1) Charges against the same person for a number of offences against this Part may be joined in one complaint, information or summons if those charges:
- (a) are founded on the same facts; or
 - (b) form a series of offences of the same or a similar character; or
 - (c) are part of a series of offences of the same or similar character.
- (2) Particulars of each offence charged must be set out in a separate paragraph if 2 or more of the charges are included in the same complaint, information or summons.
- (3) If the charges are joined, the charges must be tried together unless the court:
- (a) considers it just that any of the charges should be tried separately; and
 - (b) makes an order to that effect.
- (4) If a person is convicted of 2 or more of the offences:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the court may impose one penalty for both or all of those offences; but
- (b) the penalty must not exceed the sum of the maximum penalties that could be imposed in respect of each offence separately.

20-45 Offences that would otherwise be committed by a partnership or unincorporated company

- (1) An offence against this Part that would otherwise be committed by a partnership is taken to have been committed by each partner who:
 - (a) aided, abetted, counselled or procured the relevant act or omission; or
 - (b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly, and whether by any act or omission of the partner).
- (2) An offence against this Part that would otherwise be committed by a company that is not incorporated is taken to have been committed by each member of the company's committee of management who:
 - (a) aided, abetted, counselled or procured the relevant act or omission; or
 - (b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly, and whether by any act or omission of the member).

Subdivision 20-D—Review of decisions

20-80 Reviewable decisions

A person who is dissatisfied with any of the following decisions of the Commissioner may object against the decision in the manner set out in Part IVC.

Reviewable decisions	
Item	Description
1A	Decision not to grant an exemption under subsection 12-319(1) from withholding obligations in relation to sections 12-315 and 12-317

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Reviewable decisions	
Item	Description
1	Decision not to give a certificate under subsection 12-335(1) exempting an entity from notifying the Commissioner about a natural resource payment
5	Decision to revoke a certificate under subsection 12-335(3)
10	Decision to vary a certificate under subsection 12-335(3)
25	Refusal to determine under subsection 16-110(1) that a large withholder is a *medium withholder or a *small withholder for a particular month or particular months
30	Refusal to determine under subsection 16-110(1) that a medium withholder is a small withholder for a particular month or particular months
35	Decision to revoke a determination made under subsection 16-110(1)
40	Decision to vary a determination made under subsection 16-110(1) for a particular month or particular months
45	Determination under subsection 16-115(1) that a small withholder is a medium withholder or a large withholder for a particular month or particular months
50	Determination under subsection 16-115(1) that a medium withholder is a large withholder
55	Decision not to revoke a determination made under subsection 16-115(1)
60	Decision not to vary a determination made under subsection 16-115(1) for a particular month or particular months
65	Decision not to refund an amount under section 18-70
70	Decision not to refund an amount under section 18-80

Note: Division 298 also provides review rights about remission of administrative penalties.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 21—Entitlements relating to insolvent ADIs and general insurers

Table of Subdivisions

Guide to Division 21

21-A Treatment of some payments by APRA

Guide to Division 21

21-1 What this Division is about

This Part applies in relation to a payment by APRA under:

- (a) Division 2AA of Part II of the *Banking Act 1959* applying in relation to an account with an ADI; or
- (b) Part VC of the *Insurance Act 1973* applying in relation to a general insurance policy issued by a general insurance company;

in a way corresponding to the way this Part would have applied if the payment had been made by the ADI or company in connection with the account or policy.

Subdivision 21-A—Treatment of some payments by APRA

Table of sections

21-5 APRA treated like ADI or general insurance company

21-5 APRA treated like ADI or general insurance company

- (1) This section applies if:
 - (a) an entity's entitlement under Division 2AA of Part II of the *Banking Act 1959* to be paid an amount by *APRA in connection with the entity's account with an *ADI is met wholly or partly; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) an entity's entitlement under Part VC of the *Insurance Act 1973* to be paid an amount in connection with a *general insurance policy issued by a *general insurance company is met wholly or partly.

Note 1: Division 2AA of Part II of the *Banking Act 1959* entitles entities that have certain accounts with certain insolvent ADIs to be paid amounts by APRA worked out by reference to the balance of those accounts.

Note 2: Part VC of the *Insurance Act 1973* entitles entities with valid claims against certain insolvent general insurance companies under certain general insurance policies issued by those companies to be paid amounts by APRA.

- (2) This Part applies in relation to *APRA and the meeting of the entitlement in a way corresponding to the way in which this Part would have applied in relation to the *ADI or *general insurance company doing, in connection with the account or policy, whatever was done in meeting the entitlement.

Example: APRA (or APRA's agent or delegate) pays an entity an amount of the entity's entitlement relating to an account with an ADI. This Part applies in relation to APRA and the payment in a way corresponding to the way in which this Part would have applied in relation to the ADI had the ADI made a payment at that time of that amount under the arrangements for keeping the account.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 2-10—Pay as you go (PAYG) instalments

Division 45—Instalment payments

Table of Subdivisions

	Guide to Division 45
45-A	Basic rules
45-B	When instalments are due
45-C	Working out instalment amounts
45-D	Quarterly payers
45-E	Annual payers
45-F	Varying the instalment rate for quarterly payers who pay on the basis of instalment income
45-G	General interest charge payable in certain cases if instalments are too low
45-H	Partnership income
45-I	Trust income included in instalment income of beneficiary
45-J	How Commissioner works out your instalment rate and notional tax
45-K	How Commissioner works out your benchmark instalment rate and benchmark tax
45-L	How Commissioner works out amount of quarterly instalment on basis of GDP-adjusted notional tax
45-M	How amount of quarterly instalment is worked out on basis of your estimate of your benchmark tax
45-N	How this Part applies to the trustee of a trust
45-P	Anti-avoidance rules
45-Q	General rules for consolidated groups
45-R	Special rules for consolidated groups
45-S	MEC groups

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-1

Guide to Division 45

45-1 What this Division is about

If you have business or investment income, you must pay instalments towards your income tax liability. However, you do not have to do so unless the Commissioner has given you an instalment rate. Generally, instalments are payable for each quarter of your income year. Alternatively, instalments could be payable monthly or annually.

Your instalments may be based on your previous year's income tax liability and notified to you by the Commissioner, or on your estimate of your income tax liability for the current income year. (In this case, you are a quarterly payer who pays on the basis of GDP adjusted notional tax). Generally, four quarterly instalments are payable annually on this basis, but you may only be required to pay two.

If you are not eligible to pay instalments on that basis, or if you are so eligible but choose not to do so, you must work out the amount of your quarterly instalment by multiplying your instalment income for an instalment quarter by the rate the Commissioner gave you, or by a rate you choose yourself. (In this case, you are a quarterly payer who pays on the basis of instalment income).

If your business or investment income exceeds a certain limit, you may have to pay an instalment after the end of each month. (In this case, you are a monthly payer).

If you are not required to be registered for GST purposes, you may be able to choose to pay an annual instalment after the end of the income year. (In this case, you are an annual payer).

The amount of annual instalment can be your instalment income for the income year multiplied by the rate the Commissioner gave you, or an amount based on your previous year's income tax liability and notified to you by the Commissioner, or your own estimate of your income tax liability for the income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 45-A—Basic rules

Table of sections

45-5	Object of this Part
45-10	Application of Part
45-15	Liability for instalments
45-20	Information to be given to the Commissioner by certain payers
45-25	Penalty for failure to notify Commissioner
45-30	Credit for instalments payable

45-5 Object of this Part

- (1) The object of this Part is to ensure the efficient collection of:
 - (a) income tax; and
 - (b) *Medicare levy; and
 - (ca) amounts of liabilities to the Commonwealth under Chapter 4 of the *Higher Education Support Act 2003*; and
 - (d) amounts of liabilities to the Commonwealth under Part 2B.3 of the *Social Security Act 1991*; and
 - (e) amounts of liabilities to the Commonwealth under Division 6 of Part 4A of the *Student Assistance Act 1973*;through the application of the principles set out in the rest of this section.
- (2) As you earn *instalment income, you pay instalments after the end of each *instalment quarter worked out on the basis of your instalment income for that quarter if you are required or choose to work out your instalment on this basis. However, you may be able to pay an amount notified by the Commissioner. (There are exceptions to this).
- (2A) Alternatively:
 - (a) you may be required to pay instalments after the end of each *instalment month worked out on the basis of your instalment income for that month; or
 - (b) you may be able to choose to pay an annual instalment for the income year.
- (3) The total of your instalments for an income year is as close as possible to the total of your liabilities for the income year that are

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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covered by subsection (1), except so far as the amounts of those liabilities are attributable to a *net capital gain. (The exception does not apply to the entities listed in subsections 45-120(2) and (2A) or the net capital gains specified in subsection 45-120(2B).)

- (4) Consequently, the additional amounts you have to pay to discharge those liabilities, after an assessment of your income tax for the income year is made, are as low as possible.
- (5) If you are a *quarterly payer who pays on the basis of instalment income, the amount of each of your instalments for an income year is the same proportion (as nearly as possible, subject to the principles in subsections (3) and (4)) of the total of those instalments as your *instalment income for that *instalment quarter is of your total instalment income for the income year.
- (5A) If you are a *monthly payer, the amount of each of your instalments for an income year is the same proportion (as nearly as possible, subject to the principles in subsections (3) and (4)) of the total of those instalments as your *instalment income for that *instalment month is of your total instalment income for the income year.
- (6) When instalments are payable, and how their amount is calculated, are the same for different kinds of entities, except as expressly provided.

Note: Subdivision 45-P penalises an entity whose tax position, so far as it relates to PAYG instalments and related matters, is altered by a scheme that is inconsistent with the object of this Part.

45-10 Application of Part

This Part applies to individuals, companies, and the entities listed in items 4 to 10, and 12 and 13, of the table in section 9-1 of the *Income Tax Assessment Act 1997* (which lists the entities that must pay income tax).

Note 1: Section 45-450 provides for how this Part applies to a trustee covered by any of items 4 to 8, and 12 and 13, of the table in section 9-1 of the *Income Tax Assessment Act 1997*. In most respects, the trust is treated like a company.

Note 2: This Part also applies to a trustee covered by item 11 of the table in section 9-1 of the *Income Tax Assessment Act 1997*, but only to the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

extent set out in section 45-455, and the rest of Subdivision 45-N, in this Schedule.

45-15 Liability for instalments

- (1) The Commissioner may give you an instalment rate from time to time, by giving you written notice of the rate.
- (2) You are liable to pay instalments under this Division if the Commissioner has given you an instalment rate.

Note 1: The instalment rate that the Commissioner gives you is worked out under section 45-320 or 45-775.

Note 2: If your assessable income has always consisted wholly of withholding payments (other than non-quotation withholding payments), the Commissioner will not give you an instalment rate.

Note 3: Work out the amount of your instalments under Subdivision 45-C.

Note 4: If the Commissioner withdraws the rate under section 45-90, you are not liable to pay further instalments.

Note 5: For provisions about collection and recovery of amounts you are liable to pay under this Part, see Part 4-15.

45-20 Information to be given to the Commissioner by certain payers

- (1) If you are liable to pay an instalment for a period (even if it is a nil amount), you must notify the Commissioner of the amount of your *instalment income for the period.
- (2) You must notify the Commissioner in the *approved form and on or before the day when the instalment is due (regardless of whether it is paid).
- (2A) If you are a *monthly payer for the period, you must give the notification electronically, unless the Commissioner otherwise approves.

Note: A penalty applies if you fail to give the notification electronically as required—see section 288-10.

- (2B) The notification is given electronically if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Exceptions

- (3) Subsection (1) does not apply to:
- (a) a quarterly instalment worked out under section 45-112 (on the basis of GDP-adjusted notional tax or estimated benchmark tax); or
 - (b) an annual instalment, unless it is worked out under paragraph 45-115(1)(a) (based on the Commissioner's rate and your instalment income for the income year).

45-25 Penalty for failure to notify Commissioner

- (1) If you fail to notify the Commissioner of an amount as required by section 45-20, or you notify an amount that is less than the correct amount, you are liable to pay the *failure to notify penalty on the amount, or on the shortfall, multiplied by the instalment rate that you are required to use to work out the instalment for the period, for each day in the period that:
- (a) started at the beginning of the day by which the amount was due to be paid; and
 - (b) finishes at the end of the day before you notify the Commissioner of the correct amount, or he or she otherwise becomes aware of it.
- (2) This section does not apply to a notification required to be lodged on or after 1 July 2000.

Note: See instead Division 286 in Schedule 1 to the *Taxation Administration Act 1953*.

45-30 Credit for instalments payable

- (1) You are entitled to a credit when the Commissioner makes an assessment of the income tax you are liable to pay for an income year or an assessment that no income tax is payable by you for an income year.
- (2) The credit is equal to:
- the total of each instalment payable by you for the income year (even if you have not yet paid it);
- reduced by:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- the total of each credit that you have claimed under section 45-215 or 45-420 in respect of such an instalment.
- (3) The making of the assessment, and the resulting credit entitlement, do not affect the liability to pay an instalment.
- Note: How the credit is applied is set out in Division 3 of Part IIB.
- (4) If:
- (a) you are a *subsidiary member of a *consolidated group at any time during a *consolidation transitional year for you; and
 - (b) an amount of instalment payable by you, or an amount of credit claimed by you under section 45-215 or 45-420, is taken into account in working out a credit to which the *head company of that consolidated group is entitled under section 45-865 for a consolidation transitional year for the head company;
- that amount, to the extent to which it is so taken into account under that section, is not to be taken into account in working out any credit to which you are entitled under this section for any year.

Subdivision 45-B—When instalments are due

Table of sections

45-50	Liability to pay instalments
45-60	Meaning of <i>instalment quarter</i>
45-61	When quarterly instalments are due—payers of quarterly instalments
45-65	Meaning of <i>instalment month</i>
45-67	When monthly instalments are due—payers of monthly instalments
45-70	When annual instalments are due
45-72	Means of payment of instalment
45-75	Instalments recoverable in same way as income tax
45-80	General interest charge on late payment
45-90	Commissioner may withdraw instalment rate

45-50 Liability to pay instalments

- (1) Subject to subsection (4), you are liable to pay an instalment for an *instalment quarter in an income year if, at the end of that instalment quarter, you are:
- (a) a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) a *quarterly payer who pays on the basis of instalment income.
- (2) Subject to subsection (4), you are liable to pay an instalment for an *instalment quarter that is the third or fourth instalment quarter in an income year if, at the end of that quarter, you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax.
- (2A) Subject to subsection (4), you are liable to pay an instalment for an *instalment month if, at the end of that month, you are a *monthly payer.
- (3) Subject to subsection (4), you are liable to pay an instalment for an income year if, at the end of the *starting instalment quarter in that year, you are an *annual payer.
- (4) You are only liable to pay an instalment for an *instalment quarter, an *instalment month or an income year if:
 - (a) the Commissioner has given you an instalment rate; and
 - (b) the Commissioner has not withdrawn your instalment rate before the end of that quarter, month or year.

45-60 Meaning of *instalment quarter*

For an income year (whether it ends on 30 June or not), the following are the *instalment quarters*:

- (a) your first *instalment quarter* consists of the first 3 months of the income year; and
- (b) your second *instalment quarter* consists of the fourth, fifth and sixth months of the income year; and
- (c) your third *instalment quarter* consists of the seventh, eighth and ninth months of the income year; and
- (d) your fourth *instalment quarter* consists of the tenth, 11th and 12th months of the income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-61 When quarterly instalments are due—payers of quarterly instalments

You are not a deferred BAS payer

- (1) Subject to subsection (2), if you are:
- (a) a *quarterly payer who pays on the basis of instalment income; or
 - (b) a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax; or
 - (c) a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax;

the instalment for an *instalment quarter that you are liable to pay is due on or before the 21st day of the month after the end of that quarter.

Note: You are only liable to pay instalments for the third and fourth instalment quarters in an income year if you are a quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax. See section 45-50.

You are a deferred BAS payer

- (2) If:
- (a) subsection (1) would, but for this subsection, have applied to you in relation to an *instalment quarter; but
 - (b) you are a *deferred BAS payer on the 21st day of the month after the end of that quarter;
- the instalment for that quarter is instead due on or before:
- (c) the 28th day of the month after the end of that quarter unless all or a part of a December falls within the last month of that quarter; or
 - (d) if all or a part of a December falls within the last month of that quarter—the next 28 February.

Note 1: You are only liable to pay instalments for the third and fourth instalment quarters in an income year if you are a quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax. See section 45-50.

Note 2: If you are the head company of a consolidated group to which Subdivision 45-Q applies, the instalment is due on or before the 21st day of the month after the end of the quarter: see section 45-715.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-65 Meaning of *instalment month*

For an income year (whether it ends on 30 June or not), the following are *instalment months*:

- (a) the month that starts on the first day of the income year;
- (b) each subsequent month.

Note: For the meaning of *month*, see section 2G of the *Acts Interpretation Act 1901*.

45-67 When monthly instalments are due—payers of monthly instalments

You are not a deferred BAS payer

- (1) If you are a *monthly payer, the instalment for an *instalment month that you are liable to pay is due on or before the 21st day of the next instalment month.
- (2) If:
 - (a) subsection (1) would, but for this subsection, have applied to you in relation to an *instalment month; but
 - (b) you are a *deferred BAS payer on the 21st day of the next instalment month;the instalment for the month mentioned in paragraph (a) is instead due on or before:
 - (c) the 28th day of that next instalment month unless that next instalment month is January; or
 - (d) if that next instalment month is January—the next 28 February.

Note: If you are the head company of a consolidated group to which Subdivision 45-Q applies, the instalment is due on or before the 21st day of that next month: see section 45-715 (as it has effect because of section 45-703).

45-70 When annual instalments are due

- (1) This section applies if you are liable to pay an annual instalment for the 2002-03 income year or a later income year.
- (2) If the income year ends on 30 June, the instalment is due on or before the next 21 October.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) If the income year ends on a day other than 30 June, the instalment is due on or before the 21st day of the fourth month after the end of the income year.

45-72 Means of payment of instalment

You must pay an instalment by *electronic payment, or any other means approved in writing by the Commissioner.

45-75 Instalments recoverable in same way as income tax

Instalments are to be treated as income tax for the purposes of sections 254 and 255 of the *Income Tax Assessment Act 1936*.

45-80 General interest charge on late payment

If you fail to pay some or all of an instalment by the time by which the instalment is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the day by which the instalment was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the instalment;
 - (ii) general interest charge on any of the instalment.

45-90 Commissioner may withdraw instalment rate

- (1) The Commissioner may:
- (a) by giving you written notice, withdraw your instalment rate; or
 - (b) by notice published in the *Gazette*, withdraw the instalment rate of a class of entities that includes you.

Note: If the Commissioner does so, you cease to be liable to pay instalments (even if you have chosen a rate under section 45-205). See subsection 45-50(4).

- (2) If the Commissioner withdraws your instalment rate and later gives you another one:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) you are again liable to pay instalments in accordance with section 45-50; and
- (b) this Division has effect as if the Commissioner has given you an instalment rate for the first time.

Subdivision 45-C—Working out instalment amounts

Table of sections

45-110	How to work out amount of quarterly instalment on instalment income basis
45-112	Amount of instalment for quarterly payer who pays on basis of GDP-adjusted notional tax
45-114	How to work out amount of monthly instalment
45-115	How to work out amount of annual instalment
45-120	Meaning of <i>instalment income</i>

45-110 How to work out amount of quarterly instalment on instalment income basis

- (1) Work out the amount of an instalment you are liable to pay for an *instalment quarter as follows if, at the end of that instalment quarter, you are a *quarterly payer who pays on the basis of instalment income:

Applicable instalment rate × Your *instalment income for that quarter

- (2) For the purposes of the formula in subsection (1):

Applicable instalment rate means:

- (a) unless paragraph (b) or (c) applies—the most recent instalment rate given to you by the Commissioner under section 45-15 before the end of that quarter; or
- (b) if you have chosen an instalment rate for that quarter under section 45-205—that rate; or
- (c) if you have chosen an instalment rate under section 45-205 for an earlier *instalment quarter in that income year (and paragraph (b) does not apply)—that rate.

Note: If you believe the Commissioner's rate is not appropriate for the current income year, you may choose a different instalment rate under Subdivision 45-F.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-112 Amount of instalment for quarterly payer who pays on basis of GDP-adjusted notional tax

- (1) If, at the end of an *instalment quarter in an income year, you are a *quarterly payer who pays on the basis of GDP-adjusted notional tax who is liable to pay an instalment for that quarter, the amount of your instalment for that quarter is:
 - (a) unless paragraph (b) or (c) applies—the amount that the Commissioner works out under Subdivision 45-L, and notifies to you, as the amount of the instalment; or
 - (b) if you choose to work out the amount of the instalment on the basis of your estimate of your *benchmark tax for that income year, and you notify the Commissioner in accordance with subsection (2)—the amount worked out under Subdivision 45-M; or
 - (c) if paragraph (b) applied to your instalment for an earlier *instalment quarter in that income year—the amount that the Commissioner works out under Subdivision 45-M, and notifies to you, as the amount of the instalment.
- (2) If the amount of the instalment is worked out under paragraph (1)(b) on the basis of your estimate of your *benchmark tax for the income year, you must notify the Commissioner in the *approved form, on or before the day when the instalment is due (disregarding subsection (3)), of the amount of that estimate.
- (3) If:
 - (a) *after* the end of an *instalment quarter the Commissioner notifies you of an amount as the amount of your instalment for that quarter; and
 - (b) the amount of your instalment for that quarter is *not* worked out under paragraph (1)(b);the instalment is due on or before the 21st day after the day on which the notice is given.

45-114 How to work out amount of monthly instalment

- (1) Work out the amount of an instalment you are liable to pay for an *instalment month as follows if, at the end of that instalment month, you are a *monthly payer:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Applicable instalment rate \times Your ^{*}instalment income
for that instalment month

- (2) For the purposes of the formula in subsection (1):

applicable instalment rate means:

- (a) unless paragraph (b) or (c) applies—the most recent instalment rate given to you by the Commissioner under section 45-15 before the end of that month; or
- (b) if you have chosen an instalment rate for that month under section 45-205—that rate; or
- (c) if you have chosen an instalment rate under section 45-205 for an earlier ^{*}instalment month in that income year (and paragraph (b) does not apply)—that rate.

Note: If you believe the Commissioner's rate is not appropriate for the current income year, you may choose a different instalment rate under Subdivision 45-F.

- (3) The Commissioner may, by legislative instrument, determine one or more specified additional methods by which a specified class of entity that is a ^{*}monthly payer at the end of an ^{*}instalment month may work out, in specified circumstances, the amount of an instalment that it is liable to pay for the instalment month.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (4) You may choose a method specified in the determination:

- (a) unless paragraph (b) applies—for any ^{*}instalment month; or
- (b) if the determination provides that that method can be chosen only for the first instalment month in an ^{*}instalment quarter—for the first instalment month in an instalment quarter.

- (5) The determination may provide that an entity that chooses a method in accordance with paragraph (4)(b) for the first ^{*}instalment month in an ^{*}instalment quarter is taken to have chosen that method under subsection (4) for the other instalment months in that quarter. The determination has effect accordingly.

- (6) Subsection (7) applies if:

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the Commissioner has made a determination under subsection (3); and
 - (b) at the end of an *instalment month, you are a *monthly payer; and
 - (c) you choose under subsection (4), for that month:
 - (i) if the determination specifies one additional method to work out that amount—that method; or
 - (ii) if the determination specifies more than one additional method to work out that amount—one of those methods.
- (7) Despite subsection (1), work out the amount of an instalment you are liable to pay for that *instalment month in accordance with the method that you chose for that month under subsection (4).

45-115 How to work out amount of annual instalment

- (1) The amount of an instalment you are liable to pay for the 2002-03 income year or a later income year is whichever of the following you choose:
- (a) the amount worked out using the formula:
$$\text{*Commissioner's instalment rate} \times \text{Your *instalment income for the income year}$$
 - (b) your most recent *notional tax notified by the Commissioner before the end of the income year;
 - (c) the amount that you estimate will be your *benchmark tax for the income year.
- Note 1: You cannot choose a different instalment rate under Subdivision 45-F if you are an annual payer. Instead you can work out the amount of your instalment under paragraph (c).
- Note 2: You may be liable to general interest charge under section 45-235 if working out your instalment under paragraph (c) leads you to pay an instalment that is less than 85% of your benchmark tax for the income year (worked out by the Commissioner under section 45-365).
- (2) ***Commissioner's instalment rate*** for an income year means the most recent instalment rate given to you by the Commissioner before the end of the income year.
- (3) If you choose to work out your instalment under paragraph (1)(c), you must notify the Commissioner, in the *approved form, of the amount of the instalment on or before the day when it is due.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-120 Meaning of *instalment income*

General rule

- (1) Your ***instalment income*** for a period includes your *ordinary income *derived during that period, but only to the extent that it is assessable income of the income year that is or includes that period.

Note 1: No other amount is instalment income unless it is covered by another provision of this section or by Subdivision 45-H or 45-I.

Note 1A: The operation of this section and other provisions relating to instalment income is affected by sections 45-855 and 45-860 (about a member of a consolidated group during a period before the members of the group are treated as a single entity for the purposes of this Part.)

Note 2: If during that period you are a partner in a partnership, or a beneficiary of a trust, your instalment income also includes some of the partnership's or trust's instalment income for the period (except in some cases). See Subdivision 45-H or 45-I.

Statutory income included for some entities

- (2) The ***instalment income*** of:
- (a) a *complying approved deposit fund or a *non-complying approved deposit fund; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund; or
 - (c) a *pooled superannuation trust; or
 - (ca) an *FHSA trust;
- for a period also includes the entity's *statutory income, to the extent that:
- (d) it is reasonably attributable to that period; and
 - (e) it is assessable income of the income year that is or includes that period.
- (2A) The instalment income of a *life insurance company for a period also includes any part of its *statutory income that:
- (a) is reasonably attributable to that period; and
 - (b) is included in the *complying superannuation/FHSA class of its taxable income for the income year that is or includes that period.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Net gains under Subdivision 250-E of the Income Tax Assessment Act 1997 included in instalment income

- (2B) Your instalment income for a period also includes the difference between:
- (a) a gain (or gains) you make from a *financial arrangement to the extent to which it is (or they are):
 - (i) assessable under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period; and
 - (b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):
 - (i) allowable to you as a deduction under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period.

This is so only if the gain (or gains) referred to in paragraph (a) exceeds the loss (or losses) referred to in paragraph (b).

Effect of Division 230 of the Income Tax Assessment Act 1997 on instalment income

- (2C) Your instalment income for a period also includes the difference between:
- (a) a gain (or gains) you make from a *financial arrangement to the extent to which it is (or they are):
 - (i) assessable under Division 230 of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period; and
 - (b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):
 - (i) allowable to you as a deduction under Division 230 of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period.

This is so only if the gain (or gains) referred to in paragraph (a) equals or exceeds the loss (or losses) referred to in paragraph (b).

- (2D) However, your instalment income for a period is worked out disregarding subsection (2C) if any of the following apply:
- (a) you are an individual;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the only gains and losses that would be taken into account under subsection (2C) for the period are from *financial arrangements that are *qualifying securities.
- (2E) A gain or loss that is taken into account under subsection (2C) in working out an amount (including a nil amount) to be included in your instalment income for a period is not to be, to any extent, taken into account again under another provision of this section in calculating your instalment income for the same or any other period.

Exclusion: amounts in respect of withholding payments

- (3) Your **instalment income** for a period does not include amounts in respect of:
 - (a) *withholding payments (except *non-quotation withholding payments) made to you during that period; and
 - (b) amounts included in your assessable income under section 86-15 of the *Income Tax Assessment Act 1997* for which there are amounts required to be paid under Division 13; and
 - (c) which a penalty is applicable under section 12-415.

Farm management deposits: effect of making and repayment

- (4) Your **instalment income** for a period is reduced (but not below nil) by a *farm management deposit made during that period, but only to the extent that, at the end of that period, you can reasonably expect to be able to deduct the deposit under section 393-5 of the *Income Tax Assessment Act 1997* for the income year that is or includes that period.
- (5) Your **instalment income** for a period also includes an amount that section 393-10 of the *Income Tax Assessment Act 1997* includes in your assessable income, for the income year that is or includes that period, because of a repayment during that period of all or some of a *farm management deposit.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Gross proceeds on disposal of registered emissions units included in instalment income

- (5A) Your **instalment income** for a period also includes an amount that section 420-25 of the *Income Tax Assessment Act 1997* includes in your assessable income, for the income year that is or includes that period, because you cease to *hold a *registered emissions unit during that period.

Instalment income of entity that is not liable for instalments

- (6) An entity can have *instalment income for a period even if the entity is not liable to pay an instalment for that period.

Note: For example, although a partnership does not pay instalments, it is necessary to work out the partnership's instalment income in order to work out instalments payable by the partners. See Subdivision 45-H.

Subdivision 45-D—Quarterly payers

Table of sections

45-125	Quarterly payer who pays instalments on the basis of instalment income
45-130	Quarterly payer who pays on the basis of GDP-adjusted notional tax
45-132	Quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax
45-134	Quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax

45-125 Quarterly payer who pays instalments on the basis of instalment income

- (1) You are a **quarterly payer who pays on the basis of instalment income** if:
- (a) at the end of the *starting instalment quarter in an income year, you are not a *quarterly payer who pays on the basis of GDP-adjusted notional tax and you are not a *monthly payer or an *annual payer; or
 - (b) but for this section, you would be a quarterly payer who pays on the basis of GDP-adjusted notional tax at the end of the starting instalment quarter in an income year but you choose to pay quarterly instalments on the basis of your instalment income.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: The entity must make the choice mentioned in paragraph (b) in accordance with subsection (4).

- (2) The ***starting instalment quarter*** in an income year (the ***current year***) is:
- (a) if the Commissioner gives you an instalment rate for the first time during an *instalment quarter in the current year—that instalment quarter (even if it is not the first instalment quarter in the current year); or
 - (b) if the Commissioner has given you an instalment rate during a previous income year and your instalment rate has not been withdrawn—the first instalment quarter in the current year.

How and when you become such a payer

- (3) You become a *quarterly payer who pays on the basis of instalment income just before the end of the *starting instalment quarter if paragraph (1)(a) or (b) is satisfied.
- (4) You must make the choice mentioned in paragraph (1)(b) by notifying the Commissioner in the *approved form on or before the day on which the instalment for that quarter is due (disregarding subsection 45-112(3)).

How and when you stop being such a payer

- (5) If you are a *quarterly payer who pays on the basis of instalment income because of paragraph (1)(a), you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
 - (i) a quarterly payer who pays on the basis of GDP-adjusted notional tax; or
 - (ii) an *annual payer; or
 - (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

No quarterly payer status in quarter if monthly payer in following month

- (5A) Despite subsections (1) and (3), you cannot be a *quarterly payer who pays on the basis of instalment income at a time in an

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

*instalment quarter if you are a *monthly payer at a time in the first
*instalment month that ends after that quarter.

- (6) If you are a *quarterly payer who pays on the basis of instalment income because of paragraph (1)(b), you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) you become an *annual payer at the end of that quarter; or
 - (b) both of the following conditions apply:
 - (i) you choose not to be a quarterly payer who pays on the basis of instalment income;
 - (ii) you become a *quarterly payer who pays on the basis of GDP-adjusted notional tax at the end of that quarter.
- (7) You may only make the choice mentioned in paragraph (6)(b) if you would otherwise satisfy paragraph 45-130(1)(a), (b), (c) or (d) at the end of that quarter. You must make that choice by notifying the Commissioner in the *approved form on or before the day on which the instalment for that quarter is due (disregarding subsection 45-112(3)).

45-130 Quarterly payer who pays on the basis of GDP-adjusted notional tax

- (1) You are a ***quarterly payer who pays on the basis of GDP-adjusted notional tax*** if, at the end of the *starting instalment quarter in an income year:
- (a) you are an individual who is not an *annual payer, a *monthly payer or a *quarterly payer who pays on the basis of instalment income; or
 - (b) you are a *self-assessment entity:
 - (i) that is not an *annual payer or a *quarterly payer who pays on the basis of instalment income; and
 - (ii) your base assessment instalment income (within the meaning of section 45-320) for the *base year is \$2 million or less; or
 - (c) you satisfy all of the following conditions:
 - (i) you are a self-assessment entity whose base assessment instalment income (within the meaning of section 45-320) for the *base year is more than \$2 million;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) you are not an annual payer, but you satisfy the conditions set out in subsection 45-140(1) for an annual payer;
- (ia) you are not a *monthly payer;
- (iii) you are not a quarterly payer who pays on the basis of instalment income; or
- (d) for the 2009-10 income year or a later income year—you are a *small business entity (other than because of subsection 328-110(4) of the *Income Tax Assessment Act 1997*).

Note: Paragraph (a) may apply to you if you are a multi-rate trustee. See section 45-468.

How and when you become such a payer

- (2) You become such a payer just before the end of the *starting instalment quarter if paragraph (1)(a), (b), (c) or (d) is satisfied.
- (2A) For the purposes of subsection (2), you satisfy proposed paragraph (1)(d) at the end of the *starting instalment quarter in an income year if you are a *small business entity (other than because of subsection 328-110(4) of the *Income Tax Assessment Act 1997*) for the income year that includes that instalment quarter.

How and when you stop being such a payer

- (3) You stop being a *quarterly payer who pays on the basis of GDP-adjusted notional tax at the start of the first *instalment quarter in the *next* income year if you fail to satisfy paragraph (1)(a), (b), (c) or (d) at the end of that quarter.
- (3A) For the purposes of subsection (3), you fail to satisfy proposed paragraph (1)(d) at the end of the first *instalment quarter in an income year if you are not a *small business entity (other than because of subsection 328-110(4) of the *Income Tax Assessment Act 1997*) for the income year that includes that instalment quarter.
- (4) In addition, you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
 - (a) at the end of that quarter, you become:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) a *quarterly payer who pays on the basis of instalment income; or
- (ii) an *annual payer; or
- (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

No quarterly payer status in quarter if monthly payer in following month

- (5) Despite subsections (1) and (2), you cannot be a *quarterly payer who pays on the basis of GDP-adjusted notional tax at a time in an *instalment quarter if you are a *monthly payer at a time in the first *instalment month that ends after that quarter.

45-132 Quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax

- (1) You are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax* if, at the end of the *starting instalment quarter in an income year:
 - (a) you satisfy the conditions to be a *quarterly payer who pays on the basis of GDP-adjusted notional tax under section 45-130; and
 - (b) you do not satisfy the conditions to be a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax under section 45-134.

How and when you become such a payer

- (2) You become such a payer just before the end of the *starting instalment quarter if paragraphs (1)(a) and (b) are satisfied.

How and when you stop being such a payer

- (3) You stop being a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the start of the first *instalment quarter in the *next* income year if you fail to satisfy paragraphs (1)(a) and (b) at the end of that quarter.
- (4) In addition, you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) at the end of that quarter, you become:
 - (i) a *quarterly payer who pays on the basis of instalment income; or
 - (ii) an *annual payer; or
- (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

45-134 Quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax

- (1) You are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax* if, at the end of the *starting instalment quarter in an income year, you are an individual that is a *quarterly payer who pays on the basis of GDP-adjusted notional tax and one or more of the following paragraphs apply:
 - (a) both of the following conditions are satisfied:
 - (i) you are carrying on a *primary production business in the income year;
 - (ii) the assessable income that was *derived from, or resulted from, a primary production business that you carried on in the *base year exceeded the amount of so much of your deductions in that year that are reasonably related to that income;
 - (b) both of the following conditions are satisfied:
 - (i) you are a *special professional in the income year;
 - (ii) your *assessable professional income in the base year exceeded the amount of so much of your deductions in that year that are reasonably related to that income.

Note: This section may apply to you if you are a multi-rate trustee. See section 45-468.

How and when you become such a payer

- (2) You become such a payer just before the end of the *starting instalment quarter if subsection (1) is satisfied.

How and when you stop being such a payer

- (3) You stop being a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax at the start of the first

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

*instalment quarter in the *next* income year if you fail to satisfy subsection (1) at the end of that quarter.

- (4) In addition, you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
 - (i) a *quarterly payer who pays on the basis of instalment income; or
 - (ii) an *annual payer; or
 - (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

Subdivision 45-DA—Monthly payers

Table of sections

45-136	Monthly payer
45-138	Monthly payer requirement

45-136 Monthly payer

- (1) You are a **monthly payer** at a time if:
- (a) you were a monthly payer immediately before that time; or
 - (b) if paragraph (a) does not apply—you satisfy the requirement in subsection 45-138(1) for the income year in which that time occurs.

Note: If paragraph (b) applies, see subsection (3) for the time at which you become a monthly payer.

- (2) The **starting instalment month** in an income year (the **current year**) is:
- (a) if the Commissioner gives you an instalment rate for the first time during an *instalment month in the current year—the next instalment month in the current year; or
 - (b) if the Commissioner has given you an instalment rate during a previous income year and your instalment rate has not been withdrawn—the first instalment month in the current year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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How and when you become such a payer

- (3) Despite subsection (1), if paragraph (1)(b) applies, you become a *monthly payer just before the end of the *starting instalment month in the income year.

How and when you stop being such a payer

- (4) Despite subsection (1), you stop being a *monthly payer at the start of the first *instalment month in a later income year if:
- (a) you do not satisfy the requirement in subsection 45-138(1) for that later income year; and
 - (b) you give the Commissioner a notice (the **MP stop notice**) in the *approved form for that later income year before the start of that later income year.

45-138 Monthly payer requirement

- (1) You satisfy the requirement in this subsection for an income year if at the start of your *MPR test day for that income year, your base assessment instalment income (within the meaning of section 45-320) for the *base year equals or exceeds:
- (a) \$20 million; or
 - (b) if regulations made for the purposes of this paragraph specify a different amount—that amount.
- (2) However, you do *not* satisfy the requirement in subsection (1) for an income year if, at the start of your *MPR test day for that income year:
- (a) you have (or, if you are a *member of a *GST group, the *representative member of the GST group has) an obligation to give the Commissioner a *GST return for a quarterly *tax period; and
 - (b) you are *not* the *head company of a *consolidated group nor the *provisional head company of a *MEC group; and
 - (c) your base assessment instalment income (within the meaning of section 45-320) for the *base year is less than \$100 million.
- (3) For the purposes of subsections (1) and (2), at the start of an entity's *MPR test day:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) determine the amount of the entity's base assessment instalment income (within the meaning of section 45-320) for the *base year only on the basis of the information provided by the Commissioner to the entity before that start of that day; and
 - (b) in determining on that day whether an entity has an obligation mentioned in paragraph (2)(a), disregard any creation or removal of such an obligation after that day (even if that change is made retrospective to that day).
- (4) An entity's **MPR test day** for an income year is:
 - (a) if the Commissioner gives the entity an instalment rate for the first time during an *instalment month in the income year—the last day of that month; or
 - (b) otherwise—the first day of the third last month of the previous income year.
- (5) Subsection (6) applies if, disregarding that subsection, an entity does *not* satisfy the requirement in subsection (1) for an income year.
- (6) For the purposes of this section, in determining the entity's base assessment instalment income (within the meaning of section 45-320) for the *base year:
 - (a) disregard subsection 45-120(2C); and
 - (b) disregard paragraph (3)(a) of this section, to the extent that that paragraph relates to the operation of subsection 45-120(2C).
- (7) If, because of subsection (6), the entity satisfies the requirement in subsection (1) for an income year, the entity must give the Commissioner a notice in the *approved form in respect of that income year before:
 - (a) if the *starting instalment month in the income year is determined under paragraph 45-136(2)(a)—the end of that starting instalment month; or
 - (b) if the starting instalment month in the income year is determined under paragraph 45-136(2)(b)—the start of that starting instalment month.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-140

Subdivision 45-E—Annual payers

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When you start and stop being an annual payer

45-140 Choosing to pay annual instalments

- (1) You may choose to pay instalments annually instead of quarterly if, at the end of the *starting instalment quarter, you satisfy the following conditions:
 - (a) you are neither registered, nor *required to be registered, under Part 2-5 of the *GST Act; and
 - (b) you are not a partner in a partnership that is registered, or required to be registered, under that Part; and
 - (c) your most recent *notional tax notified by the Commissioner is less than \$8,000; and
 - (d) in the case of a company—the company is not a *participant in a *GST joint venture under Division 51 of that Act; and
 - (e) in the case of a company—the company is not part of an *instalment group.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

- (1A) You may also choose at a time (subject to subsection (2)) to pay instalments annually instead of quarterly if at that time either:
 - (a) an *annual tax period election of yours has effect and, if you are a partner in one or more partnerships that are registered under Part 2-5 of the *GST Act, an annual tax period election of each of those partnerships has effect; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(b) all of the following subparagraphs apply:

- (i) you are neither registered, nor *required to be registered, under Part 2-5 of the GST Act;
- (ii) you are a partner in one or more partnerships that are registered under that Part;
- (iii) an annual tax period election of each of those partnerships has effect;

and at the end of the *starting instalment quarter, you satisfy the following conditions:

- (c) you are not a partner in a partnership that is required to be registered under Part 2-5 of the GST Act;
- (d) your most recent *notional tax notified by the Commissioner is less than \$8,000;
- (e) in the case of a company—the company is not a *participant in a *GST joint venture under Division 51 of that Act;
- (f) in the case of a company—the company is not part of an *instalment group.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

- (2) You must make the choice under subsection (1) or (1A) by notifying the Commissioner, in the *approved form, on or before the day on which that instalment would otherwise be due.
- (3) You become an **annual payer** just before the end of the *starting instalment quarter if:
 - (a) you satisfy the conditions in subsection (1) or (1A); and
 - (b) you choose to pay instalment annually.

45-145 Meaning of *instalment group*

- (1) An **instalment group** consists of:
 - (a) a company:
 - (i) that has *majority control of at least one other company; but
 - (ii) of which no other company has *majority control; and
 - (b) any other company of which the first-mentioned company has *majority control.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-150

- (2) A company has **majority control** of another company if, and only if:
- (a) the first company is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or
 - (b) the first company has the power to appoint or remove the majority of the directors of the other company; or
 - (c) the other company is, or a majority of its directors are, accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the first company.

45-150 Entity stops being annual payer if involved with GST registration or instalment group

- (1) You stop being an *annual payer if, during an *instalment quarter that is in an income year that starts after the commencement of this section:
- (a) you become *required to be registered under Part 2-5 of the *GST Act; or
 - (b) you become a partner in a partnership that is required to be registered under that Part; or
 - (c) a partnership in which you are a partner becomes required to be registered under that Part; or
 - (d) in the case of a company—the company becomes a *participant in a *GST joint venture under Division 51 of that Act; or
 - (e) in the case of a company—the company becomes part of an *instalment group; or
 - (f) an *annual tax period election of yours, or of a partnership in which you are a partner, ceases to have effect.
- (2) If you stop being an *annual payer under subsection (1):
- (a) you must still pay an annual instalment for the income year mentioned in that subsection; and
 - (b) you must pay an instalment for each instalment quarter in the next income year for which subsection 45-50(1) or (2) requires you to do so.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) You may again become an *annual payer if:
 - (a) after you stop being an *annual payer under subsection (1), you satisfy the conditions in subsection 45-140(1) or (1A); and
 - (b) you again choose under section 45-140 to pay instalments annually.

45-155 Entity stops being annual payer if notional tax is \$8,000 or more, or entity chooses to pay quarterly

- (1) You stop being an *annual payer at the start of the first *instalment quarter in an income year (the *current year*) if:
 - (a) after the end of the first instalment quarter in the previous income year and before the end of the first instalment quarter in the current year, the Commissioner notifies you of your *notional tax, and it is \$8,000 or more; or
 - (b) you choose to pay instalments quarterly instead of annually.
- (1A) You must make the choice by notifying the Commissioner, in the *approved form, on or before the day on which the instalment for the first *instalment quarter for the current year would otherwise be due (disregarding subsection 45-112(3)).
- (2) You must pay an instalment for the first *instalment quarter of the *next* income year, and later instalment quarters, in accordance with Subdivision 45-B.
- (3) You must still pay an annual instalment for the previous income year referred to in subsection (1).
- (4) You may again become an *annual payer at the end of the first *instalment quarter in a later income year if:
 - (a) at that time, you satisfy the conditions in subsection 45-140(1) or in paragraphs 45-140(1A)(c), (d), (e) and (f); and
 - (b) you again choose under section 45-140 to pay annually.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-160 Head company of a consolidated group stops being annual payer

- (1) You stop being an *annual payer at the start of an *instalment quarter if Subdivision 45-Q starts applying to you as the *head company of a *consolidated group during that quarter.
- (2) You must pay an instalment for that *instalment quarter and later instalment quarters in accordance with Subdivision 45-B.
- (3) You may again become an *annual payer if:
 - (a) after you stop being an *annual payer under subsection (1), you satisfy the conditions in subsection 45-140(1) or (1A); and
 - (b) you again choose under section 45-140 to pay instalments annually.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

Subdivision 45-F—Varying the instalment rate for quarterly or monthly payers who pay on the basis of instalment income

Table of sections

45-200	Application
45-205	Choosing a varied instalment rate
45-210	Notifying Commissioner of varied instalment rate
45-215	Credit on using varied rate in certain cases

45-200 Application

- (1) This Subdivision applies if you are a *quarterly payer who pays on the basis of instalment income at the end of an *instalment quarter.
- (2) If you are a *monthly payer, this Subdivision has effect in relation to you in respect of an *instalment month in the same way in which it has effect in relation to a *quarterly payer in respect of an *instalment quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-205 Choosing a varied instalment rate

- (1) You may choose an instalment rate for working out under section 45-110 the amount of your instalment for an *instalment quarter in an income year.

- (2) If you do so, you must use that instalment rate to work out the amount of that instalment. (You cannot later choose another instalment rate for working out that amount.)

Note 1: If choosing a rate leads you to pay an instalment that is too low, you may be liable to general interest charge under section 45-230.

Note 2: If you choose a rate under this section, you must use it even if the Commissioner later gives you a new instalment rate.

- (3) You must also use that instalment rate to work out the amount of the instalment that you are liable to pay for each later *instalment quarter in that income year, unless you choose another instalment rate under subsection (1) for working out that amount.

Note 1: If you choose a rate under this section, you must use it even if the Commissioner later gives you a new instalment rate.

Note 2: If a rate you have chosen for an instalment quarter is not appropriate for a later instalment quarter in the same income year, you should choose another rate under subsection (1) for the later quarter. If the earlier rate is too low, you may be liable to general interest charge under section 45-230.

- (4) However, for working out under section 45-110 the amount of your instalment for an *instalment quarter in a later income year, you must use the most recent instalment rate given to you by the Commissioner before the end of that quarter, unless you again choose another instalment rate under subsection (1).

- (5) Subsection (6) applies if you are a monthly payer.

- (6) Treat the references in subsections (1) and (4) to section 45-110 as instead being references to section 45-114.

45-210 Notifying Commissioner of varied instalment rate

If you work out the amount of an instalment using an instalment rate you have chosen under section 45-205, you must specify that rate in the notice about your instalment income that you must give the Commissioner under section 45-20.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-215 Credit on using varied rate in certain cases

- (1) You are entitled to claim a credit if:
- (a) the amount of your instalment for an *instalment quarter (the *current quarter*) in an income year is to be worked out using an instalment rate you chose under section 45-205; and
 - (b) that rate is lower than the instalment rate you used to work out the amount of your instalment for the previous instalment quarter (if any) in the same income year; and
 - (c) the amount worked out using the method statement is greater than nil.

Method statement

- Step 1. Add up the instalments you are liable to pay for the earlier *instalment quarters in the income year (even if you have not yet paid all of them).
- Step 2. Subtract from the step 1 amount each earlier credit that you have claimed under this section or section 45-420 in respect of the income year.
- Step 3. Multiply the total of your *instalment income for those earlier *instalment quarters by the instalment rate to be used for the current quarter.
- Step 4. Subtract the step 3 amount from the step 2 amount.
- Step 5. If the result is a positive amount, it is the amount of the credit you can claim.

- (2) A claim for a credit must be made in the *approved form on or before the day on which the instalment for the current quarter is due.

Note: How the credit is applied is set out in Division 3 of Part IIB.

- (3) The credit entitlement does not affect your liability to pay an instalment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 45-G—General interest charge payable in certain cases if instalments are too low

Table of sections

45-225	Effect of Subdivision in relation to monthly payers
45-230	Liability to GIC on shortfall in quarterly instalment worked out on the basis of varied rate
45-232	Liability to GIC on shortfall in quarterly instalment worked out on the basis of estimated benchmark tax
45-233	Reduction in GIC liability under section 45-232 if shortfall is made up in later instalment
45-235	Liability to GIC on shortfall in annual instalment
45-240	Commissioner may remit general interest charge

45-225 Effect of Subdivision in relation to monthly payers

If you are a *monthly payer, this Subdivision has effect in relation to you in respect of an *instalment month in the same way in which it has effect in relation to a *quarterly payer in respect of an *instalment quarter.

45-230 Liability to GIC on shortfall in quarterly instalment worked out on the basis of varied rate

- (1) You are liable to pay the *general interest charge under this section if:
 - (a) you use an instalment rate (the *varied rate*) under section 45-205 to work out the amount of your instalment for an *instalment quarter (the *variation quarter*) in an income year; and
 - (b) the varied rate is less than 85% of your *benchmark instalment rate for that income year that the Commissioner works out under Subdivision 45-K.

- (2) You are liable to pay the *general interest charge on the amount worked out as follows:

$$\left[\begin{array}{c} \text{Rate} \\ \text{discrepancy} \end{array} \times \begin{array}{c} \text{Your *instalment income} \\ \text{for the variation quarter} \end{array} \right] + \begin{array}{c} \text{Credit} \\ \text{Adjustment} \end{array}$$

where:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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rate discrepancy means the difference between the varied rate and the lesser of:

- (a) the most recent instalment rate given to you by the Commissioner before the end of the variation quarter; and
- (b) your *benchmark instalment rate for that income year.

credit adjustment means:

- (a) if, as a result of using the varied rate for the variation quarter, you claimed a credit under section 45-215—the amount worked out as follows:

$$\text{Rate discrepancy} \times \text{Your *instalment income for the earlier instalment quarters in that income year}$$

or the amount of the credit, whichever is less; and

- (b) otherwise—nil.

- (2A) If the variation quarter is in a *consolidation transitional year for you as a *subsidiary member of a *consolidated group, a reference in subsection (2) to:

- (a) your *instalment income for the variation quarter; or
 - (b) your instalment income for the earlier instalment quarters in the income year;

is taken to be a reference to so much of that income as is reasonably attributable to the period in that quarter or those quarters (as appropriate) during which you are not a subsidiary member of the group.

- (3) You are liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the variation quarter was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (4) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2). You must pay the charge within 14 days after the notice is given to you.
- (5) If any of the *general interest charge to which you are liable under subsection (2) remains unpaid at the end of the 14 days referred to in subsection (4), you are also liable to pay the *general interest charge on the unpaid amount for each day in the period that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) starts at the end of those 14 days; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

45-232 Liability to GIC on shortfall in quarterly instalment worked out on the basis of estimated benchmark tax

- (1) You are liable to pay the *general interest charge under this section if:
 - (a) the amount of your instalment for an *instalment quarter (the **variation quarter**) in an income year is worked out under paragraph 45-112(1)(b) or (c) on the basis of your estimate of your *benchmark tax for that income year; and
 - (b) the estimate used is less than 85% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

Amount on which the charge is payable

- (2) You are liable to pay the *general interest charge on the amount worked out as follows (if it is a positive amount):

*Acceptable amount of the instalment — Actual amount

where:

acceptable amount, of your instalment for an *instalment quarter in an income year, has the meaning given by subsections (3), (3A), (3B), (3C) and (3D).

actual amount means:

- (a) the amount of your instalment, as worked out on the basis of the estimate; or
 - (b) if, as a result of using the estimate, you claimed a credit under section 45-420 for the variation quarter—the amount of the credit, expressed as a negative amount.
- (3) If you are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax, the **acceptable amount** of your instalment for that instalment quarter is:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
- (b) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the first in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <ul style="list-style-type: none">(a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and(b) 25% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
2	the second in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <ul style="list-style-type: none">(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and(b) the amount worked out by subtracting:<ul style="list-style-type: none">• the *acceptable amount of your instalment for the earlier instalment quarter in that income year;from:<ul style="list-style-type: none">• 50% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
3	the third in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the total of the *acceptable amounts of your instalments for the earlier instalment quarters in that income year; <p>from:</p> <ul style="list-style-type: none"> 75% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
4	the fourth in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the total of the *acceptable amounts of your instalments for the earlier instalment quarters in that income year; <p>from:</p> <ul style="list-style-type: none"> 100% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

- (3A) Subject to subsections (3B), (3C) and (3D), if you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax, the ***acceptable amount*** of your instalment for an *instalment quarter in an income year is:
- (a) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the table in this subsection (which can be a negative amount);
or

- (b) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the third *instalment quarter in that income year	<p>the lower of:</p> <p>(a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and</p> <p>(b) 75% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).</p>
2	the fourth *instalment quarter in that income year	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> • the *acceptable amount of your instalment for the earlier instalment quarter in that income year; <p>from:</p> <ul style="list-style-type: none"> • 100% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

(3B) If:

- (a) you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax; and
- (b) the Commissioner first gives you an instalment rate during the second *instalment quarter in an income year;
- the ***acceptable amount*** of your instalment for an instalment quarter in that income year is:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
- (d) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter.

Acceptable amount of an instalment

Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the third *instalment quarter in that income year	the lower of: (a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and (b) 50% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
2	the fourth *instalment quarter in that income year	the lower of: (a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and (b) the amount worked out by subtracting: <ul style="list-style-type: none"> the *acceptable amount of your instalment for the earlier instalment quarter in that income year; from: <ul style="list-style-type: none"> 75% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

(3C) If:

- (a) you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax; and
- (b) the Commissioner first gives you an instalment rate during the third *instalment quarter in an income year;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the **acceptable amount** of your instalment for an instalment quarter in that income year is:

- (c) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
- (d) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the third *instalment quarter in that income year	<p>the lower of:</p> <ul style="list-style-type: none"> (a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and (b) 25% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
2	the fourth *instalment quarter in that income year	<p>the lower of:</p> <ul style="list-style-type: none"> (a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and (b) the amount worked out by subtracting: <ul style="list-style-type: none"> • the *acceptable amount of your instalment for the earlier instalment quarter in that income year; <p>from:</p> <ul style="list-style-type: none"> • 50% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

(3D) If:

- (a) you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) the Commissioner first gives you an instalment rate during the fourth *instalment quarter in an income year;
the ***acceptable amount*** of your instalment for an instalment quarter in that income year is the lower of the following amounts:
 - (c) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter;
 - (d) 25% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

Period for which the charge is payable

- (4) You are liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the variation quarter was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.

Commissioner to notify you

- (5) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2). You must pay the charge within 14 days after the notice is given to you.

Further charge if charge under subsection (2) remains unpaid

- (6) If any of the *general interest charge to which you are liable under subsection (2) remains unpaid at the end of the 14 days referred to in subsection (5), you are also liable to pay the *general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

Modifications for subsidiary member of consolidated group

- (7) Subsections (1) to (6) apply to you with the modifications set out in subsections (8) to (10) if the variation quarter is in a *consolidation

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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transitional year for you as a *subsidiary member of a
*consolidated group.

- (8) For the purposes of subsection (7), a reference in subsection (1), (3), (3A), (3B), (3C) and (3D) to your *benchmark tax for that year is taken to be a reference to the amount worked out as follows:

$$\frac{\text{Your *benchmark tax for that year}}{\text{Number of days in that year when you are not a *subsidiary member of the group}} \times 365$$

- (9) For the purposes of subsection (7), a reference in this section to:

- (a) the acceptable amount of your instalment for an *instalment quarter in an income year; or
- (b) the acceptable amount of your instalment for the earlier instalment quarter in an income year; or
- (c) the acceptable amounts of your instalments for the earlier instalment quarters in an income year;

is taken to be a reference to so much of the acceptable amount of instalment or acceptable amounts of instalments, worked out under subsection (3), (3A), (3B), (3C) or (3D) for that quarter or those quarters (as appropriate), as is reasonably attributable to the period in that quarter or those quarters (as appropriate) during which you are not a *subsidiary member of the group.

- (10) For the purposes of subsection (7), a reference to the actual amount in subsection (2) is taken to be a reference to so much of the actual amount worked out under that subsection as is reasonably attributable to the period in the variation quarter during which you are not a *subsidiary member of the group.

45-233 Reduction in GIC liability under section 45-232 if shortfall is made up in later instalment

- (1) This section reduces the amount (the *shortfall*) on which you are liable to pay the *general interest charge under subsection 45-232(2) if, for a later *instalment quarter (the *later quarter*) that is in the same income year as the variation quarter, the amount worked out as follows is a negative amount:

$$\begin{array}{l} \text{*Acceptable amount of} \\ \text{your instalment for} \\ \text{the later quarter} \end{array} - \begin{array}{l} \text{Actual amount of your instalment} \\ \text{for the later quarter} \end{array}$$

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

That amount (expressed as a positive number) is called the ***top up***.

- (2) For the purposes of the formula in subsection (1):

actual amount of your instalment for the later quarter means:

- (a) the amount of your instalment for the later quarter, as worked out under section 45-112; or
- (b) if you claimed a credit under section 45-420 for the later quarter—the amount of the credit, expressed as a negative amount.

Amount of the reduction

- (3) The shortfall is reduced by applying so much of the top up as does not exceed the shortfall.
- (4) However, if some of the top up has already been applied (under any other application or applications of this section) to reduce the amount on which you are liable to pay the *general interest charge under subsection 45-232(2) as it applies to a different *instalment quarter, the shortfall is reduced by applying so much of the top up as has not already been applied, and does not exceed the shortfall.

Period for which reduction has effect

- (5) The reduction has effect for each day in the period that:
- (a) started at the beginning of the day by which the instalment for the later quarter was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.

45-235 Liability to GIC on shortfall in annual instalment

- (1) You are liable to pay the *general interest charge under this section if:
- (a) you choose to estimate the amount of your instalment (the ***estimated instalment amount***) for an income year under former paragraph 45-115(1)(c) or 45-175(1)(b); and
 - (b) that amount is less than 85% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) If you estimated the amount of the instalment under former paragraph 45-175(1)(b), you are liable to pay the *general interest charge on the difference between the estimated instalment amount and the lower of the following amounts:
 - (a) your most recent *notional tax notified by the Commissioner at least 30 days before the day on which the instalment was due;
 - (b) your *benchmark tax for the income year.
- (3) If you estimated the amount of the instalment under paragraph 45-115(1)(c), you are liable to pay the *general interest charge on the difference between the estimated instalment amount and the lowest of the following amounts:
 - (a) the amount of your instalment worked out using the most recent instalment rate given to you by the Commissioner before the end of the income year;
 - (b) your most recent *notional tax notified by the Commissioner before the end of the income year under subsection 45-320(5);
 - (c) your *benchmark tax for the income year.
- (4) You are liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the income year was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (5) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2) or (3). You must pay the charge within 14 days after the notice is given to you.
- (6) If any of the *general interest charge to which you are liable under subsection (2) or (3) remains unpaid at the end of the 14 days referred to in subsection (5), you are also liable to pay the *general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

45-240 Commissioner may remit general interest charge

The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under subsection 45-230(2) or 45-232(2) or subsection 45-235(2) or (3).

Subdivision 45-H—Partnership income

45-260 Instalment income for a period in which you are in a partnership

- (1) Your *instalment income* for a period (the *current period*) includes an amount for each partnership in which you are a partner at any time during the current period. The amount is worked out using the formula:

$$\frac{\text{Your assessable income from the partnership for the last income year}}{\text{Partnership's *instalment income for that income year}} \times \text{Partnership's *instalment income for the current period}$$

- (2) For the purposes of the formula in subsection (1):

your assessable income from the partnership for the last income year means so much of your individual interest in the partnership's net income for an income year as was included by section 92 of the *Income Tax Assessment Act 1936* in your assessable income for the most recent income year:

- (a) that ended before the start of the current period; and
 - (b) for which you have an assessment, or for which the Commissioner has notified you that you do not have a taxable income.
- (3) However, if for any reason the component defined in subsection (2) does not exist or is a nil amount, or the partnership

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-280

had no *instalment income for that income year, your ***instalment income*** for the current period includes, for that partnership, an amount that is fair and reasonable having regard to:

- (a) the extent of your interest in the partnership during the current period; and
- (b) the partnership's *instalment income for the current period; and
- (c) any other relevant circumstances.

Exception for corporate limited partnerships

- (4) Your ***instalment income*** for the current period does *not* include an amount for a partnership that is a *corporate limited partnership for the income year that is or includes that period.

Note: Your instalment income will still include a distribution by the partnership that is ordinary income. See section 45-120.

Subdivision 45-I—Trust income included in instalment income of beneficiary

Table of sections

45-280	Instalment income for a period in which you are a beneficiary of a trust
45-285	Instalment income includes distributions by certain resident unit trusts
45-286	Instalment income includes distributions by certain managed investment trusts
45-287	When trusts are disqualified due to concentrated ownership
45-288	Resident investment trusts for beneficiaries who are absolutely entitled
45-290	Exceptions to exclusion of trust capital gains from beneficiary's instalment income

45-280 Instalment income for a period in which you are a beneficiary of a trust

- (1) Your ***instalment income*** for a period (the ***current period***) includes an amount for each trust of which you are a beneficiary at any time during the current period. The amount is worked out using the formula:

$$\frac{\text{Your assessable income from the trust for the last income year}}{\text{Trust's *instalment income for that income year}} \times \text{Trust's *instalment income for the current period}$$

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) For the purposes of the formula in subsection (1):

your assessable income from the trust for the last income year

means so much of a share of the trust's net income for an income year as:

- (a) Division 6 of Part III of the *Income Tax Assessment Act 1936* included in your assessable income for the most recent income year:
 - (i) that ended before the start of the current period; and
 - (ii) for which you have an assessment, or for which the Commissioner has notified you that you do not have a taxable income; and
- (b) is *not* attributable to a *capital gain made by the trust.

Note: For exceptions to paragraph (b), see section 45-290.

- (3) However, if for any reason the component defined in subsection (2) does not exist or is a nil amount, or the trust had no *instalment income for that income year, your ***instalment income*** for the current period includes, for that trust, an amount that is fair and reasonable having regard to:
- (a) the extent of your interest in the trust, and your interest in the income of the trust, during the current period; and
 - (b) the trust's *instalment income for the current period; and
 - (c) any other relevant circumstances.

Exception for corporate unit trusts and public trading trusts

- (4) Your ***instalment income*** for the current period does *not* include an amount for a trust if the trustee is liable to be assessed, and to pay tax, under section 102K or 102S of the *Income Tax Assessment Act 1936* for the income year that is or includes that period.

Note: Your instalment income will still include a distribution by the trust that is ordinary income. See section 45-120.

Exception for certain resident unit trusts

- (5) Your ***instalment income*** for the current period does *not* include an amount for a trust under subsection (1) if the conditions in either subsection 45-285(1) or (2) are satisfied for you for that trust for that period.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: Your instalment income will instead include a distribution by the trust: see section 45-285.

Exception for trusts whose beneficiary is absolutely entitled

- (6) Your **instalment income** for the current period does *not* include an amount for a trust under subsection (1) if, throughout the current period:
- (a) the trustee of the trust did not have any active duties to perform in the management of the trust (other than the duty to deal with the trust income and capital in accordance with any requests made or directions given by the beneficiary or beneficiaries); and
 - (b) if there was only one beneficiary, the beneficiary:
 - (i) was absolutely entitled to the trust assets; and
 - (ii) had a vested and indefeasible interest in any trust income arising from time to time; and
 - (c) if there was more than one beneficiary, each beneficiary:
 - (i) was absolutely entitled to that beneficiary's interest in the trust assets; and
 - (ii) had a vested and indefeasible interest in a proportion of any trust income arising from time to time, being a proportion that corresponded to the beneficiary's proportional interest in the trust capital.

Instead, your **instalment income** for the current period includes the following amount:

Your proportion of the vested and
indefeasible interests in the trust
income arising from time to time \times Trust's *instalment income
for the current period

45-285 Instalment income includes distributions by certain resident unit trusts

- (1) Your **instalment income** for a period includes trust income or trust capital that a unit trust distributes to you, or applies for your benefit, during that period if:
- (a) the unit trust is a resident unit trust (within the meaning of section 102Q of the *Income Tax Assessment Act 1936*) for the income year of the trust that is or includes that period; and
 - (b) throughout that period:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) any of the units in the trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere; or
- (ii) any of the units in the trust were offered to the public; or
- (iii) the units in the trust were held by at least 50 persons; and
- (c) section 45-287 in this Schedule did not apply to the trust at any time during that period; and
- (d) throughout that period, the trust's activities consisted only of activities listed in the definition of ***eligible investment business*** in section 102M of the *Income Tax Assessment Act 1936*.

(It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)

- (2) Your ***instalment income*** for a period also includes trust income or trust capital that a unit trust distributes to you, or applies for your benefit, during that period if:
- (a) the income or capital is *not* included in your instalment income under subsection (1); and
 - (b) the unit trust is a resident unit trust (within the meaning of section 102Q of the *Income Tax Assessment Act 1936*) for the income year of the trust that is or includes that period; and
 - (c) throughout that period, the trust's activities consisted only of activities listed in the definition of ***eligible investment business*** in section 102M of the *Income Tax Assessment Act 1936*; and
 - (d) throughout that period, either:
 - (i) you are yourself the trustee of a unit trust that satisfies each of paragraphs (1)(a) to (d) of this section; or
 - (ii) you are yourself the trustee of one or more trusts covered by section 45-288; or
 - (iii) you are exempt from tax; or
 - (iv) you are a *complying superannuation entity or a statutory fund of a *life insurance company.

(It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Extension—nominee and bare trust situations

- (3) In determining, for the purposes of subparagraph (1)(b)(iii), how many persons hold units in a unit trust, if:
- (a) another trust (the **holding trust**) is a unit holder in the unit trust; and
 - (b) the holding trust is a trust of the kind covered by subsection 45-280(6); and
 - (c) the beneficiary's or beneficiaries' absolute entitlement exists at all times while the holding trust is in existence;
- the beneficiary or beneficiaries count as persons who hold units in the unit trust, and the trustee of the holding trust does not.

45-286 Instalment income includes distributions by certain managed investment trusts

Your **instalment income** for a period includes trust income or trust capital that a trust distributes to you, or applies for your benefit, during that period if:

- (a) the income or capital is not included in your instalment income under section 45-280 or 45-285; and
- (b) the trust satisfies the condition in paragraph 12-400(1)(a) in relation to the income year that is or includes that period; and
- (c) the trust is:
 - (i) a *managed investment trust for that income year; or
 - (ii) treated as a managed investment trust for that income year for the purposes of Division 275 of the *Income Tax Assessment Act 1997*; and
- (d) the trust meets the requirement in section 275-110 of that Act throughout the income year.

(It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-287 When trusts are disqualified due to concentrated ownership

Concentrated ownership

- (1) This section applies to a trust if an individual holds, or up to 20 individuals hold between them directly or indirectly and for their own benefit, interests in the trust:
- (a) carrying *fixed entitlements to:
 - (i) at least 75% of the trust's income; or
 - (ii) at least 75% of the trust's capital; or
 - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

Single individual

- (2) Subsection (1) operates as if all of these were a single individual:
- (a) an individual, whether or not the individual holds interests in the trust; and
 - (b) the individual's *associates; and
 - (c) for any interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

Concentrated ownership—potential due to possible variation of rights etc.

- (3) This section also applies to a trust if, because of:
- (a) any provision in the trust's constituent document, or in any contract, agreement or instrument:
 - (i) authorising the variation or abrogation of rights attaching to any of the interests in the trust; or
 - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those interests; or
 - (b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those interests; or
 - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those interests;
- it is reasonable to conclude that the rights attaching to any of the interests are capable of being varied or abrogated in such a way

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(even if they are not in fact varied or abrogated in that way) that, directly or indirectly, the trust would be disqualified under subsection (1).

Tracing

(4) In applying this section:

- (a) if a *complying superannuation fund, *approved deposit fund or *superannuation fund for foreign residents has more than 50 members and has, directly or indirectly, a *fixed entitlement to any of the trust's income or capital—that entitlement is taken to be held by more than 20 individuals for their own benefit; and
- (b) if a complying superannuation fund, approved deposit fund or superannuation fund for foreign residents has 50 or fewer members and has, directly or indirectly, a fixed entitlement to any of the trust's income or capital—each of the members is taken to have a share of that entitlement, in equal proportions, for his or her own benefit.

45-288 Resident investment trusts for beneficiaries who are absolutely entitled

This section covers a trust if:

- (a) the trust is a resident unit trust within the meaning of section 102Q of the *Income Tax Assessment Act 1936*; and
- (b) the trust is of the kind covered by subsection 45-280(6) in this Schedule; and
- (c) the requests or directions that beneficiaries may give the trustee are limited to requests or directions as to which of the activities listed in the definition of ***eligible investment business*** in section 102M of the *Income Tax Assessment Act 1936* the trustee should engage in; and
- (d) all of the trust's beneficiaries became beneficiaries as a result of a public offer to invest in the trust; and
- (e) either:
 - (i) the trust has 50 or more beneficiaries; or
 - (ii) if the trustee of the trust is also the trustee of one or more other trusts that satisfy paragraphs (a), (b), (c) and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(d) of this section—all those trusts together have a total of 50 or more beneficiaries.

45-290 Exceptions to exclusion of trust capital gains from beneficiary's instalment income

- (1) This section sets out cases where paragraph (b) of the definition of *your assessable income from the trust for the last income year* in subsection 45-280(2) does *not* apply.
- (2) It does not apply in the case of:
 - (a) a *complying approved deposit fund or a *non-complying approved deposit fund for the income year that is or includes the current period; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund for that year; or
 - (c) a *pooled superannuation trust for that year; or
 - (d) an *FHSA trust for that year.
- (3) It does not apply in the case of a *life insurance company to the extent that the share of the trust's net income is included in the *complying superannuation/FHSA class of its taxable income for the income year that is or includes the current period.

Subdivision 45-J—How Commissioner works out your instalment rate and notional tax

Table of sections

45-320	Working out instalment rate
45-325	Working out your <i>notional tax</i>
45-330	Working out your <i>adjusted taxable income</i>
45-335	Working out your <i>adjusted withholding income</i>
45-340	<i>Adjusted tax</i> on adjusted taxable income or on adjusted withholding income

45-320 Working out instalment rate

- (1) Except as provided by section 45-775, an instalment rate that the Commissioner gives you must be the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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$$\frac{\text{Your *notional tax}}{\text{Base assessment instalment income}} \times 100$$

However, the instalment rate must be a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

base assessment instalment income means so much of your assessable income, as worked out for the purposes of the *base assessment, as the Commissioner determines is *instalment income for the *base year.

- (3) The **base assessment** is the latest assessment for your most recent income year for which an assessment has been made. However, if the Commissioner is satisfied that there is a later income year for which you do not have a taxable income, the **base assessment** is the latest return or other information from which an assessment for that income year would have been made.
- (4) The **base year** is the income year to which the *base assessment relates.
- (5) When the Commissioner gives you the instalment rate, he or she must also notify you of the amount of your *notional tax, as worked out for the purposes of working out the instalment rate.
- (6) The Commissioner may incorporate notice of the instalment rate and the amount of your *notional tax in notice of your assessment.

45-325 Working out your *notional tax*

Notional tax if you have no withholding income

- (1) Your **notional tax** is your *adjusted tax (worked out under section 45-340) on your *adjusted taxable income (worked out under section 45-330) for the *base year.

Notional tax if you have no-TFN contributions income

- (1A) In working out the **notional tax** of a *complying superannuation fund, *non-complying superannuation fund or *RSA provider for the *base year, assume that the entity had no *no-TFN contributions income for the base year and that the entity was not

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

entitled to a *tax offset for the base year under Subdivision 295-J of the *Income Tax Assessment Act 1997*.

Notional tax if you have withholding income

- (2) However, your **notional tax** (as worked out under subsection (1)) is reduced if your assessable income for the *base assessment includes amounts in respect of *withholding payments (except *non-quotation withholding payments).
- (3) It is reduced (but not below nil) by your *adjusted tax (worked out under section 45-340) on your *adjusted withholding income (worked out under section 45-335) for the *base year.

Commissioner may take into account effect of the law, as applying to income years after base year

- (4) For the purposes of working out your *notional tax, the Commissioner may work out an amount as if provisions of an Act or regulations, as they may reasonably be expected to apply for the purposes of your assessment for a later income year, had applied for the purposes of the *base assessment.

Commissioner may take into account proposed changes to the law so as to reduce instalment rate

- (5) For the purposes of working out your *notional tax, the Commissioner may work out an amount as if provisions of an Act or regulations that, in the Commissioner's opinion, are likely to be enacted or made had applied for the purposes of the *base assessment. But the Commissioner may do so only if, as a result, the instalment rate given to you is reduced.
- (6) If the *base year is the income year immediately preceding the income year in which 1 July 2000 occurred, subsections (4) and (5) apply for the purpose of working out the *base assessment instalment income of a *life insurance company in the same way as they apply for the purpose of working out such a company's *notional tax.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-330 Working out your *adjusted taxable income*

- (1) Your ***adjusted taxable income*** for the *base year is your total assessable income for the *base assessment, reduced by:
- (a) any *net capital gain included in that assessable income; and
 - (b) your deductions for the base year (except *tax losses), as used in making that assessment; and
 - (c) the amount of any tax loss, to the extent that it is *unutilised at the end of the base year.

Exception: superannuation entities and net capital gains

- (2) Paragraph (1)(a) does not apply in the case of:
- (a) a *complying approved deposit fund or a *non-complying approved deposit fund for the *base year; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund for that year; or
 - (c) a *pooled superannuation trust for that year; or
 - (d) an *FHSA trust for that year.

Special rule for some entities

- (2A) If an entity:
- (a) has *tax losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; or
 - (b) is a *corporate tax entity at any time during the *base year; the ***adjusted taxable income*** of the entity for the base year is worked out under subsection (1) as if paragraph (1)(c) were replaced by the following provision:
 - (c) the lesser of the following amounts:
 - (i) the amount of any tax loss, to the extent that it is *unutilised at the end of the base year;
 - (ii) the amount of the deductions for tax losses used in making your *base assessment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Amounts assessable under Subdivision 250-E of the Income Tax Assessment Act 1997

- (2AA) To avoid doubt, paragraph (1)(a) does not apply to a *net capital gain that is included in your assessable income under Subdivision 250-E of the *Income Tax Assessment Act 1997*.

Special rule for life insurance companies

- (3) The **adjusted taxable income** of a *life insurance company for the *base year is worked out as follows:

Method statement

- Step 1. Recalculate the taxable income of the *ordinary class for the *base assessment on the basis that it did not include any *net capital gain.
- Step 2. Add to the step 1 result the deductions for *tax losses of the *ordinary class that were used in making the *base assessment.
- Step 3. Reduce the step 2 result by the lesser of the following amounts:
- (a) the amount of any *tax losses of the *ordinary class, to the extent that they are *unutilised at the end of the *base year;
 - (b) deductions for tax losses of the ordinary class that were used in making the *base assessment.
- Step 4. Add to the step 3 result the taxable income of the *complying superannuation/FHSA class for the *base assessment.
- Step 5. Add to the step 4 result the deductions for *tax losses of the *complying superannuation/FHSA class that were used in making the *base assessment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Step 6. Reduce the step 5 result by the lesser of the following amounts:

- (a) the amount of any *tax losses of the *complying superannuation/FHSA class, to the extent that they are *unutilised at the end of the *base year;
- (b) deductions for tax losses of the complying superannuation/FHSA class that were used in making the *base assessment.

The result of this step is the *adjusted taxable income* of the company for the *base year.

45-335 Working out your *adjusted withholding income*

Your *adjusted withholding income* for the *base year is:

- the total of the amounts included in your assessable income for the *base assessment in respect of *withholding payments (except *non-quotation withholding payments);

reduced by:

- your deductions for that year, as used in making that assessment, to the extent that they reasonably relate to those amounts.

45-340 *Adjusted tax on adjusted taxable income or on adjusted withholding income*

Your *adjusted tax* on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out as follows:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Method statement

Step 1. The income tax payable on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out disregarding any *tax offset under:

- (a) Subdivision 61-G of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or
- (b) Subdivision 61-IA of the *Income Tax Assessment Act 1997* (the child care tax offset); or
- (d) Subdivision 61-K of the *Income Tax Assessment Act 1997* (the mature age worker tax offset); or
- (da) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); or
- (db) Subdivision 61-M of the *Income Tax Assessment Act 1997* (the education expenses tax offset); or
- (dc) Division 160 of the *Income Tax Assessment Act 1997* (the loss carry back tax offset);
- (e) section 205-70 of the *Income Tax Assessment Act 1997* (the tax offset for *franking deficit tax liabilities); or
- (f) section 159N of the *Income Tax Assessment Act 1936* (the tax offset for certain low income earners); or
- (g) section 290-230 of the *Income Tax Assessment Act 1997* (the tax offset for superannuation contributions made for a spouse).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- Step 2. The *Medicare levy payable on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out disregarding sections 8B, 8C, 8D, 8E, 8F and 8G of the *Medicare Levy Act 1986* (which increase Medicare levy in certain cases).
- Step 3. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated HELP debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.
- Step 3A. The amount (if any) that you would have been liable to pay for the *base year by way of an *FS assessment debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.
- Step 4. The results of steps 1, 2, 3 and 3A are added together. The result is your ***adjusted tax*** on your *adjusted taxable income, or on your *adjusted withholding income.

Subdivision 45-K—How Commissioner works out your benchmark instalment rate and benchmark tax

Table of sections

45-355	When Commissioner works out benchmark instalment rate and benchmark tax
45-360	How Commissioner works out <i>benchmark instalment rate</i>
45-365	Working out your <i>benchmark tax</i>
45-370	Working out your <i>adjusted assessed taxable income</i> for the variation year
45-375	<i>Adjusted assessed tax</i> on adjusted assessed taxable income

45-355 When Commissioner works out benchmark instalment rate and benchmark tax

- (1) The Commissioner may work out your *benchmark instalment rate for an income year (the ***variation year***) if, under section 45-205, you choose an instalment rate to work out the amount of your instalment for an *instalment quarter in that year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (1A) The Commissioner may work out your **benchmark tax* for an income year (the *variation year*) if, under paragraph 45-112(1)(b) or (c), the amount of your instalment for an **instalment quarter* in an income year is worked out on the basis of your estimate of your **benchmark tax* for that income year.
- (2) The Commissioner may work out your **benchmark tax* for an income year (the *variation year*) if, under paragraph 45-115(1)(c), you estimate the amount of your annual instalment for that year.

45-360 How Commissioner works out *benchmark instalment rate*

- (1) Your *benchmark instalment rate* for the variation year is the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your } * \text{benchmark tax}}{\text{Variation year instalment income}} \times 100$$

However, your *benchmark instalment rate* is a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

variation year instalment income means so much of your assessable income for the variation year as the Commissioner determines is **instalment income* for that year.

45-365 Working out your *benchmark tax*

Benchmark tax if you had no withholding income

- (1) Your *benchmark tax* is your **adjusted assessed tax* (worked out under section 45-375) on your **adjusted assessed taxable income* (worked out under section 45-370) for the variation year.

Benchmark tax if you have no-TFN contributions income

- (1A) In working out the *benchmark tax* of a **complying superannuation fund*, **non-complying superannuation fund* or **RSA provider* for the variation year, assume that the entity had no **no-TFN contributions income* for the variation year and that the entity was

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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not entitled to a *tax offset for the variation year under Subdivision 295-J of the *Income Tax Assessment Act 1997*.

Benchmark tax if you had withholding income

- (2) However, your **benchmark tax** (as worked out under subsection (1)) is reduced if your assessable income for the variation year includes amounts in respect of *withholding payments.
- (3) It is reduced (but not below nil) by the sum of:
 - (a) the total amount of the credits to which you are entitled for the variation year under section 18-15 (for amounts withheld from withholding payments made to you during the variation year); and
 - (b) the total amount of the credits to which you are entitled for the variation year under section 18-27 (for amounts paid under Division 13 in respect of amounts included in your assessable income under section 86-15 of the *Income Tax Assessment Act 1997*).

45-370 Working out your *adjusted assessed taxable income* for the variation year

- (1) Your ***adjusted assessed taxable income*** for the variation year is your taxable income for the year, reduced by any *net capital gain included in your assessable income for the year.

Exception: superannuation entities and net capital gains

- (2) In working out the ***adjusted assessed taxable income***, taxable income is not reduced by any *net capital gain in the case of:
 - (a) a *complying approved deposit fund or a *non-complying approved deposit fund for the variation year; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund for the variation year; or
 - (c) a *pooled superannuation trust for the variation year; or
 - (d) an *FHSA trust for the variation year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Special rule for life insurance companies

- (3) The **adjusted assessed taxable income** of a *life insurance company for the variation year is worked out as follows:

Method statement

- Step 1. Recalculate the *ordinary class of the taxable income for the variation year on the basis that the assessable income that relates to the class did not include any *net capital gain.
- Step 2. Add to the step 1 result the *complying superannuation/FHSA class of the taxable income for the variation year.

45-375 Adjusted assessed tax on adjusted assessed taxable income

Your **adjusted assessed tax** on your *adjusted assessed taxable income for the variation year is worked out as follows:

Method statement

- Step 1. The income tax payable on your *adjusted assessed taxable income for the variation year is worked out disregarding any *tax offset under:
- (a) Subdivision 61-G of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or
 - (b) Subdivision 61-IA of the *Income Tax Assessment Act 1997* (the child care tax offset); or
 - (c) Subdivision 61-K of the *Income Tax Assessment Act 1997* (the mature age worker tax offset); or
 - (ca) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (cb) Subdivision 61-M of the *Income Tax Assessment Act 1997* (the education expenses tax offset); or
- (d) section 205-70 of the *Income Tax Assessment Act 1997* (the tax offset for *franking deficit tax liabilities); or
- (e) section 159N of the *Income Tax Assessment Act 1936* (the tax offset for certain low income earners); or
- (f) section 290-230 of the *Income Tax Assessment Act 1997* (the tax offset for superannuation contributions made for a spouse).

Step 2. The *Medicare levy payable on your *adjusted assessed taxable income for the variation year is worked out disregarding sections 8B, 8C, 8D, 8E, 8F and 8G of the *Medicare Levy Act 1986* (which increase Medicare levy in certain cases).

Step 3. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated HELP debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.

Step 3A. The amount (if any) that you would have been liable to pay for the variation year by way of an *FS assessment debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.

Step 4. The results of steps 1, 2, 3 and 3A are added together. The result is your ***adjusted assessed tax*** on your *adjusted assessed taxable income for the variation year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 45-L—How Commissioner works out amount of quarterly instalment on basis of GDP-adjusted notional tax

Table of sections

45-400	Working out amount of instalment—payers of 4 quarterly instalments
45-402	Working out amount of instalment—payers of 2 quarterly instalments
45-405	Working out your <i>GDP-adjusted notional tax</i>

45-400 Working out amount of instalment—payers of 4 quarterly instalments

Scope

- (1) This section applies if you are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year (the **current year**).

Working out amount of instalment

- (2) The amount of your instalment for that *instalment quarter which the Commissioner must work out and notify to you under paragraph 45-112(1)(a) is:
- (a) the amount worked out in accordance with the table if it is positive; or
 - (b) otherwise—nil.

Amount of quarterly instalment worked out on basis of GDP-adjusted notional tax

Item	If the instalment quarter is:	The amount of the instalment is:
1	the first in that income year for which you are liable to pay an instalment	25% of your *GDP-adjusted notional tax
2	the second in that income year for which you are liable to pay an instalment	50% of your *GDP-adjusted notional tax, reduced by the amount of your instalment for the earlier *instalment quarter in that income year

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Amount of quarterly instalment worked out on basis of GDP-adjusted notional tax

Item	If the instalment quarter is:	The amount of the instalment is:
3	the third in that income year for which you are liable to pay an instalment	75% of your *GDP-adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year
4	the fourth in that income year for which you are liable to pay an instalment	100% of your *GDP-adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year

Note: Your instalments for earlier instalment quarters may have been worked out on a basis other than GDP-adjusted notional tax.

Amount reduced in circumstances specified by regulations

- (3) In the circumstances (if any) specified by the regulations, the amount worked out in accordance with the table in subsection (2) is reduced by the amount worked out under the regulations.
- (4) Without limiting subsection (3), the regulations may specify circumstances by:
 - (a) specifying the particular *instalment quarter to which the reduction applies; or
 - (b) specifying the kind of payers to whom the reduction applies.
- (5) In working out, under subsection (2), the amount of your instalment for an *instalment quarter in an income year, assume that there had not been any reductions under subsection (3) for earlier instalment quarters in that year.

45-402 Working out amount of instalment—payers of 2 quarterly instalments

- (1) This section applies if you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year (the *current year*).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) If you are liable to pay an instalment for that *instalment quarter, the amount of that instalment which the Commissioner must work out and notify to you under paragraph 45-112(1)(a) is:
- (a) the amount worked out in accordance with this section if it is positive; or
 - (b) otherwise—nil.

Amount of instalment

- (3) Subject to subsections (4) to (6), the amount of that instalment is worked out in accordance with the following table:

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
1	the third *instalment quarter in the income year	75% of your *GDP-adjusted notional tax
2	the fourth *instalment quarter in the income year	100% of your *GDP-adjusted notional tax, reduced by your instalment for earlier instalment quarter in that income year

You receive instalment rate for the first time in second quarter

- (4) If the Commissioner gives you an instalment rate for the first time during the second *instalment quarter in that income year, the amount of the instalment is worked out in accordance with the following table:

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
1	the third *instalment quarter in the income year	50% of your *GDP-adjusted notional tax
2	the fourth *instalment quarter in the income year	75% of your *GDP-adjusted notional tax, reduced by your instalment for the earlier instalment quarter in that income year

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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You receive instalment rate for the first time in third quarter

- (5) If the Commissioner first gives you an instalment rate during the third *instalment quarter in that income year, the amount of the instalment is worked out in accordance with the following table:

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
1	the third *instalment quarter in the income year	25% of your *GDP-adjusted notional tax
2	the fourth *instalment quarter in the income year	50% of your *GDP-adjusted notional tax, reduced by your instalment for the earlier instalment quarter in that income year

You receive instalment rate for the first time in fourth quarter

- (6) If the Commissioner first gives you an instalment rate during the fourth *instalment quarter in that income year, the amount of the instalment must be equal to 25% of your *GDP-adjusted notional tax.

45-405 Working out your *GDP-adjusted notional tax*

- (1) Except as provided by section 45-775, your ***GDP-adjusted notional tax*** is worked out in the same way as your *notional tax would be worked out for the purposes of working out an instalment rate if that instalment rate were to be given to you at the same time as notice of the amount of the instalment referred to in section 45-400 or 45-402 (as appropriate).
- (2) However, for the purposes of subsection (1):
- (a) your *adjusted taxable income for the *base year; and
 - (b) your *adjusted withholding income (if any) for the *base year;
- are each increased in accordance with the formula:
- $$\text{Original amount} \times (1 + \text{GDP adjustment})$$

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) For the purposes of the formula in subsection (2):

original amount means the amount that, apart from subsection (2), would be your *adjusted taxable income for the *base year, or your *adjusted withholding income for the *base year, as appropriate.

GDP adjustment means:

- (a) if the current year is the 2009-10 income year—2%; or
- (aa) if the current year is the 2011-12 income year—4%; or
- (b) otherwise:
 - (i) the percentage (rounded to the nearest whole number, rounding down a number ending in .5) worked out using the following formula; or
 - (ii) if the percentage worked out using the formula is negative—0%:

$$\left(100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}} \right) - 100$$

Note 1: Paragraph (a) will be repealed on 1 July 2014: see Part 2 of Schedule 1 to the *Tax Laws Amendment (2009 Measures No. 3) Act 2009*.

Note 2: Paragraph (aa) will be repealed on 1 July 2016: see Part 2 of Schedule 1 to the *Tax Laws Amendment (2011 Measures No. 4) Act 2011*.

- (4) For the purposes of the formula in subsection (3):

sum of GDP amounts (current year) means the sum of the *GDP amounts, for the *quarters in the last calendar year (the **later calendar year**) ending at least 3 months before the start of the current year, specified in the document referred to in subsection (6).

sum of GDP amounts (previous year) means the sum of the *GDP amounts, for the *quarters in the calendar year (the **earlier calendar year**) before the later calendar year, specified in the document referred to in subsection (6).

- (5) The **GDP amount** for a *quarter is the amount published by the Australian Statistician as the original gross domestic product at current prices for that quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-410

- (6) In a case covered by paragraph (b) of the definition of **GDP adjustment** in subsection (3), the **GDP adjustment** must be worked out on the basis of the first document that:
- (a) is published by the Australian Statistician after the end of the later calendar year; and
 - (b) sets out the *GDP amounts for all the *quarters in both the later calendar year and the earlier calendar year.
- (7) To avoid doubt, subsections 45-325(4) and (5) also have effect for the purposes of working out your *GDP-adjusted notional tax.

Subdivision 45-M—How amount of quarterly instalment is worked out on basis of your estimate of your benchmark tax

Table of sections

45-410	Working out amount of instalment—payers of 4 quarterly instalments
45-412	Working out amount of instalment—payers of 2 quarterly instalments
45-415	Estimating your benchmark tax
45-420	Credit in certain cases where amount of instalment is nil

45-410 Working out amount of instalment—payers of 4 quarterly instalments

- (1A) This section applies if you are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year (the **current year**).
- (1) For the purposes of paragraph 45-112(1)(b) or (c), the amount of your instalment for that *instalment quarter in an income year is:
- (a) the amount worked out, in accordance with this section, on the basis of the estimate of your *benchmark tax for that income year that section 45-415 requires to be used, if that amount is positive; or
 - (b) otherwise—nil.

Note: If the amount is negative, you can claim a credit under section 45-420.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

First instalment quarter

- (2) If the *instalment quarter is the first in that income year for which you are liable to pay an instalment, the amount is 25% of the estimate of your *benchmark tax.

Second instalment quarter

- (3) If the *instalment quarter is the second in that income year for which you are liable to pay an instalment, the amount is worked out by subtracting:
- the amount of your instalment under section 45-112 for the earlier *instalment quarter in that income year;
- from:
- 50% of the estimate of your *benchmark tax.

Third instalment quarter

- (4) If the *instalment quarter is the third in that income year for which you are liable to pay an instalment, the amount is worked out using this method statement.

Method statement

- Step 1. The total of your instalments under section 45-112 for earlier *instalment quarters in that income year is subtracted from 75% of the estimate of your *benchmark tax.
- Step 2. If you were entitled to claim a credit under section 45-420 for the second of those earlier *instalment quarters, the amount of the credit is added to the step 1 amount.

Fourth instalment quarter

- (5) If the *instalment quarter is the fourth in that income year for which you are liable to pay an instalment, the amount is worked out using this method statement.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-412

Method statement

- Step 1. The total of your instalments under section 45-112 for earlier *instalment quarters in that income year is subtracted from the estimate of your *benchmark tax.
- Step 2. For each credit that you were entitled to claim under section 45-420 for any of those earlier *instalment quarters, the amount of the credit is added to the step 1 amount.

45-412 Working out amount of instalment—payers of 2 quarterly instalments

- (1) This section applies if you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year.
- (2) If you are liable to pay an instalment for that quarter, the amount of that instalment for the purposes of paragraph 45-112(1)(b) or (c) is:
 - (a) the amount worked out, in accordance with this section, on the basis of the estimate of your *benchmark tax for that income year that section 45-415 requires to be used, if that amount is positive; or
 - (b) otherwise—nil.

Note: If the amount is negative, you can claim a credit under section 45-420.

Instalment for third quarter

- (3) Subject to subsections (5) to (9), the amount of the instalment for the third *instalment quarter in that year is 75% of the estimate of your *benchmark tax.

Instalment for fourth quarter

- (4) Subject to subsections (5) to (9), the amount of the instalment for the fourth *instalment quarter in that year is worked out by subtracting:
 - (a) the amount of your instalment for the earlier instalment quarter in that year;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

from:

- (b) the estimate of your *benchmark tax.

You receive instalment rate for the first time in second quarter

- (5) If the Commissioner gives you an instalment rate for the first time during the second *instalment quarter in the income year, the amount of the instalment for the third *instalment quarter in that year is 50% of the estimate of your *benchmark tax.
- (6) If the Commissioner gives you an instalment rate for the first time during the second *instalment quarter in the income year, the amount of the instalment for the fourth instalment quarter in that year is worked out by subtracting:
 - (a) the amount of your instalment for the earlier instalment quarter in that year;

from:

- (b) 75% of the estimate of your *benchmark tax.

You receive instalment rate for the first time in third quarter

- (7) If the Commissioner gives you an instalment rate for the first time during the third *instalment quarter in the income year, the amount of the instalment for the third instalment quarter in that year is 25% of the estimate of your *benchmark tax.
- (8) If the Commissioner gives you an instalment rate for the first time during the third *instalment quarter in the income year, the amount of the instalment for the fourth instalment quarter in that year is worked out by subtracting:
 - (a) the amount of your instalment for the earlier instalment quarter in that year;

from:

- (b) 50% of the estimate of your *benchmark tax.

You receive instalment rate for the first time in fourth quarter

- (9) If the Commissioner gives you an instalment rate for the first time during the fourth *instalment quarter in the income year, the amount of the instalment for that quarter is 25% of the estimate of your *benchmark tax.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-415

45-415 Estimating your benchmark tax

- (1) If you choose under paragraph 45-112(1)(b) to work out the amount of your instalment for an *instalment quarter in an income year on the basis of your estimate of your *benchmark tax for that income year, you must make the estimate on or before the day on which the instalment is due (disregarding subsection 45-112(3)).
- (2) Having done so, you must use that estimate to work out the amount of that instalment. (You cannot later make another estimate for working out that amount.)

Note: If your estimate leads you to pay an instalment that is too low, you may be liable to general interest charge under section 45-232.

- (3) The Commissioner must also use that estimate to work out under this Subdivision the amount of each instalment:
 - (a) that you are liable to pay for a later *instalment quarter in that income year; and
 - (b) whose amount he or she must notify to you under paragraph 45-112(1)(c);

unless a later application of this subsection requires him or her to use a later estimate you make under subsection (1) of this section.

Note: This means that if an estimate you have made is not appropriate for a later instalment quarter in the same income year, you should choose under paragraph 45-112(1)(b) to work out the amount of your instalment for that later quarter on the basis of a new estimate under this section. If the instalment that the Commissioner works out on the basis of the earlier estimate is too low, you may be liable to general interest charge under section 45-232.

45-420 Credit in certain cases where amount of instalment is nil

- (1) You are entitled to claim a credit if the amount of your instalment for an *instalment quarter (the **current quarter**) in an income year is nil because the amount worked out for the current quarter in accordance with section 45-410 or 45-412 (as appropriate) is negative. The amount of the credit is equal to that amount, expressed as a positive amount.
- (2) A claim for a credit must be made in the *approved form on or before the day on which the instalment for the current quarter is due.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: How the credit is applied is set out in Division 3 of Part IIB.

Subdivision 45-N—How this Part applies to the trustee of a trust

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- 45-525 When Commissioner works out benchmark instalment rate and benchmark tax
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- 45-535 Working out your *benchmark tax*

Trustees to whom this Part applies

45-450 Trustees to whom a single instalment rate is given

- (1) This Part applies to a trustee covered by any of items 4 to 8, and 12 and 13, of the table in section 9-1 of the *Income Tax Assessment Act 1997*.
- (2) Such a trustee is called a *single-rate trustee*.
- (3) This Part applies to the trustee of a trust that is a *corporate unit trust, or a *public trading trust, for an income year as if the trustee

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-455

had a taxable income for the income year equal to the net income of the trust for the income year.

45-455 Trustees to whom several instalment rates are given

Trustee previously assessed in respect of beneficiary

- (1) This Part also applies for an income year (the **current year**), to the trustee of a trust, in respect of a beneficiary of the trust, if for a previous income year the trustee of the trust was liable to be assessed, and to pay tax, under subsection 98(1) or (2) of the *Income Tax Assessment Act 1936* in respect of that beneficiary.
- (2) However, this Part does not apply for the current year to the trustee in respect of that beneficiary if:
 - (a) for that previous income year the trustee was liable to be assessed, and to pay tax, under subsection 98(1) of the *Income Tax Assessment Act 1936* in respect of that beneficiary; and
 - (b) that beneficiary will no longer be under a legal disability, or it is reasonable to expect that he or she will no longer be under a legal disability, at the end of the current year.

Trustee previously assessed under section 99 or 99A

- (3) This Part also applies for an income year to the trustee of a trust if for a previous income year the trustee was liable to be assessed, and to pay tax, under section 99 or 99A of the *Income Tax Assessment Act 1936*.

Multiple applications of this Part to the same trustee for the same income year

- (4) The application of this Part for an income year, to the trustee of a trust, in respect of a beneficiary of the trust, because of subsection (1), is distinct from, and additional to, each of the following:
 - (a) the application of this Part for that income year, to the trustee of the trust, in respect of another beneficiary;
 - (b) the application of this Part for that income year, to the trustee of the trust, because of subsection (3);

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) the application of this Part for that income year to a beneficiary of the trust.
- (5) The application of this Part for an income year, to the trustee of a trust, because of subsection (3), is distinct from, and additional to, each of the following:
 - (a) the application of this Part for that income year, to the trustee of the trust, in respect of a beneficiary of the trust, because of subsection (1);
 - (b) the application of this Part for that income year to a beneficiary of the trust.
- (6) A **multi-rate trustee** is a trustee to whom this Part applies because of this section.

45-460 Rest of Subdivision applies only to multi-rate trustees

The rest of this Subdivision applies to you if, and only if, you are a ^{*}multi-rate trustee. (It applies instead of Subdivisions 45-J and 45-K.)

Note: Except as provided in the rest of this Subdivision or elsewhere, this Part applies according to its terms to a multi-rate trustee. For example, a multi-rate trustee can become an annual payer under Subdivision 45-E.

45-465 Meaning of *instalment income*

Your **instalment income** for a period is the whole of the trust's ^{*}instalment income for that period.

45-468 Multi-rate trustee may pay quarterly instalments

Subdivision 45-D (about quarterly payers) applies to you in the same way as it applies to an individual.

Note: This means that a multi-rate trustee may pay instalments on the basis of GDP-adjusted notional tax if the trustee otherwise satisfies the relevant test that applies to an individual.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-470

How Commissioner works out instalment rate and notional tax for a multi-rate trustee

45-470 Working out instalment rate

- (1) An instalment rate that the Commissioner gives you must be the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your *notional tax}}{\text{Base assessment instalment income}} \times 100$$

However, the instalment rate must be a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

base assessment instalment income means so much of the assessable income of the trust, as worked out for the purposes of the *base assessment, as the Commissioner determines is *instalment income of the trust for the *base year.

- (3) The **base assessment** is the latest assessment for the most recent income year for which an assessment has been made of the tax payable by you:

- (a) under subsection 98(1) or (2) of the *Income Tax Assessment Act 1936* in respect of the same beneficiary; or
- (b) under section 99 or 99A of the *Income Tax Assessment Act 1936*;

as appropriate.

- (4) However, if the Commissioner is satisfied that there is a later income year for which no tax is payable as mentioned in subsection (3), the **base assessment** is the latest return or other information from which an assessment of tax so payable for that income year would have been made.

- (5) The **base year** is the income year to which the *base assessment relates.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-473 Commissioner must notify you of notional tax

- (1) When the Commissioner gives you the instalment rate, he or she must also notify you of the amount of your *notional tax, as worked out for the purposes of working out the instalment rate.
- (2) The Commissioner may incorporate notice of the instalment rate and the amount of your *notional tax in notice of your assessment.

45-475 Working out your *notional tax*

Notional tax if no withholding income

- (1) Your ***notional tax*** is your *adjusted tax (worked out under section 45-340) on your *adjusted taxable income (worked out under section 45-480) for the *base year.

Notional tax if trust has withholding income

- (2) However, your ***notional tax*** (as worked out under subsection (1)) is reduced if the trust's assessable income for the *base assessment includes amounts in respect of *withholding payments (except *non-quotation withholding payments).
- (3) It is reduced (but not below nil) by your *adjusted tax (worked out under section 45-340) on your *adjusted withholding income (worked out under section 45-485) for the *base year.

Commissioner may take into account actual and proposed changes to the law

- (4) Subsections 45-325(4) and (5) apply for the purposes of working out your *notional tax under this section.

45-480 Working out your *adjusted taxable income*

- (1) Your ***adjusted taxable income*** for the *base year is worked out using the formula:

$$\begin{array}{c} \text{Adjusted net income} \\ \text{of the trust} \end{array} \times \frac{\text{Relevant share}}{\text{Reduced net income of the trust}}$$

- (2) For the purposes of the formula in subsection (1):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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adjusted net income of the trust means the net income of the trust, as worked out for the purposes of the *base assessment and:

- (a) reduced by any *net capital gain included in the trust's assessable income as so worked out; and
- (b) increased by any deductions for *tax losses that were made in so working out that net income; and
- (c) reduced by the amount of any tax loss, to the extent that it is *unutilised at the end of the *base year.

reduced net income of the trust means the net income of the trust, as worked out for the purposes of the *base assessment and reduced by any *net capital gain included in the trust's assessable income as so worked out.

relevant share means the *reduced beneficiary's share, or the *reduced no beneficiary's share, as appropriate, of the net income of the trust, as worked out for the purposes of the *base assessment.

45-483 Meaning of reduced beneficiary's share and reduced no beneficiary's share

- (1) If the trustee of a trust is liable to be assessed, and to pay tax, for an income year under subsection 98(1) or (2) of the *Income Tax Assessment Act 1936* in respect of a particular beneficiary, the ***reduced beneficiary's share*** of the net income is the amount on which the trustee is so liable to be assessed and to pay tax, except so much of that amount as is attributable to a *net capital gain included in the trust's assessable income for that income year.
- (2) If the trustee of a trust is liable to be assessed, and to pay tax, for an income year under section 99 or 99A of the *Income Tax Assessment Act 1936*, the ***reduced no beneficiary's share*** of the net income is the amount on which the trustee is so liable to be assessed and to pay tax, except so much of that amount as is attributable to a *capital gain made by the trust during that income year.

45-485 Working out your adjusted withholding income

- (1) Your ***adjusted withholding income*** for the *base year is worked out using the formula:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

$$\frac{\text{Net withholding income of the trust}}{\text{Reduced net income of the trust}} \times \text{Relevant share}$$

(2) For the purposes of the formula in subsection (1):

net withholding income of the trust means:

- the total of the amounts included in the trust's assessable income for the *base assessment in respect of *withholding payments (except *non-quotation withholding payments);

reduced by:

- the trust's deductions for that year, as used in making that assessment, to the extent that they reasonably relate to those amounts.

reduced net income of the trust has the meaning given by subsection 45-480(2).

relevant share has the meaning given by subsection 45-480(2).

How Commissioner works out benchmark instalment rate and benchmark tax for a multi-rate trustee

45-525 When Commissioner works out benchmark instalment rate and benchmark tax

- (1) The Commissioner may work out your *benchmark instalment rate for an income year (the ***variation year***) if, under section 45-205, you choose an instalment rate to work out the amount of your instalment for an *instalment quarter in that year.
- (2) The Commissioner may work out your *benchmark tax for an income year (the ***variation year***) if, under paragraph 45-112(1)(b) or (c), the amount of your instalment for an *instalment quarter in an income year is worked out on the basis of your estimate of your *benchmark tax for that income year.
- (3) The Commissioner may work out your *benchmark tax for an income year (the ***variation year***) if, under paragraph 45-115(1)(c), you estimate the amount of your annual instalment for that year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-530 How Commissioner works out *benchmark instalment rate*

- (1) Your ***benchmark instalment rate*** for the variation year is the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your *benchmark tax}}{\text{Variation year instalment income}} \times 100$$

However, your ***benchmark instalment rate*** is a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

variation year instalment income means so much of the trust's assessable income for the variation year as the Commissioner determines is *instalment income for that year.

45-535 Working out your *benchmark tax*

Benchmark tax if no withholding income

- (1) Your ***benchmark tax*** is your *adjusted assessed tax (worked out under section 45-375) on the *reduced beneficiary's share, or the *reduced no beneficiary's share, as appropriate, of the net income of the trust for the variation year.

Benchmark tax if you had withholding income

- (2) However, your ***benchmark tax*** (as worked out under subsection (1)) is reduced if the trust's assessable income for the variation year includes amounts in respect of *withholding payments.
- (3) It is reduced (but not below nil) by the total amount of the credits to which you are entitled for the variation year under section 18-25 (for amounts withheld from the withholding payments).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 45-P—Anti-avoidance rules

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45-620	Amount on which GIC is payable, and period for which it is payable
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45-595 Object of this Subdivision

- (1) The object of this Subdivision is to penalise an entity whose ^{*}tax position, so far as it relates to ^{*}PAYG instalments (and related credits and ^{*}general interest charge), is altered by a ^{*}scheme that is inconsistent with:
 - (a) the purposes and objects of this Part ; or
 - (b) the purposes and objects of any relevant provisions of this Part;(whether those purposes and objects are stated expressly or not).
- (2) This Subdivision is *not* intended to apply to a straightforward use of structural features of this Part if that use is consistent with the purposes and objects mentioned in subsection (1).
- (3) This Subdivision is to be interpreted and applied accordingly.

45-597 Effect of Subdivision in relation to instalment months

This Subdivision has effect in relation to an ^{*}instalment month in the same way in which it has effect in relation to an ^{*}instalment quarter.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-600

45-600 General interest charge on tax benefit relating to instalments

- (1) You are liable to pay the *general interest charge under section 45-620 if:
- (a) you get a *tax benefit from a *scheme; and
 - (b) the tax benefit relates to a *component of your *tax position for an income year, and that component is covered by section 45-610; and
 - (c) having regard to the matters referred to in subsection (3), it would be concluded that an entity that entered into or carried out the scheme (or part of it) did so for the sole or dominant purpose of:
 - (i) an entity (whether you, that entity or another entity) getting one or more tax benefits from the scheme; or
 - (ii) 2 or more entities (whether or not including you or that entity) each getting one or more tax benefits from the scheme.
- (2) It does not matter:
- (a) whether or not you entered into or carried out the *scheme (or part of it); or
 - (b) whether the entity that entered into or carried out the scheme (or part of it) did so alone or together with one or more others; or
 - (c) whether the scheme (or any part of it) was entered into or carried out inside or outside Australia; or
 - (d) whether or not the *tax benefit you got is of the same kind as a tax benefit mentioned in paragraph (1)(c).

Matters to be considered in determining purpose of scheme

- (3) In considering an entity's purpose in entering into or carrying out a *scheme (or part of one), have regard to these matters:
- (a) the manner in which the scheme or part was entered into or carried out;
 - (b) the form and substance of the scheme, including:
 - (i) the legal rights and obligations involved in the scheme; and
 - (ii) the economic and commercial substance of the scheme;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) the purposes and objects of this Part and of any relevant provisions of this Part (whether those purposes and objects are stated expressly or not);
- (d) the timing of the scheme;
- (e) the period over which the scheme was entered into and carried out;
- (f) the effect that this Act would have in relation to the scheme apart from this Subdivision;
- (g) any change in your financial position that has resulted from the scheme, or may reasonably be expected to result from it;
- (h) any change that has resulted from the scheme, or may reasonably be expected to result from it, in the financial position of an entity that has or had a connection or dealing with you, whether the connection or dealing is or was of a family, business or other nature;
- (i) any other consequence for you, or for such an entity, of the scheme having been entered into or carried out;
- (j) the nature of the connection between you and such an entity, including the question whether the dealing is or was at *arm's length.

GIC is payable on each of 2 or more tax benefits

- (4) If you get 2 or more *tax benefits from the *scheme, this section has a separate application to each of them.

45-605 When do you get a *tax benefit* from a scheme?

- (1) This section describes how to work out whether you get a ***tax benefit*** from a *scheme and, if so, the amount of the tax benefit.
- (2) First, determine your actual *tax position for an income year (apart from this Subdivision).
- (3) Next, determine your *hypothetical tax position for the same income year (apart from this Subdivision).
- (4) Then compare each *component of the 2 positions. If the amount of that component of the actual *tax position is *lower* than the amount of that component of the *hypothetical tax position, the difference

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-610

between the 2 amounts is a ***tax benefit*** that you get from the
*scheme.

Note 1: The difference between the 2 amounts is *not* a tax benefit to the extent that it is attributable to certain things for which the income tax law expressly provides. See section 45-635.

Note 2: An entity may get 2 or more tax benefits from the same scheme. One reason is that the scheme may affect 2 or more components of the entity's tax position for an income year. Another reason is that the scheme may affect the tax position for 2 or more income years.

45-610 What is your *tax position* for an income year?

Your ***tax position*** for an income year consists of a number of ***components***. The table sets out each component, and how to work out the amount of the component.

Components of your tax position that relate to PAYG instalments and credits		
Item	Each of these is a <i>component</i> :	The amount of that component is:
1	Your instalment for each *instalment quarter in the income year is a <i>quarterly instalment component</i> .	The amount worked out as follows: (a) if you are liable to pay an instalment for that instalment quarter—the amount of the instalment; or (b) if for any reason you are not liable to pay an instalment for that instalment quarter—nil (even if you are an *annual payer or a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax); or (c) if you are entitled to claim a credit for that instalment quarter under section 45-420 (because the instalment for that quarter is to be worked out on the basis of your estimated benchmark tax)—the amount of the credit (expressed as a negative amount).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Components of your tax position that relate to PAYG instalments and credits		
Item	Each of these is a <i>component</i>:	The amount of that component is:
2	Your annual instalment for the income year is the <i>annual instalment component</i> .	The amount worked out as follows: (a) if you are liable to pay an annual instalment for the income year—the amount of the instalment; or (b) if for any reason you are not liable to pay an annual instalment for the income year—nil (even if you are a <i>*quarterly payer</i>).
3	A <i>variation credit component</i> is a credit arising under section 45-215 because the amount of your instalment for an <i>*instalment quarter</i> in the income year is to be worked out using an instalment rate you chose under section 45-205.	The amount worked out as follows: (a) if you are entitled to the credit—the amount of the credit (expressed as a negative amount); or (b) otherwise—nil.
4	A <i>variation GIC component</i> is the <i>*general interest charge</i> you are liable to pay under: (a) subsection 45-230(2) (varied instalment rate); or (b) subsection 45-232(2) (estimated benchmark tax); or (c) subsection 45-235(2) or (3) (annual instalment); because of how your instalment for an <i>*instalment quarter</i> in the income year, or for the income year, was worked out.	The amount worked out as follows: (a) if you are liable to pay the charge—the amount of the charge; or (b) otherwise—nil.

Example: A scheme results in X Pty Ltd being able to choose to be an annual payer for the 2000-01 income year.

The following table shows the actual tax position of X Pty Ltd for that year, and also its hypothetical tax position as defined in section 45-615. X Pty Ltd has got 4 tax benefits from the scheme: one for each of the 4 instalment quarters.

**For definition, see section 995-1 of the Income Tax Assessment Act 1997.*

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2000-01 income year		
For this component:	The amount of that component of the actual tax position is:	The amount of that component of the hypothetical tax position is:
Quarterly instalment component for first instalment quarter	nil	\$3,000
Quarterly instalment component for second instalment quarter	nil	\$4,000
Quarterly instalment component for third instalment quarter	nil	\$3,000
Quarterly instalment component for fourth instalment quarter	nil	\$2,000
Annual instalment component	\$12,000	nil

45-615 What is your *hypothetical tax position* for an income year?

Your *hypothetical tax position* for an income year is what would have been, or what could reasonably be expected to have been, your *tax position for the income year if the *scheme had not been entered into or carried out.

45-620 Amount on which GIC is payable, and period for which it is payable

- (1) You are liable to pay the *general interest charge on twice the *tax benefit mentioned in paragraph 45-600(1)(a).

Note 1: To the extent that you also got a tax detriment from the scheme, you get a credit: see section 45-625.

Note 2: In special circumstances the Commissioner can remit some or all of the general interest charge: see section 45-640.

- (2) You are liable to pay the charge for each day in the period that:
- (a) started at the beginning of the day by which your instalment for the period mentioned in the applicable item of the table in

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

section 45-610 was due to be paid, or would have been due to be paid if you had been liable to pay an instalment for that period; and

- (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (3) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (1). You must pay the charge within 14 days after the notice is given to you.
- (4) If any of the *general interest charge to which you are liable under subsection (1) remains unpaid at the end of the 14 days referred to in subsection (3), you are also liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

45-625 Credit if you also got a tax detriment from the scheme

- (1) You are entitled to a credit if:
 - (a) you are liable to pay *general interest charge under section 45-620 because you got one or more *tax benefits from the *scheme; and
 - (b) the Commissioner is satisfied that:
 - (i) you got a *tax detriment from the scheme; and
 - (ii) the tax detriment relates to a *component of your *tax position for an income year, and that component is covered by section 45-610.

(It does not matter whether that income year is the same as the one referred to in section 45-600.)

Note: How the credit is applied is set out in Division 3 of Part IIB.
- (2) The credit is equal to the *general interest charge on twice the amount of the *tax detriment for each day in the period that:
 - (a) started at the beginning of the day by which your instalment for the period mentioned in the item of the table in

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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section 45-610 that applies for the purposes of working out the amount of the tax detriment:

- (i) was due to be paid; or
 - (ii) would have been due to be paid if you had been liable to pay an instalment for that period; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (3) However, the credit cannot exceed the total *general interest charge you are liable to pay under section 45-620 because you got one or more *tax benefits from the *scheme.

Credit for each of 2 or more tax detriments

- (4) If you get 2 or more *tax detriments from the scheme, subsections (1) and (2) have a separate application to each of them. However, the total of the credits cannot exceed the total *general interest charge referred to in subsection (3).

45-630 When do you get a *tax detriment* from a scheme?

- (1) This section describes how to work out whether you get a ***tax detriment*** from a *scheme and, if so, the amount of the tax detriment.
- (2) First, determine your actual *tax position for an income year (apart from this Subdivision).
- (3) Next, determine your *hypothetical tax position for the same income year (apart from this Subdivision).
- (4) Then compare each *component of the 2 positions. If the amount of that component of the actual *tax position is *higher* than the amount of that component of the *hypothetical tax position, the difference between the 2 amounts is a ***tax detriment*** that you get from the *scheme.

Example: In the fact situation in the example in section 45-610, X Pty Ltd gets a tax detriment from the scheme for the annual instalment component of its tax position for the income year.

Note 1: The difference between the 2 amounts is *not* a tax detriment to the extent that it is attributable to certain things for which the income tax law expressly provides. See section 45-635.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note 2: An entity may get 2 or more tax detriments from the same scheme. One reason is that the scheme may affect 2 or more components of the entity's tax position for an income year. Another reason is that the scheme may affect the tax position for 2 or more income years.

45-635 No tax benefit or detriment results from choice for which income tax law expressly provides

Choice under the income tax law generally

- (1) The difference between the 2 amounts referred to in subsection 45-605(4) or 45-630(4) is *not* a *tax benefit or *tax detriment if there would have been no difference between the 2 amounts but for one or more matters covered by subsection (3).
- (2) The difference between the 2 amounts is *not* a *tax benefit or *tax detriment to the extent that the difference between the 2 amounts would have been less but for one or more matters covered by subsection (3).
- (3) This subsection covers:
 - (a) an entity making an agreement, choice, declaration, election or selection; or
 - (b) an entity giving a notice or exercising an option; for which this Act expressly provides. However, this subsection does *not* cover an entity doing such a thing under:
 - (c) Subdivision 126-B (about CGT roll-overs involving certain companies in the same wholly-owned group) of the *Income Tax Assessment Act 1997*; or
 - (d) Subdivision 170-B of that Act (about transferring a net capital loss between certain companies in the same wholly-owned group).

Matters excluded in applying subsection (1) or (2)

- (4) Subsection (1) or (2) does not apply to a matter covered by subsection (3) if an entity entered into or carried out the *scheme (or part of it) for the sole or dominant purpose of creating a circumstance or state of affairs whose existence is necessary for the entity referred to in subsection (3):
 - (a) to make the agreement, choice, declaration, election or selection; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(b) to give the notice or exercise the option.

Choice under some CGT provisions

- (5) The difference between the 2 amounts is *not* a *tax benefit or *tax detriment if:
- (a) there would have been no difference between the 2 amounts but for one or more matters covered by subsection (7); and
 - (b) the *scheme consisted wholly of that matter or those matters.
- (6) Also, the difference between the 2 amounts is *not* a *tax benefit or *tax detriment to the extent that the difference between the 2 amounts would have been less but for one or more matters covered by subsection (7), but only if the *scheme consisted wholly of that matter or those matters.
- (7) This subsection covers:
- (a) a choice made under Subdivision 126-B (about CGT roll-overs involving certain companies in the same wholly-owned group) of the *Income Tax Assessment Act 1997*; or
 - (b) an agreement made under Subdivision 170-B of that Act (about transferring a net capital loss between certain companies in the same wholly-owned group);

45-640 Commissioner may remit general interest charge in special cases

- (1) The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under section 45-620.
- (2) If the Commissioner does so, section 45-625 (about credits for tax detriments from schemes) applies, and is taken always to have applied, as if the remitted amount had never been payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 45-Q—General rules for consolidated groups

Guide to Subdivision 45-Q

45-700 What this Subdivision is about

This Subdivision allows the members of a consolidated group to be treated as a single entity for the purposes of Pay as you go (PAYG) instalments. Generally, the head company of the group is the entity liable to pay PAYG instalments.

The PAYG instalments provisions in this Part apply to the head company in much the same way as they apply to any other company. However, the operation of some of these provisions is modified by this Subdivision.

This Subdivision also contains special rules to deal with changes in the membership of the group.

Note 1: Subdivision 45-R contains special rules that apply to members of a consolidated group before they are treated as a single entity for the purposes of this Part. It also contains special rules that affect the operation of this Subdivision (see sections 45-880 and 45-885).

Note 2: Subdivision 45-S extends the operation of this Subdivision so that it can apply to members of a MEC group. It contains modifications of this Subdivision for the purposes of that extended operation.

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Application of Subdivision

45-703 Effect of this Subdivision and Subdivision 45-R in relation to monthly payers

- (1) If:
 - (a) a company is the *head company of a *consolidated group;
and
 - (b) the company is a *monthly payer;this Subdivision and Subdivision 45-R have effect in relation to the company as the head company of the group in respect of an *instalment month in the same way in which they have effect in relation to a company that is a *quarterly payer as the head company of a consolidated group in respect of an *instalment quarter.
- (2) If:
 - (a) an entity is a *subsidiary member of a *consolidated group;
and
 - (b) the entity is a *monthly payer;this Subdivision and Subdivision 45-R have effect in relation to the entity in respect of an *instalment month in the same way in which they have effect in relation to an entity that is a *quarterly payer in respect of an *instalment quarter.
- (3) However, those effects are subject to any modifications set out in those Subdivisions.
 - Note: Subdivision 45-S can also have effect in relation to a monthly payer because of the operation of this section and section 45-910.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-705 Application of Subdivision to head company

Period during which Subdivision applies to head company

- (1) Subject to sections 45-880 and 45-885, this Subdivision applies to a company as the *head company of a *consolidated group during the period:
- (a) starting at the start of the *instalment quarter of the company determined under subsection (2), (3) or (4); and
 - (b) ending:
 - (i) at the end of the instalment quarter of the company determined under paragraph (5)(a) or (b); or
 - (ii) just before the instalment quarter of the company determined under paragraph (5)(c) or (d).

When the period begins—initial head company instalment rate

- (2) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter under this subsection if, during that quarter, the Commissioner gives the company (as that head company) the *initial head company instalment rate.

Note: The operation of this subsection may be affected by section 45-885.

When the period begins—group created from MEC group

- (3) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter (the **starting quarter**) under this subsection if all of the following conditions are satisfied:
- (a) the consolidated group is *created from a *MEC group during the starting quarter;
 - (b) the company is the head company of the consolidated group when the consolidated group is created from the MEC group;
 - (c) either of the following applies:
 - (i) this Subdivision applied, in accordance with Subdivision 45-S, to the *provisional head company of the MEC group at the end of the previous instalment quarter;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) the Commissioner gives the *initial head company instalment rate to the provisional head company of the MEC group during the starting quarter.

Note: For the application of this Subdivision to a provisional head company of a MEC group: see section 45-915.

When the period begins—new head company

- (4) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter (the **starting quarter**) under this subsection if all of the following conditions are satisfied:
 - (a) the company is an interposed company mentioned in subsection 124-380(5) of the *Income Tax Assessment Act 1997*;
 - (b) the company chooses under that subsection that the consolidated group is to continue in existence at and after the completion time mentioned in that subsection;
 - (c) the completion time occurs during the starting quarter;
 - (d) one of the following subparagraphs applies:
 - (i) this Subdivision applied to the original company mentioned in that subsection (as the head company of the consolidated group) at the end of the previous instalment quarter;
 - (ii) the Commissioner gives the *initial head company instalment rate to the original company mentioned in that subsection (as the head company of the consolidated group) during the starting quarter;
 - (iii) the consolidated group is *created from a *MEC group during the starting quarter and this Subdivision applied to the *provisional head company of the MEC group at the end of the previous instalment quarter;
 - (iv) the consolidated group is created from a MEC group during the starting quarter and the Commissioner gives the initial head company instalment rate to the provisional head company of the MEC group during the starting quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

When the period begins—modified timing for head company that is monthly payer

- (4A) Subsection (4B) applies if:
- (a) apart from subsection (4B), this Subdivision starts to apply to a company as the *head company of a *consolidated group at a particular time because of the operation of subsection (2), (3) or (4); and
 - (b) the company is a *monthly payer; and
 - (c) the Commissioner gave the *initial head company instalment rate as mentioned in subsection (2), subparagraph (3)(c)(ii), subparagraph (4)(d)(ii) or subparagraph (4)(d)(iv) in an *instalment month.
- (4B) Treat subsection (2), (3) or (4) (as the case requires) as providing that this Subdivision starts to apply to the company as the *head company of the group at the start of the *next* *instalment month.

Note: For the application of this Subdivision to a monthly payer, see section 45-703.

When the period ends

- (5) This Subdivision stops applying to a company as the *head company of a *consolidated group at the earliest of the following times after the company becomes the head company:
- (a) the end of the *instalment quarter during which the consolidated group ceases to exist (other than because a *MEC group is *created from the consolidated group);
 - (b) the end of the instalment quarter during which the Commissioner is notified of the creation of a MEC group from the consolidated group if the MEC group is created during that instalment quarter;
 - (c) just before the instalment quarter during which the Commissioner is notified of the creation of a MEC group from the consolidated group if the MEC group was created before that instalment quarter;
 - (d) just before the instalment quarter that includes the completion time mentioned in subsection 124-380(5) of the *Income Tax Assessment Act 1997* where an interposed company mentioned in that subsection chooses under that

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-705

subsection that the consolidated group is to continue in existence.

Note: The operation of this subsection because of paragraph (a) may be affected by section 45-880.

- (6) For the purposes of subsection (5), the Commissioner is notified of the creation of a *MEC group from a *consolidated group when the Commissioner receives a notice of the consolidation of the MEC group under subsection 719-40(1) of the *Income Tax Assessment Act 1997*.
- (7) If this Subdivision stops applying to a company as the *head company of a *consolidated group just before an *instalment quarter under paragraph (5)(c), then, for the purposes of this Part, this Act has effect for the company and other *members of the group as if:
 - (a) the consolidated group had continued to exist until just before the start of that quarter; and
 - (b) the company were the head company of the group until just before the start of that quarter.
- (8) To avoid doubt, this Subdivision does not apply to a company as the *head company of a *consolidated group for any time at all if:
 - (a) subsection (2), (3) or (4), and subsection (5), would, apart from this subsection, apply to the company; but
 - (b) the time at which this Subdivision would stop applying to the company under subsection (5) is before the time at which this Subdivision would start to apply to the company under subsection (2), (3) or (4).
- (9) To avoid doubt, and apart from the operation of subsection (7), this Subdivision may apply to a company as the *head company of a *consolidated group at a time when the company is not in fact the head company of the group.

Note: An example of this is when an interposed company becomes the new head company of a consolidated group. Under this section and section 45-740, this Subdivision may start applying to the company as if it had already become the head company when it is not yet such a company.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Usual operation of this Part for consolidated group members

45-710 Single entity rule

If an entity is a *subsidiary member of a *consolidated group for any period during which this Subdivision applies to the *head company of the group:

- (a) that entity; and
- (b) any other subsidiary member of the group;

are taken for the purposes of this Part to be parts of that head company (rather than separate entities) during that period.

Note: That means, amongst other things, the head company would be liable to pay instalments for that period as if the subsidiary members were parts of the head company.

45-715 When instalments are due—modification of section 45-61

- (1) If:
 - (a) the *head company of a *consolidated group is liable to pay an instalment for an *instalment quarter; and
 - (b) this Subdivision applies to the head company during that quarter;then, despite subsection 45-61(2), the instalment is due on or before the 21st day of the month after the end of that quarter whether or not the head company is a *deferred BAS payer on that day.
- (2) Subsection (3) applies if section 45-703 applies to the *head company of the *consolidated group (because it is a *monthly payer).
- (3) Treat the reference in subsection (1) to subsection 45-61(2) as instead being a reference to subsection 45-67(2).

45-720 Head company cannot be an annual payer—modification of section 45-140

Despite any other provisions in this Part, the *head company of a *consolidated group cannot choose to be an *annual payer under section 45-140 while this Subdivision applies to the head company.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: You stop being an annual payer when this Subdivision starts applying to you as the head company of a consolidated group: see section 45-160.

Membership changes

45-740 Change of head company

Object

- (1) The object of this section (except subsection (8)) is to ensure that, for the purposes of this Part, when a company becomes the new *head company of a *consolidated group:
 - (a) the company inherits the history of the former head company of the group; and
 - (b) the history of the new head company is effectively ignored.
- (2) This section applies to a *head company of a *consolidated group if:
 - (a) the company is an interposed company mentioned in subsection 45-705(4) (an interposed company that chooses under subsection 124-380(5) of the *Income Tax Assessment Act 1997* that the consolidated group is to continue in existence at and after the completion time mentioned in that subsection); and
 - (b) the conditions in subsection 45-705(4) are satisfied in relation to the interposed company (whether or not this Subdivision applies to the company as the head company of the group for any period of time).
- (3) Everything that happened before the completion time in relation to the company (the ***original company***) that was the *head company of the *consolidated group immediately before the completion time:
 - (a) is taken to have happened in relation to the interposed company instead of in relation to the original company; and
 - (b) is taken to have happened in relation to the interposed company instead of what would (apart from this section) be taken to have happened in relation to the interposed company before the completion time;just as if, at all times before the completion time:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) the interposed company had been the original company; and
 - (d) the original company had been the interposed company.
- (4) To avoid doubt, subsection (3) also covers everything that, immediately before the completion time, was taken to have happened in relation to the original company because of:
- (a) section 701-1 of the *Income Tax Assessment Act 1997* (single entity rule); or
 - (b) section 701-5 of that Act (entry history rule); or
 - (c) section 703-75 of that Act (effects of an interposed company becoming the *head company of a *consolidated group); or
 - (d) section 719-90 of that Act (effects of a change of head company of a *MEC group); or
 - (e) section 45-710 in this Schedule (single entity rule for the purposes of this Part), including an application of that section under Subdivision 45-S in this Schedule; or
 - (f) this section; or
 - (g) section 45-920 in this Schedule (effects of a change of *provisional head company of a MEC group for the purposes of this Part); or
 - (h) one or more previous applications of any of the provisions covered by paragraphs (a) to (g).
- (5) In addition, and without affecting subsection (3):
- (a) an assessment of the original company for an income year that ends before the income year that includes the completion time; or
 - (b) an amendment of the assessment;
- is taken to be something that had happened to the interposed company, whether or not the assessment or amendment is made before the completion time.
- (6) This section has effect for the purposes of applying this Part to *members of the *consolidated group in relation to an *instalment quarter of the interposed company that ends after the completion time.

Note: An assessment mentioned in subsection (5) may therefore be taken to be the base assessment of the interposed company for the purposes of this Part.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-755

- (7) Subsections (1) to (6) are to be disregarded in applying section 45-705 (about the application of this Subdivision to a company as the *head company of a *consolidated group).

Note: For example, if the Commissioner has given an initial head company instalment rate to the original company during an earlier instalment quarter, the rate is not, despite this section, treated as if it had been given to the interposed company for the purposes of section 45-705. Subject to the other provisions in that section, this Subdivision therefore starts applying to the interposed company under subsection 45-705(4).

Special rule for the original company

- (8) A provision of this Part that applies on an entity becoming a *subsidiary member of a *consolidated group does not apply to the original company when it is taken to have become such a member at the completion time as a result of section 703-70 of the *Income Tax Assessment Act 1997*.

Note: Section 45-755 (the entry rule) therefore does not apply to the original company on the company becoming a subsidiary member of the consolidated group.

45-755 Entry rule (for an entity that becomes a subsidiary member of a consolidated group)

- (1) Despite any other provisions in this Part, an entity is liable to pay an instalment for an *instalment quarter or income year (as appropriate) during which the entity becomes a *subsidiary member of a *consolidated group if:
- (a) this Subdivision applies to the *head company of the group at any time during that quarter or year (as appropriate); and
 - (b) the entity would otherwise be liable to pay an instalment for that quarter or year (as appropriate) if it had not become a subsidiary member of the group; and
 - (c) the entity becomes a subsidiary member of the group on a day other than the first day of that quarter or the first day of that year (as appropriate).

Note: Under paragraph (b), this section could apply to an entity that, at the time of becoming a subsidiary member of the group, was not a subsidiary member of another consolidated group, or was a member of another consolidated group but this Subdivision did not apply to the head company of that other group at that time.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Modifications for a quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax

- (2) Subsections (3) and (4) apply to the entity if:
 - (a) the entity would have been a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of the *instalment quarter mentioned in subsection (1) if it had not become a *subsidiary member of the group; and
 - (b) the amount of the instalment payable by the entity for that quarter would have been worked out under paragraph 45-112(1)(b); and
 - (c) that quarter is not the fourth instalment quarter in an income year.
- (3) For the purposes of working out the amount of the instalment payable by the entity for that *instalment quarter, subsection 45-410(5) applies to the entity as if that quarter were the fourth instalment quarter in the income year for which the entity is liable to pay an instalment.
- (4) For the purposes of working out the *acceptable amount of the entity's instalment for that instalment quarter, subsection 45-232(3) applies to the entity as if that quarter were the fourth instalment quarter in the income year for which the entity is liable to pay an instalment.

45-760 Exit rule (for an entity that ceases to be a subsidiary member of a consolidated group)

- (1) This section applies to an entity if all of the following conditions are satisfied:
 - (a) the entity ceases to be a *subsidiary member of a *consolidated group during an *instalment quarter of the *head company of the group;
 - (b) this Subdivision applies to the head company of the group during that instalment quarter;
 - (c) the entity does not, at the time it ceases to be a subsidiary member of the group, become:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) a subsidiary member of another consolidated group the head company of which is one to which this Subdivision applies at that time; or
 - (ii) a member (other than the *provisional head company) of a *MEC group the provisional head company of which is one to which this Subdivision applies, in accordance with Subdivision 45-S, at that time;
 - (d) this Part applies to the entity under section 45-10.
- (2) This Part applies to the entity as if:
- (a) the Commissioner had given the entity an instalment rate equal to the most recent instalment rate given to the *head company mentioned in paragraph (1)(a) before the end of the *instalment quarter mentioned in that paragraph; and
 - (b) the entity were a *quarterly payer who pays on the basis of instalment income at the end of that instalment quarter, and of each subsequent instalment quarter, until:
 - (i) if the Commissioner first gives the entity an instalment rate worked out on the basis of the *base assessment covered by subsection (3) during the first instalment quarter of an income year—immediately before the end of that first instalment quarter; or
 - (ii) if that rate is given to the entity during any other instalment quarter of an income year—immediately after the end of the last instalment quarter of that year.
- (3) This section only covers the first *base assessment of the entity for an income year that is, or includes, a period after the entity ceases to be a *subsidiary member of the group.

45-775 Commissioner's power to work out different instalment rate or GDP-adjusted notional tax

- (1) This section applies if any of the following changes (the **membership change**) occurs in relation to a *consolidated group while this Subdivision applies to the *head company of the group:
- (a) an entity becomes a *subsidiary member of the group or a number of entities become subsidiary members of the group;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) an entity ceases to be a subsidiary member of the group or a number of entities cease to be subsidiary members of the group.
- (2) If the Commissioner, having regard to the object of this Part and the membership change, is of the opinion that it would be reasonable to do so, the Commissioner may work out:
 - (a) an instalment rate that is higher, or lower, than the most recent instalment rate given by the Commissioner to the *head company under section 45-15; or
 - (b) an amount of *GDP-adjusted notional tax that is higher, or lower, than the amount of GDP-adjusted notional tax worked out for the purposes of the most recent amount of instalment notified by the Commissioner to the head company under paragraph 45-112(1)(a).
- (3) The new instalment rate or amount of *GDP-adjusted notional tax must be a rate or amount that, in the opinion of the Commissioner, is reasonable having regard to the object of this Part and the membership change.

Note 1: Subdivision 45-J does not apply for the purpose of working out an instalment rate under this section.

Note 2: Section 45-405 does not apply for the purpose of working out an amount of GDP-adjusted notional tax under this section.

Additional applications of subsection (2)

- (4) If, after exercising the power in relation to the membership change under subsection (2) for the first time, and on the basis of an assessment (including an amendment) of the *head company for the income year in which the change occurs, or for an earlier year, the Commissioner has worked out:
 - (a) another instalment rate under section 45-320 for the company (whether or not the Commissioner has given that rate to the company); or
 - (b) another amount of *GDP-adjusted notional tax under section 45-405 for the company (whether or not the Commissioner has notified the company an amount of instalment based on that other amount);the Commissioner may again exercise the power under subsection (2) in relation to the membership change, as if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) the rate mentioned in paragraph (a) were the most recent instalment rate mentioned in paragraph (2)(a); and
 - (d) the amount of GDP-adjusted notional tax mentioned in paragraph (b) were the amount of GDP-adjusted notional tax worked out for the purposes of the most recent amount of instalment that is mentioned in paragraph (2)(b).
- (5) To avoid doubt, in relation to the membership change, the Commissioner:
 - (a) may exercise the power under subsection (2) by applying subsection (4) more than once; but
 - (b) must not exercise that power more than once in relation to a particular instalment rate mentioned in paragraph (4)(a) or a particular amount of *GDP-adjusted notional tax mentioned in paragraph (4)(b).

Subdivision 45-R—Special rules for consolidated groups

Guide to Subdivision 45-R

45-850 What this Subdivision is about

This Subdivision deals with the application of this Part to members of a consolidated group after the group has come into existence but before the members are treated as a single entity for the purposes of this Part.

This Subdivision also contains special rules in relation to the application of Subdivision 45-Q to members of a consolidated group in these circumstances:

- (a) a group whose members were treated as a single entity under that Subdivision (a **mature group**) is acquired by another group (see section 45-880); or
- (b) a member of a mature group ceases to be such a member and becomes the head company of a new group (see section 45-885).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 45-S extends the operation of this Subdivision so that it can apply to members of a MEC group. It contains modifications of this Subdivision for the purposes of that extended operation.

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Operative provisions

45-855 Section 701-1 disregarded for certain purposes

If:

- (a) an amount is required to be worked out for the purpose of determining the *instalment income of an entity that is a *member of a *consolidated group for a period that is all or a part of a *consolidation transitional year for the entity; and
- (b) the period ends before Subdivision 45-Q starts to apply, because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv), to the *head company of the group;

that amount must be worked out without regard to any application of section 701-1 of the *Income Tax Assessment Act 1997* to the entity in relation to the period.

45-860 Member having a different instalment period

Different instalment period—instalment quarter

(1) If:

- (a) but for Subdivision 45-Q, a *subsidiary member of a *consolidated group would be liable to pay an instalment for

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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an *instalment quarter of the subsidiary member that includes the starting time; and

- (b) that quarter starts before the start of the instalment quarter of the *head company of the group that includes the starting time;

then, despite section 45-710, the subsidiary member is liable to pay an instalment for that quarter.

Different instalment period—income year

- (2) If:

- (a) but for Subdivision 45-Q, a *subsidiary member of a *consolidated group would be liable to pay an annual instalment for an income year of the subsidiary member that includes the starting time; and

- (b) that year ends before the end of the income year of the *head company of the group that includes the starting time;

then, despite section 45-710, the subsidiary member is liable to pay an instalment for that year.

Assumptions for working out amount of instalment

- (3) The amount of the instalment must be worked out on the following assumptions:

- (a) that the *instalment quarter or income year of the *subsidiary member (as appropriate) consists only of the period that is the part of the quarter or year occurring before the starting time;
- (b) that an amount required to be worked out for the purpose of determining the *instalment income of the subsidiary member for that period is worked out under section 45-855.

- (4) For the purposes of this section, the **starting time** is the time at which Subdivision 45-Q starts to apply to the *head company of the group because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-865 Credit rule

- (1) When the Commissioner makes an assessment:
 - (a) of the income tax that the *head company of a *consolidated group is liable to pay for a *consolidation transitional year for the head company; or
 - (b) that no income tax is payable by the head company for that year;the head company is, in addition to any credit to which it is entitled under section 45-30 for that year, entitled to a credit in relation to instalments payable by an entity that is a *subsidiary member of the group at any time during that year.
- (2) The credit is equal to:
 - (a) the sum of so much of each instalment payable by the entity (even if it has not paid it) for an *instalment quarter of a *consolidation transitional year for the entity, or for that year, as is reasonably attributable to so much of that quarter or year:
 - (i) which is, or is included in, the consolidation transitional year for the *head company; and
 - (ii) during which the entity is a *subsidiary member of the group;minus
 - (b) the sum of so much of each credit that the entity has claimed under section 45-215 or 45-420 for each instalment quarter covered by paragraph (a) as is reasonably attributable to:
 - (i) for a credit under section 45-215—so much of the preceding instalment quarters of that consolidation transitional year for the entity which is covered by subparagraphs (a)(i) and (ii); or
 - (ii) for a credit under section 45-420—so much of that instalment quarter and the preceding instalment quarters of that consolidation transitional year for the entity which is covered by subparagraphs (a)(i) and (ii).
- (3) To avoid doubt, if:
 - (a) during the *instalment quarter or the *consolidation transitional year mentioned in paragraph (2)(a), the entity is a *subsidiary member of:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) 2 or more *consolidated groups; or
 - (ii) one or more consolidated groups and one or more *MEC groups; and
 - (b) an amount is taken into account under that paragraph or paragraph (2)(b) in working out the credit to which the *head company of one of the groups is entitled under subsection (1);
- that amount is not to be taken into account in working out the credit to which the head company of another of those groups is entitled under that subsection.
- (4) A reference in subsection (3) to subsection (1) or paragraph (2)(a) or (b) includes a reference to that provision in its extended operation in relation to a *MEC group under Subdivision 45-S.

Note: This section applies to members of a MEC group with the modifications set out in section 45-930.

45-870 Head company's liability to GIC on shortfall in quarterly instalment

Liability for the general interest charge

- (1) Subject to subsections (3) and (4), the *head company of a *consolidated group is liable to pay the *general interest charge under this section for an *instalment quarter in a *consolidation transitional year for the head company if:
- (a) the instalment payable by at least one *member of the group for that quarter is worked out:
 - (i) under paragraph 45-112(1)(b) or (c); or
 - (ii) by using an instalment rate under section 45-205; and
 - (b) the sum of instalments payable by the members of the group for that quarter, reduced by credits claimed by those members under section 45-215 or 45-420 for that quarter, is less than $\frac{17}{80}$ of the head company's *benchmark tax for that consolidation transitional year.

Note: $\frac{17}{80}$ of the head company's benchmark tax represents an amount that is 85% of one quarter of that benchmark tax.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Amount on which the charge is payable

- (2) Subject to subsections (3) and (4), the *general interest charge is payable on the amount worked out in accordance with the following method statement (if the amount is a positive amount).

Method statement

- Step 1. Work out the amount that is $\frac{1}{4}$ of the *benchmark tax of the *head company for that *consolidation transitional year of that head company.
- Step 2. Work out the sum of instalments that would have been payable by all the *members of the group for that *instalment quarter of that *head company if none of the members had worked out its instalment for that quarter under paragraph 45-112(1)(b) or (c) or by using an instalment rate under section 45-205.
- Step 3. Work out the sum of instalments payable by all the *members of the group for that *instalment quarter, reduced by credits claimed by the members under section 45-215 or 45-420 for that quarter.
- Step 4. Reduce the lesser of the results of steps 1 and 2 by the result of step 3. The result of this step is the amount on which the *general interest charge is payable if it is a positive amount. No general interest charge is payable if the result of this step is nil or a negative amount.

Amounts of instalments or credits that are taken into account

- (3) In working out an amount of instalment or credit for a *subsidiary member of the group for the purposes of any of the following provisions:
- (a) paragraph (1)(b);
 - (b) step 2 or 3 of the method statement;
- take into account only an amount of instalment or credit covered by that provision that is reasonably attributable to a period in that

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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*consolidation transitional year of the *head company during which it is a subsidiary member of the group.

Members having different instalment quarters

- (4) In working out an amount of instalment or credit for a *subsidiary member whose *instalment quarters differ from those of the *head company for the purposes of any of the following provisions:
- (a) paragraph (1)(a) or (b);
 - (b) step 2 or 3 of the method statement;
- a reference to an instalment quarter in a *consolidation transitional year of the head company in any of those provisions includes a reference to the last instalment quarter of that subsidiary member ending before the end of that instalment quarter of the head company.
- (5) Subsections (6) and (7) apply if:
- (a) the *head company of the *consolidated group is a *monthly payer at a time in an *instalment month (the **current month**); and
 - (b) any of the other *members of the group (the **subsidiary quarterly payers**) are *quarterly payers at a time in the *instalment quarter (the **current quarter**) in which the current month starts.
- (6) Apply the following rules:
- (a) treat the reference in subsection (1) to an *instalment quarter as being a reference to the current month;
 - (b) treat the references in this section to that quarter (or that instalment quarter) as being references to the current month.
- (7) Also apply the following rules, for the purposes of subsections (1) to (5):
- (a) treat the subsidiary quarterly payers as *monthly payers for each *instalment month (a **notional instalment month**) that starts (disregarding paragraph (6)(a)) in the current quarter;
 - (b) apply this section separately in relation to each of those notional instalment months;
 - (c) treat the amount of instalment or credit for a subsidiary quarterly payer in respect of a notional instalment month as

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

being the extent to which the amount of instalment or credit for the subsidiary quarterly payer for the current quarter is attributable to that notional instalment month.

45-875 Other rules about the general interest charge

- (1) The *general interest charge under section 45-870 for an *instalment quarter in an income year is payable by the *head company for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for that quarter was due to be paid; and
 - (b) finishes at the end of the day on which the head company's assessed tax for that income year is due to be paid.
- (2) The Commissioner must give the *head company written notice of the *general interest charge. The head company must pay the charge within 14 days after the notice is given to the head company.
- (3) If any of the *general interest charge remains unpaid at the end of the 14 days, the *head company is also liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.
- (4) The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under section 45-870.

45-880 Continued application of Subdivision 45-Q to the head company of an acquired group

- (1) This section applies to a company for which all of the following conditions are satisfied in relation to a particular time (the *takeover time*):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) just before the takeover time, Subdivision 45-Q applied to the company as the *head company of a *consolidated group;
 - (b) at the takeover time, the company becomes a *wholly-owned subsidiary of a *member of another consolidated group or *MEC group;
 - (c) that other group is consolidated at or before the takeover time under section 703-50 or 719-50 of the *Income Tax Assessment Act 1997*;
 - (d) the Commissioner receives the choice (or notice) under that section for the consolidation of that other group not later than 28 days after the takeover time, or within such further period (if any) as the Commissioner allows;
 - (e) at the takeover time, Subdivision 45-Q (including that Subdivision as applied under Subdivision 45-S) does not apply to the head company or the *provisional head company of that other group.
- (2) For the purposes of this Part only, this Act has effect in relation to the company and the other *members of the *consolidated group mentioned in paragraph (1)(a) (the **preserved group**) as if, during the period covered by subsection (5):
 - (a) the preserved group had continued to exist as a consolidated group; and
 - (b) the company were still the *head company of the preserved group; and
 - (c) Subdivision 45-Q had continued to apply to the company as the head company of the preserved group; and
 - (d) an entity, while being a *subsidiary member of the preserved group, were not treated as a member of the group mentioned in paragraph (1)(b) (the **new group**).
- (3) Subsection (2) does not stop the company from being a member of the new group for the purposes of this Part during the period covered by subsection (5).

Note: This means, for example, sections 45-855 and 45-860 apply to the head company as a member of the new group.
- (4) However, for the purposes of applying section 45-855 to the company, a reference in that section to an application of section 701-1 of the *Income Tax Assessment Act 1997* to the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

company in relation to the period mentioned in section 45-855 is taken to be:

- (a) a reference only to an application of section 701-1 of that Act to the company as a member of the new group during that period; and
 - (b) not a reference to an application (because of subsection (2) of this section) of section 701-1 of that Act to the company as the *head company of the preserved group during that period.
- (5) This subsection covers the period that starts from the start of the *instalment quarter of the company that includes the takeover time and ends at the earlier of the following times:
- (a) the end of the instalment quarter of the company during which the company ceases to be a member of the new group;
 - (b) just before the instalment quarter of the company during which the Commissioner gives the *initial head company instalment rate to the *head company, or the *provisional head company, of the new group.
- (6) The Commissioner may, on the application of the company made not later than 28 days after the takeover time, allow such extension of time for the purposes of paragraph (1)(d) as he or she considers appropriate.
- (7) To avoid doubt, nothing in this section prevents the operation of section 45-755 or 45-760 to *members of the preserved group while it continues to exist under subsection (2).

45-885 Early application of Subdivision 45-Q to the head company of a new group

- (1) This section applies to a company for which all of the following conditions are satisfied in relation to a particular time (the **starting time**):
- (a) just before the starting time, the company was a *subsidiary member of a *consolidated group, or a member of a *MEC group;
 - (b) just before the starting time, the consolidated group or MEC group was a mature group (see subsection (4));
 - (c) at the starting time, either of the following applies:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) the company ceases to be a subsidiary member of the consolidated group, or a member of the MEC group;
 - (ii) the group ceases to exist (otherwise than because a MEC group or consolidated group is *created from the group, or because its *head company or *provisional head company becomes a *wholly-owned subsidiary of a member of another mature group);
 - (d) at the starting time, the company is the head company of another consolidated group;
 - (e) within 28 days after the starting time, or within such further period (if any) as the Commissioner allows, the Commissioner receives the notice under section 703-58 of the *Income Tax Assessment Act 1997* in relation to the choice to consolidate, at and after the starting time, that other consolidated group under section 703-50 of the *Income Tax Assessment Act 1997*.
- (2) For the purposes of this Part:
- (a) the instalment rate that the Commissioner is taken to have given to the company under paragraph 45-760(2)(a) has effect as if it were the *initial head company instalment rate for the company as the *head company of the *consolidated group mentioned in paragraph (1)(d); and
 - (b) an instalment rate that would otherwise be the initial head company instalment rate for the company as the head company of that consolidated group is not to be treated as that initial head company instalment rate.
- Note: This means, subject to the provisions in section 45-705, Subdivision 45-Q starts applying to the company as the head company of the consolidated group at the start of the instalment quarter that includes the starting time: see subsection (2) of that section and paragraph 45-760(2)(a).
- (3) The Commissioner may, on the application of the company made within 28 days after the starting time, allow such extension of time for the purposes of paragraph (1)(e) as he or she considers appropriate.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Mature group

- (4) For the purposes of this section, a *consolidated group or a *MEC group is a ***mature group*** at a particular time if:
- (a) for a consolidated group—Subdivision 45-Q applies to its *head company at that time; or
 - (b) for a MEC group—Subdivision 45-Q, as applied under Subdivision 45-S, applies to its *provisional head company at that time.

Subdivision 45-S—MEC groups

Guide to Subdivision 45-S

45-900 What this Subdivision is about

This Subdivision sets out how this Part applies in relation to MEC groups and their members.

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-905

Preliminary

45-905 Objects of Subdivision

The objects of this Subdivision are to:

- (a) extend the operation of this Part (except sections 45-705 and 45-740 and this Subdivision) so that it can apply in relation to *MEC groups and their members; and
- (b) modify the rules in this Part for that extended operation so that they take account of the special characteristics of MEC groups.

General modification rules

45-910 Extended operation of Part to cover MEC groups

- (1) This Part (except sections 45-705 and 45-740 and this Subdivision) has effect in relation to members of a *MEC group in the same way in which it has effect in relation to *members of a *consolidated group.
- (2) However, that effect is subject to the modifications set out in the following table and elsewhere in this Subdivision.

Modifications of this Part		
Item	A reference in this Part to:	Is taken to be a reference to:
1	a *consolidated group	a *MEC group
2	the *head company of a *consolidated group	the *provisional head company of a *MEC group
3	a *subsidiary member of a *consolidated group	a member (other than the *provisional head company) of a *MEC group

Exceptions

- (3) The modifications set out in the table do not apply to the following provisions:
 - (a) this Subdivision;
 - (b) subsection 45-30(4) (see section 45-930);
 - (d) note 2 at the end of section 45-700;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (e) sections 45-705 and 45-740 (see sections 45-913, 45-915 and 45-920);
- (f) subparagraphs 45-760(1)(c)(i) and (ii);
- (g) the note at the end of section 45-850;
- (h) sections 45-865 and 45-870 (see section 45-930);
- (i) paragraphs (1)(b), (c), (d) and (e), and subsection (5), of section 45-880;
- (j) paragraphs (1)(a), (b) and (c), and subsection (4), of section 45-885.

Note: The provisions covered by paragraphs (d), (f), (g), (i) and (j) apply to members of a MEC group without any modifications.

Extended operation of Subdivision 45-Q

45-913 Sections 45-705 and 45-740 do not apply to members of MEC groups

In applying Subdivision 45-Q to members of a *MEC group, the Subdivision has effect as if:

- (a) section 45-705 had no effect and section 45-915 had effect instead; and
- (b) section 45-740 had no effect and section 45-920 had effect instead.

45-915 Application of Subdivision 45-Q to provisional head company

Period during which Subdivision applies to provisional head company

- (1) Subject to sections 45-880 and 45-885 (as applied under this Subdivision), Subdivision 45-Q applies to a company as the *provisional head company of a *MEC group during the period:
 - (a) starting at the start of the *instalment quarter of the company determined under subsection (2), (3) or (4); and
 - (b) ending:
 - (i) at the end of the instalment quarter of the company determined under paragraph (6)(a) or (b); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) just before the instalment quarter of the company determined under paragraph (6)(c).

Note: The application of Subdivision 45-Q to the provisional head company is subject to the modifications set out in this section and elsewhere in this Subdivision.

When the period begins—initial head company instalment rate

- (2) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter under this subsection if, during that quarter, the Commissioner gives the company (as that provisional head company) the *initial head company instalment rate.

Note: The operation of this subsection may be affected by section 45-885 (as applied under this Subdivision).

When the period begins—group created from consolidated group

- (3) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter (the **starting quarter**) under this subsection if all of the following conditions are satisfied:
 - (a) during the starting quarter, the Commissioner is notified of the creation of the MEC group from a *consolidated group (see subsection (5));
 - (b) the company is the provisional head company of the MEC group when the Commissioner is so notified;
 - (c) either of the following applies:
 - (i) Subdivision 45-Q applied to the *head company of the consolidated group at the end of the previous instalment quarter;
 - (ii) the Commissioner gives the *initial head company instalment rate to the head company of the consolidated group during the starting quarter.

Note: For the application of Subdivision 45-Q to a head company of a consolidated group: see section 45-705.

When the period begins—new provisional head company

- (4) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

quarter (the *starting quarter*) under this subsection if both of the following conditions are satisfied:

- (a) the company is appointed as the provisional head company of the MEC group under subsection 719-60(3) of the *Income Tax Assessment Act 1997* during the starting quarter;
- (b) one of the following applies:
 - (i) Subdivision 45-Q applied to the former provisional head company of the MEC group at the end of the previous instalment quarter;
 - (ii) the Commissioner gives the *initial head company instalment rate to the former provisional head company of the MEC group during the starting quarter;
 - (iii) the Commissioner is notified during the starting quarter of the creation of the MEC group from a *consolidated group and Subdivision 45-Q applied to the *head company of the consolidated group at the end of the previous instalment quarter;
 - (iv) the Commissioner is notified during the starting quarter of the creation of the MEC group from a consolidated group and the Commissioner gives the initial head company instalment rate to the head company of the consolidated group during the starting quarter.

When the period begins—modified timing for provisional head company that is monthly payer

- (4A) Subsection (4B) applies if:
 - (a) apart from subsection (4B), Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at a particular time because of the operation of subsection (2), (3) or (4); and
 - (b) the company is a *monthly payer; and
 - (c) the Commissioner gave the *initial head company instalment rate as mentioned in subsection (2), subparagraph (3)(c)(ii), subparagraph (4)(b)(ii) or subparagraph (4)(b)(iv) in an *instalment month.
- (4B) Treat subsection (2), (3) or (4) (as the case requires) as providing that Subdivision 45-Q starts to apply to the company as the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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*provisional head company of the *MEC group at the start of the *next* *instalment month.

Note: For the application of this Subdivision to a monthly payer, see sections 45-703 and 45-910.

Notification of creation of MEC group from consolidated group

- (5) For the purposes of subsections (3) and (4), the Commissioner is notified of the creation of a *MEC group from a *consolidated group when the Commissioner receives a notice of the consolidation of the MEC group under subsection 719-40(1) of the *Income Tax Assessment Act 1997*.

When the period ends

- (6) Subdivision 45-Q stops applying to a company as the *provisional head company of a *MEC group at the earliest of the following times after the company becomes the provisional head company:
- (a) the end of the *instalment quarter during which the MEC group ceases to exist (other than because a *consolidated group is *created from the MEC group);
 - (b) the end of the instalment quarter during which a consolidated group is created from the MEC group;
 - (c) just before the instalment quarter during which another company is appointed as the provisional head company of the MEC group under subsection 719-60(3) of the *Income Tax Assessment Act 1997*.

Note: The operation of this subsection because of paragraph (a) may be affected by section 45-880 (as applied under this Subdivision).

- (7) To avoid doubt, Subdivision 45-Q does not apply to a company as the *provisional head company of a *MEC group for any time at all if:
- (a) subsection (2), (3) or (4), and subsection (6), would, apart from this subsection, apply to the company; but
 - (b) the time at which Subdivision 45-Q would stop applying to the company under subsection (6) is before the time at which that Subdivision would start to apply to the company under subsection (2), (3) or (4).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (8) To avoid doubt, Subdivision 45-Q may apply to a company as the *provisional head company of a *MEC group at a time when the company is not in fact the provisional head company of the group.

Note: An example of this is when a company replaces another company as the provisional head company of a MEC group. Under this section and section 45-920, Subdivision 45-Q may start applying to the company as if it had already become the provisional head company when it is not yet such a company.

45-917 Assumption for applying section 45-710 (single entity rule)

In applying section 45-710 to members of a *MEC group at a particular time, the company that is the *provisional head company of the group at that time must be assumed to be the *head company of the group at all times during the period:

- (a) throughout which the group is in existence; and
- (b) that is all or a part of the income year of the company that includes that particular time.

45-920 Change of provisional head company

Object

- (1) The object of this section (except subsection (9)) is to ensure that, for the purposes of this Part, when a company becomes the new *provisional head company of a *MEC group:
 - (a) the company inherits the history of the former provisional head company; and
 - (b) the history of the new provisional head company is effectively ignored.
- (2) This section applies to a *provisional head company of a *MEC group (the ***new provisional head company***) that is appointed under subsection 719-60(3) of the *Income Tax Assessment Act 1997* if one of the following conditions is satisfied:
 - (a) the conditions in subsection 45-915(4) are satisfied in relation to the new provisional head company (whether or not Subdivision 45-Q applies to the company as the provisional head company of the group for any period of time);

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the new provisional head company is so appointed during the *instalment quarter of the company in which the MEC group is *created from a *consolidated group and either:
 - (i) the Commissioner gives the *initial head company instalment rate to the *head company of the consolidated group during that instalment quarter; or
 - (ii) Subdivision 45-Q applied to the head company of the consolidated group at the end of the previous instalment quarter.
- (3) Everything that happened before the starting time in relation to the company (the **former company**) that was the *provisional head company of the *MEC group immediately before the starting time:
 - (a) is taken to have happened in relation to the new provisional head company instead of in relation to the former company; and
 - (b) is taken to have happened in relation to the new provisional head company instead of what would (apart from this section) be taken to have happened in relation to the new provisional head company before the starting time;just as if, at all times before the starting time:
 - (c) the new provisional head company had been the former company; and
 - (d) the former company had been the new provisional head company.
- (4) For the purposes of this section, the **starting time** is the time at which the *cessation event happened to the former company (the event that results in the appointment of the new provisional head company).
- (5) To avoid doubt, subsection (3) also covers everything that, immediately before the starting time, was taken to have happened in relation to the former company because of:
 - (a) section 701-1 of the *Income Tax Assessment Act 1997* (single entity rule); or
 - (b) section 701-5 of that Act (entry history rule); or
 - (c) section 703-75 of that Act (effects of an interposed company becoming the *head company of a *consolidated group); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (d) section 719-90 of that Act (effects of a change of head company of a *MEC group); or
 - (e) section 45-710 in this Schedule (single entity rule for the purposes of this Part), including an application of that section under this Subdivision; or
 - (f) section 45-740 in this Schedule (effects of an interposed company becoming the head company of a consolidated group for the purposes of this Part); or
 - (g) this section; or
 - (h) one or more previous applications of any of the provisions covered by paragraphs (a) to (g).
- (6) In addition, and without affecting subsection (3):
- (a) an assessment of the former company for an income year that ends before the income year that includes the starting time; or
 - (b) an amendment of the assessment;
- is taken to be something that had happened to the new provisional head company, whether or not the assessment or amendment is made before the starting time.
- (7) This section has effect for the purposes of applying this Part to members of the *MEC group in relation to an *instalment quarter of the new provisional head company that ends after the starting time.
- Note: An assessment mentioned in subsection (6) may therefore be taken to be the base assessment of the new provisional head company for the purposes of this Part.
- (8) Subsections (1) to (7) are to be disregarded in applying section 45-915 (about the application of Subdivision 45-Q to a company as the *provisional head company of a *MEC group).
- Note: For example, if the Commissioner has given an initial head company instalment rate to the former company during an earlier instalment quarter, the rate is not, despite this section, treated as if it had been given to the new provisional head company for the purposes of section 45-915. Subject to the other provisions in that section, Subdivision 45-Q therefore starts applying to the new provisional head company under subsection 45-915(4).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Special rule for the former company

- (9) A provision of this Part that applies on an entity becoming a member (other than the *provisional head company) of a *MEC group does not apply to the former company when it becomes such a member at the starting time.

Note: Section 45-755 (the entry rule, as applied under this Subdivision) therefore does not apply to the former company on the company becoming such a member of the MEC group.

45-922 Life insurance company

In applying Subdivision 45-Q to members of a *MEC group for an *instalment quarter of the *provisional head company of the group in an income year of the provisional head company, the company is taken to be a *life insurance company for that quarter if:

- (a) one or more life insurance companies are members of the group at any time during that quarter; or
- (b) one or more life insurance companies were members of the group at any time during a previous instalment quarter of the company in that year.

Extended operation of Subdivision 45-R

45-925 Additional modifications of sections 45-855 and 45-860

In applying sections 45-855 and 45-860 to members of a *MEC group, those sections have effect as if, in addition to the modifications set out in the table in section 45-910:

- (a) a reference in those sections to subsection 45-705(2) were a reference to subsection 45-915(2); and
- (b) a reference in those sections to subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv) were a reference to subparagraph 45-915(3)(c)(ii), (4)(b)(ii) or (iv).

45-930 Modifications of sections 45-865 and 45-870 and a related provision

- (1) In applying sections 45-865 and 45-870, and subsection 45-30(4) (which is related to section 45-865), to members of a *MEC group, those provisions have effect as if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) a reference in those provisions to a *consolidated group were a reference to a *MEC group; and
- (b) a reference in those provisions to a MEC group were a reference to a consolidated group.

Note: This means a reference in those provisions to the head company of a consolidated group has effect as if it were a reference to the head company of a MEC group. Similarly, a reference in those provisions to a subsidiary member of a consolidated group has effect as if it were a reference to a subsidiary member of a MEC group.

- (2) However, the modifications in subsection (1) do not apply to subsection 45-865(4) and the note at the end of section 45-865.

Note: This means subsection 45-865(4) and the note apply to members of a MEC group without any modifications.

45-935 Additional modifications of section 45-885

In applying section 45-885 to members of a *MEC group, that section has effect as if, in addition to the modifications set out in the table in section 45-910, it had been modified as set out in the following table:

Modifications of section 45-885		
Item	Provision:	Modification:
1	Paragraph 45-885(1)(e)	The paragraph is taken to have been replaced by the following paragraph: (e) within 28 days after the starting time, or within such further period (if any) as the Commissioner allows, the Commissioner receives a notice under section 719-76 of the <i>Income Tax Assessment Act 1997</i> in relation the consolidation of that other MEC group, at and after the starting time, under section 719-50 of the <i>Income Tax Assessment Act 1997</i> .
2	Subsection 45-885(2) (including the note at the end of the subsection)	A reference to paragraph 45-760(2)(a) is taken to be a reference to that paragraph as applied under this Subdivision
3	The note at the end of subsection 45-885(2)	The reference to section 45-705 is taken to be a reference to section 45-915

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 2 Collection, recovery and administration of income tax

Part 2-30 Collecting Medicare levy with income tax

Section 90-1

Part 2-30—Collecting Medicare levy with income tax

Division 90—Medicare levy and Medicare levy surcharge

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Subdivision 90-A—Treatment like income tax

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90-1 Laws apply in relation to Medicare levy and Medicare levy surcharge as they apply in relation to income tax

90-1 Laws apply in relation to Medicare levy and Medicare levy surcharge as they apply in relation to income tax

Except so far as the contrary intention appears, this Schedule and the *Income Tax Assessment Act 1997* apply, and are taken always to have applied, in relation to the following in the same way as they apply in relation to income tax and *tax:

- (a) *Medicare levy;
- (b) *Medicare levy (fringe benefits) surcharge.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 2-35—Excess concessional contributions

Division 95—Excess concessional contributions charge

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Guide to Division 95

95-1 What this Division is about

You are liable to pay a charge on the income tax you pay on excess concessional contributions.

The charge is applied at a uniform rate that is the same as the shortfall interest charge.

The period for the excess concessional contributions charge starts at the start of the income year and ends just before tax is due to be paid under your first assessment for the year.

Subdivision 95-A—Object of Division

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95-5 Object of Division

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from *excess concessional contributions, so that they do not receive an advantage in the form of:

- (a) the later time at which *tax is collected, as compared to tax that is collected through the Pay as you go system; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the earnings on the contributions, which receive a concessional tax rate and remain in superannuation even if the contributions are released under Division 96.

Subdivision 95-B—Excess concessional contributions charge

Table of sections

95-10	Liability to excess concessional contributions charge
95-15	Amount of excess concessional contributions charge
95-20	When excess concessional contributions charge is due and payable
95-25	General interest charge

95-10 Liability to excess concessional contributions charge

- (1) If:
 - (a) you have *excess concessional contributions for a *financial year; and
 - (b) you are liable to pay an amount of *tax (your *actual tax*) for the corresponding income year; and
 - (c) your actual tax exceeds the amount of tax you would be liable to pay for the income year if the excess concessional contributions were disregarded;

the excess is an amount of tax on which you are liable to pay *excess concessional contributions charge*.

Note 1: Excess concessional contributions are included in assessable income and give rise to a tax offset: see section 291-15 of the *Income Tax Assessment Act 1997*.

Note 2: In this Act, *tax* is an assessed amount: see subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

- (2) If you would not be liable to pay *tax for the income year if the *excess concessional contributions were disregarded, apply paragraph (1)(c) as if you would be liable to pay a nil amount of tax.

Period for which the charge is payable

- (3) The liability is for each day in the period:
 - (a) beginning on the first day of the income year; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) ending on the day before the day on which *tax under your first notice of assessment for that income year is due to be paid, or would be due to be paid if there were any.

95-15 Amount of excess concessional contributions charge

The *excess concessional contributions charge for a day is worked out by multiplying the rate worked out under section 4 of the *Superannuation (Excess Concessional Contributions Charge) Act 2013* for that day by the sum of the following amounts:

- (a) the amount of *tax on which you are liable to pay the charge;
- (b) the excess concessional contributions charge on that amount from previous days.

95-20 When excess concessional contributions charge is due and payable

- (1) The *excess concessional contributions charge you are liable to pay for an income year is due and payable on the day on which *tax is due to be paid under your first notice of assessment for that income year that includes an amount of tax on which you are liable to pay the charge.

Note: For when income tax is due and payable, see section 5-5 of the *Income Tax Assessment Act 1997*.

Determination required

- (2) An amount of *excess concessional contributions charge is only due and payable if the Commissioner gives you an *excess concessional contributions determination stating the amount of the charge (although it may be taken by subsection (1) to have been due and payable at a time before the determination was made).

Note: For excess concessional contributions determinations, see Division 97.

Amended determinations

- (3) However, if the Commissioner amends your *excess concessional contributions determination, any extra charge resulting from the amendment is due and payable 21 days after the Commissioner gives you notice of the amended determination.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 95-25

95-25 General interest charge

If an amount of *excess concessional contributions charge or *shortfall interest charge on excess concessional contributions charge that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) begins on the day on which the amount was due to be paid; and
- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the excess concessional contributions charge or shortfall interest charge;
 - (ii) the general interest charge on any of the excess concessional contributions charge or shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA.

Note 2: Shortfall interest charge is worked out under Division 280 in this Schedule.

Note 3: See section 5-10 of the *Income Tax Assessment Act 1997* for when the amount of shortfall interest charge becomes due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 96—Releasing money from superannuation

Table of Subdivisions

96-A Releasing money from superannuation

Subdivision 96-A—Releasing money from superannuation

Guide to Subdivision 96-A

96-1 What this Subdivision is about

You may elect to release up to 85% of your excess concessional contributions for a financial year from a superannuation interest.

Superannuation providers will usually be required to pay an amount from the superannuation interest. However, for certain interests the provider may choose whether or not to pay.

Released amounts are paid by the superannuation provider to the Commissioner.

You get a credit for the released amount. Surplus credits are refunded to you under Division 3A of Part IIB.

Table of sections

Requesting a release authority

96-5 Electing to release money from superannuation

Issuing a release authority to superannuation provider

96-10 Issuing a release authority to a superannuation provider

96-15 Varying and revoking a release authority

Complying with a release authority

96-20 Obligations of superannuation providers

96-25 Voluntary compliance with a release authority relating to voluntary release interests

96-30 Meaning of *maximum available release amount*

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 96-5

- 96-35 Notifying Commissioner
- 96-40 Notifying individual of unsuccessful release attempt
- 96-45 Compensation for acquisition of property

Consequences of releasing amounts

- 96-50 Entitlement to credits
- 96-55 Interest for late payments of money received by the Commissioner in accordance with release authority
- 96-60 Income tax treatment of amounts released—proportioning rule does not apply

Requesting a release authority

96-5 Electing to release money from superannuation

Original determinations

- (1) If you receive an *excess concessional contributions determination, you may elect to release from a *superannuation interest an amount not exceeding 85% of the *excess concessional contributions stated in the determination.

Note 1: For excess concessional contributions determinations, see Division 97.

Note 2: Released excess concessional contributions are not included in your non-concessional contributions (a gross-up also applies): see subsection 292-90(1A) of the *Income Tax Assessment Act 1997*.

Amended determinations

- (2) However, if the *excess concessional contributions determination is an amended determination increasing the stated amount of your *excess concessional contributions, you may elect to release an amount not exceeding:
 - (a) 85% of the excess concessional contributions stated in the amended determination; less
 - (b) any amount you elect to release under subsection (1) in relation to an earlier determination.

Requirements for election

- (3) You make the election by:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 96-5

- (a) notifying the Commissioner of the amount you elect to release; and
 - (b) identifying the *superannuation interest or interests you have from which the amount is to be released; and
 - (c) if you identify more than one superannuation interest—stating the amount to be released from each such interest.
- (4) The election must:
- (a) be in the *approved form; and
 - (b) be given to the Commissioner within:
 - (i) 21 days after receiving notice of the *excess concessional contributions determination or amended excess concessional contributions determination; or
 - (ii) a further period allowed by the Commissioner.

Unsuccessful elections—making a further election

- (5) If:
- (a) you make a valid election under this section; and
 - (b) the Commissioner gives you a notice under section 96-40 stating an amount (the **unreleased amount**) that a *superannuation provider did not pay in relation to the release authority issued in relation to that election;
- you may make a further election to release the unreleased amount from another superannuation interest you have.
- (6) The further election must comply with subsection (3) and paragraph (4)(a), and must be given to the Commissioner within:
- (a) 21 days after receiving the notice mentioned in paragraph (5)(b); or
 - (b) a further period allowed by the Commissioner.

Election is irrevocable

- (7) An election under this section is irrevocable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 96-10

Issuing a release authority to superannuation provider

96-10 Issuing a release authority to a superannuation provider

- (1) If you make a valid election under section 96-5 in relation to *excess concessional contributions you have for a *financial year, the Commissioner must issue a release authority to each *superannuation provider that holds a *superannuation interest identified in the election.
- (2) The release authority must:
 - (a) state the amount to be released from the *superannuation interest, as stated in the election; and
 - (b) be dated; and
 - (c) contain any other information that the Commissioner considers relevant.

96-15 Varying and revoking a release authority

The Commissioner may vary or revoke a release authority at any time before the Commissioner receives a payment relating to the release authority.

Complying with a release authority

96-20 Obligations of superannuation providers

- (1) A *superannuation provider that has been issued with a release authority under section 96-10 must, within 7 days after the release authority is issued, pay to the Commissioner the lesser of:
 - (a) the amount stated in the release authority; and
 - (b) the sum of the *maximum available release amounts for each *superannuation interest held by the superannuation provider for the individual in *superannuation plans.

Note 1: Subsection 288-95(3) provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see section 96-60.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Exception—interests not subject to compulsory release

- (2) However, the *maximum available release amount for a *superannuation interest is not to be included in the sum worked out under paragraph (1)(b) if the interest is of any of the following kinds (a ***voluntary release interest***):
- (a) a *defined benefit interest;
 - (b) a superannuation interest in a *non-complying superannuation fund;
 - (c) a superannuation interest that is treated as a separate interest under regulations made for the purposes of section 307-200 of the *Income Tax Assessment Act 1997* in circumstances where the interest is supporting a *superannuation income stream.

96-25 Voluntary compliance with a release authority relating to voluntary release interests

- (1) A *superannuation provider that has been issued with a release authority under section 96-10 may, within 7 days after the release authority is issued, pay to the Commissioner the lesser of:
- (a) the amount stated in the release authority; and
 - (b) the sum of the *maximum available release amounts for each voluntary release interest held by the superannuation provider for the individual in *superannuation plans.
- (2) However, the amount mentioned in paragraph (1)(a) must be reduced by any amount the provider pays to the Commissioner under section 96-20 in relation to the release authority.

96-30 Meaning of *maximum available release amount*

The ***maximum available release amount*** for a *superannuation interest at a particular time is the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 96-35

96-35 Notifying Commissioner

- (1) A *superannuation provider that has been issued with a release authority under section 96-10 must notify the Commissioner of a payment made in accordance with this Subdivision.
- (2) A *superannuation provider that:
 - (a) has been issued with a release authority under section 96-10; and
 - (b) is not required to pay an amount under section 96-20, or is required under that section to pay an amount less than the amount stated in the release authority;must notify the Commissioner that the provider is not required to comply with the release authority.
- (3) A notice under this section must be given:
 - (a) in the *approved form; and
 - (b) within 7 days after the release authority is issued.

Note: Subsection 286-75(1) provides for an administrative penalty for failing to comply with this section.

96-40 Notifying individual of unsuccessful release attempt

- (1) If the Commissioner:
 - (a) receives a notice from a *superannuation provider under subsection 96-35(2); or
 - (b) does not receive a payment from a superannuation provider of the full amount stated in a release authority within the time mentioned in subsection 96-20(1);the Commissioner must give the individual a written notice under this section.
- (2) The notice must:
 - (a) identify the *superannuation provider; and
 - (b) state how much of the amount stated in the release authority was not paid to the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

96-45 Compensation for acquisition of property

- (1) If the operation of section 96-20 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.
- (2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Consequences of releasing amounts

96-50 Entitlement to credits

- (1) If a *superannuation provider pays an amount in relation to a release authority issued under section 96-10 in relation to an election you make, you are entitled to a credit equal to that amount.

Note: Division 3 of Part IIB provides for the treatment of credits that an entity is entitled to under a taxation law.

- (2) The credit arises on the day the Commissioner receives the amount.

96-55 Interest for late payments of money received by the Commissioner in accordance with release authority

- (1) You are entitled to an amount of interest worked out under subsection (2) if:
 - (a) the Commissioner is required under Division 3A of Part IIB to refund all or part of a credit you are entitled to under section 96-50; and
 - (b) the Commissioner does not so refund all or part of that credit within 60 days after receiving the payment that gave rise to the credit.
- (2) The interest is to be calculated:
 - (a) on so much of the amount of the credit as the Commissioner fails to refund under that Division; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) for the period:
 - (i) beginning 60 days after the day the Commissioner receives the amount; and
 - (ii) ending on the day the Commissioner refunds the amount mentioned in paragraph (1)(a); and
- (c) on a daily basis; and
- (d) at the *base interest rate for the day the interest is calculated.

96-60 Income tax treatment of amounts released—proportioning rule does not apply

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Subdivision.

Note: Further provision about the income tax treatment of amounts released is in section 303-15 of that Act.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 97—Excess concessional contributions determinations

Table of Subdivisions

97-A Excess concessional contributions determinations

Subdivision 97-A—Excess concessional contributions determinations

Guide to Subdivision 97-A

97-1 What this Subdivision is about

The Commissioner must give you a determination stating the amount of your excess concessional contributions and any excess concessional contributions charge.

Table of sections

Operative provisions

97-5 Determination of excess concessional contributions and charge
97-10 Review

Operative provisions

97-5 Determination of excess concessional contributions and charge

- (1) If you have *excess concessional contributions for a *financial year, the Commissioner must make a written determination stating:
 - (a) the amount of those excess concessional contributions; and
 - (b) the amount (if any) of *excess concessional contributions charge you are liable to pay for the corresponding income year.
- (2) A determination under this section is an *excess concessional contributions determination*.
- (3) The Commissioner may amend a determination at any time.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (4) Notice of the determination may be included in any other notice given to you by the Commissioner.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

97-10 Review

If you are dissatisfied with an *excess concessional contributions determination made in relation to you, you may object against the determination in the manner set out in Part IVC.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Chapter 3—Collection, recovery and administration of other taxes

Part 3-10—Indirect taxes

Division 105—General rules for indirect taxes

Table of Subdivisions

	Guide to Division 105
105-A	Assessments
105-B	Review of indirect tax decisions
105-C	Limits on credits, refunds and recovering amounts
105-D	General interest charge and penalties
105-F	Indirect tax refund schemes
105-G	Other administrative provisions

Guide to Division 105

105-1 What this Division is about

This Division contains rules relating to the administration of the indirect tax laws.

Note 1: Administration rules relevant to particular indirect tax laws are in Divisions 110, 111 and 112.

Note 2: For assessment of assessable amounts under indirect tax laws, see Division 155.

The rules in this Division deal with the following:

- (a) how assessments are made or amended and their effect;
- (b) review of assessments;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-3

- | | |
|-----|---|
| (c) | limits on credits, refunds and recovering amounts; |
| (e) | the effect of not passing on refunds of overpaid amounts; |
| (f) | charges and penalties; |
| (h) | refunding indirect tax because of Australia's international obligations; |
| (i) | your address for service of documents and requirements for notifications. |

Subdivision 105-A—Assessments

Table of sections

105-3	Application of Subdivision
105-5	Commissioner may make assessment of indirect tax
105-10	Request for assessment
105-15	Indirect tax liabilities do not depend on assessment
105-20	Commissioner must give notice of the assessment
105-25	Amendment of assessment
105-30	Later assessment prevails in case of inconsistency

105-3 Application of Subdivision

This Subdivision applies to:

- (a) *tax periods, and *fuel tax return periods, starting before 1 July 2012; and
- (b) *indirect tax payable by you on an importation of goods, if:
 - (i) the indirect tax does not relate to any tax periods; and
 - (ii) the liability to pay the indirect tax arose before 1 July 2012.

Note: This Subdivision will be repealed on 1 January 2017: see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

105-5 Commissioner may make assessment of indirect tax

- (1) The Commissioner may at any time make an assessment of:
 - (a) your *net amount, or any part of your net amount, for a *tax period; or
 - (b) your *net fuel amount, or any part of your net fuel amount, for a tax period or *fuel tax return period.
- (2) The Commissioner may at any time make an assessment of the amount of *indirect tax payable by you on an importation of goods.
- (3) The Commissioner may make an assessment under this section even if he or she has already made an assessment for the *tax period, *fuel tax return period or importation concerned.

Note: An assessment made under this section is a reviewable indirect tax decision: see Subdivision 105-B.

105-10 Request for assessment

- (1) You may request the Commissioner in the *approved form to make an assessment of:
 - (a) your *net amount for a *tax period; or
 - (b) your *net fuel amount for a tax period or *fuel tax return period; or
 - (c) an amount of *indirect tax payable by you on an importation of goods.
- (2) The Commissioner must comply with the request if it is made within:
 - (a) 4 years after:
 - (i) the end of the *tax period or *fuel tax return period; or
 - (ii) the importation; or
 - (b) such further period as the Commissioner allows.

105-15 Indirect tax liabilities do not depend on assessment

- (1) Your liability to pay *indirect tax or a *net fuel amount, and the time by which a *net amount, a net fuel amount or an amount of indirect tax must be paid, do not depend on, and are not in any way affected by, the making of an assessment under this Subdivision.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-20

- (2) The Commissioner's obligation to pay:
- (a) a *net amount under section 35-5 of the *GST Act; or
 - (b) a *net fuel amount under section 61-5 of the *Fuel Tax Act 2006*;
- and the time by which it must be paid, do not depend on, and are not in any way affected by, the making of an assessment under this Subdivision.

Note: However, a notice of assessment can be used as evidence of liability: see section 105-100.

105-20 Commissioner must give notice of the assessment

- (1) The Commissioner must give you notice of an assessment as soon as practicable after the assessment is made. However, failing to do so does not affect the validity of the assessment.
- (2) The Commissioner may give you the notice electronically if you are required to lodge or have lodged your *GST returns electronically.

105-25 Amendment of assessment

The Commissioner may amend an assessment at any time. An amended assessment is an assessment for all purposes of any *indirect tax law.

Note 1: However, there is a time limit on the recovery of overpaid or underpaid net amounts, net fuel amounts and indirect tax: see sections 105-50 and 105-55.

Note 2: An amendment under this section is a reviewable indirect tax decision: see Subdivision 105-B.

105-30 Later assessment prevails in case of inconsistency

If there is an inconsistency between assessments that relate to the same *tax period, *fuel tax return period or importation of goods, the later assessment prevails to the extent of the inconsistency.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 105-B—Review of indirect tax decisions

Table of sections

105-40 Reviewable indirect tax decisions

105-40 Reviewable indirect tax decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a *reviewable indirect tax decision relating to you.
- (2) A decision under section 105-5 or 105-25 involving an assessment of a *net amount, a *net fuel amount or an amount of *indirect tax is a ***reviewable indirect tax decision***.

Note: This Subdivision will be repealed on 1 January 2017: see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

Subdivision 105-C—Limits on credits, refunds and recovering amounts

Table of sections

105-50 Time limit on recovery by the Commissioner
105-55 Time limit on refunds etc. from the Commissioner
105-65 Restriction on GST refunds

105-50 Time limit on recovery by the Commissioner

- (1) Any unpaid *net amount, *net fuel amount or amount of *indirect tax (together with any relevant *general interest charge under this Act) ceases to be payable 4 years after it became payable by you.
- (2) If:
 - (a) an amount was paid to you, or applied under Division 3 of Part IIB of this Act, as:
 - (i) a refund in relation to a *net amount, *net fuel amount or amount of *indirect tax; or
 - (ii) an amount of indirect tax that was overpaid or wrongly paid; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) that amount exceeded the amount (if any) that you were entitled to be paid, or to have applied under Division 3 of Part IIB of this Act;
the amount of the excess (together with any relevant *general interest charge under this Act) ceases to be payable 4 years after it became payable by you.
- (3) However, subsection (1) does not apply to an amount, and subsection (2) does not apply to an amount of an excess, if:
 - (a) within those 4 years the Commissioner has required payment of the amount or the amount of excess by giving a notice to you; or
 - (b) the Commissioner is satisfied that:
 - (i) the payment of the amount was avoided by fraud or evaded; or
 - (ii) the payment of the amount of excess, or its application under Division 3 of Part IIB of this Act, was brought about by fraud or evasion.

Sunsetting provision

- (4) This section applies in relation to payments and refunds that:
 - (a) relate to *tax periods, and *fuel tax return periods, that start before 1 July 2012; or
 - (b) do not relate to any tax periods or fuel tax return periods, but relate to liabilities or entitlements that arose before 1 July 2012.

Note: This section will be repealed on 1 January 2017: see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

105-55 Time limit on refunds etc. from the Commissioner

- (1) You are not entitled to a refund, other payment or credit to which this subsection applies in respect of a *tax period or importation unless:
 - (a) within 4 years after:
 - (i) the end of the tax period; or
 - (ii) the importation;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

as the case requires, you notify the Commissioner (in a *GST return or otherwise) that you are entitled to the refund, other payment or credit; or

- (b) within that period the Commissioner notifies you (in a notice of assessment or otherwise) that you are entitled to the refund, other payment or credit; or
- (c) in the case of a credit—the credit is taken into account in working out:
 - (i) a *net amount or *net fuel amount that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(i); or
 - (ii) an amount of excess referred to in subsection 105-50(2) that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(ii).

Note: Division 93 of the GST Act puts a time limit on your entitlement to an input tax credit. Division 47 of the *Fuel Tax Act 2006* puts a time limit on your entitlement to a fuel tax credit.

(2) Subsection (1) applies to:

- (a) a refund in relation to a *net amount or *net fuel amount in respect of a particular *tax period; or
- (aa) another payment that represents some or all of an amount:
 - (i) that you paid as an amount of *indirect tax payable by you in respect of a particular tax period; and
 - (ii) that exceeded the amount (if any) of such tax that you were liable to pay in respect of that tax period; or
- (b) an *input tax credit or *fuel tax credit that is attributable to a particular tax period; or
- (c) a *wine tax credit the amount of which could have been included in a reduction of your *net amount for a tax period under section 21-15 of the *Wine Tax Act; or
- (d) a refund of an amount of *indirect tax relating to an importation.

(2A) A request by you to the Commissioner to treat a document as a *tax invoice for the purposes of attributing a credit to a *tax period is taken to be a notification, for the purposes of paragraph (1)(a), of your entitlement to the credit if:

- (a) you made the request within the 4 year period referred to in that paragraph in relation to the credit; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the Commissioner agrees to the request (whether or not within that period).

Fuel tax—non-business taxpayers

- (3) If you are neither *registered for GST nor *required to be registered for GST, you are not entitled to a refund, other payment or *fuel tax credit to which this subsection applies in respect of a *fuel tax return period, acquisition, manufacture or importation unless:
 - (a) within 4 years after:
 - (i) the end of the fuel tax return period; or
 - (ii) the acquisition, manufacture or importation;(as the case requires) you notify the Commissioner that you are entitled to the refund, other payment or credit; or
 - (b) within that period the Commissioner notifies you (in a notice of assessment or otherwise) that you are entitled to the refund, other payment or credit; or
 - (c) in the case of a fuel tax credit—the credit is taken into account in working out:
 - (i) a *net fuel amount that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(i); or
 - (ii) an amount of excess referred to in subsection 105-50(2) that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(ii).

Note: Division 47 of the *Fuel Tax Act 2006* puts a time limit on your entitlement to a fuel tax credit.

- (4) Subsection (3) applies to:
 - (a) a refund in relation to a *net fuel amount attributable to a *fuel tax return period; or
 - (b) a *fuel tax credit for *taxable fuel that you acquire, manufacture or import.
- (5) To avoid doubt, if, under subsection (3), you are not entitled to a *fuel tax credit, then you are not entitled to a refund or other payment in relation to the credit.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Sunsetting provision

- (6) This section applies in relation to payments and refunds that:
- (a) relate to *tax periods, and *fuel tax return periods, that start before 1 July 2012; or
 - (b) do not relate to any tax periods, or fuel tax return periods, but relate to liabilities or entitlements that arose before 1 July 2012.

Note: This section will be repealed on 1 January 2017: see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

105-65 Restriction on GST refunds

- (1) The Commissioner need not give you a refund of an amount to which this section applies, or apply (under Division 3 or 3A of Part IIB) an amount to which this section applies, if:
- (a) you overpaid the amount, or the amount was not refunded to you, because a *supply was treated as a *taxable supply, or an *arrangement was treated as giving rise to a taxable supply, to any extent; and
 - (b) the supply is not a taxable supply, or the arrangement does not give rise to a taxable supply, to that extent (for example, because it is *GST-free); and
 - (c) one of the following applies:
 - (i) the Commissioner is not satisfied that you have reimbursed a corresponding amount to the recipient of the supply or (in the case of an arrangement treated as giving rise to a taxable supply) to an entity treated as the recipient;
 - (ii) the recipient of the supply, or (in the case of an arrangement treated as giving rise to a taxable supply) the entity treated as the recipient, is *registered or *required to be registered.

Note: Divisions 3 and 3A of Part IIB deal with payments, credits and RBA surpluses.

- (2) This section applies to the following amounts that relate to a *tax period starting on or before the day the *Tax Laws Amendment (2014 Measures No. 1) Act 2014* receives the Royal Assent:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) in the case of a *supply:
 - (i) so much of any *assessed net amount or amount of *GST as you have overpaid (as mentioned in paragraph (1)(a)); or
 - (ii) so much of any assessed net amount that is payable to you under section 35-5 of the *GST Act as the Commissioner has not refunded to you (as mentioned in paragraph (1)(a)), either by paying it to you or by applying it under Division 3 of Part IIB of this Act;
- (b) in the case of an *arrangement:
 - (i) so much of any assessed net amount or amount of GST to which subparagraph (a)(i) would apply if the arrangement were a supply; or
 - (ii) so much of any assessed net amount to which subparagraph (a)(ii) would apply if the arrangement were a supply.

Note: Division 3 of Part IIB deals with payments, credits and RBA surpluses.

- (3) The Commissioner must notify you in writing of any decision relating to you made under subsection (1) after the day mentioned in subsection (2).
- (4) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that was made under subsection (1).

Note: This section will be repealed on 1 July 2018: see Part 3 of Schedule 2 to the *Tax Laws Amendment (2014 Measures No. 1) Act 2014*.

Subdivision 105-D—General interest charge and penalties

Table of sections

105-80	General interest charge
105-85	Amending Acts cannot impose penalties or general interest charge earlier than 28 days after Royal Assent

105-80 General interest charge

- (1) If any of an amount (the *liability*) to which this section applies remains unpaid after the time by which it is due to be paid, you are

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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liable to pay the *general interest charge on the unpaid amount of the liability for each day in the period that:

- (a) started at the beginning of the day by which the liability was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the liability;
 - (ii) general interest charge on any of the liability.

Note: The general interest charge is worked out under Division 1 of Part IIA.

- (2) This section applies to either of the following amounts that you are liable to pay:
 - (a) an *assessed net fuel amount;
 - (b) an assessed amount of *indirect tax (including an *assessed net amount).

105-85 Amending Acts cannot impose penalties or general interest charge earlier than 28 days after Royal Assent

- (1) An Act that amends an *indirect tax law does not have the effect of making you liable to:
 - (a) a penalty for an offence against an indirect tax law; or
 - (b) *general interest charge under section 105-80;for any act or omission that happens before the 28th day (the **postponed day**) after the day on which the amending Act receives the Royal Assent.
- (2) If the amending Act would (apart from this section) have the effect of making you liable to such a penalty or charge because you contravened a requirement to do something:
 - (a) within a specified period ending before the postponed day; or
 - (b) before a specified time happening before the postponed day;the requirement has effect instead by reference to a period ending at the start of the postponed day, or by reference to the start of the postponed day, as the case requires.
- (3) This section does not relieve you from liability to such a penalty or charge to the extent to which the liability would have existed if the amending Act had not been enacted.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-120

Subdivision 105-F—Indirect tax refund schemes

Table of sections

105-120	Refund scheme—defence related international obligations
105-125	Refund scheme—international obligations

105-120 Refund scheme—defence related international obligations

- (1) The Commissioner must, on behalf of the Commonwealth, pay you an amount equal to the amount of *indirect tax borne by you in respect of an acquisition (within the meaning of the *GST Act) if:
 - (a) you are in a class of entities determined by the *Defence Minister; and
 - (b) the acquisition is covered by a determination of the Defence Minister; and
 - (c) the acquisition is made:
 - (i) by or on behalf of a *visiting force that is; or
 - (ii) by a member (within the meaning of the *Defence (Visiting Forces) Act 1963*) of the visiting force who is; or
 - (iii) by any other entity that is; covered by a determination of the Defence Minister; and
 - (d) at the time of the acquisition, it was intended for:
 - (i) the official use of the visiting force; or
 - (ii) the use of a member (within the meaning of the *Defence (Visiting Forces) Act 1963*) of the visiting force; or
 - (iii) any other use; and that use is covered by a determination of the Defence Minister; and
 - (e) you claim the amount in the *approved form.
- (2) The amount is payable:
 - (a) in accordance with the conditions and limitations; and
 - (b) within the period and manner; determined by the *Defence Minister.
- (3) The *Defence Minister may only determine an entity under subparagraph (1)(c)(iii) or a use under subparagraph (1)(d)(iii) if the Commonwealth is under an international obligation to grant

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

*indirect tax concessions in relation to the kind of entity or the kind of use.

- (4) A determination under this section is a legislative instrument.

105-125 Refund scheme—international obligations

- (1) The Commissioner must, on behalf of the Commonwealth, pay you, or an entity in a class of entities determined by the Commissioner, an amount equal to the amount of *indirect tax borne by you in respect of an acquisition (within the meaning of the *GST Act) made by you if:
- (a) you are a kind of entity specified in the regulations; and
 - (b) the acquisition is of a kind specified in the regulations; and
 - (c) you or the entity claims the amount in the *approved form.
- (2) The amount is payable:
- (a) in accordance with the conditions and limitations; and
 - (b) within the period and manner;
- set out in the regulations.
- (3) The regulations may only specify a kind of entity for the purposes of paragraph (1)(a) or a kind of acquisition for the purposes of paragraph (1)(b) if the Commonwealth is under an international obligation to grant *indirect tax concessions in relation to the kind of entity or the kind of acquisition.
- (4) A determination by the Commissioner under subsection (1) is not a legislative instrument.

Subdivision 105-G—Other administrative provisions

Table of sections

105-140	Address for service
105-145	Commissioner must give things in writing

105-140 Address for service

- (1) Your address for service for the purposes of an *indirect tax law is:
- (a) if you are registered in the *Australian Business Register—the address shown in the Register under subsection 25(2) of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-140

the *A New Tax System (Australian Business Number) Act 1999* as your address for service; or

- (b) if you are not registered in that Register—the address last notified by you in a document under an indirect tax law; or
- (c) if you have not notified an address in a document under an indirect tax law—your Australian place of business or residence last known to the Commissioner; or
- (d) any other address that the Commissioner reasonably believes to be your address for service.

Note: If you are a company, see also sections 444-10 and 444-15.

(2) If:

- (a) under an *indirect tax law, you are:
 - (i) liable to pay an amount of *indirect tax; or
 - (ii) entitled to a credit; and

(b) you change your address for service;

you must notify the Commissioner in writing of the new address within 28 days after the change.

(3) If:

- (a) a notice or other document must be served on you:
 - (i) under an *indirect tax law; or
 - (ii) in proceedings for recovery of an amount under an indirect tax law; and
- (b) you have notified the Commissioner of an Australian address for service;

the Commissioner may serve the notice or document by post to that address.

(4) However, if:

- (a) you must lodge or have lodged *GST returns electronically; and
- (b) you notify the Commissioner of an address for effecting service by way of electronic transmission;

the Commissioner may serve a notice of assessment, or notice of penalty or *general interest charge under an *indirect tax law, on you by electronic transmission to that address.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

105-145 Commissioner must give things in writing

- (1) Any notice, approval, direction, authority or declaration that the Commissioner may give, or must give, to you under an *indirect tax law must be in writing.
- (2) However, this does not prevent the Commissioner giving any of those things to you by electronic transmission if a provision of an *indirect tax law allows the Commissioner to do so.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 110-1

Division 110—Goods and services tax

Table of Subdivisions

Guide to Division 110

110-F Review of GST decisions

Guide to Division 110

110-1 What this Division is about

This Division gives you the right to object against reviewable GST decisions that relate to you. Section 110-50 sets out the reviewable GST decisions.

Subdivision 110-F—Review of GST decisions

Table of sections

110-50 Reviewable GST decisions

110-50 Reviewable GST decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is:
 - (a) a *reviewable GST decision relating to you; or
 - (b) a *reviewable GST transitional decision relating to you.
- (2) Each of the following decisions is a ***reviewable GST decision***:

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
1	refusing to register you	subsection 25-5(1)
2	registering you	subsection 25-5(2)
3	deciding the date of effect of your registration	section 25-10
4	refusing to cancel your registration	subsection 25-55(1)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
5	cancelling your registration	subsection 25-55(2)
6	refusing to cancel your registration	section 25-57
7	deciding the date on which the cancellation of your registration takes effect	section 25-60
8	determining that the *tax periods that apply to you are each individual month	subsection 27-15(1)
9	deciding the date of effect of a determination	subsection 27-15(2)
10	refusing to revoke your election under section 27-10	subsection 27-22(1)
11	deciding the date of effect of a revocation	subsection 27-22(3)
12	refusing to revoke a determination under section 27-15	subsection 27-25(1)
13	deciding the date of effect of a revocation	subsection 27-25(2)
14	determining that a specified period is a *tax period that applies to you	section 27-30
15	refusing a request for a determination	section 27-37
16	revoking a determination under section 27-37	subsection 27-38(1)
17	deciding the date of a revocation	subsection 27-38(2)
18	refusing to permit you to account on a cash basis	subsection 29-45(1)
19	deciding the date of effect of your permission to account on a cash basis	subsection 29-45(2)
20	revoking your permission to account on a cash basis	subsection 29-50(3)
21	deciding the date of effect of the revocation of your permission to account on a cash basis	subsection 29-50(4)
22	refusing an application for a decision that an event is a *fund-raising event	paragraph 40-165(1)(c)
23	approving another day of effect	paragraph 48-71(1)(b)
24	revoking an approval of a day of effect	subsection 48-71(2)
29	refusing an application for approval	section 49-5

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 3 Collection, recovery and administration of other taxes

Part 3-10 Indirect taxes

Section 110-50

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
30	refusing an application for approval or revocation	subsection 49-70(1)
31	revoking an approval under Division 49	subsection 49-70(2)
32	refusing an application for revocation	subsection 49-75(1)
33	revoking the approval of a *GST religious group	subsection 49-75(2)
34	deciding the date of effect of any approval, or any revocation of an approval, under Division 49	section 49-85
35	approving another day of effect	paragraph 51-75(1)(b)
36	revoking an approval of a day of effect	subsection 51-75(2)
42	refusing an application for registration	section 54-5
43	deciding the date of effect of registration as a *GST branch	section 54-10
44	refusing to cancel the registration of a *GST branch	subsection 54-75(1)
45	cancelling the registration of a *GST branch	subsection 54-75(2)
46	deciding the date of effect of the cancellation of the registration of a *GST branch	section 54-80
47	cancelling the registration of an Australian resident agent	subsection 57-25(1)
48	determining that the *tax periods that apply to a resident agent are each individual month	subsection 57-35(1)
49	deciding the date of effect of a determination	subsection 57-35(2)
49A	cancelling the registration of a *representative of an *incapacitated entity	subsection 58-25(1)
49B	deciding to direct a *representative of an *incapacitated entity to give to the Commissioner a *GST return	paragraph 58-50(1)(b)
50	cancelling the registration of a *non-profit sub-entity	subsection 63-35(1)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 110-50

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
51	refusing to allow, or allowing, a further period within which to make an agreement that the margin scheme is to apply	paragraph 75-5(1A)(b)
52	refusing a request to allow an annual apportionment election to take effect from the start of another *tax period	paragraph 131-10(2)(b)
53	disallowing an annual apportionment election	subsection 131-20(3)
53A	refusing to make requested decision about excess GST	subsection 142-15(1)
55	refusing a request to allow an annual *tax period election to take effect from the start of another tax period	paragraph 151-10(2)(b)
56	refusing a request to be allowed to make an annual *tax period election on a specified day	subsection 151-20(3)
57	disallowing an annual *tax period election	subsection 151-25(3)
58	refusing a request to allow an election to pay *GST by instalments to take effect from the start of another *tax period	paragraph 162-15(2)(b)
59	refusing a request to be allowed to make an election on a specified day	subsection 162-25(3)
60	disallowing an election to pay *GST by instalments	subsection 162-30(3)
61	making a declaration that states: (a) the amount that is (and has been at all times) a *net amount for a *tax period that ended before 1 July 2012; or (b) the amount that is (and has been at all times) the amount of *GST on a *taxable importation, if the GST was payable before 1 July 2012	subsection 165-40(1)
62	making a declaration to negate or reduce a GST disadvantage	subsection 165-45(3)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 110-50

Reviewable GST decisions under GST Act

Item	Decision	Provision of GST Act under which decision is made
63	deciding whether to grant a request for a declaration to negate or reduce a GST disadvantage	subsection 165-45(5)

- (3) A decision under section 24B of the *A New Tax System (Goods and Services Tax Transition) Act 1999* refusing an application for a determination under that section, or making a determination under that section, is a ***reviewable GST transitional decision***.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 111—Wine tax and luxury car tax

Table of Subdivisions

- Guide to Division 111
- 111-C Review of wine tax decisions
- 111-D Effect on contracts from amendments to laws

Guide to Division 111

111-1 What this Division is about

This Division gives you the right to object against decisions that relate to you disallowing the whole or part of a claim for a wine tax credit.

It also explains how contracts to supply wine or a luxury car are affected if a wine tax law or luxury car tax law changes.

Subdivision 111-C—Review of wine tax decisions

Table of sections

- 111-50 Reviewable wine tax decisions

111-50 Reviewable wine tax decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a *reviewable wine tax decision relating to you.
- (2) Each of the following decisions is a *reviewable wine tax decision*:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 111-60

Reviewable wine tax decisions		
Item	Decision	Provision of Wine Tax Act under which decision is made
1	disallowing the whole or a part of your claim for a *wine tax credit	section 17-45
2	deciding the date of effect of your approval as a New Zealand participant	section 19-7
3	refusing to approve you as a New Zealand participant	section 19-7
4	revoking your approval as a New Zealand participant	section 19-8
5	deciding the date of effect of revocation of your approval as a New Zealand participant	section 19-8

Subdivision 111-D—Effect on contracts from amendments to laws

Table of sections

111-60	Alteration of contracts if cost of complying with agreement is affected by later alteration to wine tax or luxury car tax laws
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111-60 Alteration of contracts if cost of complying with agreement is affected by later alteration to wine tax or luxury car tax laws

- (1) If, after a contract involving a *supply or a *wine taxable dealing has been made, an alteration to the *wine tax law or the *luxury car tax law happens and the alteration directly causes an increase or decrease in the cost to a party to the agreement of complying with the agreement, then the contract is altered as follows:
- (a) if the cost is increased—by allowing the party to add the increase to the contract price;
 - (b) if the cost is decreased—by allowing the other party to deduct the decrease from the contract price.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 111-60

- (2) The contract is not altered if:
- (a) the contract has express written provision to the contrary; or
 - (b) it is clear from the terms of the contract that the alteration of the *wine tax law or the *luxury car tax law has been taken into account in the agreed contract price.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 112-1

Division 112—Fuel tax

Table of Subdivisions

Guide to Division 112

112-E Review of fuel tax decisions

Guide to Division 112

112-1 What this Division is about

<p>This Division gives you the right to object against reviewable fuel tax decisions that relate to you. Section 112-50 sets out the reviewable fuel tax decisions.</p>

Subdivision 112-E—Review of fuel tax decisions

Table of sections

112-50 Reviewable fuel tax decisions

112-50 Reviewable fuel tax decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a ^{*}reviewable fuel tax decision relating to you.
- (2) Each of the following decisions is a ***reviewable fuel tax decision***:

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Reviewable fuel tax decisions		
Item	Decision	Provision of the <i>Fuel Tax Act 2006</i> under which decision is made
1	making a declaration that states the amount that is (and has been at all times) the *net fuel amount for a *tax period, or *fuel tax return period, that ended before 1 July 2012	subsection 75-40(1)
2	making a declaration to negate or reduce a *fuel tax disadvantage	subsection 75-45(3)
3	deciding whether or not to grant a request to negate or reduce a *fuel tax disadvantage	subsection 75-45(5)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-1

Part 3-15—Minerals Resource Rent Tax

Division 115—Instalments

Table of Subdivisions

Guide to Division 115

- 115-A Preliminary
- 115-B Liability for instalments
- 115-C Working out instalment amounts
- 115-D Instalment rate chosen by you
- 115-E Instalment rate given to you by Commissioner
- 115-F Default instalment rate
- 115-G Special rules for project interests that are transferred or split
- 115-H Special rules for transitional accounting periods

Guide to Division 115

115-1 What this Division is about

You pay quarterly instalments of MRRT under this Division if you have mining revenue or pre-mining revenue for a quarter or a positive instalment rate.

Instalments give rise to a credit once an assessment of the MRRT is made.

The amount of a quarterly instalment is the product of your instalment income for the quarter and your applicable instalment rate.

The applicable instalment rate may be a rate chosen by you, a rate given to you by the Commissioner, or a statutory default rate.

General interest charge may be payable if a rate you choose for a quarter is too low, having regard to the amount of MRRT you are liable to pay for the year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 115-A—Preliminary

Table of sections

115-5 Objects of this Division

115-5 Objects of this Division

The objects of this Division are:

- (a) to ensure the efficient collection of *MRRT by the payment of quarterly instalments; and
- (b) to calculate total instalments for the *MRRT year that are as close as possible to the amount of MRRT you are liable to pay for the year.

Subdivision 115-B—Liability for instalments

Table of sections

115-10 Liability for instalments
115-15 Information to be given to the Commissioner
115-20 Credit for instalments payable
115-25 When instalments are due
115-30 General interest charge on late payment

115-10 Liability for instalments

- (1) You are liable to pay an instalment under this Division in relation to an *instalment quarter in an *MRRT year, if:
 - (a) you have a *mining project interest or *hold a *pre-mining project interest; and
 - (b) either:
 - (i) you have *mining revenue or *pre-mining revenue relating to the instalment quarter; or
 - (ii) your *applicable instalment rate for the instalment quarter is greater than nil.

Note 1: For provisions about collection and recovery of amounts you are liable to pay under this Division, see Part 4-15.

Note 2: For *applicable instalment rate*, see section 115-45.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-15

Meaning of instalment quarter

- (2) For an *MRRT year (whether it ends on 30 June or not), the following are the *instalment quarters*:
- (a) your first *instalment quarter* consists of the first 3 months of the MRRT year;
 - (b) your second *instalment quarter* consists of the fourth, fifth and sixth months of the MRRT year;
 - (c) your third *instalment quarter* consists of the seventh, eighth and ninth months of the MRRT year;
 - (d) your fourth *instalment quarter* consists of the tenth, 11th and 12th months of the MRRT year.

Note: There is a special rule for MRRT years that are not 12 months: see Subdivision 115-H.

115-15 Information to be given to the Commissioner

- (1) If you are liable to pay an instalment for an *instalment quarter (even if it is a nil amount), you must notify the Commissioner of the amount of your *instalment income for the quarter.
- (2) You must notify the Commissioner in the *approved form and on or before the day when the instalment is due (regardless of whether it is paid).
- (3) Subsection (1) does not apply to you for an *instalment quarter if:
 - (a) a nil rate determination under subsection 115-45(2) or (3) applies to you for the quarter; and
 - (b) you are exempted from compliance with subsection (1) for the quarter:
 - (i) by a written notice the Commissioner gives you; or
 - (ii) by a legislative instrument that the Commissioner makes, exempting a class of entities.
- (4) An exemption under subsection (3) may be combined in the same document as a nil rate determination.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

115-20 Credit for instalments payable

- (1) You are entitled to a credit when the Commissioner makes an assessment of the amount (including a nil amount) of *MRRT you are liable to pay.
- (2) The amount of the credit is:
 - (a) the total of each instalment payable by you for the *MRRT year (even if you have not yet paid it); *less*
 - (b) the total of each credit that you have claimed under section 115-60 or 115-100.
- (3) The making of the assessment, and the resulting credit entitlement, do not affect the liability to pay an instalment.

Note: How the credit is applied is set out in Division 3 of Part IIB.

115-25 When instalments are due

An instalment you are liable to pay in relation to an *instalment quarter is due on or before the 21st day of the month after the end of that quarter.

115-30 General interest charge on late payment

If you fail to pay some or all of an instalment by the time by which the instalment is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the day by which the instalment was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the instalment;
 - (ii) general interest charge on any of the instalment.

Subdivision 115-C—Working out instalment amounts

Table of sections

115-35	How to work out the amount of an instalment
115-40	Meaning of <i>instalment income</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-35

115-45 Meaning of *applicable instalment rate*

115-35 How to work out the amount of an instalment

The amount of an instalment you are liable to pay in relation to *MRRT, in relation to an *instalment quarter, is:

Your *instalment income for
the *instalment quarter \times *Applicable instalment rate

115-40 Meaning of *instalment income*

Your *instalment income* for an *instalment quarter in an *MRRT year is the sum of the amounts worked out under column 2 of the table in subsection 30-25(2) of the *Minerals Resource Rent Tax Act 2012* for each *mining revenue event that:

- (a) happens during the instalment quarter; and
- (b) results in an amount (including a nil amount) being included:
 - (i) under section 30-10 of that Act in your *mining revenue for a *mining project interest for the MRRT year; or
 - (ii) under section 70-40 of that Act in your *pre-mining revenue for a *pre-mining project interest for the MRRT year.

Note 1: Special rules affect the calculation of instalment income for project interests that are transferred or split: see Subdivision 115-G.

Note 2: If you have chosen to use the alternative valuation method under Division 175 of the *Minerals Resource Rent Tax Act 2012*, your unadjusted revenue amounts under section 175-30 of that Act will be the same as the amounts worked out under column 2 of the table in subsection 30-25(2) of that Act.

115-45 Meaning of *applicable instalment rate*

- (1) Your *applicable instalment rate*, for an *instalment quarter in an *MRRT year (the *current year*), is worked out using the first applicable item in the table.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-45

Applicable instalment rate for an instalment quarter for MRRT		
Item	Column 1 If:	Column 2 Your applicable instalment rate is:
1	A nil rate determination under subsection (2) or (3) applies to you for the *instalment quarter	Nil.
2	You have chosen an instalment rate under Subdivision 115-D for: (a) the *instalment quarter; or (b) an earlier instalment quarter in the current year	The rate you chose for the instalment quarter, or, if you did not choose a rate for the instalment quarter, the rate you chose for the most recent earlier instalment quarter in the current year for which you chose a rate.
3	The Commissioner has given you an instalment rate under Subdivision 115-E before the end of the *instalment quarter (whether in the current year or an earlier *MRRT year)	The most recent instalment rate given to you by the Commissioner before the end of the instalment quarter.
4	None of items 1, 2 and 3 applies	The rate that applies to you under Subdivision 115-F.

Note: If you choose a rate under Subdivision 115-D, you must use it for the rest of the MRRT year even if the Commissioner later gives you a different instalment rate.

Nil rate determinations

- (2) The Commissioner may, by giving you written notice, determine a nil rate for you for an *MRRT year if, in the Commissioner's opinion, you are unlikely to be liable to pay *MRRT for the MRRT year.
- (3) The Commissioner may, by legislative instrument, determine a nil rate for a class of entities for an *MRRT year if, in the Commissioner's opinion, each entity in the class is unlikely to be liable to pay *MRRT for the MRRT year.
- (4) A determination applies for the *instalment quarter in which the Commissioner makes it, and for later quarters in the *MRRT year.

Note: The determination does not apply in later MRRT years.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-50

- (5) However, if the Commissioner later gives you an instalment rate under Subdivision 115-E, the determination stops applying to you for the instalment quarter in which you are given that later rate, and for later quarters.

Note 1: This may mean the nil rate determination does not apply to you for any instalment quarter (if the Commissioner makes the determination, then *later* in the same quarter gives you an instalment rate under Subdivision 115-E).

Note 2: For whether the rate the Commissioner gives you under Subdivision 115-E is your ***applicable instalment rate*** for an instalment quarter, see the table in subsection (1).

Subdivision 115-D—Instalment rate chosen by you

Table of sections

Choosing an instalment rate

115-50 Choosing a varied instalment rate

115-55 Notifying Commissioner of varied instalment rate

Variation credits

115-60 Credit on using varied rate in certain cases

General interest charge payable in certain cases if instalments are too low

115-65 Liability to GIC on shortfall in instalments worked out on the basis of varied rate

115-70 Working out your ***benchmark instalment rate***

Choosing an instalment rate

115-50 Choosing a varied instalment rate

You may choose an instalment rate for an *instalment quarter in an *MRRT year under this Subdivision.

Note 1: If choosing a rate leads you to pay an instalment that is too low, you may be liable to general interest charge under section 115-65.

Note 2: You would also use this rate for later instalment quarters in the MRRT year, unless you choose another rate for the later instalment quarter under this section (see section 115-45).

Note 3: Division 119 is about choices under the MRRT law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

115-55 Notifying Commissioner of varied instalment rate

- (1) If you choose an instalment rate for an *instalment quarter under section 115-50, you must notify the Commissioner of the rate.
- (2) You must notify the Commissioner in the *approved form and on or before the day the instalment for the *instalment quarter is due (regardless of whether it is paid).

Note: The Commissioner may combine this approved form with the approved form for the notice you are required to give under section 115-15: see subsection 388-50(2).

Variation credits

115-60 Credit on using varied rate in certain cases

- (1) You are entitled to claim a credit if:
 - (a) you are liable to pay an instalment for an *instalment quarter (the **current quarter**) in an *MRRT year; and
 - (b) the amount of your instalment for the current quarter is to be worked out using an instalment rate you chose under section 115-50; and
 - (c) that rate is lower than your *applicable instalment rate for the previous quarter in the same year; and
 - (d) the amount worked out using the method statement is greater than nil.

Method statement

- Step 1. Add up the instalments you are liable to pay for the earlier *instalment quarters in the year (even if you have not yet paid all of them).
- Step 2. Subtract from the step 1 amount each earlier credit that you have claimed under this section or section 115-100 in respect of the year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-60

- Step 3. Multiply the total of your *instalment income for those earlier *instalment quarters by your *applicable instalment rate for the current quarter.
- Step 4. Subtract the step 3 amount from the step 2 amount.
- Step 5. If the result is a positive amount, it is the amount of the credit you can claim.

Example: In the first instalment quarter in an MRRT year, a miner has instalment income of \$100m and an applicable instalment rate of 15%, which has been given by the Commissioner.

In the second instalment quarter in the MRRT year, the miner has instalment income of \$80m and uses the same rate given by the Commissioner (15%).

In the third instalment quarter in the MRRT year, the miner has instalment income of \$70m and chooses an instalment rate of 12%.

The miner uses the method statement to work out a credit as follows:

Step 1: The instalment of \$15m for the first instalment quarter (\$100m x 15%), plus the instalment of \$12m for the second instalment quarter (\$80m x 15%) gives a total step 1 amount of \$27m.

Step 2: No earlier credits have been claimed, so there is no amount to subtract from the step 1 amount—the step 2 amount is \$27m.

Step 3: The total of the instalment income for the earlier quarters is \$180m, multiplied by the rate for the current quarter (12%), equals \$21.6m.

Step 4: $\$27\text{m} - \$21.6\text{m} = \$5.4\text{m}$.

Step 5: The miner has a credit of \$5.4m.

The miner also has an instalment liability for the current quarter of \$8.4m (\$70m x 12%).

After applying the \$5.4m credit, the miner will be liable to pay an amount of \$3m for the quarter.

- (2) A claim for a credit must be made in the *approved form on or before the day on which the instalment for the current quarter is due.

Note: How the credit is applied is set out in Division 3 of Part IIB.

- (3) The credit entitlement does not affect your liability to pay an instalment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

General interest charge payable in certain cases if instalments are too low

115-65 Liability to GIC on shortfall in instalments worked out on the basis of varied rate

- (1) You are liable to pay the ^{*}general interest charge under this section if:
- (a) an instalment rate (the **varied rate**) you choose under section 115-50 is your ^{*}applicable instalment rate for an ^{*}instalment quarter (the **variation quarter**) in an ^{*}MRRT year; and
 - (b) the varied rate is less than 85% of your ^{*}benchmark instalment rate for the MRRT year.

Note: For the Commissioner's power to remit general interest charge, see section 8AAG.

- (2) You are liable to pay the ^{*}general interest charge on the amount worked out as follows:

$$\left(\text{Rate discrepancy} \times \text{Your } ^*\text{instalment income for the variation quarter} \right) + \text{Credit adjustment}$$

where:

credit adjustment means:

- (a) if, as a result of using the varied rate for the variation quarter, you claimed a credit under section 115-60—the amount worked out as follows:

$$\text{Rate discrepancy} \times \frac{\text{Your } ^*\text{instalment income for the earlier instalment quarters in the } ^*\text{MRRT year}}{\text{Rate discrepancy}}$$

or the sum of the amounts of the credits, whichever is less;
and

- (b) otherwise—nil.

rate discrepancy means the difference between the varied rate and the lesser of:

- (a) the rate that would have been your ^{*}applicable instalment rate for the variation quarter if you did not choose an instalment

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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rate for the variation quarter or an earlier *instalment quarter in the *MRRT year; and

(b) your *benchmark instalment rate for that MRRT year.

- (3) You are liable to pay the charge for each day in the period that:
- (a) started at the beginning of the day by which the instalment for the variation quarter was due to be paid; and
 - (b) finishes at the end of the day on which your *assessed MRRT for the *MRRT year is due to be paid.
- (4) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2). You must pay the charge within 14 days after the notice is given to you.
- (5) If any of the *general interest charge to which you are liable under subsection (2) remains unpaid at the end of the 14 days referred to in subsection (4), you are also liable to pay the general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

115-70 Working out your benchmark instalment rate

Your **benchmark instalment rate** for an *MRRT year is the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{The amount of *MRRT you are liable to pay for the *MRRT year}}{\text{Your *instalment income for the *MRRT year}} \times 100$$

However, your **benchmark instalment rate** for the MRRT year is a nil rate if either component of the fraction is nil.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 115-E—Instalment rate given to you by Commissioner

Table of sections

115-75	Commissioner instalment rate for MRRT
115-80	Commissioner may take changes, and proposed changes, to the law into account

115-75 Commissioner instalment rate for MRRT

- (1) The Commissioner may give you an instalment rate from time to time, by giving you written notice of:
- (a) the instalment rate; and
 - (b) the modified MRRT liability, as worked out under subsection (2), for the purposes of working out the instalment rate.

Note: For whether the rate the Commissioner gives you is your *applicable instalment rate* for an instalment quarter, see section 115-45.

- (2) An instalment rate that the Commissioner gives you must be the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your modified liability for MRRT for the } ^*\text{base year}}{\text{Your } ^*\text{instalment income for the base year}} \times 100$$

where:

modified liability for MRRT is the amount of **MRRT* you are liable to pay for the **base year*, subject to section 115-80.

Note: The instalment rate worked out under this subsection could exceed the MRRT rate. One reason for this is that not all amounts of mining revenue are included in instalment income.

- (3) The ***base year*** is the most recent **MRRT* year for which an assessment of **MRRT* has been made for you.
- (4) However, the instalment rate must be a nil rate if either component of the fraction is nil.
- (5) Despite subsections (2) to (4), the Commissioner may give you an instalment rate worked out on a different basis if, having regard to

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the object of this Division and the circumstances, the Commissioner is of the opinion:

- (a) that it would be reasonable to work out the rate under this subsection; and
- (b) that the rate so worked out is reasonable.

Example: The following are some examples of circumstances in which a rate may be worked out on a different basis:

- (a) an entity joins or leaves a consolidated group;
 - (b) a mining project interest is transferred or split;
 - (c) there is no base year for the mining project interest;
 - (d) there was a significant amount of one-off capital expenditure in the base year;
 - (e) MRRT allowances applied in a later year are expected to be significantly less than MRRT allowances applied in the base year;
 - (f) there is a change in the economic circumstances of the mining industry.
- (6) To avoid doubt, an instalment rate the Commissioner works out under subsection (5) may be higher, or lower, than the rate worked out under subsection (2) (if a rate can be worked out under that subsection).

115-80 Commissioner may take changes, and proposed changes, to the law into account

For the purposes of working out your modified liability for *MRRT for a *base year, the Commissioner may work out an amount:

- (a) as if provisions of an Act or regulations, as they may reasonably be expected to apply for the purposes of your assessment for a later *MRRT year, had applied for the purposes of the base year; and
- (b) as if provisions of an Act or regulations had applied for the purposes of the base year if:
 - (i) in the Commissioner's opinion, the provisions are likely to be enacted or made; and
 - (ii) the application of the provisions reduces the instalment rate being given to you.

Note: Taking law changes, and proposed law changes, into account in working out the instalment rate means total instalments for the year are as close as possible to your likely MRRT for the year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 115-F—Default instalment rate

Table of sections

115-85 Default instalment rate

115-85 Default instalment rate

Instalment rate for instalment income relating to iron ore

- (1) The rate that applies to you for an *instalment quarter in which your *instalment income only includes amounts relating to iron ore is:
- (a) if paragraph (b) does not apply—8%; or
 - (b) if the regulations prescribe a rate for the instalment quarter for the purposes of this subsection—that rate.

Instalment rate for instalment income relating to other taxable resources

- (2) The rate that applies to you for an *instalment quarter in which your *instalment income only includes amounts relating to *taxable resources other than iron ore, is:
- (a) if paragraph (b) does not apply—3%; or
 - (b) if the regulations prescribe a rate for the instalment quarter for the purposes of this subsection—that rate.

Instalment rate for instalment income relating to iron ore and other taxable resources

- (3) The rate that applies to you for an *instalment quarter in which your *instalment income includes amounts relating both to iron ore and to other *taxable resources is the sum of the following, worked out to 2 decimal places (rounding up if the third decimal place is 5 or more):
- (a) the rate that would apply for the quarter if your instalment income only included amounts relating to iron ore, multiplied by the proportion of your total instalment income for the quarter that relates to iron ore;
 - (b) the rate that would apply for the quarter if your instalment income only included amounts relating to taxable resources

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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other than iron ore, multiplied by the proportion of your total instalment income for the quarter that relates to taxable resources other than iron ore.

Example: In an instalment quarter, you have \$200m in instalment income from mining project interests that relate to iron ore, and \$100m in instalment income from mining project interests that relate to coal.

Under subsection (1), the default instalment rate for iron ore is 8%, and under subsection (2) the default instalment rate for coal is 3%.

The rate that applies to you for the quarter is 6.33% $[(.08 \times 200\text{m}/300\text{m}) + (.03 \times 100\text{m}/300\text{m})]$.

Regulations not to be made in first MRRT year

- (4) The regulations may prescribe a rate for the purposes of subsection (1) or (2) for an *instalment quarter in the 2013-2014 *MRRT year or a later year.

Subdivision 115-G—Special rules for project interests that are transferred or split

Table of sections

115-90	Effect of transfer or split of project interest on instalment income
115-95	Additional instalment income for new miner or new explorer
115-100	Credit for original miner or original explorer for instalment quarters before transfer or split
115-105	Adjusted instalment income for original miners or explorers

115-90 Effect of transfer or split of project interest on instalment income

Instalment quarters that have ended before transfer or split happens—instalment income not affected by transfer or split

- (1) In working out, under section 115-40, your *instalment income for an *instalment quarter that ends before a *mining project transfer, *mining project split, *pre-mining project transfer or *pre-mining project split happens:
- (a) include amounts that:
- (i) relate to *mining revenue events that happen during the instalment quarter; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) would, apart from the application of Division 120, 125, 145 or 150 of the *Minerals Resource Rent Tax Act 2012* in relation to the transfer or split, be included in your *mining revenue or *pre-mining revenue as mentioned in section 115-40; and
- (b) do not include amounts that:
 - (i) relate to mining revenue events that happen during the instalment quarter; and
 - (ii) are included in your mining revenue or pre-mining revenue as mentioned in section 115-40 only because of the application of those Divisions in relation to the transfer or split.

Note 1: For the original miner or explorer (paragraph (a) case):

- (a) a credit may be available under section 115-100; and
- (b) the effect of paragraph (a) is modified in some circumstances: see section 115-105.

Note 2: For the new miner or explorer (paragraph (b) case), additional “catch up” instalment income may be included in the quarter in which the transfer or split happens: see section 115-95.

Instalment quarter in which transfer or split happens—instalment income transfers with interest

- (2) In working out, under section 115-40, your *instalment income for an *instalment quarter in which a *mining project transfer, *mining project split, *pre-mining project transfer or *pre-mining project split happens:
 - (a) include amounts that:
 - (i) relate to *mining revenue events that happen during the instalment quarter; and
 - (ii) because of the application of Division 120, 125, 145 or 150 of the *Minerals Resource Rent Tax Act 2012* in relation to the transfer or split, are included in your *mining revenue or *pre-mining revenue as mentioned in section 115-40; and
 - (b) do not include amounts that:
 - (i) relate to mining revenue events that happen during the instalment quarter; and
 - (ii) because of the application of those Divisions in relation to the transfer or split, are not included in your mining

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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revenue or pre-mining revenue as mentioned in section 115-40.

115-95 Additional instalment income for new miner or new explorer

- (1) Your *instalment income* for an *instalment quarter in an *MRRT year includes an amount worked out under subsection (2) if:
 - (a) a *mining project transfer, *mining project split, *pre-mining project transfer or *pre-mining project split happens in the instalment quarter; and
 - (b) you have the relevant *mining project interest or *pre-mining project interest after the transfer or split.
- (2) The amount is the sum of the amounts worked out under column 2 of the table in subsection 30-25(2) of the *Minerals Resource Rent Tax Act 2012* for each *mining revenue event that:
 - (a) happens before the start of the *instalment quarter in which the transfer or split happens; and
 - (b) because of the application of Division 120, 125, 145 or 150 of the *Minerals Resource Rent Tax Act 2012* in relation to the transfer or split, results in an amount (including a nil amount) being included in your *mining revenue or *pre-mining revenue as mentioned in section 115-40.

Note 1: The additional instalment income amount is nil if the transfer or split happens in the first quarter of an MRRT year, and the miner or explorer that has the interest before the transfer or split has the same MRRT year as each miner or explorer that has the interest after the transfer or split.

Note 2: For the instalment quarter in which the transfer or split happens, instalment income from before the transfer or split is included under subsection 115-90(2).

115-100 Credit for original miner or original explorer for instalment quarters before transfer or split

- (1) You are entitled to claim a credit if:
 - (a) a *mining project transfer, *mining project split, *pre-mining project transfer or *pre-mining project split happens in relation to a *mining project interest or *pre-mining project interest in an *instalment quarter in an *MRRT year; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) your *instalment income for an earlier instalment quarter in the MRRT year for which you are liable to pay an instalment includes one or more amounts relating to the mining project interest; and
- (c) the amount worked out using the method statement is greater than nil.

Method statement

- Step 1. Add up the instalments you are liable to pay for the earlier *instalment quarters in the year (even if you have not yet paid all of them).
- Step 2. Subtract from the step 1 amount each earlier credit that you have claimed under this section or section 115-60 in respect of the year.
- Step 3. For each earlier *instalment quarter in the year, work out your *instalment income under section 115-40 without including amounts that:
 - (a) relate to *mining revenue events that happen during the instalment quarter; and
 - (b) because of the application of Division 120, 125, 145 or 150 of the *Minerals Resource Rent Tax Act 2012* in relation to a transfer or split, are not included in your *mining revenue or *pre-mining revenue as mentioned in section 115-40.

Note: Step 3 effectively recalculates instalment income disregarding paragraph 115-90(1)(a).
- Step 4. Multiply the step 3 amount by your *applicable instalment rate for that quarter.
- Step 5. Sum the amounts worked out under step 4.
- Step 6. Subtract the step 5 amount from the step 2 amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Step 7. If the result is a positive amount, it is the amount of the credit you can claim.

Claim to be made in approved form

- (2) A claim for a credit must be made in the *approved form on or before the day on which the instalment for the current quarter is due.

115-105 Adjusted instalment income for original miners or explorers

- (1) Despite subsection 115-90(1), the provisions mentioned in subsection (2) have effect as if your *instalment income for an *instalment quarter that ends before a *mining project transfer, *mining project split, *pre-mining project transfer or *pre-mining project split happens did not include amounts that:
- (a) relate to *mining revenue events that happen during the instalment quarter; and
 - (b) because of the application of Division 120, 125, 145 or 150 of the *Minerals Resource Rent Tax Act 2012* in relation to the transfer or split, are not included in your *mining revenue or *pre-mining revenue as mentioned in section 115-40.

Note: Subsection (1) effectively recalculates instalment income disregarding paragraph 115-90(1)(a).

- (2) The provisions are:
- (a) subsection 115-65(2) (about GIC on instalment shortfalls); and
 - (b) section 115-70 (about your benchmark instalment rate for an *MRRT year); and
 - (c) subsection 115-75(2) (about working out a Commissioner instalment rate).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 115-H—Special rules for transitional accounting periods

Table of sections

115-110 Instalment quarters in transitional accounting periods

115-110 Instalment quarters in transitional accounting periods

- (1) An *MRRT year that is a period longer than 12 months has the following *instalment quarters* in addition to the instalment quarters mentioned in subsection 115-10(2):
 - (a) your fifth *instalment quarter* consists of the 13th, 14th and 15th months of the MRRT year;
 - (b) your sixth *instalment quarter* consists of the 16th, 17th and 18th months of the MRRT year;
 - (c) your seventh *instalment quarter* consists of the 19th, 20th and 21st months of the MRRT year;
 - (d) your eighth *instalment quarter* consists of the 22nd, 23rd and 24th months of the MRRT year.
- (2) Despite subsection (1) and subsection 115-10(2):
 - (a) you do not have any *instalment quarters* that begin after the end of an *MRRT year; and
 - (b) an *instalment quarter* that would otherwise end after the end of an MRRT year consists instead of the period from the start of the instalment quarter to the end of the MRRT year.

Note: You will only have an MRRT year that is not a 12 month period if you are moving from one accounting period to another: see Division 190 of the *Minerals Resource Rent Tax Act 2012*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 117-1

Division 117—MRRT returns and starting base returns

Guide to Division 117

117-1 What this Division is about

You are obliged to give the Commissioner an MRRT return for each MRRT year in which you have a mining project interest or pre-mining project interest, unless the Commissioner does not require you to lodge a return.

You are also obliged to give the Commissioner a starting base return for the first MRRT year.

Table of sections

Operative provisions

117-5	Who must give MRRT returns
117-10	The form and contents of MRRT returns
117-15	Additional MRRT returns
117-20	Starting base returns
117-25	Electronic lodgement of MRRT returns and starting base returns
117-30	MRRT returns and starting base returns treated as being duly made

Operative provisions

117-5 Who must give MRRT returns

- (1) If you have a *mining project interest, or *hold a *pre-mining project interest, during an *MRRT year, you must give the Commissioner an *MRRT return for that year that relates to all such interests.
- (2) You must give the return whether or not you are liable to pay *MRRT for the *MRRT year.
- (3) You must give your *MRRT return for the *MRRT year to the Commissioner:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) on or before the first day of the sixth month after the end of the year; or
 - (b) within such further period as the Commissioner allows; or
 - (c) if you are a member of a class of entities for which the Commissioner has determined a period under paragraph (5)(a)—within that further period;
- whichever is the latest.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (4) Despite subsection (1), you are not required to give the Commissioner an *MRRT return for an *MRRT year if:
 - (a) you have made a valid choice under section 200-10 of the *Minerals Resource Rent Tax Act 2012* (choosing to use the simplified MRRT method) that has effect at the end of the year; or
 - (b) you are a member of a class of entities that the Commissioner has exempted from providing a return for that year under paragraph (5)(b).
- (5) The Commissioner may, by legislative instrument, do either or both of the following:
 - (a) determine a further period within which a class of entities may provide an *MRRT return for an *MRRT year;
 - (b) exempt a class of entities from providing an MRRT return for an MRRT year.

117-10 The form and contents of MRRT returns

- (1) Your *MRRT return for an *MRRT year must be in the *approved form.
- (2) The *approved form for an *MRRT return must require information to be provided relating to the following:
 - (a) your *taxable mining profit for the *MRRT year;
 - (b) your *MRRT payable for the MRRT year.

Note: If you have chosen the simplified MRRT method under Division 200 of the *Minerals Resource Rent Tax Act 2012*, both of these amounts will be zero.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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117-15 Additional MRRT returns

- (1) In addition to the *MRRT returns required under section 117-5, you must give the Commissioner:
 - (a) such further or fuller MRRT returns; or
 - (b) such other MRRT returns for an *MRRT year or a specified period, whether or not you have given the Commissioner an MRRT return for the same period;as the Commissioner directs you to give (including any MRRT return in your capacity as agent or trustee).
- (2) The *approved form for a further or fuller *MRRT return may require information to be provided relating to:
 - (a) the *MRRT year to which the return relates; or
 - (b) one or more preceding MRRT years; or
 - (c) both the MRRT year to which the return relates, and one or more preceding MRRT years.

117-20 Starting base returns

- (1) In addition to the *MRRT returns required under section 117-5 or 117-15, you must give the Commissioner a *starting base return for the first *MRRT year if you make a choice under section 85-5 of the *Minerals Resource Rent Tax Act 2012*.
- (2) The *starting base return must relate to all *starting base assets (and all property or rights that are expected to be starting base assets after the time mentioned in subsection 80-25(2) of that Act) that you *hold that relate to the mining project interest or *pre-mining project interest to which that choice relates.
- (3) A *starting base return is not valid unless you give it to the Commissioner:
 - (a) on or before the first day of the sixth month after the end of the first *MRRT year of the entity that had the mining project interest, or *held the *pre-mining project interest, on 1 July 2012; or
 - (b) within such further period as the Commissioner allows.
- (4) A *starting base return must be in the *approved form.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (5) The *approved form must require information to be provided relating to:
- (a) the *base value of all *starting base assets mentioned in subsection (2) for the first *MRRT year; or
 - (b) what would be the base value of any other property or right mentioned in that subsection for that year if it were a starting base asset.
- (6) In addition to the *starting base return required under subsection (1) (and the *MRRT returns required under section 117-5 or 117-15), you must give the Commissioner such further or fuller starting base returns as the Commissioner directs you to give (including any starting base return in your capacity as agent or trustee).

117-25 Electronic lodgement of MRRT returns and starting base returns

You must *lodge electronically your *MRRT returns and *starting base returns, unless the Commissioner otherwise approves.

Note: Section 388-75 in this Schedule deals with signing returns.

117-30 MRRT returns and starting base returns treated as being duly made

An *MRRT return or *starting base return purporting to be made or signed by or on behalf of an entity is treated as having been duly made by the entity or with the entity's authority until the contrary is proved.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 119-1

Division 119—Making choices

Guide to Division 119

119-1 What this Division is about

A choice you make under the MRRT law must be made in accordance with the general rules in this Division (subject to any more specific rule in the MRRT law).

Table of sections

Operative provisions

119-5	Making choices
119-10	Choices are irrevocable
119-15	Division subject to more specific rules

Operative provisions

119-5 Making choices

- (1) If a provision of the *MRRT law allows, or requires, you to make a choice about a matter, the choice is not valid unless you make it:
 - (a) no later than:
 - (i) if you are required to give the Commissioner an *MRRT return for the first *MRRT year in which the choice applies—the earlier of the day on which that obligation is met or the day on which that obligation falls due; or
 - (ii) otherwise—the last day in the period within which you would be required to give the Commissioner such a return if you were required to give the Commissioner such a return; or
 - (b) within a further time that the Commissioner allows.
- (2) The way your *MRRT return for an *MRRT year is prepared is sufficient evidence of you making the choice.
- (3) However, you must give the Commissioner notice of the choice in the *approved form if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) you are not required to give the Commissioner an *MRRT return for that MRRT year; or
- (b) the *MRRT law expressly requires you to give the choice to the Commissioner; or
- (c) the Commissioner requests you to do so.

119-10 Choices are irrevocable

A choice under the *MRRT law is irrevocable.

119-15 Division subject to more specific rules

This Division is subject to any specific rules in the *MRRT law outside this Division.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 121-1

Division 121—Reporting

Guide to Division 121

121-1 What this Division is about

If a mining project transfer, mining project split, pre-mining project transfer or pre-mining project split happens, the original entity must give the new entity all the information the new entity will need to satisfy its MRRT obligations in relation to the interest it has acquired.

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Operative provisions

121-5	Object of this Division
121-10	Information notice for transfers and splits of mining and pre-mining project interests
121-12	Notice of rehabilitation expenditure
121-15	Substantiation requirement

Operative provisions

121-5 Object of this Division

The object of this Division is to provide entities with access to the information necessary for them to comply with their obligations under the *MRRT law.

121-10 Information notice for transfers and splits of mining and pre-mining project interests

- (1) An entity (the *original entity*) must give another entity (the *new entity*) a notice if:
 - (a) the original entity had a *mining project interest before a *mining project transfer or *mining project split, and the new entity has the interest, or part of the interest, after the transfer or split; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) the original entity *held a *pre-mining project interest before a *pre-mining project transfer or *pre-mining project split, and the new entity holds the interest, or part of the interest, after the transfer or split.
- (2) The notice must contain:
 - (a) the amount of each *allowance component relating to the new entity's interest; and
 - (b) the information the original entity has that is necessary for the new entity to work out, for the *MRRT year in which the transfer or split happens or for later MRRT years:
 - (i) the *starting base losses for its interest; and
 - (ii) the amounts that are included in the new entity's *mining revenue or *pre-mining revenue for its interest; and
 - (iii) the amounts that are included in the new entity's *mining expenditure or *pre-mining expenditure for its interest; and
 - (iv) the amount of a *rehabilitation tax offset for its interest; and
 - (c) for a split—the new entity's *split percentage for its interest; and
 - (d) the information the original entity has that is necessary for the new entity to work out the new entity's *instalment income for an *instalment quarter in the MRRT year in which the transfer or split happens.
- (3) The original entity must also give the new entity a notice containing information about a thing mentioned in section 120-20, 125-30, 145-25 or 150-30 of the *Minerals Resource Rent Tax Act 2012* (events that happen after a transfer or split) in relation to the transfer or split.
- (4) The original entity must give the notice:
 - (a) in writing, or in another form acceptable to the new entity; and
 - (b) for a notice under subsection (1)—within 60 days of the *mining project transfer, *mining project split, *pre-mining project transfer or *pre-mining project split; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) for a notice under subsection (3)—within 60 days of the day on which the thing happens.

Note: Section 286-75 provides an administrative penalty for a breach of this section. A breach of this section may also be an offence under section 8C, and making a false or misleading statement when providing the information may be an offence under section 8K or 8N.

121-12 Notice of rehabilitation expenditure

- (1) If:

- (a) an amount of expenditure is incurred by a trustee or bondholder (the *trustee*) out of an amount provided as security as mentioned in subsection 35-70(1) of the *Minerals Resource Rent Tax Act 2012*; and
- (b) the amount is for rehabilitation of an area that is the *project area for a *mining project interest the other entity has at the time the amount is incurred;

the trustee must give the other entity a notice containing the information the trustee has that is necessary for the other entity to determine the extent, if any, to which the amount is *mining expenditure for the other entity.

- (2) The trustee must give the notice:

- (a) in writing, or in another form acceptable to the new entity; and
- (b) within 60 days of the incurring of the amount.

Note: Section 286-75 provides an administrative penalty for a breach of this section. A breach of this section may also be an offence under section 8C, and making a false or misleading statement when providing the information may be an offence under section 8K or 8N.

121-15 Substantiation requirement

- (1) An entity that receives information from another entity under this Division may request the other entity to provide further and better particulars of the information, including:
- (a) if relevant, the underlying document or information on which it was based; and
- (b) in relation to an amount, the way in which it was calculated.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) The other entity must comply with the request within 60 days of the request being made.

Note: Section 286-75 provides an administrative penalty for a breach of this section. A breach of this section may also be an offence under section 8C, and making a false or misleading statement when providing the information may be an offence under section 8K or 8N.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 123-1

Division 123—Record keeping

Guide to Division 123

123-1 What this Division is about

You are required to keep records relating to your mining operations or pre-mining operations in accordance with this Division.

Table of sections

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| 123-5 | What records you must keep |
| 123-10 | Retaining records |
| 123-15 | Offence for failing to keep or retain records |

Operative provisions

123-5 What records you must keep

- (1) You must keep records of every act, transaction, event or circumstance relating to your *mining operations or *pre-mining operations that are relevant to working out any of the following:
 - (a) whether you are, or another entity is, liable to pay *MRRT for an *MRRT year;
 - (b) whether you are, or another entity is, entitled to an offset under Division 45 (low profit offsets) or Division 225 (rehabilitation tax offsets) of the *Minerals Resource Rent Tax Act 2012*.
- (2) If the necessary records of an act, transaction, event or circumstance:
 - (a) do not already exist—you must create them or have someone else create them; or
 - (b) no longer exist—you must reconstruct them or have someone else reconstruct them.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) If you make any choice, election, estimate, determination or calculation under the *MRRT law, you must keep records containing particulars of:
- (a) the choice, election, estimate, determination or calculation; and
 - (b) in the case of an estimate, determination or calculation—the basis on which, and the method by which, the estimate, determination or calculation was made.
- (4) The records must be:
- (a) in English, or readily accessible and easily convertible into English; and
 - (b) such as to enable the things mentioned in subsection (1) or (3) (as the case requires) to be readily ascertained.

123-10 Retaining records

You must retain the records required by section 123-5 until the latest of the following:

- (a) if it is a record mentioned in subsection (1) of that section—5 years after the completion of the act, transaction, event or circumstance to which it relates;
- (b) if it is a record mentioned in subsection (3) of that section—5 years after the choice, election, estimate, determination or calculation was made;
- (c) 5 years after you prepared or obtained the records;
- (d) if the records are relevant to an assessment of *MRRT for an *MRRT year—the end of the *period of review for that assessment.

123-15 Offence for failing to keep or retain records

- (1) An entity commits an offence if:
- (a) the entity is required to keep or retain a record under this Division; and
 - (b) the entity does not keep or retain the record in accordance with this Division; and
 - (c) the Commissioner has not notified the entity that the entity does not need to retain the record; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(d) the entity is not a company that has been finally dissolved.

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) For the purposes of section 288-25, section 123-10 does not require an entity to retain a record if:

(a) the Commissioner notifies the entity that the entity does not need to retain the record; or

(b) the entity is a company that has been finally dissolved.

Note: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this Division.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 125—Miscellaneous

Table of sections

125-1 Address for service

125-1 Address for service

- (1) Your address for service for the purposes of the *MRRT law is:
 - (a) a physical address in Australia; or
 - (b) a postal address in Australia; or
 - (c) an electronic address;that you have given the Commissioner as your address for service for the purposes of the MRRT law.
- (2) If you have given the Commissioner more than one address for service for the purposes of subsection (1), your address for service is such of those addresses as the Commissioner considers reasonable in the circumstances.
- (3) If you have not given the Commissioner an address for service, your address for service is the address that the Commissioner reasonably believes to be your address for service for the purposes of the *MRRT law.
- (4) For the purposes of the *MRRT law, a document (however described) may be given:
 - (a) in the manner specified in section 28A of the *Acts Interpretation Act 1901*; or
 - (b) if your address for service is an electronic address—by sending it to that address.
- (5) Despite section 29 of the *Acts Interpretation Act 1901*, a document under subsection (4) of this section is taken to be given at the time the Commissioner leaves or posts it.
- (6) This section has effect despite paragraphs 9(1)(d) and 9(2)(d) of the *Electronic Transactions Act 1999*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-1

Part 3-20—Sustaining the superannuation contribution concession

Division 133—Deferred payment

Table of Subdivisions

	Guide to Division 133
133-A	Deferral determination
133-B	Debt account
133-C	Compulsory payment

Guide to Division 133

133-1 What this Division is about

Payment of Division 293 tax is deferred to the extent to which the tax is attributable to defined benefit interests from which no superannuation benefit has yet become payable.

This reflects the fact that money generally cannot be released from defined benefit interests until a superannuation benefit is paid, usually upon retirement.

Subdivision 133-A—Deferral determination

Guide to Subdivision 133-A

133-5 What this Subdivision is about

The Commissioner determines the amount of your tax that is deferred to a debt account by working out the extent to which your assessed tax is attributable to defined benefit interests.

Table of sections

Operative provisions

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- 133-10 Determination of tax that is *deferred to a debt account*
- 133-15 ***Defined benefit tax***
- 133-20 How to attribute the defined benefit tax to defined benefit interests
- 133-25 Determination reducing tax deferred to a debt account
- 133-30 General provisions applying to determinations under this Subdivision

Operative provisions

133-10 Determination of tax that is *deferred to a debt account*

- (1) The Commissioner must make a determination specifying the amount the Commissioner has ascertained as being the extent to which your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.
 - Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
 - Note 2: For general provisions, including review, see section 133-30.
- (2) The amount of *assessed Division 293 tax specified in the determination is *deferred to a debt account* for the *superannuation interest.
- (3) However, the Commissioner must not make a determination under this section in relation to a *superannuation interest if, at the time the determination is to be made:
 - (a) the *end benefit for the superannuation interest has become payable; or
 - (b) a notice under section 133-125 has been made in relation to the superannuation interest.
 - Note: For the meaning of *end benefit*, see section 133-130.
- (4) Subsection (1) does not apply if the Commissioner ascertains that no part of your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.

133-15 ***Defined benefit tax***

- (1) Your *defined benefit tax* for an income year is the amount worked out using the formula:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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$$\frac{\text{*Division 293 tax for the income year}}{\text{*Taxable contributions for the income year}} \times \frac{\text{Defined benefit contribution component}}{\text{*Taxable contributions for the income year}}$$

where:

defined benefit contribution component means the amount worked out as follows:

- (a) work out the lesser of the following for the corresponding *financial year:
 - (i) your *low tax contributions;
 - (ii) the total amount of your *defined benefit contributions in respect of all *defined benefit interests you have in the financial year;
- (b) subtract from the result of paragraph (a) the difference (if any) between:
 - (i) your *taxable contributions for the income year; and
 - (ii) your low tax contributions for the corresponding financial year.

Note: A difference may exist for paragraph (b) because of the \$300,000 high income threshold: see subsection 293-20(1) of the *Income Tax Assessment Act 1997*.

Exception—defined benefit contribution component is nil or less

- (2) However, if the defined benefit contribution component mentioned in subsection (1) is nil, or a negative amount, no part of the *Division 293 tax for the income year is ***defined benefit tax***.

133-20 How to attribute the defined benefit tax to defined benefit interests

- (1) If you have one *defined benefit interest in a *financial year, your *defined benefit tax for the corresponding income year is attributable to that interest.
- (2) If you have more than one *defined benefit interest in a *financial year, your *defined benefit tax for the corresponding income year is attributable to each such interest in proportion to the *defined benefit contributions for the interest for the financial year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

133-25 Determination reducing tax deferred to a debt account

- (1) If an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest is reduced as a result of an amended assessment, the Commissioner must make a determination under this section in respect of the reduced amount.
- (2) The amount so determined is a *deferral reversal* for the *superannuation interest.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

133-30 General provisions applying to determinations under this Subdivision

- (1) The Commissioner must:
 - (a) make a determination as soon as practicable after:
 - (i) for a determination under section 133-10—assessing the amount (whether by way of a first assessment or an amended assessment); or
 - (ii) for a determination under section 133-25—amending the assessment; and
 - (b) give you notice in writing of the determination as soon as practicable after making it.
- (2) The Commissioner:
 - (a) may include 2 or more determinations under this Subdivision in the same notice; and
 - (b) may include a notice under this Subdivision in a notice of an assessment under this Act.
- (3) The validity of the determination is not affected because any of the provisions of this Act have not been complied with.

Review

- (4) If you are dissatisfied with a determination made under this Subdivision in relation to you, you may object against the determination in the manner set out in Part IVC.
- (5) If you are dissatisfied with a decision the Commissioner makes not to make a determination under this Subdivision:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) you may object against the decision in the manner set out in Part IVC; and
- (b) for the purpose of working out the period within which the objection must be lodged, notice of the decision is taken to have been served on you on the day notice is given to you of:
 - (i) for a determination under section 133-10—the assessment of the amount; or
 - (ii) for a determination under section 133-25—the amended assessment.

Note: For the period within which objections must be lodged, see section 14ZW.

Subdivision 133-B—Debt account

Guide to Subdivision 133-B

133-55 What this Subdivision is about

The Commissioner keeps debt accounts for tax that is deferred to a debt account for a superannuation interest.

You can make voluntary payments of the debt account.

Table of sections

Operative provisions

133-60	Debt account to be kept for deferred tax
133-65	Interest on debt account balance
133-70	Voluntary payments
133-75	Commissioner must notify superannuation provider of debt account

Operative provisions

133-60 Debt account to be kept for deferred tax

Accounts to be kept

- (1) The Commissioner is to keep a debt account for *Division 293 tax for you for a *superannuation interest, if an amount of your

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

*assessed Division 293 tax is *deferred to a debt account for the superannuation interest.

Account to be debited for Division 293 tax

- (2) The Commissioner must debit the debt account for the amount of *assessed Division 293 tax that is *deferred to a debt account for the *superannuation interest.

133-65 Interest on debt account balance

Interest to be debited at end of financial year

- (1) If a debt account for a *superannuation interest is in debit at the end of a *financial year, the Commissioner is to debit the account for interest on the amount by which the account is in debit, calculated at the *long term bond rate for that financial year.

Note: Interest would not be debited to a debt account that is no longer being kept by the Commissioner because the assessed Division 293 tax liability being tracked in the account has been finally discharged as mentioned in subsection 133-105(3).

Remission of interest—deferral reversal

- (2) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, from a debt account under subsection (1) if:
- (a) the debt account is credited:
 - (i) under section 133-70 because of a *deferral reversal; or
 - (ii) because a determination under section 133-10 is varied or revoked; and
 - (b) the Commissioner is satisfied that, because of that credit, it would be fair and reasonable to do so.

Remission of interest—special circumstances

- (3) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, to a debt account under subsection (1) if the Commissioner is satisfied that, because special circumstances exist, it would be fair and reasonable to do so.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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133-70 Voluntary payments

- (1) You may make payments to the Commissioner for the purpose of reducing the amount by which a debt account for a *superannuation interest is in debit.
- (2) The Commissioner is to:
 - (a) acknowledge receipt of the payment to you; and
 - (b) credit the payment to the debt account; and
 - (c) notify you of the revised balance of the debt account.The credit mentioned in paragraph (b) is to be made when the payment is received.
- (3) The amount of a *deferral reversal for the *superannuation interest is to be treated as if it were a voluntary payment under this section in relation to the debt account for that interest. However, paragraphs (2)(a) and (c) do not apply in relation to that amount.

133-75 Commissioner must notify superannuation provider of debt account

If the Commissioner starts to keep a debt account for *Division 293 tax for you for a *superannuation interest, the Commissioner must give the *superannuation provider in relation to the superannuation interest a notice saying so.

Subdivision 133-C—Compulsory payment

Guide to Subdivision 133-C

133-100 What this Subdivision is about

The deferred tax liability must be paid when a superannuation benefit becomes payable from the superannuation interest.

In some cases, the amount that must be paid is capped.

Table of sections

Debt account discharge liability

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- 133-105 Liability to pay debt account discharge liability
- 133-110 When debt account discharge liability must be paid
- 133-115 General interest charge
- 133-120 Meaning of *debt account discharge liability*
- 133-125 Notice of debt account discharge liability

End benefit

- 133-130 Meaning of *end benefit*
- 133-135 End benefit notice—individual
- 133-140 End benefit notice—superannuation provider
- 133-145 End benefit notice—material changes or omissions

Debt account discharge liability

133-105 Liability to pay debt account discharge liability

- (1) You are liable to pay the amount of your *debt account discharge liability for a *superannuation interest if the *end benefit for the interest becomes payable.
 - (2) The liability arises:
 - (a) unless paragraph (b) applies—at the time the *end benefit becomes payable; or
 - (b) if the end benefit is a *superannuation death benefit—just before you die.
- Note 1: For paragraph (a), a release authority allows money to be released from the superannuation plan to pay this amount: see subsection 135-10(1).
- Note 2: For paragraph (b), the debt will be recovered from your estate: see Subdivision 260-E.
- (3) Payment of your *debt account discharge liability for a *superannuation interest discharges your liability for so much of your total *assessed Division 293 tax for all income years as is *deferred to a debt account for the superannuation interest.

133-110 When debt account discharge liability must be paid

The amount of your *debt account discharge liability for a *superannuation interest is due and payable at the end of 21 days

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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after the day on which the *end benefit for the superannuation interest is paid.

133-115 General interest charge

If your *debt account discharge liability remains unpaid after the time by which it is due and payable, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) begins on the day on which the debt account discharge liability was due to be paid; and
- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the debt account discharge liability;
 - (ii) general interest charge on any of the debt account discharge liability.

Note: The general interest charge is worked out under Part IIA.

133-120 Meaning of *debt account discharge liability*

- (1) The ***debt account discharge liability*** for a *superannuation interest for which the Commissioner keeps a debt account is the lesser of:
 - (a) the amount by which the debt account is in debit at the earlier of:
 - (i) the time the *end benefit for the superannuation interest becomes payable; and
 - (ii) the time a notice under section 133-125 is made; and
 - (b) the end benefit cap specified in a notice given to the Commissioner by the *superannuation provider under subsection (2) or section 133-140 (as the case requires).
- (2) If requested by the Commissioner, the *superannuation provider in relation to a *superannuation interest must give the Commissioner notice of the amount (the ***end benefit cap***) that is 15% of the employer-financed component of any part of the *value of the superannuation interest that accrued after 1 July 2012.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with notice given to the Commissioner under this subsection.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) For the purposes of subsection (2), the *value of the *superannuation interest is to be worked out at the end of the *financial year before the financial year in which the *end benefit becomes payable.
- (4) A notice under subsection (2) must be given:
 - (a) in the *approved form; and
 - (b) within 14 days of the Commissioner making the request.

133-125 Notice of debt account discharge liability

- (1) The Commissioner must give you a notice under this section if:
 - (a) the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account; or
 - (b) the Commissioner receives a notice from you under section 133-135 in relation to such a superannuation interest.
- (2) The notice must state that you are liable to pay your *debt account discharge liability for the *superannuation interest and specify:
 - (a) the amount of that debt; and
 - (b) the day on which that debt is due and payable; and
 - (c) whether the amount of that debt is:
 - (i) the amount by which the debt account is in debit as mentioned in paragraph 133-120(1)(a); or
 - (ii) the end benefit cap mentioned in paragraph 133-120(1)(b).
- (3) If you are dissatisfied with a notice given under this section in relation to you, you may object against it in the manner set out in Part IVC of this Act.
- (4) However, you cannot object against a notice stating that the amount you are liable to pay is the amount by which the debt account is in debit, unless you are seeking to be liable to pay the end benefit cap specified in a notice given to the Commissioner by the *superannuation provider under subsection (2) or section 133-140 (as the case requires).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-130

End benefit

133-130 Meaning of *end benefit*

- (1) A *superannuation benefit is the ***end benefit*** for a *superannuation interest if it is the first superannuation benefit to become payable from the interest, disregarding a benefit that is any of the following:
 - (a) a *roll-over superannuation benefit paid to a *complying superannuation plan that is a *successor fund;
 - (b) a benefit that becomes payable under the condition of release specified in item 105 of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (about severe financial hardship);
 - (c) a benefit that becomes payable under the condition of release specified in item 107 of that table (about compassionate ground);
 - (d) a benefit specified in an instrument under subsection (2).
- (2) The Minister may, by legislative instrument, specify a *superannuation benefit for the purposes of paragraph (1)(d).
- (3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a legislative instrument made under subsection (2) may be expressed to take effect from any time on or after 1 July 2012.

133-135 End benefit notice—individual

- (1) If an individual requests a *superannuation provider to pay the *end benefit from a *superannuation interest for which the Commissioner keeps a debt account, the individual must notify the Commissioner of the request.
- (2) The notice must be given within 21 days after making the request.
- (3) A notice under this section must be given in the *approved form.

133-140 End benefit notice—superannuation provider

- (1) If the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account, the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

*superannuation provider in relation to the interest must give the Commissioner a notice stating:

- (a) the amount of the end benefit cap mentioned in subsection 133-120(2) for the superannuation interest (unless the provider has already given the Commissioner notice of the end benefit cap under that subsection); and
- (b) the expected date of payment of the benefit.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with notice given to the Commissioner under this section.

- (2) The notice must be given within 14 days after the earlier of:
 - (a) the *superannuation provider receiving a request (if any) to pay the *superannuation benefit; and
 - (b) the superannuation benefit becoming payable.
- (3) However, this section does not apply if the *superannuation provider has not been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for the *superannuation interest.
- (4) A notice under this section must be given in the *approved form.

133-145 End benefit notice—material changes or omissions

- (1) If an entity that gives the Commissioner a notice under section 133-135 or 133-140 becomes aware of a material change or material omission in any information given to the Commissioner in the notice, the entity must:
 - (a) tell the Commissioner of the change in the *approved form; or
 - (b) give the omitted information to the Commissioner in the approved form.
- (2) Information required by this section must be given no later than 7 days after the entity becomes aware of the change or omission.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 135-1

Division 135—Releasing money from superannuation

Table of Subdivisions

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- 135-A When the Commissioner must issue a release authority
- 135-B When a release authority can be given to a superannuation provider
- 135-C Release of superannuation money under a release authority

Guide to Division 135

135-1 What this Division is about

This Division contains rules about release authorities, which allow money to be released from a superannuation plan to pay amounts relating to the Division 293 tax.

Subdivision 135-A—When the Commissioner must issue a release authority

Guide to Subdivision 135-A

135-5 What this Subdivision is about

The Commissioner must issue you with a release authority to allow money to be released from a superannuation plan to pay assessed Division 293 tax that is due and payable, make voluntary payments in reduction of a debt account, or pay your debt account discharge liability.

Table of sections

Operative provisions

- 135-10 Release authorities

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Operative provisions

135-10 Release authorities

- (1) If the condition mentioned in column 1 of an item in the following table is satisfied:
- (a) the Commissioner must issue you with a release authority under that item; and
 - (b) you have a **release entitlement**:
 - (i) equal to the amount mentioned in column 2 of that item; and
 - (ii) arising at the time mentioned in column 3 of that item.

Release entitlement			
Item	Column 1 Condition:	Column 2 Amount of the release entitlement:	Column 3 Time at which the release entitlement arises:
1	An amount of your *assessed Division 293 tax for an income year is due and payable in accordance with subsection 293-65(1) or 293-70(1)	The amount of tax that is due and payable as mentioned in column 1	On assessing the amount
2	An amount of your *assessed Division 293 tax for an income year is *deferred to a debt account for a *superannuation interest	The amount so deferred	On the making of the determination under section 133-10
3	You become liable to pay your *debt account discharge liability for a *superannuation interest	The amount of your debt account discharge liability	On the giving of the notice under section 133-125

Note: A release authority issued under item 3 of the table can only be given to the superannuation provider that holds the superannuation interest to which the debt account relates: see subsection 135-40(3).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Requirements for release authority

- (2) A release authority must:
- (a) state the amount of the *release entitlement in respect of which it is given; and
 - (b) be dated; and
 - (c) contain any other information that the Commissioner considers relevant.

Commissioner may issue a further release authority

- (3) The Commissioner may at any time issue you with a further release authority in respect of a *release entitlement if:
- (a) the Commissioner is satisfied that it is reasonable in the circumstances to do so; and
 - (b) the Commissioner has issued you with an earlier release authority in respect of that release entitlement.

Despite paragraph (2)(a), the further release authority must state the amount the Commissioner considers reasonable in the circumstances, but not exceeding the amount of the release entitlement.

Note: For variation and revocation of release authorities, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Release authority not to be issued to trustee of deceased estate

- (4) To avoid doubt, this section does not require or permit the Commissioner to issue a release authority to the trustee of a deceased estate.

Subdivision 135-B—When a release authority can be given to a superannuation provider

Guide to Subdivision 135-B

135-35 What this Subdivision is about

You may give a release authority to a superannuation provider within 120 days of being issued with it.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

The Commissioner may give the release authority to a superannuation provider if you fail to pay assessed Division 293 tax that is due and payable within 120 days after the release authority being issued.

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- 135-40 When you may give release authority to superannuation provider
135-45 When Commissioner may give release authority to superannuation provider

Operative provisions

135-40 When you may give release authority to superannuation provider

- (1) You may give the release authority to a *superannuation provider that holds a *superannuation interest for you within 120 days after the date of the release authority.
- (2) You may request the *superannuation provider, in writing, to pay a specified amount in relation to the release authority.

Note 1: For the amount that the provider pays under a release authority, see section 135-85.

Note 2: If excess amounts are paid in relation to a release authority:

- (a) the excess is assessable income (see section 304-20 of the *Income Tax Assessment Act 1997*); and
- (b) you are liable to an administrative penalty (see section 288-100 in this Schedule).

- (3) However, a release authority issued under item 3 of the table in subsection 135-10(1) (for debt account discharge liability) may only be given to the *superannuation provider that holds the *superannuation interest to which the debt account relates.

135-45 When Commissioner may give release authority to superannuation provider

- (1) The Commissioner may, at any time, give a release authority issued under item 1 of the table in subsection 135-10(1) to one or more *superannuation providers that hold a *superannuation

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 135-70

interest for you, if, at the end of 120 days after the date of the release authority:

- (a) some or all of the *assessed Division 293 tax that is due and payable in accordance with subsection 293-65(1) or 293-70(1) (as the case requires) is unpaid; and
- (b) the Commissioner reasonably believes any of the following:
 - (i) that you have not given the release authority to a superannuation provider that holds a superannuation interest for you in accordance with section 135-40;
 - (ii) that you have given the release authority to one or more superannuation providers in accordance with that section, but that the sum of the amounts to be paid by the providers under those release authorities falls short of the amount of your assessed Division 293 tax;
 - (iii) that the total of the *values of every superannuation interest (other than a *defined benefit interest) held for you by superannuation providers to which the release authority has been given falls short of the amount of your assessed Division 293 tax.

Note: No payment may be made from a defined benefit interest: see subsection 135-75(4).

- (2) The Commissioner may request the *superannuation provider, in writing, to pay a specified amount in relation to the release authority.

Note: For the amount that the provider pays under a release authority, see section 135-85.

Subdivision 135-C—Release of superannuation money under a release authority

Guide to Subdivision 135-C

135-70 What this Subdivision is about

This Subdivision sets out a general requirement for a superannuation provider to comply with a release authority.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

The Subdivision also includes provisions about how much must be paid, who it must be paid to, which interest it is to be paid from, and how the payments are treated by the Commissioner.

Table of sections

Operative provisions

135-75	Requirement for superannuation provider to release money
135-80	Compensation for acquisition of property
135-85	Release amount
135-90	How the Commissioner applies amounts received under a release authority
135-95	Defined benefit interests—releasing amounts to pay debt account discharge liability
135-100	Income tax treatment of amounts released—proportioning rule does not apply

Operative provisions

135-75 Requirement for superannuation provider to release money

- (1) If:
- (a) a *superannuation provider has been given a release authority in accordance with Subdivision 135-B; and
 - (b) the amount mentioned in section 135-85 (the *release amount*) is greater than nil;
- the superannuation provider must pay the release amount within 30 days after receiving the release authority.

Who superannuation provider pays the amount to

- (2) The release amount must be paid to the Commissioner.
- (3) However, if the release authority was:
- (a) issued under item 1 of the table in subsection 135-10(1) (which is about Division 293 tax that is due and payable within 21 days); and
 - (b) given to the *superannuation provider by the individual under section 135-40;
- the release amount may be paid to the individual.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 135-80

Note 1: Section 288-95 provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see sections 303-20 and 304-20 of the *Income Tax Assessment Act 1997*.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in this Schedule.

Which superannuation interest the amount is to be paid from

- (4) The payment must be made out of one or more *superannuation interests (other than a *defined benefit interest) held by the *superannuation provider for the individual.

135-80 Compensation for acquisition of property

- (1) If the operation of section 135-75 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.
- (2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

135-85 Release amount

The amount is the least of the following amounts:

- (a) the amount stated in the release authority, as issued by the Commissioner;
- (b) if the individual or Commissioner requests the *superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
- (c) the sum of the *maximum available release amounts for each *superannuation interest (other than a *defined benefit interest) held by the superannuation provider for the individual in *superannuation plans.

Note: For the *maximum available release amount*, see section 96-30.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

135-90 How the Commissioner applies amounts received under a release authority

- (1) If the Commissioner receives a payment under a release authority, it is taken for the purposes of Part IIB to have been received in respect of a current or anticipated tax debt of the individual.

Note: Part IIB is about running balance accounts and the application of payments and credits.

Exception for voluntary payments of Division 293 tax debt account

- (2) However, if the Commissioner receives the payment under a release authority issued under item 2 of the table in subsection 135-10(1) in respect of a *superannuation interest, the payment is to be treated as if it were a voluntary payment under section 133-70 in relation to the debt account for that interest.

Commissioner to notify individual if payment received

- (3) If:
- (a) the release authority was given by the Commissioner in accordance with section 135-45; and
 - (b) the payment is made to the Commissioner;
- the Commissioner must, as soon as possible, give the individual written notice that the payment has been made.

135-95 Defined benefit interests—releasing amounts to pay debt account discharge liability

The exclusion of *defined benefit interests from subsection 135-75(4) and paragraph 135-85(c) is to be disregarded for a release authority issued under item 3 of the table in subsection 135-10(1) (about debt account discharge liability).

135-100 Income tax treatment of amounts released—proportioning rule does not apply

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Division.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 3 Collection, recovery and administration of other taxes

Part 3-20 Sustaining the superannuation contribution concession

Section 135-100

Note: Further provisions about the income tax treatment of amounts released are in sections 303-20 and 304-20 of that Act.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Chapter 4—Generic assessment, collection and recovery rules

Part 4-1—Returns and assessments

Division 155—Assessments

Table of Subdivisions

	Guide to Division 155
155-A	Making assessments
155-B	Amending assessments
155-C	Validity and review of assessments
155-D	Miscellaneous

Guide to Division 155

155-1 What this Division is about

This Division contains rules relating to assessments.

The rules in this Division deal with the following:

- (a) how assessments are made or amended and their effect;
- (b) review of assessments.

Subdivision 155-A—Making assessments

Table of sections

155-5	Commissioner may make assessment
155-10	Commissioner must give notice of assessment
155-15	Self-assessment
155-20	Assessment of indirect tax on importations and customs dealing
155-25	Special assessment
155-30	Delays in making assessments

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-5

155-5 Commissioner may make assessment

- (1) The Commissioner may at any time make an assessment of an *assessable amount (including an assessment that the amount is nil).

Note 1: For amendment of assessments, see Subdivision 155-B.

Note 2: An assessment can be reviewed: see Subdivision 155-C.

- (2) Each of the following is an *assessable amount*:

- (a) a *net amount;
- (b) a *net fuel amount;
- (c) an amount of *indirect tax not included in an amount covered by another paragraph of this subsection;
- (d) a credit under an *indirect tax law not included in an amount covered by another paragraph of this subsection;
- (e) an amount of *MRRT payable for an *MRRT year in relation to a *taxable mining profit for the MRRT year;
- (f) an amount of *Division 293 tax payable for an income year in relation to an individual's *taxable contributions for the income year.

155-10 Commissioner must give notice of assessment

- (1) The Commissioner must give you notice of an assessment of an *assessable amount of yours as soon as practicable after the assessment is made.

Note: This section also applies to an amended assessment: see section 155-80.

- (2) The Commissioner may give you the notice electronically if you are required to lodge, or have lodged, the return (if any) that relates to the *assessable amount electronically.

155-15 Self-assessment

- (1) The Commissioner is treated as having made an assessment under section 155-5 of an *assessable amount mentioned in an item of the following table, if the document mentioned in the item is given to the recipient mentioned in the item:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-15

Self-assessed amounts			
Item	Column 1 Assessable amount	Column 2 Recipient	Column 3 Document
1	your *net amount for a *tax period	the Commissioner	your *GST return for the tax period
2	your *net fuel amount for a *tax period	the Commissioner	your *fuel tax return for the tax period
3	the *GST payable by you on a *taxable importation	Customs	return given under paragraph 69(5)(c) or 70(7)(a) of the <i>Customs Act 1901</i> in relation to the importation
4	the *MRRT payable by you for an *MRRT year in relation to your *taxable mining profit for the MRRT year	the Commissioner	your *MRRT return for the MRRT year

Note: There is no self-assessment of Division 293 tax.

- (2) The assessment is treated as having been made on the day the document is given to the recipient mentioned in column 2.
- (3) The amount assessed is:
 - (a) if the document is required to state the *assessable amount—the amount (including a nil amount) stated; or
 - (b) otherwise—the amount (including a nil amount) worked out in accordance with the information stated in the document.
- (4) The document is treated as being a notice of the assessment:
 - (a) signed by the Commissioner; and
 - (b) given to you under section 155-10 on the day the document is given to the recipient.
- (5) This section does not apply to an *assessable amount if the Commissioner has already assessed the assessable amount on or before the day mentioned in paragraph (4)(b).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-20

155-20 Assessment of indirect tax on importations and customs dealing

- (1) The Commissioner is treated as having made an assessment under section 155-5 of the *GST, *luxury car tax or *wine tax (whichever is applicable) payable by you on a *taxable importation, *taxable importation of a luxury car or *customs dealing, if:
- (a) the document mentioned in column 1 of an item of the following table is communicated to Customs in respect of the importation or dealing; and
 - (b) Customs gives the document mentioned in column 2 of the item to an entity in respect of the importation or dealing.

Customs documents		
Item	Column 1 Document communicated to Customs	Column 2 Document given to an entity
1	an *import declaration	an *import declaration advice
2	a self-assessed clearance declaration (within the meaning of the <i>Customs Act 1901</i>)	a *self-assessed clearance declaration advice

- (2) The assessment is treated as having been made on the day Customs gives the document mentioned in paragraph (1)(b) to the entity.
- (3) The amount assessed is the amount (including a nil amount) worked out in accordance with the information stated in the 2 documents.
- (4) The 2 documents are treated as together being a notice of the assessment:
- (a) signed by the Commissioner; and
 - (b) given to you under section 155-10 on the day Customs gives the document mentioned in paragraph (1)(b) of this section to the entity.
- (5) This section does not apply if the Commissioner has already assessed the *GST, *luxury car tax or *wine tax on or before the day mentioned in paragraph (4)(b).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

155-25 Special assessment

For the purposes of making, under section 155-5, an assessment of an *assessable amount that relates to a period (e.g. a tax period), the Commissioner may treat part of the period as being the whole period.

155-30 Delays in making assessments

- (1) You may give the Commissioner a written notice requiring the Commissioner to make an assessment of an *assessable amount of yours, if, 6 months after the day on which the relevant return (if any) for the assessable amount is given to the Commissioner, the Commissioner has not given to you notice of an assessment of the assessable amount under section 155-10.
- (2) You may object, in the manner set out in Part IVC of this Act, against the Commissioner's failure to make the assessment if the Commissioner does not make the assessment within 30 days after the day the notice is given under subsection (1).
- (3) This section does not apply to the following *assessable amounts:
 - (a) the *MRRT payable by you for an *MRRT year in relation to your *taxable mining profit for the MRRT year;
 - (b) the *Division 293 tax payable by you in relation to an income year in relation to your *taxable contributions for the income year.

Subdivision 155-B—Amending assessments

Table of sections

When Commissioner may amend assessments

155-35	Amendment during period of review
155-40	Amendment during period of review—certain applications taken to be notices
155-45	Amendment on application
155-50	Amendment to give effect to private ruling
155-55	Amendment to give effect to certain anti-avoidance declarations or determinations
155-57	Amendment to give effect to MRRT anti-profit shifting rules
155-60	Amendment because of review, objection or fraud

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-35

Special rules about amending amended assessments

155-65 Amending amended assessments

155-70 Refreshed period of review

General rules

155-75 Refunds of amounts overpaid

155-80 Amended assessments are assessments

When Commissioner may amend assessments

155-35 Amendment during period of review

Amendment

- (1) The Commissioner may amend an assessment of an *assessable amount within the *period of review for the assessment.

Note 1: An amendment of an assessment can be reviewed: see Subdivision 155-C.

Note 2: This section also applies to amended assessments: see section 155-80. However, there are limits on how amended assessments can be amended: see sections 155-65 and 155-70.

Meaning of period of review

- (2) The **period of review**, for an assessment of an *assessable amount of yours, is:
- (a) the period:
 - (i) starting on the day on which the Commissioner first gives notice of the assessment to you under section 155-10; and
 - (ii) ending on the last day of the period of 4 years starting the day after that day; or
 - (b) if the period of review is extended under subsection (3) or (4) of this section—the period as so extended.

Extensions

- (3) The Federal Court of Australia may order an extension of the *period of review for an assessment of an *assessable amount of yours for a specified period, if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-40

- (a) the Commissioner has started to examine your affairs in relation to the assessment; and
 - (b) the Commissioner has not completed the examination within the period of review for the assessment; and
 - (c) the Commissioner, during the period of review, applies to the Federal Court of Australia for an order extending the period; and
 - (d) the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the period of review, because of:
 - (i) any action taken by you; or
 - (ii) any failure by you to take action that it would have been reasonable for you to take.
- (4) You may, by written notice given to the Commissioner, consent to the extension of the *period of review for an assessment of an *assessable amount of yours for a specified period, if:
- (a) the Commissioner has started to examine your affairs in relation to the assessment; and
 - (b) the Commissioner has not completed the examination within the period of review for the assessment; and
 - (c) the Commissioner, during the period of review, requests you to consent to extending the period of review.
- (5) An order may be made under subsection (3), or consent given under subsection (4), in relation to an assessment of an *assessable amount more than once.

155-40 Amendment during period of review—certain applications taken to be notices

- (1) An application made by you for an amendment of an assessment of an *assessable amount of yours is treated as being a notice of the amended assessment given to you by the Commissioner under section 155-10, if:
- (a) the application is in the *approved form; and
 - (b) the Commissioner makes the amendment:
 - (i) to give effect to the decision on the application; and
 - (ii) during the *period of review for the assessment; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-45

- (c) the amendment the Commissioner makes is the entire amendment for which you applied, and nothing else.
- (2) The notice is treated as having been given to you on whichever of the following is applicable:
 - (a) the first day the Commissioner adjusts the balance of an *RBA of yours as a result of the amendment;
 - (b) the day Customs gives an *import declaration advice, or a *self-assessed clearance declaration advice, to an entity in respect of the relevant *taxable importation, *taxable importation of a luxury car or *customs dealing as a result of the amendment.

155-45 Amendment on application

The Commissioner may amend an assessment of an *assessable amount of yours at any time, if you apply for an amendment in the *approved form during the *period of review for the assessment. The Commissioner may amend the assessment to give effect to his or her decision on the application.

Note: The Commissioner must give you notice of the amended assessment under section 155-10: see section 155-80.

155-50 Amendment to give effect to private ruling

The Commissioner may amend an assessment of an *assessable amount of yours at any time, if:

- (a) you apply for a *private ruling during the *period of review for the assessment; and
- (b) the Commissioner makes a private ruling because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

155-55 Amendment to give effect to certain anti-avoidance declarations or determinations

The Commissioner may amend an assessment of an *assessable amount at any time, if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-57

- (a) the Commissioner makes a declaration under subsection 165-45(3) of the **GST Act* (about compensating adjustments for anti-avoidance declarations); or
- (b) the Commissioner makes a declaration under subsection 75-45(3) of the *Fuel Tax Act 2006* (about compensating adjustments for anti-avoidance declarations); or
- (c) the Commissioner makes a determination under section 210-30 of the *Minerals Resource Rent Tax Act 2012* (about compensating adjustments for anti-avoidance determinations).

The Commissioner may amend the assessment to give effect to the declaration or determination.

155-57 Amendment to give effect to MRRT anti-profit shifting rules

The Commissioner may amend an assessment of an **assessable* amount of yours at any time for the purposes of giving effect to Division 205 (about anti-profit shifting) of the *Minerals Resource Rent Tax Act 2012*.

155-60 Amendment because of review, objection or fraud

Despite anything in this Subdivision, the Commissioner may amend an assessment of an **assessable* amount of yours at any time:

- (a) to give effect to a decision on a review or appeal; or
- (b) as a result of an objection made by you, or pending a review or appeal; or
- (c) if he or she is of the opinion there has been fraud or evasion.

Special rules about amending amended assessments

155-65 Amending amended assessments

The Commissioner cannot amend an amended assessment of an **assessable* amount under section 155-35 if the **period* of review for the assessment has ended.

Note: The Commissioner can amend amended assessments at any time under sections 155-45 to 155-60.

**For definition, see section 995-1 of the Income Tax Assessment Act 1997.*

Section 155-70

155-70 Refreshed period of review

- (1) This section applies if the Commissioner has made one or more amendments of an assessment of an *assessable amount of yours under section 155-35 about a particular.
- (2) Despite section 155-65, the Commissioner may amend (the **later amendment**) the amended assessment after the end of the *period of review for the assessment, if:
 - (a) the Commissioner makes the later amendment before the end of the period of 4 years starting on the day after the day on which the Commissioner gave notice of the last of the amendments mentioned in subsection (1) to you under section 155-10; and
 - (b) the later amendment is about the particular mentioned in subsection (1) of this section; and
 - (c) the Commissioner has not previously amended the assessment under this section about that particular.

General rules

155-75 Refunds of amounts overpaid

- (1) This section applies if:
 - (a) an assessment of an *assessable amount of yours is amended; and
 - (b) as a result of the amendment, a *tax-related liability (the **earlier liability**) of yours is reduced.
- (2) For the purposes of any *taxation law that applies the *general interest charge, the amount by which the *tax-related liability is reduced is taken never to have been payable.

Note 1: The general interest charge is worked out under Part IIA of this Act.

Note 2: Subsection 8AAB(4) of this Act lists the provisions that apply the charge.
- (3) The Commissioner must apply the amount of any *tax-related liability overpaid in accordance with Divisions 3 and 3A of Part IIB of this Act (about running balance accounts and the application of payments and credits).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-80

- (4) However, if:
- (a) a later amendment of an assessment of an *assessable amount is made; and
 - (b) all or some of your earlier liability in relation to a particular is reinstated;
- this section is taken not to have applied to the extent that the earlier liability is reinstated.

155-80 Amended assessments are assessments

An amended assessment of an *assessable amount is an assessment for all purposes of any *taxation law.

Note: The Commissioner must give notice of the amended assessment under section 155-10. Under section 155-40, an application for an amendment is treated as being a notice of the amendment in certain circumstances.

Subdivision 155-C—Validity and review of assessments

Table of sections

155-85	Validity of assessment
155-90	Review of assessments

155-85 Validity of assessment

The validity of any assessment of an *assessable amount is not affected by non-compliance with the provisions of this Act or of any other *taxation law.

155-90 Review of assessments

- (1) You may object, in the manner set out in Part IVC of this Act, against an assessment of an *assessable amount of yours if you are dissatisfied with the assessment.

Note: An individual may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-95

- (2) You cannot object under subsection (1) against an assessment ascertaining that:
- (a) you have no *taxable mining profit for an *MRRT year; or
 - (b) you have a taxable mining profit and no *MRRT payable for an MRRT year;
- unless you are seeking an increase in your liability.

Subdivision 155-D—Miscellaneous

Table of sections

155-95 Entities

155-95 Entities

This Division applies, in relation to an *assessable amount under a *taxation law, to an entity under that taxation law in the same way as the Division applies to an entity under the *Income Tax Assessment Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 4-15—Collection and recovery of tax-related liabilities and other amounts

Division 250—Introduction

Table of Subdivisions

- 250-A Guide to Part 4-15
- 250-B Object of this Part

Subdivision 250-A—Guide to Part 4-15

250-1 What this Part is about

This Part deals with the methods by which the Commissioner may collect and recover amounts of taxes and other liabilities.

These rules may affect you if you are liable to pay an amount of a tax-related liability (see, for example, Division 255). Some of the rules may also affect you because of your relationship with someone else who is liable for such an amount (see Division 260).

Table of sections

- 250-5 Some important concepts about tax-related liabilities
- 250-10 Summary of tax-related liabilities

250-5 Some important concepts about tax-related liabilities

- (1) A tax-related liability may arise for an entity before it becomes due and payable by that entity.

Example: Under Part 2-5, an entity's liability to pay a withheld amount may arise before the amount is due and payable.

- (2) For some tax-related liabilities, an assessment needs to be made before the amount of the relevant liability becomes due and payable.

Example: Under Division 5 of the *Income Tax Assessment Act 1997*, an amount of income tax needs to be assessed before it becomes due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

- (3) An amount of a tax-related liability may become payable by an entity (for example, when the amount has been assessed) before it is due and payable by that entity.

250-10 Summary of tax-related liabilities

- (1) The following table is an index of each tax-related liability under the *Income Tax Assessment Act 1936*. The key provision for the liability, as set out in the table, specifies when the liability becomes due and payable.

Note 1: The Commissioner may vary the time at which the amount becomes due and payable. See Subdivision 255-B.

Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).

Tax-related liabilities under the <i>Income Tax Assessment Act 1936</i>		
Item	Topic	Provision
5	trustee beneficiary non-disclosure tax	102UO
10	withholding tax on dividend, interest or royalty	128C(1)
15	special tax payable on dealings by offshore banking units	128NB(3)
20	mining withholding tax	128W(1)
50	late lodgment penalty	163A(3)
70	excessive tax offset refunds	172A(2)
90	family trust distribution tax	271-75 in Schedule 2F
100	interest payable under section 102AAM (about distributions from non-resident trust estates)	5-5 of the <i>Income Tax Assessment Act 1997</i>
105	tax payable under section 159GZZZZH (Tax payable where infrastructure borrowing certificate cancelled)	5-5 of the <i>Income Tax Assessment Act 1997</i>

- (2) The following table is an index of each tax-related liability under other Acts. The key provision for the liability, as set out in the table, specifies when the liability becomes due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

- Note 1: The Commissioner may vary the time at which the amount becomes due and payable. See Subdivision 255-B.
- Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).
- Note 3: Companies that are or were members of the same wholly-owned group as an NZ franking company may be jointly and severally liable to pay certain tax-related liabilities of the NZ franking company (see Division 220 of the *Income Tax Assessment Act 1997*).
- Note 4: Penalties under Division 175 of the *Australian Charities and Not-for-profits Commission Act 2012*, and related general interest charge, are treated in the same way as tax-related liabilities: see subsection 175-70(2) of that Act.

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
5	assessed net amount, including amounts in respect of luxury car tax and wine equalisation tax	33-3, 33-5, 35-5(2)	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
10	amount of assessed GST on importations	33-15	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
12A	assessed GST on supplies made in settlement of claims under insurance policies	78-90	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
12B	assessed GST on supplies made in satisfaction of debts	105-20	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
13	repayments of amounts paid under tourist refund scheme	168-10	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
15	amount of assessed luxury car tax on importation	13-20	<i>A New Tax System (Luxury Car Tax) Act 1999</i>
16	excess luxury car tax credits	17-15	<i>A New Tax System (Luxury Car Tax) Act 1999</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 4 Generic assessment, collection and recovery rules

Part 4-15 Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
18	excess wine tax credits	17-25	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
20	amount of assessed wine tax on customs dealings	23-5	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
21	repayments of amounts paid under tourist refund scheme	25-10	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
22A	amount of advance to be repaid	14A	<i>Diesel and Alternative Fuels Grants Scheme Act 1999</i>
22B	amount payable as a result of an amended assessment	15E	<i>Diesel and Alternative Fuels Grants Scheme Act 1999</i>
24	excise duty	54	<i>Excise Act 1901</i>
24A	accounting for excisable goods	60(1), (1A), (1B) and (1C)	<i>Excise Act 1901</i>
24B	tobacco leaf stock deficiency	77AA	<i>Excise Act 1901</i>
24C	accounting for spirit	77FH	<i>Excise Act 1901</i>
24CA	penalty for using LPG for excisable LPG use	77M	<i>Excise Act 1901</i>
24D	returnable Government FHSA contributions	43	<i>First Home Saver Accounts Act 2008</i>
24E	returnable underpaid amounts in relation to Government FHSA contributions	47	<i>First Home Saver Accounts Act 2008</i>
25	fringe benefits tax	90(1)	<i>Fringe Benefits Tax Assessment Act 1986</i>
30	additional tax under Part VIII	90(2)	<i>Fringe Benefits Tax Assessment Act 1986</i>
35	fringe benefits tax instalments	103	<i>Fringe Benefits Tax Assessment Act 1986</i>
36	assessed net fuel amount	61-5(2) 61-10	<i>Fuel Tax Act 2006</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
36A	compulsory repayment amount under the <i>Higher Education Support Act 2003</i>	5-5	<i>Income Tax Assessment Act 1997</i>
37	income tax	5-5	<i>Income Tax Assessment Act 1997</i>
37AA	shortfall interest charge on income tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AB	shortfall interest charge on excess non-concessional contributions tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AC	shortfall interest charge on Division 293 tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AD	shortfall interest charge on excess concessional contributions charge	5-10	<i>Income Tax Assessment Act 1997</i>
37A	untainting tax	197-70	<i>Income Tax Assessment Act 1997</i>
38	franking tax	214-150(1), (2), (3) and (4)	<i>Income Tax Assessment Act 1997</i>
38B	excess non-concessional contributions tax	292-385	<i>Income Tax Assessment Act 1997</i>
38BB	Division 293 tax	293-65 and 293-70	<i>Income Tax Assessment Act 1997</i>
38C	FHSA misuse tax	section 345-110	<i>Income Tax Assessment Act 1997</i>
39	TSA liability	721-30	<i>Income Tax Assessment Act 1997</i>
39A	managed investment trust withholding tax	840-810(1)	<i>Income Tax Assessment Act 1997</i>
39AA	Seasonal Labour Mobility Program withholding tax	840-910	<i>Income Tax Assessment Act 1997</i>
39B	managed investment trust withholding tax	840-810(1)	<i>Income Tax (Transitional Provisions) Act 1997</i>
39C	MRRT	50-5	<i>Minerals Resource Rent Tax Act 2012</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

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Part 4-15 Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
39D	shortfall interest charge on shortfall in MRRT	50-10	<i>Minerals Resource Rent Tax Act 2012</i>
40	petroleum resource rent tax and additional tax	82	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
41	shortfall interest charge on petroleum resource rent tax	82	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
45	petroleum resource rent tax instalments	95	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
45A	instalment transfer interest charge	98C(4)	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
45B	liability for excess private health insurance premium reduction or refund	282-18	<i>Private Health Insurance Act 2007</i>
46	amount of advance to be repaid	13	<i>Product Grants and Benefits Administration Act 2000</i>
47	amount payable as a result of an amended assessment	20	<i>Product Grants and Benefits Administration Act 2000</i>
48	penalty under section 35	36	<i>Product Grants and Benefits Administration Act 2000</i>
50	superannuation contributions surcharge	15(3)	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
55	superannuation contributions surcharge	15(8)	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>
60	superannuation guarantee charge	46	<i>Superannuation Guarantee (Administration) Act 1992</i>
65	additional superannuation guarantee charge	47	<i>Superannuation Guarantee (Administration) Act 1992</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
67	Superannuation (Self Managed Funds) Levy	15DB	<i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i>
67A	payment of unclaimed money to the Commissioner	17	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
67B	payment from Commissioner that cannot be credited	18C	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
68	payment in respect of a superannuation interest to the Commissioner	20F	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69	repayment of Commissioner's payment	20M	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69A	payment of value of lost member accounts to the Commissioner	24E	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69B	payment from Commissioner that cannot be credited	24L	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
70	general interest charge	8AAE	<i>Taxation Administration Act 1953</i>
85	RBA deficit debt	8AAZH(1)	<i>Taxation Administration Act 1953</i>
90	administrative overpayment made by Commissioner	8AAZN	<i>Taxation Administration Act 1953</i>
95	TFN withholding tax	14-55 in Schedule 1	<i>Taxation Administration Act 1953</i>
100	TFN withholding tax (ESS)	14-155 in Schedule 1	<i>Taxation Administration Act 1953</i>
105	payment of withheld amount to Commissioner	16-75 in Schedule 1	<i>Taxation Administration Act 1953</i>
110	PAYG withholding non-compliance tax	18-145 in Schedule 1	<i>Taxation Administration Act 1953</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

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Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
115	quarterly PAYG instalment	45-61 in Schedule 1	<i>Taxation Administration Act 1953</i>
115A	monthly PAYG instalment	45-67 in Schedule 1	<i>Taxation Administration Act 1953</i>
120	annual PAYG instalment	45-70 in Schedule 1	<i>Taxation Administration Act 1953</i>
125	general interest charge on shortfall in quarterly instalment worked out on basis of varied rate	45-230(4) in Schedule 1	<i>Taxation Administration Act 1953</i>
130	general interest charge on shortfall in quarterly instalment worked out on basis of estimated benchmark tax	45-232 in Schedule 1	<i>Taxation Administration Act 1953</i>
135	general interest charge on shortfall in annual instalment	45-235(5) in Schedule 1	<i>Taxation Administration Act 1953</i>
135Q	excess concessional contributions charge	95-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
135R	amount in accordance with excess concessional contributions release authority	96-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
136	quarterly MRRT instalment	115-25 in Schedule 1	<i>Taxation Administration Act 1953</i>
136A	debt account discharge liability	133-105 in Schedule 1	<i>Taxation Administration Act 1953</i>
137	amount to be recovered from a debtor under a registered foreign revenue claim	263-30 in Schedule 1	<i>Taxation Administration Act 1953</i>
138	estimate of payable amounts	268-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
139	penalty under Subdivision 269-B	269-20 in Schedule 1	<i>Taxation Administration Act 1953</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-25

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
140	administrative penalties	298-15 in Schedule 1	<i>Taxation Administration Act 1953</i>
145	termination payment surcharge	11(2)	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>

Subdivision 250-B—Object of this Part

250-25 Object

The object of this Part is to ensure that unpaid amounts of
*tax-related liabilities and other related amounts are collected or
recovered in a timely manner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-1

Division 255—General rules about collection and recovery

Table of Subdivisions

255-A	Tax-related liabilities
255-B	Commissioner's power to vary payment time
255-C	Recovery proceedings
255-D	Security deposits

Subdivision 255-A—Tax-related liabilities

Table of sections

255-1	Meaning of <i>tax-related liability</i>
255-5	Recovering a tax-related liability that is due and payable

255-1 Meaning of *tax-related liability*

- (1) A ***tax-related liability*** is a pecuniary liability to the Commonwealth arising directly under a *taxation law (including a liability the amount of which is not yet due and payable).

Note 1: See section 250-10 for an index of tax-related liabilities.

Note 2: A taxation law, or a provision of it, may be excluded from being applied to this Part. See section 265-65.
- (2) A civil penalty under Division 290 of this Schedule or Part 5 of the *Tax Agent Services Act 2009* is not a ***tax-related liability***.

255-5 Recovering a tax-related liability that is due and payable

- (1) An amount of a *tax-related liability that is due and payable:
 - (a) is a debt due to the Commonwealth; and
 - (b) is payable to the Commissioner.
- (2) The Commissioner, a *Second Commissioner or a *Deputy Commissioner may sue in his or her official name in a court of competent jurisdiction to recover an amount of a *tax-related liability that remains unpaid after it has become due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: The tables in section 250-10 set out each provision that specifies when an amount of a tax-related liability becomes due and payable. The Commissioner may vary that time under Subdivision 255-B.

Subdivision 255-B—Commissioner’s power to vary payment time

Table of sections

255-10	To defer the payment time
255-15	To permit payments by instalments
255-20	To bring forward the payment time in certain cases

255-10 To defer the payment time

Deferrals for particular taxpayers

- (1) The Commissioner may, having regard to the circumstances of your particular case, defer the time at which an amount of a *tax-related liability is, or would become, due and payable by you (whether or not the liability has already arisen). If the Commissioner does so, that time is varied accordingly.

Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

- (2) The Commissioner must do so by written notice given to you.

Deferrals for classes of taxpayers

- (2A) The Commissioner, having regard to the circumstances of the case, may, by notice published on the Australian Taxation Office website, defer the time at which amounts of *tax-related liabilities are, or would become, due and payable by a class of taxpayers (whether or not the liabilities have already arisen).

- (2B) If the Commissioner does so, that time is varied accordingly.

Note: General interest charge and any other relevant penalties, if applicable for any unpaid amounts of the liabilities, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-15

- (2C) A notice published under subsection (2A) is not a legislative instrument.

Deferral does not affect time for giving form

- (3) A deferral under this section does not defer the time for giving an *approved form to the Commissioner.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

255-15 To permit payments by instalments

- (1) The Commissioner may, having regard to the circumstances of your particular case, permit you to pay an amount of a *tax-related liability by instalments under an *arrangement between you and the Commissioner (whether or not the liability has already arisen).
- (2) The *arrangement does not vary the time at which the amount is due and payable.

Note: Despite an arrangement under this section, any general interest charge or other relevant penalty, if applicable for any unpaid amount of the liability, begins to accrue when the liability is due and payable under the relevant taxation law, or at that time as varied under section 255-10 or 255-20.

255-20 To bring forward the payment time in certain cases

- (1) If the Commissioner reasonably believes that you may leave Australia before the time at which an amount of a *tax-related liability becomes due and payable by you, the Commissioner may bring that time forward. If the Commissioner does so, that time is varied accordingly.

Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

- (2) The Commissioner must do so by written notice given to you.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 255-C—Recovery proceedings

Guide to Subdivision 255-C

255-35 What this Subdivision is about

This Subdivision deals with procedural and evidentiary matters relating to proceedings to recover an amount of a tax-related liability.

Table of sections

Operative provisions

255-40	Service of documents if person absent from Australia or cannot be found
255-45	Evidentiary certificate
255-50	Certain statements or averments
255-55	Evidence by affidavit

Operative provisions

255-40 Service of documents if person absent from Australia or cannot be found

- (1) This section applies if a document needs to be served on a person in respect of a proceeding to recover an amount of a *tax-related liability, and the Commissioner, after making reasonable inquiries, is satisfied that:
 - (a) the person is absent from Australia and does not have any agent in Australia on whom the document can be served; or
 - (b) the person cannot be found.
- (2) The Commissioner may, without the court's leave, serve the document by posting it, or a sealed copy of it, in a letter addressed to the person at any Australian address of the person (including the person's Australian place of business or residence) that is last known to the Commissioner.
- (3) For the purposes of giving effect to a provision of an international agreement of a kind referred to in Subdivision 263-A (about foreign revenue claims), if a document needs to be served on a

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-45

person and the Commissioner, after making reasonable inquiries, is satisfied that:

- (a) the person is absent from Australia and does not have an agent in Australia on whom the document can be served; and
- (b) the person has an address in a foreign country, a constituent part of a foreign country or a foreign territory;

the Commissioner may serve the document on the person at the address mentioned in paragraph (b).

255-45 Evidentiary certificate

(1) A certificate:

- (a) stating one or more of the matters covered by subsection (2) or (3); and
- (b) signed by the Commissioner, a *Second Commissioner or a *Deputy Commissioner;

is prima facie evidence of the matter or matters in a proceeding to recover an amount of a *tax-related liability.

(2) A certificate may state:

- (a) that a person named in the certificate has a *tax-related liability; or
- (b) that an *assessment relating to a tax-related liability has been made, or is taken to have been made, under a *taxation law; or
- (c) that notice of an assessment, or any other notice required to be served on a person in respect of an amount of a tax-related liability, was, or is taken to have been, served on the person under a *taxation law; or
- (d) that the particulars of a notice covered by paragraph (c) are as stated in the certificate; or
- (e) that a sum specified in the certificate is, as at the date specified in the certificate, a debt due and payable by a person to the Commonwealth.

(3) A certificate may state:

- (a) that a *foreign revenue claim for an amount specified in the certificate has been made by the competent authority under the relevant international agreement; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) that the relevant requirements of the relevant international agreement have been complied with in relation to the foreign revenue claim; or
- (c) that the claim was registered under Division 263 on the date specified in the certificate; or
- (d) that, as at the date of the certificate, the Commissioner has or has not received advice from the competent authority under the relevant international agreement about the reduction or discharge of an amount to be recovered under the claim; or
- (e) that the particulars of any reduction or discharge of an amount to be recovered under the claim are as specified in the certificate.

255-50 Certain statements or averments

- (1) In a proceeding to recover an amount of a *tax-related liability, a statement or averment about a matter in the plaintiff's complaint, claim or declaration is prima facie evidence of the matter.
- (2) This section applies even if the matter is a mixed question of law and fact. However, the statement or averment is prima facie evidence of the fact only.
- (3) This section applies even if evidence is given in support or rebuttal of the matter or of any other matter.
- (4) Any evidence given in support or rebuttal of the matter stated or averred must be considered on its merits. This section does not increase or diminish the credibility or probative value of the evidence.
- (5) This section does not lessen or affect any onus of proof otherwise falling on a defendant.

255-55 Evidence by affidavit

In a proceeding to recover an amount of a *tax-related liability:

- (a) a person may give evidence by affidavit; and
- (b) the court may require the person to attend before it:
 - (i) to be cross-examined on that evidence; or
 - (ii) to give other evidence relating to the proceedings.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-100

Subdivision 255-D—Security deposits

Table of sections

255-100	Commissioner may require security deposit
255-105	Notice of requirement to give security
255-110	Offence

255-100 Commissioner may require security deposit

- (1) The Commissioner may require you to give security for the due payment of an existing or future *tax-related liability of yours if:
- (a) the Commissioner has reason to believe that:
 - (i) you are establishing or *carrying on an *enterprise in Australia; and
 - (ii) you intend to carry on that enterprise for a limited time only; or
 - (b) the Commissioner reasonably believes that the requirement is otherwise appropriate, having regard to all relevant circumstances.

Note: A requirement to give security under this section is *not* a tax-related liability. As such, the collection and recovery provisions in this Part do not apply to it.

- (2) The Commissioner may require you to give the security:
- (a) by way of a bond or deposit (including by way of payments in instalments); or
 - (b) by any other means that the Commissioner reasonably believes is appropriate.
- (3) The Commissioner may require you to give security under this section:
- (a) at any time the Commissioner reasonably believes is appropriate; and
 - (b) as often as the Commissioner reasonably believes is appropriate.

Example: The Commissioner may require additional security if he or she reasonably believes that the original security requirement underestimated the amount of the likely tax-related liability.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

255-105 Notice of requirement to give security

Commissioner must give notice of requirement to give security

- (1) If the Commissioner requires you to give security under section 255-100, he or she must give you written notice of the requirement.

Content of notice

- (2) The notice must:
- (a) state that you are required to give the security to the Commissioner; and
 - (b) explain why the Commissioner requires the security; and
 - (c) set out the amount of the security; and
 - (d) describe the means by which you are required to give the security under subsection 255-100(2); and
 - (e) specify the time by which you are required to give the security; and
 - (f) explain how you may have the Commissioner's decision to require you to give the security reviewed.
- (3) To avoid doubt, a single notice may relate to security for the payment of 2 or more existing or future *tax-related liabilities, but must comply with subsection (2) in relation to each of them.

When notice is given

- (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Miscellaneous

- (5) A failure to comply with this section does not affect the validity of the requirement to give the security under section 255-100.

255-110 Offence

You commit an offence if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Section 255-110

- (a) the Commissioner requires you to give security under section 255-100; and
- (b) you fail to give that security as required.

Penalty: 100 penalty units.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 260—Special rules about collection and recovery

Table of Subdivisions

Guide to Division 260	
260-A	From third party
260-B	From liquidator
260-C	From receiver
260-D	From agent winding up business for foreign resident principal
260-E	From deceased person's estate

Guide to Division 260

260-1 What this Division is about

This Division deals with the collection and recovery of an amount from a person who is not personally liable to pay that amount. Apart from Subdivision 260-A, which covers a wider range of amounts, this Division primarily deals with amounts of tax-related liabilities.

Subdivision 260-A—From third party

Table of sections

260-5	Commissioner may collect amounts from third party
260-10	Notice to Commonwealth, State or Territory
260-15	Indemnity
260-20	Offence

260-5 Commissioner may collect amounts from third party

Amount recoverable under this Subdivision

- (1) This Subdivision applies if any of the following amounts (the **debt**) is payable to the Commonwealth by an entity (the **debtor**) (whether or not the debt has become due and payable):
- (a) an amount of a *tax-related liability;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-5

- (b) a judgment debt for a *tax-related liability;
- (c) costs for such a judgment debt;
- (d) an amount that a court has ordered the debtor to pay to the Commissioner following the debtor's conviction for an offence against a *taxation law.

Commissioner may give notice to an entity

- (2) The Commissioner may give a written notice to an entity (the **third party**) under this section if the third party owes or may later owe money to the debtor.

Third party regarded as owing money in these circumstances

- (3) The third party is taken to owe money (the **available money**) to the debtor if the third party:
 - (a) is an entity by whom the money is due or accruing to the debtor; or
 - (b) holds the money for or on account of the debtor; or
 - (c) holds the money on account of some other entity for payment to the debtor; or
 - (d) has authority from some other entity to pay the money to the debtor.

The third party is so taken to owe the money to the debtor even if:

- (e) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
- (f) the condition has not been fulfilled.

How much is payable under the notice

- (4) A notice under this section must:
 - (a) require the third party to pay to the Commissioner the lesser of, or a specified amount not exceeding the lesser of:
 - (i) the debt; or
 - (ii) the available money; or
 - (b) if there will be amounts of the available money from time to time—require the third party to pay to the Commissioner a specified amount, or a specified percentage, of each amount of the available money, until the debt is satisfied.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

When amount must be paid

- (5) The notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b):
- (a) immediately after; or
 - (b) at or within a specified time after;
- the amount of the available money concerned becomes an amount owing to the debtor.

Debtor must be notified

- (6) The Commissioner must send a copy of the notice to the debtor.

Setting-off amounts

- (7) If an entity other than the third party has paid an amount to the Commissioner that satisfies all or part of the debt:
- (a) the Commissioner must notify the third party of that fact; and
 - (b) any amount that the third party is required to pay under the notice is reduced by the amount so paid.

260-10 Notice to Commonwealth, State or Territory

If the third party is the Commonwealth, a State or a Territory, the Commissioner may give the notice to a person who:

- (a) is employed by the Commonwealth, or by the State or Territory (as appropriate); and
- (b) has the duty of disbursing public money under a law of the Commonwealth, or of the State or Territory (as appropriate).

260-15 Indemnity

An amount that the third party pays to the Commissioner under this Subdivision is taken to have been authorised by:

- (a) the debtor; and
- (b) any other person who is entitled to all or a part of the amount;

and the third party is indemnified for the payment.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-20

260-20 Offence

- (1) The third party must not fail to comply with the Commissioner's notice.

Penalty: 20 penalty units

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commissioner an amount not exceeding that amount.

Subdivision 260-B—From liquidator

Table of sections

260-40	Subdivision does not apply to superannuation guarantee charge
260-45	Liquidator's obligation
260-50	Offence
260-55	Joint liability of 2 or more liquidators
260-60	Liquidator's other obligation or liability

260-40 Subdivision does not apply to superannuation guarantee charge

This Subdivision does not apply to a *tax-related liability that is superannuation guarantee charge imposed by the *Superannuation Guarantee Charge Act 1992*.

260-45 Liquidator's obligation

- (1) This Subdivision applies to a person who becomes a liquidator of a company.
- (2) Within 14 days after becoming liquidator, the liquidator must give written notice of that fact to the Commissioner.
- (3) The Commissioner must, as soon as practicable, notify the liquidator of the amount (the ***notified amount***) that the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the company has when the notice is given.

- (4) The liquidator must not, without the Commissioner's permission, part with any of the company's assets before receiving the Commissioner's notice.
- (5) However, subsection (4) does not prevent the liquidator from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
 - (a) the *outstanding tax-related liabilities;
 - (b) any debts of the company which:
 - (i) are unsecured; and
 - (ii) are not required, by an *Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Commissioner's notice, the liquidator must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the following formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left(\frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right)$$

where:

amount of remaining ordinary debts means the sum of the company's ordinary debts other than the *outstanding tax-related liabilities.

- (7) The liquidator must, in his or her capacity as liquidator, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the liquidator is required to set aside.
- (8) The liquidator is personally liable to discharge the liabilities, to the extent of that value, if the liquidator contravenes this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-50

260-50 Offence

The liquidator must not fail to comply with subsection 260-45(2), (4), (5), (6) or (7).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

260-55 Joint liability of 2 or more liquidators

If there are 2 or more persons who become liquidators of the company, the obligations and liabilities under this Subdivision:

- (a) apply to all the liquidators; but
- (b) may be discharged by any of them.

260-60 Liquidator's other obligation or liability

This Subdivision does not reduce any obligation or liability of a liquidator arising elsewhere.

Subdivision 260-C—From receiver

Table of sections

260-75	Receiver's obligation
260-80	Offence
260-85	Joint liability of 2 or more receivers
260-90	Receiver's other obligation or liability

260-75 Receiver's obligation

- (1) This Subdivision applies to a person (the *receiver*) who, in the capacity of receiver, or of receiver and manager, takes possession of a company's assets for the company's debenture holders.
- (2) Within 14 days after taking possession of the assets, the receiver must give written notice of that fact to the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) The Commissioner must, as soon as practicable, notify the receiver of the amount (the **notified amount**) that the Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the company has when the notice is given.
- (4) The receiver must not, without the Commissioner's permission, part with any of the company's assets before receiving the Commissioner's notice.
- (5) However, subsection (4) does not prevent the receiver from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
 - (a) the *outstanding tax-related liabilities;
 - (b) any debts of the company which:
 - (i) are unsecured; and
 - (ii) are not required, by an *Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Commissioner's notice, the receiver must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the following formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left(\frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right)$$

where:

amount of remaining ordinary debts means the sum of the company's ordinary debts other than the *outstanding tax-related liabilities.

- (7) The receiver must, in his or her capacity as receiver, or as receiver and manager, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the receiver is required to set aside.
- (8) The receiver is personally liable to discharge the liabilities, to the extent of that value, if the receiver contravenes this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-80

260-80 Offence

The receiver must not fail to comply with subsection 260-75(2), (4), (5), (6) or (7).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

260-85 Joint liability of 2 or more receivers

If 2 or more persons (the **receivers**) take possession of a company's assets, for the company's debenture holders, in the capacity of receiver, or of receiver and manager, the obligations and liabilities under this Subdivision apply to:

- (a) all the receivers; but
- (b) may be discharged by any of them.

260-90 Receiver's other obligation or liability

This Subdivision does not reduce any obligation or liability of the receiver or receivers arising elsewhere.

Subdivision 260-D—From agent winding up business for foreign resident principal

Table of sections

260-105	Obligation of agent winding up business for foreign resident principal
260-110	Offence
260-115	Joint liability of 2 or more agents
260-120	Agent's other obligation or liability

260-105 Obligation of agent winding up business for foreign resident principal

- (1) This Subdivision applies to an agent whose principal:
 - (a) is a foreign resident; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) has instructed the agent to wind up so much of the principal's business as is carried on in Australia.
- (2) Within 14 days after receiving the instructions, the agent must give written notice of that fact to the Commissioner.
- (3) The Commissioner must, as soon as practicable after receiving the notice, notify the agent of the amount (the ***notified amount***) that the Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the principal has when the notice is given.
- (4) Before receiving the Commissioner's notice, the agent must not, without the Commissioner's permission, part with any of the principal's assets that are available for discharging the *outstanding tax-related liabilities.
- (5) After receiving the notice, the agent must set aside:
- (a) out of the assets available for discharging the *outstanding tax-related liabilities, assets to the value of the notified amount; or
 - (b) all of the assets so available, if their value is less than the notified amount.
- (6) The agent must, in that capacity, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the agent is required to set aside.
- (7) The agent is personally liable to discharge the liabilities, to the extent of that value, if the agent contravenes this section.

260-110 Offence

A person must not fail to comply with subsection 260-105(2), (4), (5) or (6).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of penalty units.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-115

260-115 Joint liability of 2 or more agents

If 2 or more agents are jointly instructed by the principal to wind up the business, the obligations and liabilities under this

Subdivision:

- (a) apply to all the agents; but
- (b) may be discharged by any of them.

260-120 Agent's other obligation or liability

This Subdivision does not reduce any obligation or liability of the agent or agents arising elsewhere.

Subdivision 260-E—From deceased person's estate

Table of sections

260-140	Administered estate
260-145	Unadministered estate
260-150	Commissioner may authorise amount to be recovered

260-140 Administered estate

- (1) This section applies if:
 - (a) a person has an *outstanding tax-related liability when the person dies; and
 - (b) either of the following is granted after the death:
 - (i) probate of the person's will;
 - (ii) letters of administration of the person's estate.
- (2) The Commissioner may, in respect of the liability, deal with the trustee of the deceased person's estate as if:
 - (a) the deceased person were still alive; and
 - (b) the trustee were the deceased person.
- (3) Without limiting subsection (2), the trustee must:
 - (a) provide any returns and other information that the deceased person was liable to provide, or would have been liable to provide if he or she were still alive; and
 - (b) provide any additional returns or other information relating to the liability that the Commissioner requires; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) in the trustee's representative capacity, discharge the liability and any penalty imposed in respect of the liability under a *taxation law (including any *general interest charge) for which the deceased person would be liable if he or she were still alive.
- (4) If:
 - (a) the amount of the liability requires an *assessment under a *taxation law but the assessment has not been made; and
 - (b) the trustee fails to provide a return or other information in relation to assessing that amount as required by the Commissioner;the Commissioner may assess that amount. If the Commissioner does so, the assessment has the same effect as if it were made under that taxation law.
- (5) A trustee who is dissatisfied with an *assessment under subsection (4) may object in the manner set out in Part IVC.
- (6) Part IVC applies in relation to the objection as if the trustee were the deceased person.

260-145 Unadministered estate

- (1) This section applies if neither of the following is granted within 6 months after a person's death:
 - (a) probate of the person's will;
 - (b) letters of administration of the person's estate.
- (2) The Commissioner may determine the total amount of *outstanding tax-related liabilities that the person had at the time of death.
- (3) The Commissioner must publish notice of the determination twice in a daily newspaper circulating in the State or Territory in which the person resided at the time of death.
- (4) A notice of the determination is conclusive evidence of the *outstanding tax-related liabilities, unless the determination is amended.
- (5) A person who is dissatisfied with the determination may object in the manner set out in Part IVC if the person:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-150

- (a) claims an interest in the estate; or
 - (b) is granted probate of the deceased person's will or letters of administration of the estate.
- (6) Part IVC applies in relation to the objection as if the person making it were the deceased person.

260-150 Commissioner may authorise amount to be recovered

- (1) The Commissioner may, in writing, authorise a person (the **authorised person**) who is:
 - (a) a member or a special member of the Australian Federal Police; or
 - (b) a member of the police force of a State or Territory; or
 - (c) any other person;to recover:
 - (d) the total amount of the *outstanding tax-related liabilities of a deceased person as determined under section 260-145 (about unadministered estates); and
 - (e) any reasonable costs incurred by the authorised person in recovering that amount;by seizing and disposing of any property of the deceased person.
- (2) The authorised person may seize and dispose of the property as prescribed by the regulations.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 263—Mutual assistance in collection of foreign tax debts

Table of Subdivisions

263-A Foreign revenue claims

Subdivision 263-A—Foreign revenue claims

Guide to Subdivision 263-A

263-5 What this Subdivision is about

This Subdivision can be activated if there is in force an agreement between Australia and a foreign country or territory that contains an article relating to assistance in collection of foreign tax debts.

The Commissioner can collect from an entity an amount in respect of a tax debt that the person owes to such a country or territory or take action to conserve assets of the entity.

The Commissioner is required to remit amounts collected to the foreign country or territory concerned.

Table of sections

Operative provisions

263-10	Meaning of <i>foreign revenue claim</i>
263-15	Requirements for foreign revenue claims
263-20	Foreign Revenue Claims Register
263-25	Registering claims
263-30	When amount is due and payable
263-35	Amending the Register etc.
263-40	Payment to competent authority

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 263-10

Operative provisions

263-10 Meaning of foreign revenue claim

A **foreign revenue claim** is a claim made to the Commissioner:

- (a) in accordance with an agreement (the **international agreement**) between Australia and:
 - (i) a foreign country or a constituent part of a foreign country; or
 - (ii) an overseas territory;
(the **overseas entity**); and
- (b) for one or both of these purposes:
 - (i) the recovery by the Commissioner of an amount from an entity (the **debtor**) in respect of taxes imposed otherwise than by an ^{*}Australian law (including any associated amounts);
 - (ii) the conserving of assets for the purposes of a recovery of that kind.

263-15 Requirements for foreign revenue claims

A ^{*}foreign revenue claim must:

- (a) be made by or on behalf of an entity that is, under the relevant international agreement, the competent authority; and
- (b) be consistent with the provisions of that agreement; and
- (c) be made in the ^{*}approved form; and
- (d) specify the amount owed by the debtor in Australian currency (calculated as at the day the claim is made); and
- (e) be accompanied by a declaration by the competent authority stating that the claim fulfils the requirements of that agreement.

263-20 Foreign Revenue Claims Register

- (1) The Commissioner must keep a register called the Foreign Revenue Claims Register (the **Register**).

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The regulations may make provision in relation to the form in which the Register may be kept.
- (3) The register is not a legislative instrument.

263-25 Registering claims

If the Commissioner is satisfied that a *foreign revenue claim has been made in accordance with section 263-15, the Commissioner must register the claim by entering particulars of it in the Register within 90 days after receiving the claim.

263-30 When amount is due and payable

- (1) When particulars of a *foreign revenue claim are entered in the Register, the amount owed by the debtor becomes a pecuniary liability to the Commonwealth by the debtor.

Note 1: The amount to be recovered from the debtor will be a primary tax debt for the purposes of Part IIB and the Commissioner may allocate the debt to a running balance account under that Part.

Note 2: For provisions about collection and recovery of the debt, see Part 4-15.

- (1A) To avoid doubt, the amount owed by the debtor may not be the same as the amount (if any) entered in the Register.
- (2) The amount owed by the debtor becomes due and payable 30 days after notice of the particulars of the *foreign revenue claim is given to the debtor or on a later day specified in the notice.
- (3) If that amount remains unpaid after it is due and payable, the debtor is liable to pay *general interest charge on the unpaid amount for each day in the period that:
 - (a) started at the beginning of the day by which the amount was due to be paid; and
 - (b) finishes at the end of the last day at the end of which either of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 263-35

263-35 Amending the Register etc.

- (1) The Commissioner may, with the agreement of the relevant competent authority, amend the Register to correct an error.
- (2) The Commissioner may, with the agreement of the relevant competent authority:
 - (a) remove from the Register the particulars of a *foreign revenue claim; or
 - (b) reduce an amount to be recovered from a debtor under the claim.
- (2A) To avoid doubt, the Commissioner may reduce an amount to be recovered from a debtor under paragraph (2)(b) without amending the Register.
- (3) A debtor may, after receiving a copy of the particulars of a *foreign revenue claim entered in the Register, apply to the Commissioner in the *approved form to have those particulars removed from the Register.
- (4) The Commissioner may, after considering the application, remove those particulars from the Register.
- (5) If the Commissioner removes particulars of a *foreign revenue claim relating to the recovery of an amount from the Register under paragraph (2)(a) or subsection (4), the debtor is entitled to a credit for the purposes of Part IIB equal to the sum of:
 - (a) the amount (as reduced by any previous application of subsection (6)); and
 - (b) any *general interest charge for which the debtor is liable as a result of the foreign revenue claim.

Note: How the credit is applied is set out in Part IIB.

- (6) If the Commissioner reduces the amount to be recovered from a debtor under a *foreign revenue claim under paragraph (2)(b), the debtor is entitled to a credit for the purposes of Part IIB equal to the amount of the reduction.

Note: How the credit is applied is set out in Part IIB.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

263-40 Payment to competent authority

- (1) The Commissioner must, if the Commissioner recovers all or part of an amount to be recovered from a debtor under a registered *foreign revenue claim, pay that amount to the competent authority concerned or to another entity on behalf of that competent authority.
- (2) The Commissioner may also pay to the competent authority all or part of an amount that the Commissioner has received and that is attributable to *general interest charge in relation to the claim.
- (3) The Commissioner may also pay to the competent authority all or part of an amount that the Commissioner has received and that is attributable to any of the following in relation to the claim:
 - (a) judgment interest;
 - (b) costs that:
 - (i) have been recovered in the course of legal proceedings; and
 - (ii) represent an amount that has previously been paid by the competent authority to the Commonwealth in relation to the recovery of the claim.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 265-35

Division 265—Other matters

Table of Subdivisions

- 265-A Right of person to seek recovery or contribution
- 265-B Application of laws

Subdivision 265-A—Right of person to seek recovery or contribution

Guide to Subdivision 265-A

265-35 What this Subdivision is about

This Division deals with a person's right to recover from another person an amount paid in discharge of a tax-related liability if:

- the person has paid the amount for or on behalf of the other person;
- the persons are jointly liable to pay the amount.

Table of sections

Operative provisions

- 265-40 Right of recovery if another person is liable
- 265-45 Right of contribution if persons are jointly liable

Operative provisions

265-40 Right of recovery if another person is liable

A person who has paid an amount of a *tax-related liability for or on behalf of another person may:

- (a) recover that amount from the other person as a debt (together with the costs of recovery) in a court of competent jurisdiction; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) retain or deduct the amount out of money held by the person that belongs to, or is payable to, the other person.

265-45 Right of contribution if persons are jointly liable

- (1) If 2 or more persons are jointly liable to pay an amount of a *tax-related liability, they are each liable for the whole of the amount.
- (2) If one of the persons has paid an amount of the liability, the person may recover in a court of competent jurisdiction, as a debt, from another of those persons:
- (a) an amount equal to so much of the amount paid; and
 - (b) an amount equal to so much of the costs of recovery under this section;
- as the court considers just and equitable.

Note: Item 15 of Schedule 6 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* has the effect that, in addition to its normal application in relation to tax-related liabilities arising on or after 1 July 2000, subsection (2) also applies to such liabilities arising before that date, where amounts of the liabilities are paid after the commencement of that item.

Subdivision 265-B—Application of laws

Table of sections

265-65 Non-application of certain taxation laws

265-65 Non-application of certain taxation laws

This Part does not apply in relation to a *taxation law, or a provision of a taxation law, that is prescribed by the regulations.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 268-1

Division 268—Estimates and recovery of PAYG withholding liabilities and superannuation guarantee charge

Table of Subdivisions

	Guide to Division 268
268-A	Object
268-B	Making estimates
268-C	Liability to pay estimates
268-D	Reducing and revoking estimates
268-E	Late payment of estimates
268-F	Miscellaneous

Guide to Division 268

268-1 What this Division is about

This Division enables the Commissioner to make an estimate of:

- (a) amounts not paid as required by Part 2-5 of this Act (Pay as you go (PAYG) withholding); or
- (b) unpaid superannuation guarantee charge;

and to recover the amount of the estimate.

If you are given an estimate, you are liable to pay the amount of the estimate. That liability is distinct from your liability to pay the amounts required by Part 2-5 or the *Superannuation Guarantee (Administration) Act 1992*. However, you can ensure that the Commissioner does not require you to pay more than the amounts not paid under that Part or Act.

Other Divisions of this Part provide for the recovery of amounts payable under this Division.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 268-A—Object

Table of sections

268-5 Object of Division

268-5 Object of Division

The object of this Division is to enable the Commissioner to take prompt and effective action to recover:

- (a) amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding); or
- (b) unpaid superannuation guarantee charge that has not been assessed.

Subdivision 268-B—Making estimates

Table of sections

268-10 Commissioner may make estimate
268-15 Notice of estimate

268-10 Commissioner may make estimate

Estimate

- (1) The Commissioner may estimate the unpaid and overdue amount of a liability (the ***underlying liability***) of yours:
 - (a) under section 16-70 in this Schedule (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules); or
 - (b) to pay superannuation guarantee charge for a *quarter under section 16 of the *Superannuation Guarantee (Administration) Act 1992*, to the extent the superannuation guarantee charge has not been assessed before the Commissioner makes the estimate.
- (1A) For the purposes of this Division, your superannuation guarantee charge for a *quarter is treated as being payable on the day by which you must lodge a superannuation guarantee statement for the quarter under section 33 of the *Superannuation Guarantee*

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(Administration) Act 1992, even if, on that day, the charge has not been assessed under that Act.

Amount of estimate

- (2) The amount of the estimate must be what the Commissioner thinks is reasonable.
- (3) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant.

Example 1: In the case of an underlying liability under section 16-70 (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the Commissioner may have regard to information about amounts you withheld under the Pay as you go rules before the period in relation to which the underlying liability arose.

Example 2: In the case of an underlying liability to pay superannuation guarantee charge for a quarter, the Commissioner may have regard to information about your contributions to RSAs and complying superannuation funds for earlier quarters.

Only one estimate for each liability

- (4) While the estimate is in force, the Commissioner cannot make another estimate relating to the underlying liability.
- (5) For the purposes of subsection (4), the estimate is in force if:
 - (a) the Commissioner has given you notice of the estimate; and
 - (b) the estimate has not been revoked; and
 - (c) your liability to pay the estimate has not been discharged.

268-15 Notice of estimate

Commissioner must give notice of estimate

- (1) The Commissioner must give you written notice of the estimate.

Content of notice

- (2) The notice must:
 - (a) identify the underlying liability; and
 - (b) specify the date of the estimate; and
 - (c) set out the amount of the estimate; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (d) state that the amount of the estimate is due and payable; and
 - (e) explain how you may have the amount of the estimate reduced or the estimate revoked.
- (3) To avoid doubt, a single notice may relate to 2 or more estimates, but must comply with subsection (2) in relation to each of them.

When notice is given

- (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Subdivision 268-C—Liability to pay estimates

Table of sections

268-20	Nature of liability to pay estimate
268-25	Accuracy of estimate irrelevant to liability to pay
268-30	Estimate provable in bankruptcy or winding up

268-20 Nature of liability to pay estimate

Liability to pay amount of estimate

- (1) You must pay to the Commissioner the amount of the estimate if the Commissioner gives you notice of the estimate in accordance with section 268-15. The amount is due and payable when the Commissioner gives you the notice.

Note: The amount of the estimate may be reduced, or the estimate revoked, under Subdivision 268-D.

Liability to pay amount of estimate is distinct from underlying liability

- (2) Your liability to pay the amount of the estimate is separate and distinct from the underlying liability. It is separate and distinct for all purposes.

Example: The Commissioner may take:

- (a) proceedings to recover the unpaid amount of the estimate; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 268-25

- (b) proceedings to recover the unpaid amount of the underlying liability; or
- (c) proceedings of both kinds.

Discharging one liability discharges other liabilities

- (3) Despite subsection (2), if, at a particular time, one of the liabilities to which this subsection applies is discharged, to the extent of an amount, for either of the following reasons, each of the other liabilities to which this subsection applies is discharged to the extent of the same amount:
 - (a) an amount is paid or applied towards discharging the liability;
 - (b) the liability is discharged because of section 269-40 (Effect of director paying penalty or company discharging liability).
- (4) Subsection (3) applies to whichever of the following liabilities are in existence at the particular time:
 - (a) your liability to pay the amount of the estimate;
 - (b) the underlying liability;
 - (c) a liability of yours under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).
- (5) Subsection (3) does not discharge a liability to a greater extent than the amount of the liability.

268-25 Accuracy of estimate irrelevant to liability to pay

You are liable to pay the unpaid amount of the estimate even if:

- (a) the underlying liability never existed or has been discharged in full; or
- (b) the unpaid amount of the underlying liability is less than the unpaid amount of the estimate.

Note 1: Section 268-40 revokes the estimate if you give the Commissioner a statutory declaration, or file an affidavit, to the effect that the underlying liability never existed.

Note 2: Subdivision 268-D provides ways in which you can challenge the estimate or its amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

268-30 Estimate provable in bankruptcy or winding up

- (1) Your liability (the *estimate liability*) to pay the unpaid amount of the estimate is provable in a bankruptcy or winding up, even if the estimate was made after:
 - (a) the date of the bankruptcy; or
 - (b) the relevant date (within the meaning of the *Corporations Act 2001*).
- (2) However, the estimate liability is provable only to the extent that the underlying liability would be provable if the unpaid amount of the underlying liability were the same as the unpaid amount of the estimate.

Example: Subsection (2) prevents proof of the estimate liability if the underlying liability could not be proved because, for example, of when it arose.
- (3) Subsections (1) and (2) do not apply if:
 - (a) the underlying liability has already been admitted to proof; and
 - (b) the proof has not been set aside.
- (4) If the estimate liability has been admitted to proof at a particular amount, the underlying liability is provable only to the extent the unpaid amount of the underlying liability exceeds that particular amount.
- (5) To the extent that a liability is provable because of this section, it is taken, for the purposes of the *Bankruptcy Act 1966*, to be provable in bankruptcy under that Act.

Subdivision 268-D—Reducing and revoking estimates

Table of sections

268-35	How estimate may be reduced or revoked—Commissioner's powers
268-40	How estimate may be reduced or revoked—statutory declaration or affidavit
268-45	How estimate may be reduced or revoked—rejection of proof of debt
268-50	How estimate may be reduced—amount paid or applied
268-55	When reduction or revocation takes effect
268-60	Consequences of reduction or revocation—refund
268-65	Consequences of reduction or revocation—statutory demand changed or set aside

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 268-35

268-70 Consequences of reduction or revocation—underlying liability

268-35 How estimate may be reduced or revoked—Commissioner's powers

Reduction

- (1) The Commissioner may at any time reduce the amount of the estimate, but is not obliged to consider whether or not to do so.
- (2) If the Commissioner reduces the amount of the estimate under subsection (1), he or she must give you a written notice that:
 - (a) identifies the underlying liability; and
 - (b) sets out the reduced amount of the estimate.

Note: The estimate is taken always to have had effect as reduced: see section 268-55.

Revocation

- (3) The Commissioner may at any time revoke the estimate, but is not obliged to consider whether or not to do so.
- (4) If the Commissioner revokes the estimate under subsection (3), he or she must give you a written notice that:
 - (a) identifies the underlying liability; and
 - (b) states that the estimate has been revoked.

Note: The estimate is taken never to have been made: see section 268-55.

Matters for Commissioner to consider

- (5) In exercising his or her power under this section to reduce the amount of the estimate, or to revoke the estimate, the Commissioner must have regard to:
 - (a) the following principles:
 - (i) the estimate is of the unpaid amount of the underlying liability as at a particular time;
 - (ii) the purpose of reducing the amount of the estimate is to bring it closer to the unpaid amount of the underlying liability as at the time the estimate was made;
 - (iii) reductions of the unpaid amount of the underlying liability that happen after the time the estimate was

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- made are dealt with by section 268-20 (Nature of liability to pay estimate) and so should not be taken into account in exercising such a power; and
- (b) the effects of sections 268-55 and 268-70 (effect of reduction or revocation on liabilities).

268-40 How estimate may be reduced or revoked—statutory declaration or affidavit

Scope

- (1) This section applies as set out in the following table:

Statutory declaration or affidavit			
Item	This section applies if ...	and ...	within ...
1	the Commissioner gives you notice of the estimate	you give the Commissioner a statutory declaration for the purposes of this section	(a) 7 days after the Commissioner gives you the notice; or (b) a longer period allowed by the Commissioner.
2	you are a party to proceedings before a court that relate to the recovery of the unpaid amount of the estimate	you: (a) file an affidavit for the purposes of this section; and (b) serve a copy on the Commissioner	(a) 14 days after you first take a procedural step as a party to the proceedings; or (b) a longer period allowed by the court.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 268-40

Statutory declaration or affidavit			
Item	This section applies if ...	and ...	within ...
3	<p>(a) the estimate is of the unpaid amount of a liability of a company; and</p> <p>(b) the Commissioner serves on the company a * statutory demand relating to the company's liability to pay the unpaid amount of the estimate; and</p> <p>(c) an application is made to a court under section 234, 459P, 462 or 464 of the <i>Corporations Act 2001</i> for the company to be wound up</p>	<p>the company:</p> <p>(a) files an affidavit for the purposes of this section; and</p> <p>(b) serves a copy on the applicant</p>	<p>(a) 14 days after notice of the application was served on the company; or</p> <p>(b) a longer period allowed by the court.</p>

Example: For the purposes of item 2 of the table, taking a procedural step as a party to proceedings includes entering an appearance, filing a notice of intention to defend, or applying to set aside judgment entered in default of appearance.

Note 1: Section 459C of the *Corporations Act 2001* creates a presumption that a company is insolvent, and may be wound up, if the company fails to comply with a statutory demand.

Note 2: See section 268-90 for what the statutory declaration or affidavit must contain and who must make, swear or affirm it.

Reduction

- (2) The amount of the estimate is reduced if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that a specified lesser amount is the unpaid amount of the underlying liability.

Example: Subsection (2) will apply if the statutory declaration etc. is to the effect that the underlying liability has been discharged in full (and therefore the unpaid amount of the liability is nil).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) The amount of the reduction is the amount by which the unpaid amount of the estimate (just before the reduction) exceeds the amount specified.

Note: The effect of subsection (3) is to reduce the unpaid amount of the estimate to the amount specified.

Revocation

- (4) The estimate is revoked if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that the underlying liability never existed.

268-45 How estimate may be reduced or revoked—rejection of proof of debt

Scope

- (1) This section applies if:
- (a) the Commissioner lodges a proof of debt relating to the unpaid amount of the estimate; and
 - (b) section 268-95 applies to an entity (your *supervising entity*) in relation to you.

Rejection of proof of debt

- (2) Your supervising entity may give the Commissioner a statutory declaration to the effect that:
- (a) the underlying liability has been discharged in full; or
 - (b) the unpaid amount of the underlying liability is a specified, lesser amount; or
 - (c) the underlying liability never existed.

Note: See section 268-90 for what the statutory declaration must contain and who must make it.

- (3) If your supervising entity does so, he or she may reject the proof of debt (in whole or in part) on the ground made out in the statutory declaration.
- (4) If the Commissioner appeals, or applies for review of, your supervising entity's decision to reject the proof of debt, nothing in

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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subsection (2) or (3) prevents evidence being adduced to contradict statements in the declaration.

Note: Such evidence might also be relevant to a prosecution for an offence, such as an offence against section 11 of the *Statutory Declarations Act 1959* (False declarations).

Revocation or reduction of estimate

- (5) The following table applies in relation to the outcome following all (if any) appeals from, and applications for review of, your supervising entity's decision to reject the proof of debt. (If there are no appeals or applications for review, the outcome is your supervising entity's decision as originally made.)

Rejecting proof of debt		
Item	If the outcome is that ...	then ...
1	the proof is rejected in whole on the ground that the estimate has been discharged in full	the amount of the estimate is reduced by the unpaid amount of the estimate (just before the reduction).
2	the proof is rejected in part	the amount of the estimate is reduced by so much of the unpaid amount of the estimate (just before the reduction) as is rejected.
3	the proof is rejected in whole on the ground that the underlying liability never existed	the estimate is revoked.

Note 1: The effect of item 1 of the table is to reduce the unpaid amount of the estimate to nil.

Note 2: The effect of item 2 of the table is to reduce the unpaid amount of the estimate to the amount admitted to proof.

268-50 How estimate may be reduced—amount paid or applied

- (1) This section applies if:
- (a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) the amount paid or applied exceeds the unpaid amount of the underlying liability as at the time just before the payment or application.
- (2) The amount of the estimate is reduced so that it does not exceed the unpaid amount, at the time mentioned in paragraph (1)(b), of the underlying liability.

268-55 When reduction or revocation takes effect

Scope

- (1) This section applies for the purposes of the following:
 - (a) Subdivision 268-C (Liability to pay estimates);
 - (b) section 268-60 (refund of overpayments);
 - (c) Subdivision 268-E (Late payment of estimates);
 - (d) Division 269 (Penalties for directors of non-complying companies).

When reduction or revocation takes effect

- (2) If the amount of the estimate is reduced, the estimate has effect, and is taken always to have had effect, as if the original amount of the estimate had been the reduced amount.
- (3) If the estimate is revoked, the estimate is taken never to have been made.

268-60 Consequences of reduction or revocation—refund

- (1) This section applies if:
 - (a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and
 - (b) the amount paid or applied exceeds the unpaid amount of the estimate as at the time just before the payment or application.

Example: You pay an amount towards discharging the estimate and the estimate is later reduced to a lesser amount.

Note: Section 268-50 provides for the reduction of the amount of the estimate in the case of overpayment.

- (2) The Commissioner must pay you the excess.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: See Division 3A of Part IIB of this Act for the rules about how the Commissioner must pay you. Division 3 of that Part allows the Commissioner to apply the amount owing as a credit against tax debts that you owe the Commonwealth.

268-65 Consequences of reduction or revocation—statutory demand changed or set aside

Scope

- (1) This section applies if:
- (a) the estimate is of the unpaid amount of a liability of a company; and
 - (b) the Commissioner has served a *statutory demand on the company relating to the company's liability to pay the unpaid amount of the estimate; and
 - (c) the amount of the estimate is later reduced, or the estimate is revoked.

Statutory demand changed

- (2) The *statutory demand is changed accordingly.
- (3) The *statutory demand is taken to have had effect (as so changed) from the time the Commissioner served it on the company.

Statutory demand set aside

- (4) The *statutory demand is set aside if subsection (2) reduces the amount of the debt (or the total of the amounts of the debts) below the statutory minimum (within the meaning of the *Corporations Act 2001*).

268-70 Consequences of reduction or revocation—underlying liability

Reduction of the amount of the estimate, or revocation of the estimate, does not affect the Commissioner's rights or remedies in relation to the underlying liability (except to the extent that this Division expressly provides otherwise).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 268-E—Late payment of estimates

Table of sections

268-75	Liability to pay the general interest charge
268-80	Effect of paying the general interest charge

268-75 Liability to pay the general interest charge

- (1) This section applies if:
 - (a) your liability to pay the amount of the estimate remains undischarged at the end of 7 days after the Commissioner gives you notice of the estimate; and
 - (b) the underlying liability is not a liability to pay superannuation guarantee charge.
- (2) You are liable to pay the *general interest charge on the unpaid amount of the estimate for each day in the period that:
 - (a) started at the beginning of the day by which the underlying liability was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the amount of the estimate;
 - (ii) general interest charge on any of the amount of the estimate.

Note: The general interest charge is worked out under Part IIA of this Act.

268-80 Effect of paying the general interest charge

Scope

- (1) If you are liable to pay the *general interest charge under section 268-75 in relation to the estimate, this section applies to the following liabilities:
 - (a) your liability to pay the general interest charge;
 - (b) a liability of yours to pay a general interest charge, under a corresponding provision of Subdivision 16-B, because the underlying liability remains undischarged;
 - (c) liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b);

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (d) a liability of yours to pay interest carried by a judgment debt, to the extent that the judgment debt is based on:
 - (i) the liability to pay the estimate; or
 - (ii) the liability to pay the general interest charge under section 268-75 on an unpaid amount of the estimate.

Discharging one liability discharges other liabilities

- (2) If, at a particular time, an amount is paid or applied towards discharging one of the liabilities, each of the other liabilities that is in existence at that time is discharged to the extent of the same amount.
- (3) However, this section does not discharge a liability to a greater extent than the amount of the liability.
- (4) If, because a judgment debt carries interest, section 8AAH of this Act reduces the amount of a *general interest charge payable as mentioned in paragraph (1)(b) of this section, the amount of the reduction is taken, for the purposes of subsection (2) of this section, to have been applied towards discharging your liability to the charge.

Subdivision 268-F—Miscellaneous

Table of sections

268-85	Effect of judgment on liability on which it is based
268-90	Requirements for statutory declaration or affidavit
268-95	Liquidators, receivers and trustees in bankruptcy
268-100	Division not to limit or exclude Corporations or Bankruptcy Act

268-85 Effect of judgment on liability on which it is based

Estimate payable despite judgment

- (1) The unpaid amount of the estimate, or of the underlying liability, does not stop being payable merely because a judgment has been given by, or entered in, a court.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division applies to liability under judgment

- (2) This Division applies in relation to liability under a judgment, to the extent that it is based on your liability to pay the amount of the estimate, in the same way as this Division applies to that estimate liability.
- (3) This Division applies in relation to liability under a judgment, to the extent that it is based on the underlying liability, in the same way as this Division applies to the underlying liability.
- (4) Subsections (2) and (3) do not apply for the purposes of the following:
 - (a) section 268-20 (Nature of liability to pay estimate);
 - (b) section 268-30 (Estimate provable in bankruptcy or winding up);
 - (c) section 268-45 (rejection of proof of debt).

Judgment conclusive as to amount of liability

- (5) Nothing in this Division affects the conclusiveness of a judgment as to the amount of a liability on which it is based.

268-90 Requirements for statutory declaration or affidavit

Scope

- (1) This section applies to a statutory declaration given, or an affidavit filed, for the purposes of section 268-40 or 268-45 in relation to the estimate.

Content

- (2) In a case covered by paragraph 268-10(1)(a) (estimate of liability under requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the statutory declaration or affidavit must verify the following facts:
 - (a) whichever of the following are applicable:
 - (i) the sum of all amounts you withheld under Division 12 during the relevant period, or the fact that you did not withhold any such amounts during the period;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) the sum of all amounts you were required to pay under Division 13 (Alienated personal services payments) during the relevant period, or the fact that you were not required to pay any such amounts during the period;
 - (iii) the sum of all amounts you were required to pay under Division 14 (non-cash benefits and accruing gains) during the relevant period, or the fact that you were not required to pay any such amounts during the period;
 - (b) what has been done to comply with Division 16 (Payer's obligations and rights) in relation to the amounts referred to in paragraph (a).
- (2A) In a case covered by paragraph 268-10(1)(b) (estimate of liability to pay superannuation guarantee charge), the statutory declaration or affidavit must verify the following facts:
- (a) your name and address;
 - (b) for each employee for whom you have an *individual superannuation guarantee shortfall for the relevant *quarter:
 - (i) the employee's name and postal address and, if the employee has *quoted the employee's *tax file number to you, the employee's tax file number; and
 - (ii) the amount of the shortfall;
 - (c) what has been done to comply with your obligation to pay the relevant superannuation guarantee charge to the Commissioner.

Note: The amount of the individual superannuation guarantee shortfall mentioned in paragraph (b) is a factor in determining the amount of the superannuation guarantee charge mentioned in paragraph 268-10(1)(b). The lesser amount mentioned in subsection 268-40(2) may therefore differ from the amount of that shortfall.

Maker or deponent

- (3) The statutory declaration or affidavit must be made, sworn or affirmed by:
 - (a) an individual specified in the following table; or
 - (b) your liquidator, receiver or trustee in bankruptcy (if and as applicable).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Who must make the statutory declaration or swear or affirm the affidavit		
Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
1	an individual	that individual.
2	a body corporate	(a) in the case of a company that has a director or a company secretary (within the meaning of the <i>Corporations Act 2001</i>)—a director of the company or the company secretary; or (b) in the case of an [*] Australian government agency—an individual prescribed by the regulations; or (c) in any case—the public officer of the body corporate (for the purposes of the <i>Income Tax Assessment Act 1936</i>).
3	a body politic	an individual prescribed by the regulations.
4	a partnership	a partner of the partnership.
5	any other unincorporated association or body of persons	(a) a member of the association's or body's committee of management; or (b) the public officer of the association or body (for the purposes of the <i>Income Tax Assessment Act 1936</i>).
6	a trust	(a) the trustee of the trust; or (b) the public officer of the trust (for the purposes of the <i>Income Tax Assessment Act 1936</i>).
7	a [*] superannuation fund or an [*] approved deposit fund	(a) the trustee of the fund; or (b) if the fund does not have a trustee—the entity managing the fund.

(4) If the entity specified in the table in subsection (3) is not an individual, the table is taken to specify the individual who, under

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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that subsection, would be eligible to make a statutory declaration in relation to an estimate of a liability of that entity.

268-95 Liquidators, receivers and trustees in bankruptcy

Scope

- (1) This section applies to an entity (your **supervising entity**), in relation to you, if:
 - (a) the entity is your liquidator, receiver, trustee in bankruptcy or administrator, or the administrator of a deed of company arrangement executed by you; or
 - (b) your property is vested in the entity, or the entity has control of your property.
- (2) For the purposes of this Division, this section applies to an entity in relation to a partnership if it applies to the entity in relation to a partner of the partnership.

Notices from the Commissioner

- (3) For the purposes of this Division, a notice given by the Commissioner to your supervising entity is taken to have been given to you.
- (4) You must give your supervising entity a copy of any notice given to you by the Commissioner under this Division. You must do so as soon as practicable, and in any event within 7 days, after:
 - (a) if the Commissioner gave you the notice before the day when your property vested in, or control of your property passed to, the supervising entity—that day; or
 - (b) if subsection (2) applies and the Commissioner gave you the notice before the day when the relevant partner's property vested in, or control of the relevant partner's property passed to, the supervising entity—that day; or
 - (c) otherwise—the day when the Commissioner gave you the notice.
- (5) If the Commissioner gives you and your supervising entity a notice at different times, each notice is taken to have been given at the later of those times.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Action taken by your supervising entity

- (6) For the purposes of this Division, a statutory declaration given to the Commissioner by your supervising entity is taken to have been given by you.
- (7) For the purposes of this Division, an affidavit filed by your supervising entity is taken to have been filed by you.
- (8) For the purposes of item 2 in the table in subsection 268-40(1) (recovery proceedings), a procedural step taken by your supervising entity is taken to have been taken by you.

Multiple supervising entities

- (9) If you have 2 or more supervising entities, anything this Division provides for to be done by or in relation to your supervising entity may be done by or in relation to any of them.

268-100 Division not to limit or exclude Corporations or Bankruptcy Act

This Division is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001* (External administration), or the *Bankruptcy Act 1966*, to the extent that Chapter or Act can operate concurrently with this Division.

Note: Section 268-30 and Subdivision 268-D affect the operation of Chapter 5 of the *Corporations Act 2001* and the *Bankruptcy Act 1966*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-1

Division 269—Penalties for directors of non-complying companies

Table of Subdivisions

	Guide to Division 269
269-A	Object and scope
269-B	Obligations and penalties
269-C	Discharging liabilities
269-D	Miscellaneous

Guide to Division 269

269-1 What this Division is about

The directors of a company have a duty to ensure that the company either:

- (a) meets its obligations under Subdivision 16-B (obligation to pay withheld amounts to the Commissioner) and Division 268 in this Schedule and Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); or
- (b) goes promptly into voluntary administration under the *Corporations Act 2001* or into liquidation.

The directors' duties are enforced by penalties.

Note: The duties this Division imposes on the directors of the company are in addition to the similar duties imposed on the public officer of the company. See subsection 252(1) of the *Income Tax Assessment Act 1936*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 269-A—Object and scope

Table of sections

269-5	Object of Division
269-10	Scope of Division

269-5 Object of Division

The object of this Division is to ensure that a company either:

- (a) meets its obligations under:
 - (i) Subdivision 16-B (obligation to pay withheld amounts to the Commissioner); and
 - (ii) Division 268 (estimates of PAYG withholding liabilities and superannuation guarantee charge); and
 - (iii) Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); or
- (b) goes promptly into voluntary administration under the *Corporations Act 2001* or into liquidation.

Note: The directors' duties are enforced by penalties on the directors. A penalty recovered under this Division is applied towards meeting the company's obligation.

269-10 Scope of Division

- (1) This Division applies as set out in the following table:

Obligations that directors must cause company to comply with		
Item	Column 1	Column 2
	This Division applies if, on a particular day (the <i>initial day</i>), a company is a company registered under the <i>Corporations Act 2001</i> , and on the initial day ...	and the company is obliged to pay to the Commissioner on or before a particular day (the <i>due day</i>) ...
1	the company withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Obligations that directors must cause company to comply with		
Item	Column 1 This Division applies if, on a particular day (the <i>initial day</i>), a company is a company registered under the <i>Corporations Act 2001</i>, and on the initial day ...	Column 2 and the company is obliged to pay to the Commissioner on or before a particular day (the <i>due day</i>) ...
2	the company receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	the company provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
4	the company is given notice of an estimate under Division 268	the amount of the estimate.
5	a *quarter ends	superannuation guarantee charge for the quarter in accordance with the <i>Superannuation Guarantee (Administration) Act 1992</i> .

Note: In a case covered by item 2, 3 or 4 of the table, the due day is the same as the initial day.

- (2) This Division applies in relation to an amount that the company purports to withhold under Division 12, but is not required to withhold, as if the company were required to withhold the amount.

Superannuation guarantee charge

- (3) For the purposes of this Division, the company's superannuation guarantee charge for a *quarter under the *Superannuation Guarantee (Administration) Act 1992* is treated as being payable on the day by which the company must lodge a superannuation guarantee statement for the quarter under section 33 of that Act, even if the charge is not assessed under that Act on or before that day.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 269-B—Obligations and penalties

Table of sections

269-15	Directors' obligations
269-20	Penalty
269-25	Notice
269-30	Effect on penalty of directors' obligation ending before end of notice period
269-35	Defences

269-15 Directors' obligations

Directors' obligations

- (1) The directors (within the meaning of the *Corporations Act 2001*) of the company (from time to time) on or after the initial day must cause the company to comply with its obligation.
- (2) The directors of the company (from time to time) continue to be under their obligation until:
 - (a) the company complies with its obligation; or
 - (b) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
 - (c) the company begins to be wound up (within the meaning of that Act).

Instalment arrangements

- (3) The Commissioner must not commence, or take a procedural step as a party to, proceedings to enforce an obligation, or to recover a penalty, of a director under this Division if an *arrangement that covers the company's obligation is in force under section 255-15 (Commissioner's power to permit payments by instalments).

Note 1: The arrangement may also cover other obligations of the company.

Note 2: Subsection (3) does not prevent the Commissioner from giving a director a notice about a penalty under section 269-25.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-20

269-20 Penalty

Penalty for director on or before due day

- (1) You are liable to pay to the Commissioner a penalty if:
- (a) at the end of the due day, the directors of the company are still under an obligation under section 269-15; and
 - (b) you were under that obligation at or before that time (because you were a director).

Note: Paragraph (1)(b) applies even if you stopped being a director before the end of the due day: see subsection 269-15(2).

- (2) The penalty is due and payable at the end of the due day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Penalty for new director

- (3) You are also liable to pay to the Commissioner a penalty if:
- (a) after the due day, you became a director of the company and began to be under an obligation under section 269-15; and
 - (b) 30 days later, you are still under that obligation.

- (4) The penalty is due and payable at the end of that 30th day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Amount of penalty

- (5) The amount of a penalty under this section is equal to the unpaid amount of the company's liability under its obligation.

Note 1: See section 269-40 for the effect on your penalty of the company discharging its obligation, or of another director paying his or her penalty.

Note 2: See section 269-45 for your rights of indemnity and contribution.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

269-25 Notice

Commissioner must give notice of penalty

- (1) The Commissioner must not commence proceedings to recover from you a penalty payable under this Subdivision until the end of 21 days after the Commissioner gives you a written notice under this section.

Content of notice

- (2) The notice must:
 - (a) set out what the Commissioner thinks is the unpaid amount of the company's liability under its obligation; and
 - (b) state that you are liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount because of an obligation you have or had under this Division; and
 - (c) explain the main circumstances in which the penalty will be remitted.
- (3) To avoid doubt, a single notice may relate to 2 or more penalties, but must comply with subsection (2) in relation to each of them.

When notice is given

- (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note 1: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Note 2: Section 269-50 of this Act is also relevant to giving a notice under subsection (1).

269-30 Effect on penalty of directors' obligation ending before end of notice period

- (1) Subject to subsection (2), a penalty of yours under this Division is remitted if the directors of the company stop being under the relevant obligation under section 269-15:
 - (a) before the Commissioner gives you notice of the penalty under section 269-25; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-30

(b) within 21 days after the Commissioner gives you notice of the penalty under that section.

(2) The following table has effect:

When appointing administrator or winding up company does not affect penalty			
Item	Column 1 If the company's obligation is to pay to the Commissioner, on or before the due day ...	Column 2 and, because of paragraph 269-15(2)(b) or (c) (an administrator is appointed or the company begins to be wound up), the directors stop being under the relevant obligation after the last day of the 3 months after ...	Column 3 subsection (1) does not apply ...
1	an amount in accordance with Subdivision 16-B (obligation to pay withheld amounts to the Commissioner),	the due day,	to the extent the company does not, on or before the last day mentioned in column 2, notify the Commissioner under section 16-150 of the amount the company is obliged to pay.
2	the amount of an estimate under Division 268 (estimates of PAYG withholding liabilities and superannuation guarantee charge),	the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

When appointing administrator or winding up company does not affect penalty			
Item	Column 1	Column 2	Column 3
	If the company's obligation is to pay to the Commissioner, on or before the due day ...	and, because of paragraph 269-15(2)(b) or (c) (an administrator is appointed or the company begins to be wound up), the directors stop being under the relevant obligation after the last day of the 3 months after ...	subsection (1) does not apply ...
3	superannuation guarantee charge for a *quarter,	the due day,	(a) if the company, on or before the last day mentioned in column 2, lodges under section 33 of the <i>Superannuation Guarantee (Administration) Act 1992</i> a superannuation guarantee statement for the quarter—the extent (if any) to which the sum mentioned in paragraph 35(1)(e) of that Act is less than the amount of the superannuation guarantee charge the company is obliged to pay for the quarter; or (b) otherwise—to any extent.

Note 1: An administrator of the company being appointed, or the company beginning to be wound up, after the last day mentioned in column 2 will, to the extent mentioned in column 3, have no effect on the penalty.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- Note 2: The sum mentioned in paragraph 35(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* is the sum of:
- (a) the total of the company's individual superannuation guarantee shortfalls; and
 - (b) the company's nominal interest component; and
 - (c) the company's administration component;
- specified in the superannuation guarantee statement.
- (3) If you become a director of the company during or after the 3 months mentioned in column 2, treat the reference in the column to the 3 months as being a reference to the 3 months after the day you become a director of the company.

269-35 Defences

Illness

- (1) You are not liable to a penalty under this Division if, because of illness or for some other good reason, it would have been unreasonable to expect you to take part, and you did not take part, in the management of the company at any time when:
- (a) you were a director of the company; and
 - (b) the directors were under the relevant obligations under subsection 269-15(1).

All reasonable steps

- (2) You are not liable to a penalty under this Division if:
- (a) you took all reasonable steps to ensure that one of the following happened:
 - (i) the directors caused the company to comply with its obligation;
 - (ii) the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (iii) the directors caused the company to begin to be wound up (within the meaning of that Act); or
 - (b) there were no reasonable steps you could have taken to ensure that any of those things happened.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) In determining what are reasonable steps for the purposes of subsection (2), have regard to:
- (a) when, and for how long, you were a director and took part in the management of the company; and
 - (b) all other relevant circumstances.

Superannuation guarantee charge—reasonably arguable position

- (3A) You are not liable to a penalty under this Division to the extent that the penalty resulted from the company treating the *Superannuation Guarantee (Administration) Act 1992* as applying to a matter or identical matters in a particular way that was *reasonably arguable, if the company took reasonable care in connection with applying that Act to the matter or matters.

When you can rely on this section

- (4) For the purposes of:
- (a) proceedings in a court to recover from you a penalty payable under this Division; or
 - (b) proceedings in a court against you in relation to a right referred to in paragraph 269-45(2)(b) (directors jointly and severally liable as guarantors);
- subsection (1) or (2) of this section does not apply unless you prove the matters mentioned in that subsection.
- (4A) For the purpose of the Commissioner recovering from you a penalty payable under this Division (other than as mentioned in subsection (4)), subsection (1) or (2) does not apply unless:
- (a) you provide information to the Commissioner during the period of 60 days starting on the day the Commissioner:
 - (i) in the case of the Commissioner recovering the penalty under section 260-5 (Commissioner may collect amounts from third party)—gives you a notice under subsection 260-5(6) in relation to the penalty; or
 - (ii) otherwise—notifies you in writing that he or she has recovered any of the penalty; and
 - (b) the Commissioner is satisfied of the matters mentioned in subsection (1) or (2) of this section on the basis of that information.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-40

Power of courts to grant relief

- (5) Section 1318 of the *Corporations Act 2001* does not apply to an obligation or liability of a director under this Division.

Subdivision 269-C—Discharging liabilities

Table of sections

269-40	Effect of director paying penalty or company discharging liability
269-45	Directors' rights of indemnity and contribution

269-40 Effect of director paying penalty or company discharging liability

Liabilities

- (1) This section applies to the following liabilities:
- (a) the liability of the company under its obligation referred to in section 269-10;
 - (b) the liability of each director (or former director) to pay a penalty under this Division in relation to the liability of the company referred to in paragraph (a);
 - (c) a liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).

Discharging one liability discharges other liabilities

- (2) If an amount is paid or applied at a particular time towards discharging one of the liabilities, each of the other liabilities in existence at that time is discharged to the extent of the same amount.
- (3) If, because of section 268-20 (Nature of liability to pay estimate), one of the liabilities is discharged at a particular time to the extent of a particular amount, each of the other liabilities in existence at that time is discharged to the extent of the same amount.
- (4) This section does not discharge a liability to a greater extent than the amount of the liability.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

269-45 Directors' rights of indemnity and contribution

- (1) This section applies if you pay a penalty under this Division in relation to a liability of the company under an obligation referred to in section 269-10.
- (2) You have the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against the company or anyone else as if:
 - (a) you made the payment under a guarantee of the liability of the company; and
 - (b) under the guarantee you and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Division in relation to the company's obligation were jointly and severally liable as guarantors.

Subdivision 269-D—Miscellaneous

Table of sections

269-50	How notice may be given
269-52	Copies of notices
269-55	Division not to limit or exclude Corporations Act

269-50 How notice may be given

The Commissioner may give you a notice under section 269-25 by leaving it at, or posting it to, an address that appears, from information held by the Australian Securities and Investments Commission, to be, or to have been within the last 7 days, your place of residence or *business.

269-52 Copies of notices

- (1) If:
 - (a) the Commissioner gives you a notice under section 269-25 in accordance with section 269-50; and
 - (b) you have given the address of a *registered tax agent to the Commissioner as your address for service for the purposes of any *taxation law;the Commissioner may also give you a copy of the notice.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-55

- (2) The Commissioner may do so by leaving the copy at, or posting the copy to, the address of the *registered tax agent.
- (3) To avoid doubt, this section does not affect:
 - (a) whether the Commissioner has given you the actual notice;
or
 - (b) how the Commissioner may give you the actual notice.

269-55 Division not to limit or exclude Corporations Act

To avoid doubt, this Division is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001* (External administration), to the extent that Chapter can operate concurrently with this Division.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 4-25—Charges and penalties

Division 280—Shortfall interest charge

Table of Subdivisions

	Guide to Division 280
280-A	Object of Division
280-B	Shortfall interest charge
280-C	Remitting shortfall interest charge

Guide to Division 280

280-1 Guide to Division 280

The shortfall interest charge applies to shortfalls of income tax, minerals resource rent tax, petroleum resource rent tax, excess non-concessional contributions tax or Division 293 tax that are revealed when the Commissioner amends your assessment.

The charge is applied at a uniform rate that is lower than the general interest charge rate.

The Commissioner has a discretion to remit shortfall interest charge.

Subdivision 280-A—Object of Division

Table of sections

280-50	Object of Division
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280-50 Object of Division

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from shortfalls of income tax, *MRRT, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax, so that they do not receive

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-100

an advantage in the form of a free loan over those who assess correctly.

Subdivision 280-B—Shortfall interest charge

Table of sections

280-100	Liability to shortfall interest charge—income tax
280-101	Liability to shortfall interest charge—minerals resource rent tax
280-102	Liability to shortfall interest charge—petroleum resource rent tax
280-102A	Liability to shortfall interest charge—excess non-concessional contributions tax
280-102B	Liability to shortfall interest charge—Division 293 tax
280-103	Liability to shortfall interest charge—general
280-105	Amount of shortfall interest charge
280-110	Notification by Commissioner

280-100 Liability to shortfall interest charge—income tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of income tax that you are liable to pay because the Commissioner amends your assessment for an income year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which income tax under your first assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which income tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See Division 5 of the *Income Tax Assessment Act 1997* for when the amount of income tax and shortfall interest charge becomes due and payable. That Division also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Liability to shortfall interest charge—excess concessional contributions charge

- (4) Despite subsection (1), if:
- (a) you are liable under that subsection to pay *shortfall interest charge on an additional amount of income tax; and
 - (b) that additional amount includes an amount of income tax on which you are liable to pay an amount of *excess concessional contributions charge;
- the additional amount of income tax on which you are liable to pay shortfall interest charge is taken to be increased by the amount of excess concessional contributions charge mentioned in paragraph (b).

280-101 Liability to shortfall interest charge—minerals resource rent tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *MRRT that you are liable to pay because the Commissioner amends your assessment for an *MRRT year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which *MRRT under your first assessment for that *MRRT year was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *MRRT under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See Division 50 of the *Minerals Resource Rent Tax Act 2012* for when the amount of assessed MRRT and shortfall interest charge becomes due and payable. That Division also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-102

280-102 Liability to shortfall interest charge—petroleum resource rent tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *petroleum resource rent tax that you are liable to pay because the Commissioner amends your assessment under the *Petroleum Resource Rent Tax Assessment Act 1987* for a year of tax (within the meaning of that Act).
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which *petroleum resource rent tax under your first assessment for that year of tax was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *petroleum resource rent tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 82 of the *Petroleum Resource Rent Tax Assessment Act 1987* for when the amount of petroleum resource rent tax and shortfall interest charge becomes due and payable. Section 85 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102A Liability to shortfall interest charge—excess non-concessional contributions tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *excess non-concessional contributions tax that you are liable to pay because the Commissioner amends your *excess non-concessional contributions tax assessment for a financial year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which *excess non-concessional contributions tax under your first *excess

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-102B

non-concessional contributions tax assessment for that year was due to be paid; and

- (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *excess non-concessional contributions tax under the earlier amended assessment was due to be paid.

Note: See section 292-385 of the *Income Tax Assessment Act 1997* for when the amount of excess non-concessional contributions tax becomes due and payable. See section 5-10 of that Act for when the amount of shortfall interest charge becomes due and payable. Section 292-390 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102B Liability to shortfall interest charge—Division 293 tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *Division 293 tax that you are liable to pay because the Commissioner amends your assessment of an amount of Division 293 tax payable in relation to an income year.
- (2) However, subsection (1) does not apply to the extent the additional amount of *Division 293 tax is *deferred to a debt account for a *superannuation interest.
- (3) The liability is for each day in the period:
 - (a) beginning on the day on which *Division 293 tax under your first assessment of Division 293 tax for that income year was due to be paid; and
 - (b) ending on the day before the day on which the Commissioner gave you notice of the amended assessment.
- (4) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *Division 293 tax under the earlier amended assessment was due to be paid.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-103

Note 1: See section 5-10 of the *Income Tax Assessment Act 1997* for when the amount of shortfall interest charge becomes due and payable.

Note 2: See Subdivision 293-C of that Act for when the amount of assessed Division 293 tax becomes due and payable. That Subdivision also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-103 Liability to shortfall interest charge—general

- (1) Your liability to pay *shortfall interest charge exists whether or not you are liable to any penalty under this Act.
- (2) Neither the Commonwealth nor an authority of the Commonwealth is liable to pay *shortfall interest charge.

280-105 Amount of shortfall interest charge

- (1) The *shortfall interest charge for a day is worked out by multiplying the rate worked out under subsection (2) for that day by the sum of these amounts:
 - (a) the additional amount of income tax, *MRRT, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax,; and
 - (b) the shortfall interest charge on that amount from previous days.
- (2) The rate is:

$$\frac{\text{*Base interest rate for the day} + \frac{3 \text{ percentage points}}{\text{Number of days in the calendar year}}}{\text{Number of days in the calendar year}}$$

280-110 Notification by Commissioner

- (1) The Commissioner must give you a notice stating the amount of the *shortfall interest charge you are liable to pay for the period applicable under section 280-100, 280-101, 280-102, 280-102A or 280-102B.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The notice may be included in any other notice given to you by the Commissioner.
- (3) A notice given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Subdivision 280-C—Remitting shortfall interest charge

Table of sections

280-160	Remitting shortfall interest charge
280-165	Commissioner must give reasons for not remitting in certain cases
280-170	Objecting against remission decision

280-160 Remitting shortfall interest charge

- (1) The Commissioner may remit all or a part of an amount of *shortfall interest charge you are liable to pay if the Commissioner considers it fair and reasonable to do so.
- (2) Without limiting subsection (1), in deciding whether to remit, the Commissioner must have regard to:
 - (a) the principle that remission should not occur just because the benefit you received from the temporary use of the shortfall amount is less than the *shortfall interest charge; and
 - (b) the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments.

280-165 Commissioner must give reasons for not remitting in certain cases

The Commissioner must give you a written statement of the reasons for a decision not to remit an amount of *shortfall interest charge you are liable to pay if you requested the Commissioner, in the *approved form, to remit the amount.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-170

280-170 Objecting against remission decision

You may object, in the manner set out in Part IVC, against a decision of the Commissioner not to remit an amount of *shortfall interest charge you are liable to pay on an additional amount of income tax, *MRRT, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax,, if the amount of the charge that was not remitted is more than 20% of the additional amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 284—Administrative penalties for statements, unarguable positions and schemes

Table of Subdivisions

	Guide to Division 284
284-A	General provisions
284-B	Penalties relating to statements
284-C	Penalties relating to schemes
284-D	Provisions common to Subdivisions 284-B and 284-C

Guide to Division 284

284-5 What this Division is about

This Division sets out the circumstances in which administrative penalties apply for:

- (a) making false or misleading statements; and
- (b) taking a position that is not reasonably arguable;
and
- (c) entering into schemes.

It also sets out the amounts of those penalties.

Subdivision 284-A—General provisions

Table of sections

284-10	Object of Division
284-15	When a matter is <i>reasonably arguable</i>
284-20	Which statements this Division applies to
284-25	Statements by agents
284-30	Application of Division to trusts
284-35	Application of Division to partnerships

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-10

284-10 Object of Division

The object of this Division is to provide a uniform administrative penalty regime for all *taxation laws to enable administrative penalties to apply to entities that fail to meet their obligations under those laws in relation to:

- (a) making false or misleading statements; and
- (b) taking a position that is not reasonably arguable; and
- (c) entering into *schemes; and
- (d) refusing to provide documents to the Commissioner.

284-15 When a matter is *reasonably arguable*

- (1) A matter is *reasonably arguable* if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.

Note: For the effect of transfer pricing documentation on when a matter is reasonably arguable, see Subdivision 284-E.

- (2) To the extent that a matter involves an assumption about the way in which the Commissioner will exercise a discretion, the matter is only *reasonably arguable* if, had the Commissioner exercised the discretion in the way assumed, a court would be about as likely as not to decide that the exercise of the discretion was in accordance with law.
- (3) Without limiting subsection (1), these authorities are relevant:
- (a) a *taxation law;
 - (b) material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*;
 - (c) a decision of a court (whether or not an Australian court), the *AAT or a Board of Review;
 - (d) a *public ruling.

284-20 Which statements this Division applies to

This Division applies to a statement made orally, in a document or in any other way (including electronically) for a purpose connected with a *taxation law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

284-25 Statements by agents

This Division applies to a statement made by your agent as if it had been made by you.

284-30 Application of Division to trusts

If you are a trustee of a trust and:

- (a) you make a statement to the Commissioner or to an officer who is exercising powers or performing functions under a *taxation law about the trust; and
- (b) the statement:
 - (i) is false or misleading in a material particular, whether because of things in it or omitted from it; or
 - (ii) treated an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; or
 - (iii) treated a taxation law as applying in a particular way to a *scheme;

this Division applies to you as if any *shortfall amount or *scheme shortfall amount of a beneficiary of the trust as a result of the statement were your shortfall amount or scheme shortfall amount.

Note: A beneficiary of a trust cannot have a *shortfall amount or *scheme shortfall amount in relation to the MRRT law.

284-35 Application of Division to partnerships

- (1) If you are a partner in a partnership and:
 - (a) a statement about the partnership net income or partnership loss is made by a partner or the partnership's agent to the Commissioner or to an entity who is exercising powers or performing functions under a *taxation law about the partnership; and
 - (b) the statement:
 - (i) is false or misleading in a material particular, whether because of things in it or omitted from it; or
 - (ii) treated an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-70

this Division applies to you as if you had made the statement.

- (2) If you are a partner in a partnership and:
- (a) the partnership participated in a *scheme; and
 - (b) the partnership net income would have been greater, or the partnership loss would have been smaller, apart from the scheme;

this Division applies to you as if the proportion of the *scheme benefit that is the same as your share of the partnership net income or partnership loss were your scheme benefit.

Note: For the purposes of the MRRT law, under section 220-5 of the *Minerals Resource Rent Tax Act 2012* acts and omissions of partners in a partnership are taken to be acts or omissions of the partnership. Section 444-30 in this Schedule deals with the liability of partners for the obligations imposed on a partnership under the MRRT law.

Subdivision 284-B—Penalties relating to statements

Guide to Subdivision 284-B

284-70 What this Subdivision is about

You are liable to an administrative penalty if:

- (a) you make a false or misleading statement about a tax-related matter; or
- (b) you take a position that is not reasonably arguable about a tax-related matter; or
- (c) the Commissioner determines a tax-related liability of yours without documents you were required to provide.

This Subdivision sets out when the penalties apply and how the amounts of the penalties are calculated.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Table of sections

Operative provisions

284-75	Liability to penalty
284-80	<i>Shortfall amounts</i>
284-85	Amount of penalty
284-90	<i>Base penalty amount</i>
284-95	Joint and several liability of directors of corporate trustee that makes a false or misleading statement

Operative provisions

284-75 Liability to penalty

- (1) You are liable to an administrative penalty if:
- (a) you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under a *taxation law (other than the *Excise Acts); and
 - (b) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.
- Note: This section applies to a statement made by your agent as if it had been made by you: see section 284-25.
- (2) You are liable to an administrative penalty if:
- (a) you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under an *income tax law or the *MRRT law or *petroleum resource rent tax law; and
 - (b) in the statement, you treated an income tax law, or the MRRT law or petroleum resource rent tax law, as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and
 - (d) item 4, 5 or 6 of the table in subsection 284-90(1) applies to you.
- (3) You are liable to an administrative penalty if:
- (a) you fail to give a return, notice or other document to the Commissioner by the day it is required to be given; and
 - (b) that document is necessary for the Commissioner to determine a *tax-related liability of yours accurately; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-75

- (c) the Commissioner determines the tax-related liability without the assistance of that document.

Note: You are also liable to an administrative penalty for failing to give the document on time: see Subdivision 286-C.

- (4) You are liable to an administrative penalty if:
 - (a) you make a statement to an entity other than:
 - (i) the Commissioner; and
 - (ii) an entity exercising powers or performing functions under a *taxation law (other than the *Excise Acts); and
 - (b) the statement is, or purports to be, one required or permitted by a taxation law (other than the Excise Acts); and
 - (c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

Exceptions to subsections (1) and (4)

- (5) You are not liable to an administrative penalty under subsection (1) or (4) for a statement that is false or misleading in a material particular if you, and your *agent (if relevant), took reasonable care in connection with the making of the statement.
- (6) You are not liable to an administrative penalty under subsection (1) or (4) if:
 - (a) you engage a *registered tax agent or BAS agent; and
 - (b) you give the registered tax agent or BAS agent all relevant taxation information; and
 - (c) the registered tax agent or BAS agent makes the statement; and
 - (d) the false or misleading nature of the statement did not result from:
 - (i) intentional disregard by the registered tax agent or BAS agent of a *taxation law (other than the *Excise Acts); or
 - (ii) recklessness by the agent as to the operation of a taxation law (other than the Excise Acts).
- (7) If you wish to rely on subsection (6), you bear an evidential burden in relation to paragraph (6)(b).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

284-80 Shortfall amounts

- (1) You have a **shortfall amount** if an item in this table applies to you. That amount is the amount by which the relevant liability, or the payment or credit, is less than or more than it would otherwise have been.

Shortfall amounts

Item	You have a shortfall amount in this situation:
1	A *tax-related liability of yours for an accounting period, or for a *taxable importation, or under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> , worked out on the basis of the statement is less than it would be if the statement were not false or misleading
2	An amount that the Commissioner must pay or credit to you under a *taxation law (other than the *Excise Acts) for an accounting period, or under a tourist refund scheme under Division 168 of the *GST Act or Division 25 of the <i>A New Tax System (Wine Equalisation Tax) Act 1999</i> , worked out on the basis of the statement is more than it would be if the statement were not false or misleading
3	A *tax-related liability of yours for an accounting period worked out on the basis of the statement is less than it would be if the statement did not treat an *income tax law, the *MRRT law or the *petroleum resource rent tax law as applying in a way that was not *reasonably arguable
4	An amount that the Commissioner must pay or credit to you under an *income tax law, the *MRRT law or the *petroleum resource rent tax law for an accounting period worked out on the basis of the statement is more than it would be if the statement did not treat an income tax law, the MRRT law or the petroleum resource rent tax law as applying in a way that was not *reasonably arguable

- (2) However, if:
- (a) your shortfall amount arises in the situation covered by both item 1 in the table and item 1, 2 or 3 in the table in subsection 284-90(1); and
 - (b) the statement is false or misleading because of errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in it and it was made before the Commissioner became aware of the errors, your **shortfall amount** is instead the amount worked out using the formula:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-80

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}} \right]$$

where:

adjusted reset cost base asset setting amount means:

- (a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

- (b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the time it joined the group, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

- (a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and
- (b) the *corporate tax rate in respect of taxable income for the income year in which that CGT event happens.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

284-85 Amount of penalty

- (1) Work out the *base penalty amount under section 284-90. If the base penalty amount is not increased under section 284-220 or reduced under section 284-225, this is the amount of the penalty.

- (2) Otherwise, use this formula:

$$BPA + [BPA \times (\text{Increase \%} - \text{Reduction \%})]$$

where:

BPA is the *base penalty amount.

increase % is the percentage increase (if any) under section 284-220.

reduction % is the percentage reduction (if any) under section 284-225.

284-90 Base penalty amount

- (1) The **base penalty amount** under this Subdivision is worked out using this table and section 284-224 if relevant:

Base penalty amount		
Item	In this situation:	The base penalty amount is:
1	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from intentional disregard of a *taxation law (other than the *Excise Acts) by you or your agent	75% of your *shortfall amount or part
2	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from recklessness by you or your agent as to the operation of a *taxation law (other than the *Excise Acts)	50% of your *shortfall amount or part

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 4 Generic assessment, collection and recovery rules

Part 4-25 Charges and penalties

Section 284-90

<i>Base penalty amount</i>		
Item	In this situation:	The base penalty amount is:
3	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from a failure by you or your agent to take reasonable care to comply with a *taxation law (other than the *Excise Acts)	25% of your *shortfall amount or part
3A	A statement described in subsection 284-75(1) or (4) was false or misleading because of intentional disregard of a *taxation law (other than the *Excise Acts) by you or your *agent but did not result in you having a *shortfall amount	60 penalty units
3B	A statement described in subsection 284-75(1) or (4) was false or misleading because of recklessness by you or your *agent as to the operation of a *taxation law (other than the *Excise Acts) but did not result in you having a *shortfall amount	40 penalty units
3C	A statement described in subsection 284-75(1) or (4) was false or misleading because of a failure by you or your *agent to take reasonable care to comply with a *taxation law (other than the *Excise Acts) but did not result in you having a *shortfall amount	20 penalty units
4	You have a *shortfall amount, all or part of which resulted from you or your agent treating an *income tax law, the *MRRT law or the *petroleum resource rent tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable, and that amount is more than the greater of \$10,000 or 1% of whichever of the following applies: (a) the income tax payable by you for the income year, worked out on the basis of your *income tax return; (b) the *MRRT payable by you for the *MRRT year, worked out on the basis of your *MRRT return; (c) the *petroleum resource rent tax payable by you for the year of tax (within the meaning of the <i>Petroleum Resource Rent Tax Assessment Act 1987</i>), worked out on the basis of your return under Division 1 of Part VI of that Act.	25% of your *shortfall amount or part

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Base penalty amount

Item	In this situation:	The base penalty amount is:
5	<p>You have a *shortfall amount because of section 284-30 (about trusts) and:</p> <p>(a) your shortfall amount or part of it resulted from you or your agent treating an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and</p> <p>(b) because of that treatment, the trust's net income would have been reduced, or the trust's *tax loss would have been increased, for the income year by more than the trust's *reasonably arguable threshold</p>	<p>25% of your *shortfall amount or part</p>
6	<p>You have a *shortfall amount because of section 284-35 (about partnerships) and:</p> <p>(a) your shortfall amount or part of it resulted from you or your agent treating an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and</p> <p>(b) because of that treatment, the partnership net income would have been reduced, or the partnership loss would have been increased, for the income year by more than the partnership's *reasonably arguable threshold</p>	<p>25% of your *shortfall amount or part</p>
7	You are liable to an administrative penalty under subsection 284-75(3)	75% of the tax-related liability concerned

- (2) If 2 or more items in that table apply and one of them produces a greater *base penalty amount than any of the others, use that item.
- (3) An entity's ***reasonably arguable threshold*** for an income year is:
- unless paragraph (b) applies—the greater of the following amounts:
 - \$10,000;
 - 1% of the income tax payable, or *MRRT payable (as the case requires), by the entity for the income year,

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-95

- worked out on the basis of the entity's *income tax return or *MRRT return (as the case requires); or
- (b) if the entity is a trust or partnership—the greater of the following amounts:
- (i) \$20,000;
 - (ii) 2% of the entity's *net income (if any) for the income year worked out on the basis of the entity's *income tax return.

284-95 Joint and several liability of directors of corporate trustee that makes a false or misleading statement

- (1) This section applies if a trustee of a *self managed superannuation fund, or of a fund that is treated as a self managed superannuation fund under subsection 10(4) of the *Superannuation Industry (Supervision) Act 1993*:
- (a) is liable to an administrative penalty under subsection 284-75(1) or (4); and
 - (b) is a body corporate.
- (2) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the *tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

Subdivision 284-C—Penalties relating to schemes

Guide to Subdivision 284-C

284-140 What this Subdivision is about

You are liable to an administrative penalty if you attempt to reduce your tax-related liabilities or increase your credits through a scheme.

This Subdivision sets out when the penalties apply and how the amounts of the penalties are calculated.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Table of sections

Operative provisions

284-145	Liability to penalty
284-150	<i>Scheme benefits and scheme shortfall amounts</i>
284-155	Amount of penalty
284-160	<i>Base penalty amount: schemes</i>

Operative provisions

284-145 Liability to penalty

- (1) You are liable to an administrative penalty if:
- (a) you would, apart from a provision of a *taxation law or action taken under such a provision (the ***adjustment provision***), get a *scheme benefit from a *scheme; and
 - (b) having regard to any relevant matters, it is reasonable to conclude that:
 - (i) an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; or
 - (ii) for a scheme referred to in Division 165 of the *GST Act or Division 75 of the *Fuel Tax Act 2006*—the principal effect of the scheme, or of part of the scheme, is that you would, apart from the adjustment provision, get the scheme benefit from the scheme directly or indirectly.
- (2A) You are also liable to an administrative penalty if:
- (a) you would, apart from a determination under section 815-30 of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***), get a *scheme benefit from a *scheme; and
 - (b) subparagraph (1)(b)(i) is not satisfied for the scheme.
- (2B) You are also liable to an administrative penalty if:
- (a) to give effect to Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***) in relation to a *scheme, the Commissioner:
 - (i) amends your assessment for an income year; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) serves you with one or more notices under subsection 128C(7) of the *Income Tax Assessment Act 1936* in respect of income that is taken because of the application of the adjustment provision to have been derived in the income year; and
- (b) as a result, you are liable to pay an additional amount of income tax or *withholding tax (as the case requires).

Note: Subdivisions 815-B and 815-C of the *Income Tax Assessment Act 1997* apply the arm's length principle (about transfer pricing) to entities and permanent establishments respectively.

- (3) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

284-150 Scheme benefits and scheme shortfall amounts

- (1) An entity gets a **scheme benefit** from a *scheme if:
 - (a) a *tax-related liability of the entity for an accounting period is, or could reasonably be expected to be, less than it would be apart from the scheme or a part of the scheme; or
 - (b) an amount that the Commissioner must pay or credit to the entity under a *taxation law for an accounting period is, or could reasonably be expected to be, more than it would be apart from the scheme or a part of the scheme.
- (2) The amount of the *scheme benefit that you would, apart from the adjustment provision, have got from the *scheme is called your **scheme shortfall amount**.
- (3) However, to the extent that your scheme shortfall amount is due to errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in a statement that was made before the Commissioner became aware of the errors, your **scheme shortfall amount** is instead the amount worked out using the formula:

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}} \right]$$

where:

adjusted reset cost base asset setting amount means:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

- (b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the joining time, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

- (a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and
- (b) the *corporate tax rate in respect of taxable income for the income year in which that CGT event happens.

Scheme shortfall amount for cross-border transfer pricing

- (4) Despite subsection (2), your **scheme shortfall amount** for a *scheme to which subsection 284-145(2B) applies is the total amount of additional income tax and *withholding tax you are liable to pay as mentioned in that subsection.
- (5) Disregard your *scheme shortfall amount for a *scheme to which subsection 284-145(1) applies to the extent that scheme shortfall amount is attributable to additional tax that is, or is part of, your

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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scheme shortfall amount for a scheme to which subsection 284-145(2B) applies.

284-155 Amount of penalty

- (1) Work out the *base penalty amount under section 284-160. If the base penalty amount is not increased under section 284-220 or reduced under section 284-225, this is the amount of the penalty.

- (2) Otherwise, use this formula:

$$BPA + [BPA \times (\text{Increase \%} - \text{Reduction \%})]$$

where:

BPA is the *base penalty amount.

increase % is the percentage increase (if any) under section 284-220.

reduction % is the percentage reduction (if any) under section 284-225.

284-160 Base penalty amount: schemes

- (1) The **base penalty amount** for a *scheme to which subsection 284-145(1) applies is, subject to section 284-224:
 - (a) 50% of your *scheme shortfall amount; or
 - (b) 25% of your scheme shortfall amount if it is *reasonably arguable that the adjustment provision does not apply.
- (2) The **base penalty amount** for a *scheme to which subsection 284-145(2A) applies is, subject to section 284-224:
 - (a) 25% of your *scheme shortfall amount; or
 - (b) 10% of your scheme shortfall amount if it is *reasonably arguable that the adjustment provision does not apply.
- (3) The **base penalty amount** for a *scheme to which subsection 284-145(2B) applies is worked out using this table and section 284-224 if relevant:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Base penalty amount		
Item	Column 1 In this situation:	Column 2 The base penalty amount is:
1	having regard to any relevant matters, it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the *scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a *transfer pricing benefit from the scheme	the sum of: (a) 50% of your *scheme shortfall amount, to the extent that it is not attributable as mentioned in paragraph (b); and (b) 25% of your scheme shortfall amount, to the extent (if any) that it is attributable to the entity, or the entity's agent, treating the adjustment provision as applying (including not applying) to a matter (or identical matters) in a particular way that is *reasonably arguable
2	item 1 does not apply	the sum of: (a) 25% of your *scheme shortfall amount, to the extent that it is not attributable as mentioned in paragraph (b); and (b) 10% of your scheme shortfall amount, to the extent (if any) that it is attributable to the entity, or the entity's agent, treating the adjustment provision as applying (including not applying) to a matter (or identical matters) in a particular way that is *reasonably arguable

Note: For special rules about when transfer pricing treatment is not reasonably arguable, see Subdivision 284-E.

284-165 Exception—threshold for penalty arising from cross-border transfer pricing

- (1) You are not liable to an administrative penalty under subsection 284-145(2B) if your *scheme shortfall amount is equal to or less than your *reasonably arguable threshold.
- (2) You are also not liable to an administrative penalty under that subsection if:
 - (a) you have the *scheme shortfall amount because of section 284-30 (about trusts); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-220

- (b) the amount by which the trust would, apart from the application of Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997*, have had a greater *net income, or a lesser *tax loss, is equal to or less than the trust's *reasonably arguable threshold.
- (3) You are also not liable to an administrative penalty under that subsection if:
 - (a) you have the *scheme shortfall amount because you are a partner in a partnership that participated in the *scheme; and
 - (b) the amount by which the partnership would, apart from the application of Subdivision 815-B or 815-C of that Act, have had a greater *net income, or a lesser *partnership loss, is equal to or less than the partnership's *reasonably arguable threshold.

Nil amounts

- (4) For the purposes of this section:
 - (a) treat a trust or a partnership that has no *net income for an income year as having a net income for the year of a nil amount; and
 - (b) treat a trust that has no *tax loss for an income year as having a tax loss for the year of a nil amount; and
 - (c) treat a partnership that has no *partnership loss for an income year as having a partnership loss for the year of a nil amount.

Subdivision 284-D—Provisions common to Subdivisions 284-B and 284-C

Table of sections

284-220	Increase in base penalty amount
284-224	Reduction of base penalty amount if law was applied in an accepted way
284-225	Reduction of base penalty amount if you voluntarily tell the Commissioner

284-220 Increase in base penalty amount

- (1) The *base penalty amount is increased by 20% if:
 - (a) you took steps to prevent or obstruct the Commissioner from finding out about a *shortfall amount, or the false or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- misleading nature of a statement, in relation to which the base penalty amount was calculated; or
- (b) you:
- (i) became aware of such a shortfall amount after a statement had been made to the Commissioner about the relevant *tax-related liability; or
 - (ii) became aware of the false or misleading nature of a statement made to the Commissioner or another entity after the statement had been made;
- and you did not tell the Commissioner or other entity about it within a reasonable time; or
- (c) the base penalty amount was worked out using item 1, 2 or 3 of the table in subsection 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or
- (ca) the base penalty amount was worked out using item 3A, 3B or 3C of the table in subsection 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or
- (d) the base penalty amount was worked out using item 4, 5 or 6 of that table and a base penalty amount for you was worked out under that item previously; or
- (e) your liability to a penalty arises under subsection 284-75(3) and you were previously liable to a penalty under that subsection.
- (2) The *base penalty amount for your *scheme shortfall amount, or for part of it, for an accounting period is increased by 20% if:
- (a) you took steps to prevent or obstruct the Commissioner from finding out about the scheme shortfall amount or the part; or
 - (b) a base penalty amount for you was worked out under section 284-160 for a previous accounting period.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-224

284-224 Reduction of base penalty amount if law was applied in an accepted way

- (1) If, apart from this section, you would have a *base penalty amount because you or your *agent treated a *taxation law as applying in a particular way, and that way agreed with:
 - (a) advice given to you or your agent by or on behalf of the Commissioner; or
 - (b) general administrative practice under that law; or
 - (c) a statement in a publication approved in writing by the Commissioner;your base penalty amount is reduced to the extent that it was caused by that treatment.
- (2) For the purposes of subsection (1) it does not matter whether the *base penalty amount also relates to:
 - (a) a statement; or
 - (b) a failure to give the Commissioner a return, notice or other document when required; or
 - (c) a *scheme.

284-225 Reduction of base penalty amount if you voluntarily tell the Commissioner

- (1) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced by 20% if:
 - (a) the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; and
 - (b) *after* that time, you voluntarily tell the Commissioner, in the *approved form, about the shortfall, the part of it or the false or misleading nature of the statement; and
 - (c) telling the Commissioner can reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the examination.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced under subsection (3), (4) or (4A) if you voluntarily tell the Commissioner, in the *approved form, about the shortfall amount, the part of it or the false or misleading nature of the statement *before*:
 - (a) the day the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; or
 - (b) if the Commissioner makes a public statement requesting entities to make a voluntary disclosure by a particular earlier day about a *scheme or transaction that applies to your affairs—that earlier day.
- (3) The *base penalty amount for your *shortfall amount, or for part of it, is:
 - (a) reduced by 80% if the shortfall amount, or the part of it, is \$1,000 or more; or
 - (b) reduced to nil if the shortfall amount, or the part of it, is less than \$1,000.
- (4) The *base penalty amount for your *scheme shortfall amount, or for part of it, is reduced by 80%.
- (4A) The *base penalty amount for your false or misleading statement that does not result in you having a *shortfall amount is reduced to nil.
- (5) If you voluntarily tell the Commissioner, in the *approved form, about your *shortfall amount or *scheme shortfall amount, part of it or the false or misleading nature of the statement *after* the Commissioner tells you that an examination is to be conducted of your affairs relating to a *taxation law for a relevant period, the Commissioner may treat you as having done so *before* being told about the examination if the Commissioner considers it appropriate to do so in the circumstances.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-250

**Subdivision 284-E—Special rules about unarguable positions
for cross-border transfer pricing**

Table of sections

284-250	Undocumented transfer pricing treatment not reasonably arguable
284-255	Documentation requirements

**284-250 Undocumented transfer pricing treatment not reasonably
arguable**

This Division has effect in relation to an entity as if a matter was not *reasonably arguable if:

- (a) the matter is a particular way of applying (including not applying) Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* to a matter (or identical matters); and
- (b) the entity does not have records that meet the requirements in this Subdivision for the application of the Subdivision mentioned in paragraph (a) to that matter (or those matters) in that way.

Note: For the Commissioner's power to remit an administrative penalty imposed by this Part, see section 298-20.

284-255 Documentation requirements

- (1) Records kept by an entity meet the requirements in this Subdivision for the application (or non-application) of Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* to a matter (or identical matters) in a particular way if the records:
 - (a) are prepared before the time by which the entity lodges its *income tax return for the income year relevant to the matter (or matters); and
 - (b) are in English, or readily accessible and convertible into English; and
 - (c) explain the particular way in which the Subdivision applies (or does not apply) to the matter (or matters); and
 - (d) explain why the application of the Subdivision to the matter (or matters) in that way best achieves the consistency

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

mentioned in section 815-135 or 815-235 of that Act (as the case requires) (about guidance material).

- (2) Without limiting subsection (1), the records must allow each of the following to be readily ascertained:
- (a) the *arm's length conditions relevant to the matter (or matters);
 - (b) the particulars of the method used and comparable circumstances relevant to identifying those arm's length conditions;
 - (c) unless the records are for the non-application of the Subdivision to a matter (or matters)—the result that the application of the Subdivision in that particular way, as compared to the non-application of the Subdivision, has for the operation of this Act in relation to the entity;
 - (d) for Subdivision 815-B—the actual conditions relevant to the matter (or matters);
 - (e) for Subdivision 815-C:
 - (i) the actual profits mentioned in paragraph 815-220(1)(a) of that Act and the *arm's length profits, to the extent that they are relevant to the matter (or matters); and
 - (ii) the particulars of the activities and circumstances mentioned in subsection 815-225(1) of that Act, to the extent they are relevant to the matter (or matters).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 286-1

Division 286—Penalties for failing to lodge documents on time

Table of Subdivisions

- 286-A Guide to Division 286
- 286-B Object of Division
- 286-C Penalties for failing to lodge documents on time

Subdivision 286-A—Guide to Division 286

286-1 What this Division is about

You are liable to an administrative penalty if you are required to give a return, statement, notice or other document by a particular time and you do not do so.

This Division sets out when the penalty applies and how the amounts of the penalty are calculated.

Subdivision 286-B—Object of Division

Table of sections

- 286-25 Object of Division

286-25 Object of Division

The object of this Division is to provide a uniform administrative penalty regime for all *taxation laws to enable administrative penalties to apply for failure to give returns, notices, statements or other documents on time.

Subdivision 286-C—Penalties for failing to lodge documents on time

Table of sections

- 286-75 Liability to penalty
- 286-80 Amount of penalty

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

286-75 Liability to penalty

- (1) You are liable to an administrative penalty if:
 - (a) you are required under a *taxation law to give a return, notice, statement or other document to the Commissioner in the *approved form by a particular day; and
 - (b) you do not give the return, notice, statement or document to the Commissioner in the approved form by that day.
- (1A) However, you are not liable to an administrative penalty under subsection (1) if:
 - (a) you engage a *registered tax agent or BAS agent; and
 - (b) you give the registered tax agent or BAS agent all relevant taxation information to enable the agent to give a return, notice, statement or other document to the Commissioner in the *approved form by a particular day; and
 - (c) the registered tax agent or BAS agent does not give the return, notice, statement or other document to the Commissioner in the approved form by that day; and
 - (d) the failure to give the return, notice, statement or other document to the Commissioner did not result from:
 - (i) intentional disregard by the registered tax agent or BAS agent of a *taxation law; or
 - (ii) recklessness by the agent as to the operation of a taxation law.
- (1B) If you wish to rely on subsection (1A), you bear an evidential burden in relation to paragraph (1A)(b).
- (2) Subsection (1) does not apply to a return, notice, statement or other document under any of these Acts:
 - (a) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;
 - (b) the *Superannuation Guarantee (Administration) Act 1992*; or
 - (c) the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*.
- (2AA) You are also liable to an administrative penalty if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) you are required under Division 121 (MRRT reporting) to give information to an entity (other than the Commissioner) in a particular form by a particular day; and
 - (b) you do not give the information to the entity in that form by that day.
- (2A) You are also liable to an administrative penalty if:
 - (a) you are required under Division 390 to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and
 - (b) you do not give the statement in the approved form to the other entity by that day.
- (2B) You are also liable to an administrative penalty if:
 - (a) you are required under Division 391 to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and
 - (b) you do not give the statement in the approved form to the entity by that day.
- (2BA) You are also liable to an administrative penalty if:
 - (a) you are required under Division 392 (Employee share scheme reporting) to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and
 - (b) you do not give the statement in the approved form to the entity by that day.
- (2C) You are also liable to an administrative penalty if:
 - (a) you are required under section 20 of the *First Home Saver Accounts Act 2008* to give a notice to an entity in the *approved form by a particular day; and
 - (b) you do not give the notice in the approved form to the entity by that day.
- (4) You are also liable to an administrative penalty if:
 - (a) you are required under section 713-540 of the *Income Tax (Transitional Provisions) Act 1997* to notify another entity of the happening of an event by a particular day; and
 - (b) you do not notify the other entity of the happening of that event by that day.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (5) Subsection (6) applies if:
- (a) an entity is liable to an administrative penalty under subsection (1) or (2A) as the *superannuation provider in relation to a *self managed superannuation fund; and
 - (b) the entity is a body corporate.
- (6) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the *tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

286-80 Amount of penalty

- (1) The amount of the penalty is worked out in this way:
- (a) work out the *base penalty amount under subsection (2); and
 - (b) work out whether the base penalty amount is increased under subsection (3) or (4).
- (2) The **base penalty amount** is:
- (a) for failing to give a return, notice or other document on time or in the *approved form, as mentioned in subsection 286-75(1), (2AA), (2A), (2B), (2BA) or (2C)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the document is due and ending when you give it (up to a maximum of 5 penalty units); or
 - (c) for failing to notify the happening of an event as mentioned in subsection 286-75(4)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the notification is due and ending when you notify the happening of the event (up to a maximum of 5 penalty units).
- Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.
- Example: An entity lodges a return 31 days late. The base penalty amount under subsection (2) is 2 penalty units.
- (3) The *base penalty amount is multiplied by 2 if:
- (a) the entity concerned is a *medium withholder for the month in which the return, notice or other document was required to be given; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is more than \$1 million but less than \$20 million; or
 - (c) the entity's *current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is more than \$1 million but less than \$20 million.
- (4) The *base penalty amount is multiplied by 5 if:
 - (a) the entity concerned is a *large withholder for the month when the return, notice or other document was required to be given; or
 - (b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is \$20 million or more; or
 - (c) the entity's *current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is \$20 million or more.
- (5) In working out the *base penalty amount, the amount of a penalty unit is the amount applying at the start of the relevant 28 day period.
- (6) The fact that you have not yet given the relevant return, notice or other document does not prevent the Commissioner notifying you that you are liable to an administrative penalty under this Subdivision. That penalty may be later increased under this section.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 288—Miscellaneous administrative penalties

Table of sections

288-10	Penalty for non-electronic notification
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288-30	Penalty for failure to retain or produce declarations
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288-50	Penalty for both principal and agent issuing certain documents
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288-110	Contravention of superannuation data and payment regulation or standard

288-10 Penalty for non-electronic notification

An entity that:

- (a) under subsection 31-25(2) of the *GST Act, is required to *lodge a *GST return electronically; or
- (aa) under subsection 45-20(2A) in this Schedule, is required to give a notification electronically; or
- (b) under section 388-80 in this Schedule, is required to notify another *BAS amount electronically;

but lodges, gives or notifies it in another way, is liable to an administrative penalty of 5 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 288-20

288-20 Penalty for non-electronic payment

An entity that:

- (a) under subsection 33-10(2) of the *GST Act, is required to pay an *assessed net amount for a tax period electronically; or
- (b) under section 8AAZMA, or section 45-72 in this Schedule, is required to pay an amount electronically;

but pays it another way, is liable to an administrative penalty of 5 penalty units for each payment of one or more such amounts.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

288-25 Penalty for failure to keep or retain records

- (1) You are liable to an administrative penalty of 20 penalty units if:
 - (a) a provision of a *taxation law requires you to keep or retain a record; and
 - (b) you do not keep or retain that record in the manner required by that law.
- (2) Subsection (1) does not apply to:
 - (a) documents required to be retained under Part X of the *Fringe Benefits Tax Assessment Act 1986* (about statutory evidentiary documents); or
 - (b) documents required to be kept or retained under Division 900 of the *Income Tax Assessment Act 1997* (about substantiation of expenses).

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-30 Penalty for failure to retain or produce declarations

You are liable to an administrative penalty of 20 penalty units if:

- (a) a provision of a *taxation law requires you to retain or produce a declaration you made about an agent giving an *approved form to the Commissioner on your behalf; and
- (b) you do not retain or produce that declaration in the manner required by that law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-35 Penalty for preventing access etc.

You are liable to an administrative penalty of 20 penalty units if:

- (a) a provision of a *taxation law confers a power on an officer authorised under that law:
 - (i) to enter or remain on land, premises or a place that you occupy; or
 - (ii) to have access to documents, goods or other property in your possession; or
 - (iii) to inspect, copy or take extracts from documents in your possession; or
 - (iv) to inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property in your possession and, to that end, take samples; and
- (b) you refuse to provide the officer with all reasonable facilities for the officer effectively to exercise that power in accordance with that law.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-40 Penalty for failing to register or cancel registration

You are liable to an administrative penalty of 20 penalty units if you fail to apply for registration, or to apply for cancellation of registration, as required by the *GST Act.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-45 Penalty for failing to issue tax invoice etc.

- (1) You are liable to an administrative penalty of 20 penalty units if you fail to issue a tax invoice as required by section 29-70 of the *GST Act.
- (2) You are liable to an administrative penalty of 20 penalty units if you fail to issue an adjustment note as required by section 29-75 of the *GST Act.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 288-50

- (3) You are liable to an administrative penalty of 20 penalty units if you fail to issue a third party adjustment note as required by section 134-20 of the *GST Act.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-50 Penalty for both principal and agent issuing certain documents

An entity is liable to an administrative penalty of 20 penalty units if both the entity and its agent issue:

- (a) separate tax invoices relating to the same taxable supply, contrary to subsection 153-15(2) of the *GST Act; or
- (b) separate adjustment notes, or third party adjustment notes, for the same decreasing adjustment, contrary to subsection 153-20(2) of that Act.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-70 Administrative penalties for life insurance companies

Complying superannuation/FHSA asset pool—calculation of an amount

- (1) A *life insurance company is liable to an administrative penalty if the company:
- (a) is required to calculate a particular amount under section 320-175 of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 60 days that is required by that section.

Complying superannuation/FHSA asset pool—transfer following valuation

- (2) A *life insurance company is liable to an administrative penalty if the company:
- (a) is required to transfer assets having a particular *transfer value from its *complying superannuation/FHSA assets under subsection 320-180(1) of the *Income Tax Assessment Act 1997*; but

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) fails to do so within the period of 30 days that is required by subsection 320-180(2) of that Act.

Segregated exempt assets—calculation of an amount

- (3) A *life insurance company is liable to an administrative penalty if the company:
 - (a) is required to calculate a particular amount under section 320-230 of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 60 days that is required by that section.

Segregated exempt assets—transfer following valuation

- (4) A *life insurance company is liable to an administrative penalty if the company:
 - (a) is required to transfer assets having a particular *transfer value from its *segregated exempt assets under subsection 320-235(1) of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 30 days that is required by subsection 320-235(2) of that Act.

How to work out the administrative penalty

- (5) The administrative penalty under subsection (1), (2), (3) or (4) for a failure to make a calculation or transfer is equal to 5 penalty units for each period of 28 days or part of a period of 28 days:
 - (a) starting immediately after the end of the period mentioned in paragraph (b) of that subsection; and
 - (b) ending at the end of the day on which the calculation or transfer is made.

However, the maximum penalty for that failure must not exceed 25 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for the penalties provided by this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 288-75

288-75 Administrative penalty for a copyright or resale royalty collecting society

- (1) A *copyright collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-5 of the *Income Tax Assessment Act 1997*.
- (2) The *resale royalty collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-50 of the *Income Tax Assessment Act 1997*.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-80 Administrative penalty for over declaring conduit foreign income

- (1) An *Australian corporate tax entity is liable to an administrative penalty if:
 - (a) the entity makes a *frankable distribution that has an *unfranked part; and
 - (b) the entity declares an amount of the unfranked part to be *conduit foreign income; and
 - (c) the sum of the amounts declared exceeds the amount of the entity's conduit foreign income at:
 - (i) if the entity declares the distribution before making the distribution—the time of the declaration; or
 - (ii) otherwise—the time the distribution is made.
- (2) The amount of the penalty is the sum of the amounts worked out under subsections (3) and (4).
- (3) The amount is:

$$\text{*Corporate tax rate} \times \frac{\text{Excess mentioned in paragraph (1)(c)}}{\text{Total membership interests}} \times \frac{\text{Australian membership interests}}{\text{Total membership interests}}$$

where:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Australian membership interests means the number of *membership interests or *non-share equity interests in the entity that are not covered by the definition of **foreign membership interests** in subsection (4).

total membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution.

(4) The amount is:

$$\text{Applicable withholding tax rate} \times \text{Excess referred to in paragraph (1)(c)} \times \frac{\text{Foreign membership interests}}{\text{Total membership interests}}$$

where:

applicable withholding tax rate means 50% of the rate of tax set out in paragraph 7(a) of the *Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974*.

foreign membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution and in relation to whom the entity is required to withhold amounts under section 12-210 disregarding the operation of section 12-300 (about limits on the amount withheld).

total membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution.

288-90 Failing to give release authority for excess non-concessional contributions tax

A person to whom the Commissioner has given a release authority in accordance with paragraph 292-405(1)(b) of the *Income Tax Assessment Act 1997* and who fails to comply with subsection 292-410(2) of that Act in relation to the release authority is liable to an administrative penalty of 20 penalty units.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 288-95

288-95 Failing to comply etc. with release authority

- (1) A *superannuation provider that has been given a release authority in accordance with section 292-410 of the *Income Tax Assessment Act 1997* and that fails to comply with subsection 292-415(1) of that Act is liable to an administrative penalty of 20 penalty units.
- (2) A *superannuation provider that has been given a transitional release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997* and that fails to comply with subsection 292-80C(1) of that Act is liable to an administrative penalty of 20 penalty units.
- (3) A *superannuation provider that fails to comply with section 96-20 (about release authority for excess concessional contributions) is liable to an administrative penalty of 20 penalty units.
- (4) A *superannuation provider that fails to comply with section 135-75 (about release authorities for Division 293 tax) is liable to an administrative penalty of 20 penalty units.

288-100 Excess money paid under release authority

- (1) A person is liable for an administrative penalty of 20 penalty units if:
 - (a) the person gives one or more *superannuation providers a release authority in accordance with:
 - (i) section 292-410 of the *Income Tax Assessment Act 1997*; or
 - (ii) section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; and
 - (b) the total of the amounts paid by the superannuation provider or providers to the person and the Commissioner as a result of being given the release authority exceeds the amount required to be paid in respect of the release authority under:
 - (i) if subparagraph (a)(i) applies—subsection 292-415(1) of the *Income Tax Assessment Act 1997*; or
 - (ii) if subparagraph (a)(ii) applies—section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) An individual is liable to an administrative penalty of 20 penalty units if one or more *superannuation benefits that the individual receives (or is taken to receive), paid in relation to a release authority issued in accordance with Subdivision 135-A in this Schedule, is assessable income to any extent.

288-105 Superannuation provider to calculate crystallised pre-July 83 amount of superannuation interest by 30 June 2008

- (1) An entity is liable to an administrative penalty of 5 penalty units if:
- (a) the entity is the *superannuation provider in relation to a *superannuation plan (other than a *constitutionally protected fund) on 30 June 2008; and
 - (b) the entity has not ensured that the crystallised pre-July 83 amount in relation to each superannuation interest in the plan has been calculated on or before that day.
- (2) For the purpose of paragraph (1)(b), disregard a *superannuation interest unless the *element taxed in the fund of the *taxable component of the interest exceeds nil just before 1 July 2007.
- (3) For the purpose of paragraph (1)(b), disregard a *superannuation interest that supported a *superannuation income stream just before 1 July 2007.

288-110 Contravention of superannuation data and payment regulation or standard

Liability to penalty—RSA providers and trustees of eligible superannuation entities

- (1) An entity is liable to an administrative penalty if the entity contravenes:
- (a) subsection 34M(1) of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) subsection 45D(1) of the *Retirement Savings Accounts Act 1997*.
- (2) An entity is liable to an administrative penalty if the entity contravenes:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 288-110

- (a) subsection 34P(6) of the *Superannuation Industry (Supervision) Act 1993*; or
- (b) subsection 45F(6) of the *Retirement Savings Accounts Act 1997*.

Liability to penalty—employers

- (3) An entity is liable to an administrative penalty if the entity contravenes:
 - (a) subsection 34N(1) of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) subsection 45E(1) of the *Retirement Savings Accounts Act 1997*.
- (4) An entity is liable to an administrative penalty if the entity contravenes:
 - (a) subsection 34Q(6) of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) subsection 45G(6) of the *Retirement Savings Accounts Act 1997*.

Amount of the penalty

- (5) The amount of the penalty is:
 - (a) for an administrative penalty under subsection (1) or (3)—4 penalty units; or
 - (b) for an administrative penalty under subsection (2) or (4)—10 penalty units.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 290—Promotion and implementation of schemes

Table of Subdivisions

290-A	Preliminary
290-B	Civil penalties
290-C	Injunctions
290-D	Voluntary undertakings

Subdivision 290-A—Preliminary

Table of sections

290-5	Objects of this Division
290-10	Extra-territorial application

290-5 Objects of this Division

The objects of this Division are:

- (a) to deter the promotion of tax avoidance *schemes and tax evasion schemes; and
- (b) to deter the implementation of schemes that have been promoted on the basis of conformity with a *product ruling in a way that is materially different from that described in the product ruling.

290-10 Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

Subdivision 290-B—Civil penalties

Table of sections

290-50	Civil penalties
290-55	Exceptions
290-60	Meaning of <i>promoter</i>
290-65	Meaning of <i>tax exploitation scheme</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 290-50

290-50 Civil penalties

Promoter of tax exploitation scheme

- (1) An entity must not engage in conduct that results in that or another entity being a *promoter of a *tax exploitation scheme.

Implementing scheme otherwise than in accordance with ruling

- (2) An entity must not engage in conduct that results in a *scheme that has been promoted on the basis of conformity with a *product ruling being implemented in a way that is materially different from that described in the product ruling.

Note: A scheme will not have been implemented in a way that is materially different from that described in a product ruling if the tax outcome for participants in the scheme is the same as that described in the ruling.

- (2A) For the purposes of subsection (2), disregard:

- (a) subsection 82KZMGA(1A) of the *Income Tax Assessment Act 1936*; and
(b) subsection 394-10(5A) of the *Income Tax Assessment Act 1997*.

Note 1: Those 2 subsections relate to forestry managed investment schemes.

Note 2: The effect of this subsection is that a scheme will have been implemented in a way that is materially different from that described in a product ruling if the tax outcome for participants in the scheme is the same as that described in the ruling only because of the operation of the subsections mentioned in paragraphs (a) and (b).

Civil penalty

- (3) If the Federal Court of Australia is satisfied, on application by the Commissioner, that an entity has contravened subsection (1) or (2), the Court may order the entity to pay a civil penalty to the Commonwealth.

Amount of penalty

- (4) The maximum amount of the penalty is the greater of:
(a) 5,000 penalty units (for an individual) or 25,000 penalty units (for a body corporate); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) twice the consideration received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Principles relating to penalties

- (5) In deciding what penalty is appropriate for a contravention of subsection (1) or (2) by an entity, the Federal Court of Australia may have regard to all matters it considers relevant, including:
 - (a) the amount of the consideration received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme; and
 - (b) the deterrent effect that any penalty may have; and
 - (c) the amount of loss or damage incurred by scheme participants; and
 - (d) the nature and extent of the contravention; and
 - (e) the circumstances in which the contravention took place, including the deliberateness of the entity's conduct and whether there was an honest and reasonable mistake of law; and
 - (f) the period over which the conduct extended; and
 - (g) whether the entity took any steps to avoid the contravention; and
 - (h) whether the entity has previously been found by the Court to have engaged in the same or similar conduct; and
 - (i) the degree of the entity's cooperation with the Commissioner.

Recovery of penalty

- (6) The penalty is a civil debt payable to the Commonwealth, and the Commissioner may, on behalf of the Commonwealth, enforce an order for an entity to pay the penalty as if it were an order made in civil proceedings against the entity to recover a debt due by the entity. The debt arising from the order is taken to be a judgment debt.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 290-55

290-55 Exceptions

Reasonable mistake or reasonable precautions

- (1) The Federal Court of Australia must not order the entity to pay a civil penalty if the entity satisfies the Court:
 - (a) that the conduct in respect of which the proceedings were instituted was due to a reasonable mistake of fact; or
 - (b) that:
 - (i) the conduct in respect of which the proceedings were instituted was due to the act or default of another entity, to an accident or to some other cause beyond the entity's control; and
 - (ii) the entity took reasonable precautions and exercised due diligence to avoid the conduct.
- (2) The other entity referred to in paragraph (1)(b) does not include someone who was an employee or agent of the entity when the alleged conduct occurred.

Reliance on advice from the Commissioner

- (3) The Commissioner must not make an application under section 290-50 for conduct referred to in subsection 290-50(1) in relation to an entity's involvement in a *scheme if:
 - (a) the scheme is based on treating a *taxation law as applying in a particular way; and
 - (b) that way agrees with:
 - (i) advice given to the entity or the entity's agent by or on behalf of the Commissioner; or
 - (ii) a statement in a publication approved in writing by the Commissioner.

Time limitation

- (4) The Commissioner must not make an application under section 290-50 in relation to an entity's involvement in a *tax exploitation scheme more than 4 years after the entity last engaged in conduct that resulted in the entity or another entity being a *promoter of the tax exploitation scheme.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 290-60

- (5) The Commissioner must not make an application under section 290-50 in relation to an entity's involvement in a *scheme that has been promoted on the basis of conformity with a *product ruling more than 4 years after the entity last engaged in conduct in relation to implementation of the scheme.
- (6) However, the limitation in subsection (4) or (5) does not apply to a *scheme involving tax evasion.

Exception where entity does not know result of conduct

- (7) The Federal Court of Australia must not order an entity to pay a civil penalty in relation to the entity's engaging in conduct:
 - (a) that results in another entity being a *promoter of a *tax exploitation scheme; or
 - (b) that results in a *scheme that has been promoted on the basis of conformity with a *product ruling being implemented in a way that is materially different from that described in the product ruling;if the entity satisfies the Court that the entity did not know, and could not reasonably be expected to have known, that the entity's conduct would produce that result.

Employees

- (8) The Commissioner must not make an application under section 290-50 in relation to an individual's involvement in a *scheme as an employee if the Federal Court of Australia has ordered the individual's employer to pay a civil penalty under this Division in relation to the same scheme.

290-60 Meaning of *promoter*

- (1) An entity is a ***promoter*** of a *tax exploitation scheme if:
 - (a) the entity markets the scheme or otherwise encourages the growth of the scheme or interest in it; and
 - (b) the entity or an *associate of the entity receives (directly or indirectly) consideration in respect of that marketing or encouragement; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 290-65

- (c) having regard to all relevant matters, it is reasonable to conclude that the entity has had a substantial role in respect of that marketing or encouragement.
- (2) However, an entity is not a ***promoter*** of a *tax exploitation scheme merely because the entity provides advice about the *scheme.
- (3) An employee is not to be taken to have had a substantial role in respect of that marketing or encouragement merely because the employee distributes information or material prepared by another entity.

290-65 Meaning of tax exploitation scheme

- (1) A *scheme is a ***tax exploitation scheme*** if, at the time of the conduct mentioned in subsection 290-50(1):
 - (a) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the scheme did so with the sole or dominant purpose of that entity or another entity getting a *scheme benefit from the scheme;
 - (ii) if the scheme has not been implemented—it is reasonable to conclude that, if an entity (alone or with others) had entered into or carried out the scheme, it would have done so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; and
 - (b) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is not *reasonably arguable that the scheme benefit is available at law;
 - (ii) if the scheme has not been implemented—it is not reasonably arguable that the scheme benefit would be available at law if the scheme were implemented.

Note: The condition in paragraph (b) would not be satisfied if the implementation of the scheme for all participants were in accordance with binding advice given by or on behalf of the Commissioner of Taxation (for example, if that implementation were in accordance with a public ruling under this Act, or all participants had private rulings

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

under this Act and that implementation were in accordance with those rulings).

- (2) In deciding whether it is *reasonably arguable that a *scheme benefit would be available at law, take into account any thing that the Commissioner can do under a *taxation law.

Example: The Commissioner may cancel a tax benefit obtained by a taxpayer in connection with a scheme under section 177F of the *Income Tax Assessment Act 1936*.

Subdivision 290-C—Injunctions

Table of sections

290-120	Conduct to which this Subdivision applies
290-125	Injunctions
290-130	Interim injunctions
290-135	Delay in making ruling
290-140	Discharge etc. of injunctions
290-145	Certain limits on granting injunctions not to apply
290-150	Other powers of the Federal Court unaffected

290-120 Conduct to which this Subdivision applies

This Subdivision applies to conduct of the kind referred to in subsection 290-50(1) or (2).

290-125 Injunctions

If an entity has engaged, is engaging or is proposing to engage in conduct to which this Subdivision applies or would apply, the Federal Court of Australia may, on the application of the Commissioner, grant an injunction:

- (a) restraining the entity from engaging in the conduct; and
- (b) if, in the Court's opinion, it is desirable to do so—requiring the entity to do something.

290-130 Interim injunctions

The Federal Court of Australia may, before considering an application for an injunction under section 290-125, grant an

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 290-135

interim injunction restraining an entity from engaging in conduct to which this Subdivision applies.

290-135 Delay in making ruling

If:

- (a) an entity applied in writing to the Commissioner for a *product ruling in relation to a *scheme; and
- (b) the Commissioner has neither made the ruling nor told the entity in writing that the Commissioner has declined to make the ruling;

the Commissioner must not make an application under section 290-125 in relation to conduct or proposed conduct by an entity in relation to the scheme until the Commissioner makes the ruling or tells the entity in writing that the Commissioner has declined to make the ruling.

290-140 Discharge etc. of injunctions

The Federal Court of Australia may discharge or vary an injunction granted under this Subdivision.

290-145 Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the Federal Court of Australia under this Subdivision to grant an injunction restraining an entity from engaging in conduct of a particular kind may be exercised:
 - (a) if the Court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the Court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to anyone if the entity engages in conduct of that kind.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Performance injunctions

- (2) The power of the Federal Court of Australia under this Subdivision to grant an injunction requiring an entity to do something may be exercised:
- (a) if the Court is satisfied that the entity has refused or failed to do that thing—whether or not it appears to the Court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the entity will refuse or fail to do that thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to anyone if the entity refuses or fails to do that act or thing.

290-150 Other powers of the Federal Court unaffected

The powers conferred on the Federal Court of Australia under this Subdivision are in addition to, and not instead of, any other powers of the Court, however conferred.

Subdivision 290-D—Voluntary undertakings

Table of sections

290-200 Voluntary undertakings

290-200 Voluntary undertakings

- (1) The Commissioner may accept a written undertaking given by an entity for the purposes of this section in connection with furthering the objects of this Division.
- (2) The entity may withdraw or vary the undertaking at any time, but only with the consent of the Commissioner.
- (3) If the Commissioner considers that the entity that gave the undertaking has breached any of its terms, the Commissioner may apply to the Federal Court of Australia for an order under subsection (4).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (4) If the Court is satisfied that the entity has breached a term of the undertaking, the Court may make one or both of the following orders:
- (a) an order directing the entity to comply with that term of the undertaking;
 - (b) any other order that the Court considers appropriate.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 298—Machinery provisions for penalties

Subdivision 298-A—Administrative penalties

Table of sections

298-5	Scope of Subdivision
298-10	Notification of liability
298-15	Due date for penalty
298-20	Remission of penalty
298-25	General interest charge on unpaid penalty
298-30	Assessment of penalties under Division 284

298-5 Scope of Subdivision

This Subdivision applies if:

- (a) an administrative penalty is imposed on an entity by another Division in this Part; or
- (b) a penalty is imposed on an entity by Subdivision 162-D of the *GST Act; or
- (c) an administrative penalty is imposed on an entity by a provision of Subdivision 12-H, Division 16 or section 426-120 in this Schedule.

298-10 Notification of liability

The Commissioner must give written notice to the entity of the entity's liability to pay the penalty and of the reasons why the entity is liable to pay the penalty. The Commissioner may do so in any other notice he or she gives to the entity. The Commissioner is not required to give reasons if he or she decides to remit all of the penalty.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

298-15 Due date for penalty

The penalty becomes due for payment on the day specified in the notice, which must be at least 14 days after the notice is given to the entity.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 298-20

Note: For provisions about collection and recovery of the penalty, see Part 4-15.

298-20 Remission of penalty

- (1) The Commissioner may remit all or a part of the penalty.
- (2) If the Commissioner decides:
 - (a) not to remit the penalty; or
 - (b) to remit only part of the penalty;the Commissioner must give written notice of the decision and the reasons for the decision to the entity.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

- (3) If:
 - (a) the Commissioner refuses to any extent to remit an amount of penalty; and
 - (b) the amount of penalty payable after the refusal is more than 2 penalty units; and

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

 - (c) the entity is dissatisfied with the decision;the entity may object against the decision in the manner set out in Part IVC.

298-25 General interest charge on unpaid penalty

If any of the penalty remains unpaid after it is due, the entity is liable to pay the *general interest charge on the unpaid amount of the penalty for each day in the period that:

- (a) started at the beginning of the day by which the amount was due to be paid; and
- (b) finishes at the end of the last day, at the end of which, any of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

Note: The general interest charge is worked out under Part IIA.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

298-30 Assessment of penalties under Division 284

- (1) The Commissioner must make an assessment of the amount of an administrative penalty under Division 284.
- (2) An entity that is dissatisfied with such an assessment made about the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (3) The production of a notice of such an assessment, or of a copy of it certified by or on behalf of the Commissioner, is conclusive evidence of the making of the assessment and of the particulars in it.
- (4) Subsection (3) does not apply to proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment.

Subdivision 298-B—Civil penalties

Table of sections

298-80	Application of Subdivision
298-85	Civil evidence and procedure rules for civil penalty orders
298-90	Civil proceedings after criminal proceedings
298-95	Criminal proceedings during civil proceedings
298-100	Criminal proceedings after civil proceedings
298-105	Evidence given in proceedings for penalty not admissible in criminal proceedings
298-110	Civil double jeopardy

298-80 Application of Subdivision

This Subdivision applies for the purposes of the following provisions (the ***civil penalty provisions***):

- (a) Division 290 of this Schedule (civil penalties for the promotion and implementation of schemes);
- (b) Part 5 of the *Tax Agent Services Act 2009* (civil penalties for providing tax agent services while unregistered and for certain conduct when providing tax agent services).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 298-85

298-85 Civil evidence and procedure rules for civil penalty orders

The Federal Court of Australia must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order under the civil penalty provisions.

298-90 Civil proceedings after criminal proceedings

The Court must not make a civil penalty order under the civil penalty provisions against an entity if the entity has been convicted of an offence constituted by conduct that is substantially the same as the conduct in relation to which the civil penalty order would be made.

298-95 Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order under the civil penalty provisions against an entity are stayed if:
 - (a) criminal proceedings are started or have already been started against the entity for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct in relation to which the civil penalty order would be made.
- (2) The proceedings for the order may be resumed if the entity is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

298-100 Criminal proceedings after civil proceedings

Criminal proceedings may be started against an entity for conduct that is substantially the same as conduct in relation to which a civil penalty order under the civil penalty provisions could be made regardless of whether a civil penalty order has been made against the entity.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

298-105 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an entity is not admissible in criminal proceedings against the entity if:

- (a) the entity previously gave the evidence or produced the documents in proceedings for a civil penalty order under the civil penalty provisions against the entity (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct in relation to which the civil penalty order was sought.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the entity in the proceedings for the civil penalty order.

298-110 Civil double jeopardy

If an entity is ordered to pay a civil penalty under the civil penalty provisions in respect of particular conduct, the entity is not liable to a civil penalty under some other provision of a *Commonwealth law in respect of that conduct.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 340-1

Part 4-50—Release from particular liabilities

Division 340—Commissioner’s power in cases of hardship

Guide to Division 340

340-1 What this Division is about

The Commissioner may release you from a particular liability that you have incurred if you are an individual, or a trustee of the estate of a deceased person, and satisfying the liability would cause serious hardship.

Table of sections

Operative provisions

340-5	Release from particular liabilities in cases of serious hardship
340-10	Liabilities to which this section applies
340-15	Commissioner may take action to give effect to a release decision
340-20	Extinguishing your liability to pay a fringe benefits tax instalment if you are released
340-25	Extinguishing your liability to pay a PAYG instalment if you are released

Operative provisions

340-5 Release from particular liabilities in cases of serious hardship

Applying for release

- (1) You may apply to the Commissioner to release you, in whole or in part, from a liability of yours if section 340-10 applies to the liability.
- (2) The application must be in the *approved form.
- (3) The Commissioner may release you, in whole or in part, from the liability if you are an entity specified in the column headed “Entity” of the following table and the condition specified in the column headed “Condition” of the table is satisfied.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Entity and condition		
Item	Entity	Condition
1	an individual	you would suffer serious hardship if you were required to satisfy the liability
2	a trustee of the estate of a deceased individual	the dependants of the deceased individual would suffer serious hardship if you were required to satisfy the liability

Effect of the Commissioner's decision

- (4) If the Commissioner:
- (a) refuses to release you in whole from the liability; or
 - (b) releases you in part from the liability;
- nothing in this section prevents you from making a further application or applications under subsection (1) in relation to the liability.

Notification of the Commissioner's decision

- (5) The Commissioner must notify you in writing of the Commissioner's decision within 28 days after making the decision.
- (6) A failure to comply with subsection (5) does not affect the validity of the Commissioner's decision.

Objections against the Commissioner's decision

- (7) If you are dissatisfied with the Commissioner's decision, you may object against the decision in the manner set out in Part IVC.

340-10 Liabilities to which this section applies

- (1) This section applies to a liability if it is a liability of the following kind:
- (a) fringe benefits tax;
 - (b) an instalment of fringe benefits tax;
 - (c) *Medicare levy;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (d) *Medicare levy (fringe benefits) surcharge;
- (e) a *PAYG instalment.
- (2) This section also applies to a liability if it is a liability that is specified in the column headed “Liabilities” of the following table and the liability is a liability under a provision or provisions of an Act specified in the column headed “Provision(s)” of the table:

Liabilities and provision(s)		
Item	Liabilities	Provision(s)
1	additional tax	(a) section 93 or 112B or Part VIII of the <i>Fringe Benefits Tax Assessment Act 1986</i> ; or (b) section 163B or subsection 221YDB(1), (1AAA), (1AA) or (1ABA) or Part VII of the <i>Income Tax Assessment Act 1936</i>
2	administrative penalty in relation to fringe benefits tax or *tax	Part 4-25 in this Schedule
3	general interest charge	(a) section 163AA or 170AA, former subsection 204(3) or former subsection 221AZMAA(1), 221AZP(1), 221YD(3) or 221YDB(3) of the <i>Income Tax Assessment Act 1936</i> ; or (aa) section 5-15 in the <i>Income Tax Assessment Act 1997</i> ; or (b) section 45-80 or 45-620 or subsection 45-230(2), 45-232(2), 45-235(2) or 45-235(3) in this Schedule
3A	shortfall interest charge	Division 280 in this Schedule
4	interest	section 102AAM of the <i>Income Tax Assessment Act 1936</i>
5	penalty	section 163A of the <i>Income Tax Assessment Act 1936</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 340-15

Liabilities and provision(s)		
Item	Liabilities	Provision(s)
6	*tax	<p>(a) section 128B of the <i>Income Tax Assessment Act 1936</i>; or</p> <p>(b) section 128V of the <i>Income Tax Assessment Act 1936</i>; or</p> <p>(c) section 4-1 of the <i>Income Tax Assessment Act 1997</i>; or</p> <p>(d) section 840-805 of the <i>Income Tax Assessment Act 1997</i>; or</p> <p>(da) section 840-905 of the <i>Income Tax Assessment Act 1997</i>; or</p> <p>(e) section 840-805 of the <i>Income Tax (Transitional Provisions) Act 1997</i></p>

340-15 Commissioner may take action to give effect to a release decision

- (1) If the Commissioner decides to release you from a liability to which section 340-10 applies, the Commissioner may take such action as is necessary to give effect to the decision.
- (2) Without limiting subsection (1), the Commissioner may amend an assessment within the meaning of the following provisions:
 - (a) subsection 6(1) of the *Income Tax Assessment Act 1936*;
 - (b) subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*;

by making such alterations or additions to the assessment as the Commissioner thinks necessary.
- (3) Subsection (2) does not limit the power of the Commissioner to amend the assessment in accordance with any other provision of the *Income Tax Assessment Act 1936* or the *Fringe Benefits Tax Assessment Act 1986*.

340-20 Extinguishing your liability to pay a fringe benefits tax instalment if you are released

- (1) This section applies if the Commissioner releases you from a liability to pay an instalment of fringe benefits tax.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) If your liability to pay the instalment is released in whole, you are taken, for the purposes of Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act 1986*, not to be liable to pay the instalment.

Note: This means that for the purposes of section 105 of that Act you are not entitled to a credit for the instalment.

- (3) If your liability to pay the instalment is released in part, you are taken, for the purposes of Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act 1986*, to be liable to pay the instalment to the extent to which your liability has not been released.

Note: This means that for the purposes of section 105 of that Act you are entitled to a credit for the instalment to the extent to which your liability to pay the instalment has not been released.

340-25 Extinguishing your liability to pay a PAYG instalment if you are released

- (1) This section applies if the Commissioner releases you from a liability to pay a *PAYG instalment.
- (2) If your liability to pay the instalment is released in whole, you are taken, for the purposes of Division 45 of Part 2-10, not to be liable to pay the instalment.

Note: This means that for the purposes of section 45-30 you are not entitled to a credit for the instalment.

- (3) If your liability to pay the instalment is released in part, you are taken, for the purposes of Division 45 of Part 2-10, to be liable to pay the instalment to the extent to which your liability has not been released.

Note: This means that for the purposes of section 45-30 you are entitled to a credit for the instalment to the extent to which your liability to pay the instalment has not been released.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 342—Commissioner’s power relating to proceeds of crime proceedings

Table of Subdivisions

Guide to Division 342

342-A Power to waive right to payment of tax-related liabilities

Guide to Division 342

342-1 What this Division is about

To facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*, the Commissioner may waive the right to payment of certain tax-related liabilities.

Subdivision 342-A—Power to waive right to payment of tax-related liabilities

Table of sections

342-5 Object of this Subdivision

342-10 Power to waive right to payment of tax-related liability

342-5 Object of this Subdivision

The object of this Subdivision is to facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002* by allowing the Commissioner to waive the right to payment of certain liabilities to the Commonwealth arising under *taxation laws.

Note: The Commissioner may also exercise other powers so as to facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*. Examples of those other powers include:

- (a) the power under section 255-10 to defer the time a tax-related liability is due and payable; and
- (b) the power under section 8AAG to remit general interest charge.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 342-10

342-10 Power to waive right to payment of tax-related liability

- (1) The Commissioner may waive the Commonwealth's right to payment of all or part of a *tax-related liability if the Commissioner is satisfied that:
- (a) the waiver will facilitate the starting, conduct or ending (by settlement or otherwise) of proceedings under the *Proceeds of Crime Act 2002*; and
 - (b) the liability is connected with circumstances associated with the proceedings.

Note: The Commissioner may waive the right to payment only after the liability has arisen, but may do so whether or not the liability is due and payable.

Example: A liability is connected with circumstances associated with the proceedings if the liability arose because of activities constituting an offence to which the proceedings relate.

- (2) In deciding whether to waive the right, the Commissioner must consider:
- (a) the amount the Commonwealth will forgo as a result of the waiver and the time the Commonwealth could reasonably be expected to receive that amount apart from the waiver; and
 - (b) the amount the Commonwealth could reasonably be expected to receive as a result of the proceedings and the time the Commonwealth could reasonably be expected to receive that amount.
- (3) Subsection (2) does not limit the matters that the Commissioner may consider in making the decision.

Extended operation of this section

- (4) This section (except this subsection) applies in relation to a pecuniary liability to the Commonwealth that arises directly under a *taxation law, but is not a *tax-related liability, in the same way as this section applies in relation to a tax-related liability.

Example: This section applies to a civil penalty under Division 290 (which penalises certain conduct involving promotion of schemes) in the same way as this section applies to a tax-related liability.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 4-90—Evidence

Division 350—Evidence

Table of Subdivisions

	Guide to Division 350
350-A	Evidence

Guide to Division 350

350-1 What this Division is about

<p>The rules in this Division deal with the evidentiary effect of official tax documents for the purposes of certain taxation laws.</p>

Subdivision 350-A—Evidence

Table of sections

350-5	Application of Subdivision
350-10	Evidence
350-15	Judicial notice of signature

350-5 Application of Subdivision

This Subdivision applies in relation to the following *taxation laws:

- (a) *indirect tax laws;
- (b) the *MRRT law;
- (c) the *Division 293 tax law.

350-10 Evidence

Conclusive evidence

- (1) The following table has effect:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 350-10

Conclusive evidence		
Item	Column 1 The production of ...	Column 2 is conclusive evidence that ...
1	<p>(a) a <i>Gazette</i> containing a notice purporting to be issued by the Commissioner for the purposes of a *taxation law; or</p> <p>(b) a document that:</p> <p>(i) is under the hand of the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner; and</p> <p>(ii) purports to be a copy of, or extract from, a document issued by the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner for the purposes of a taxation law;</p>	<p>the notice or document was so issued.</p>
2	<p>(a) a notice of assessment of an *assessable amount; or</p> <p>(b) a declaration under:</p> <p>(i) subsection 165-40(1) or 165-45(3) of the *GST Act; or</p> <p>(ii) subsection 75-40(1) or 75-45(3) of the <i>Fuel Tax Act 2006</i>;</p>	<p>(a) the assessment or declaration was properly made; and</p> <p>(b) except in proceedings under Part IVC of this Act on a review or appeal relating to the assessment or declaration—the amounts and particulars of the assessment or declaration are correct.</p>

(2) Paragraph (b) of column 1 of item 2 of the table in subsection (1) applies to:

- (a) a declaration under subsection 165-40(1) or 165-45(3) of the *GST Act that states:
- (i) the amount that is (and has been at all times) a *net amount for a *tax period that started before 1 July 2012; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) the amount that is (and has been at all times) the amount of *GST on a *taxable importation, if the GST was payable before 1 July 2012; or
- (b) a declaration under subsection 75-40(1) or 75-45(3) of the *Fuel Tax Act 2006* that states the amount that is (and has been at all times) a *net fuel amount for a tax period, or *fuel tax return period, that started before 1 July 2012.

Note: Division 165 of the GST Act and Division 75 of the *Fuel Tax Act 2006* are anti-avoidance provisions.

Prima facie evidence

- (3) The production of a certificate that:
 - (a) is signed by the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner; and
 - (b) states that, from the time specified in the certificate, an amount was payable under a *taxation law (whether to or by the Commissioner);is prima facie evidence that:
 - (c) the amount is payable from that time; and
 - (d) the particulars stated in the certificate are correct.

Signed copies are evidence

- (4) The production of a document that:
 - (a) appears to be a copy of, or extract from, any document (the **original document**) made or given by or to an entity for the purposes of a *taxation law; and
 - (b) is signed by the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner;is evidence of the matters set out in the document to the same extent as the original document would have been evidence of those matters.

350-15 Judicial notice of signature

All courts, and all persons having by law or consent of parties authority to hear, receive and examine evidence, must take judicial notice of the signature of every person who is or has been:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) the Commissioner; or
 - (b) a *Second Commissioner; or
 - (c) a *Deputy Commissioner; or
 - (d) a delegate of the Commissioner;
- if the signature is attached or appended to an official document for the purposes of a *taxation law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Chapter 5—Administration

Part 5-1—The Australian Taxation Office

Division 352—Accountability of the Commissioner

Table of Subdivisions

Guide to Division 352

352-A Accountability of the Commissioner in respect of indirect tax laws

352-B Accountability of the Commissioner in respect of MRRT law

Guide to Division 352

352-1 What this Division is about

This Division requires the Commissioner to prepare an annual report on the working of the indirect tax laws and the MRRT law.

Subdivision 352-A—Accountability of the Commissioner in respect of indirect tax laws

Table of sections

352-5 Commissioner must prepare annual report on indirect tax laws

352-5 Commissioner must prepare annual report on indirect tax laws

- (1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report on the working of the *indirect tax laws during the year ending on that 30 June.
- (2) The report must include a report on any breaches or evasions of the *indirect tax laws that the Commissioner knows about.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Subdivision 352-B—Accountability of the Commissioner in respect of MRRT law

Table of sections

352-10 Commissioner must prepare annual report on MRRT law

352-10 Commissioner must prepare annual report on MRRT law

- (1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report on the working of the *MRRT law during the year ending on that 30 June.
- (2) The report must include a report on any breaches or evasions of the *MRRT law that the Commissioner knows about.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 353—Powers to obtain information and evidence

353-10 Commissioner's power

- (1) The Commissioner may by notice in writing require you to do all or any of the following:
- (a) to give the Commissioner any information that the Commissioner requires for the purpose of the administration or operation of:
 - (i) an *indirect tax law; or
 - (ii) the *MRRT law; or
 - (ia) the *Division 293 tax law; or
 - (iii) this Schedule (other than Division 340);
 - (b) to attend and give evidence before the Commissioner, or an individual authorised by the Commissioner, for the purpose of the administration or operation of:
 - (i) an indirect tax law; or
 - (ii) the MRRT law; or
 - (ia) the Division 293 tax law; or
 - (iii) this Schedule (other than Division 340);
 - (c) to produce to the Commissioner any documents in your custody or under your control for the purpose of the administration or operation of:
 - (i) an indirect tax law; or
 - (ii) the MRRT law; or
 - (ia) the Division 293 tax law; or
 - (iii) this Schedule.

Note: Failing to comply with a requirement can be an offence under section 8C or 8D.

- (2) The Commissioner may require the information or evidence:
- (a) to be given on oath or affirmation; and
 - (b) to be given orally or in writing.

For that purpose, the Commissioner or the officer may administer an oath or affirmation.

- (3) The regulations may prescribe scales of expenses to be allowed to entities required to attend before the Commissioner or the officer.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 353-15

353-15 Access to premises for the purposes of the indirect tax laws, the MRRT law and the Division 293 tax law

- (1) For the purposes of an *indirect tax law, the *MRRT law or the *Division 293 tax law, the Commissioner, or an individual authorised by the Commissioner for the purposes of this section:
 - (a) may at all reasonable times enter and remain on any land or premises; and
 - (b) is entitled to full and free access at all reasonable times to any documents, goods or other property; and
 - (c) may inspect, examine, make copies of, or take extracts from, any documents; and
 - (d) may inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property and, to that end, take samples.
- (2) An individual authorised by the Commissioner for the purposes of this section is not entitled to enter or remain on any land or premises if, after having been requested by the occupier to produce proof of his or her authority, the individual does not produce an authority signed by the Commissioner stating that the individual is authorised to exercise powers under this section.
- (3) You commit an offence if:
 - (a) you are the occupier of land or premises; and
 - (b) an individual enters, or proposes to enter, the land or premises under this section; and
 - (c) the individual is the Commissioner or authorised by the Commissioner for the purposes of this section; and
 - (d) you do not provide the individual with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 353-17

- (4) Strict liability applies to paragraphs (3)(a) and (c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

353-17 Offshore information notices

For the purposes of the *MRRT law, section 264A (about offshore information notices) of the *Income Tax Assessment Act 1936* applies as if:

- (a) a reference to a taxpayer in that section were a reference to an entity; and
- (b) a reference to an assessment in that section were a reference to an assessment under Division 155 of this Schedule relating to *MRRT; and
- (c) a reference to the *Income Tax Assessment Act 1936* in that section were a reference to the MRRT law.

353-20 Checking status of specifically listed deductible gift recipients

- (1) The Commissioner may require a *deductible gift recipient covered by this section to give the Commissioner information or a document that is relevant to the deductible gift recipient's status as a deductible gift recipient. The deductible gift recipient must comply with the requirement.

Note: Failure to comply with this subsection is an offence against section 8C.

- (2) If the Commissioner is satisfied of any of the matters set out in subsection (4) in relation to a *deductible gift recipient covered by this section, the Commissioner must, within 28 days, give written notice to the Minister about that fact.
- (3) The Minister may only disclose information provided under subsection (2) for a purpose relating to the removal of the name of the *deductible gift recipient from Division 30 of the *Income Tax Assessment Act 1997*.
- (4) The matters are as follows:
- (a) the *deductible gift recipient fails or ceases to use gifts, contributions or money received solely for the principal purpose of the relevant fund, authority or institution;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 353-20

- (b) there is a change in the principal purpose of the relevant fund, authority or institution;
 - (c) the deductible gift recipient fails or ceases to comply with any rules or conditions made by the Prime Minister or any other Minister relating to the recipient being or becoming a deductible gift recipient.
- (5) The requirement in subsection (1):
 - (a) is to be made by notice in writing to the *deductible gift recipient; and
 - (b) may ask the deductible gift recipient to give the information in writing; and
 - (c) must specify:
 - (i) the information or document the deductible gift recipient is to give; and
 - (ii) the period within which the deductible gift recipient is to give the information or document.

The period specified under subparagraph (c)(ii) must end at least 28 days after the notice is given.
- (6) This section covers *deductible gift recipients, other than:
 - (a) an entity or *government entity that is endorsed under Subdivision 30-BA of the *Income Tax Assessment Act 1997* as a deductible gift recipient; and
 - (b) an entity or government entity that is endorsed under that Subdivision as a deductible gift recipient for the operation of a fund, authority or institution.
- (7) In a prosecution of a person for an offence against section 8C of this Act because of this section as it applies because of Division 444, it is a defence if the person proves that the person:
 - (a) did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 355—Confidentiality of taxpayer information**Table of Subdivisions**

	Guide to Division 355
355-A	Objects and application of Division
355-B	Disclosure of protected information by taxation officers
355-C	On-disclosure of protected information by other people
355-D	Disclosure of protected information that has been unlawfully acquired
355-E	Other matters

Guide to Division 355**355-1 What this Division is about**

The disclosure of information about the tax affairs of a particular entity is prohibited, except in certain specified circumstances.

Those exceptions are designed having regard to the principle that disclosure of information should be permitted only if the public benefit derived from the disclosure outweighs the entity's privacy.

Note: This Division contains the main circumstances in which protected tax information can be disclosed. A number of other Commonwealth laws also allow for the disclosure of, or access to, such information in limited circumstances. Some of these other laws are as follows:

- sections 32 and 33 of the *Auditor-General Act 1997*;
- section 15 of the *Inspector-General of Taxation Act 2003*;
- section 9 of the *Ombudsman Act 1976*;
- section 44 of the *Privacy Act 1988*.

Subdivision 355-A—Objects and application of Division**Table of sections**

355-10	Objects of Division
355-15	Application of Division

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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355-10 Objects of Division

The objects of this Division are:

- (a) to protect the confidentiality of taxpayers' affairs by imposing strict obligations on *taxation officers (and others who acquire protected tax information), and so encourage taxpayers to provide correct information to the Commissioner; and
- (b) to facilitate efficient and effective government administration and law enforcement by allowing disclosures of protected tax information for specific, appropriate purposes.

355-15 Application of Division

This Division applies in relation to the following entities in the same way as it applies in relation to *taxation officers:

- (a) an entity engaged to provide services relating to the Australian Taxation Office;
- (b) an individual employed by, or otherwise performing services for, an entity referred to in paragraph (a);
- (c) an individual:
 - (i) appointed or employed by, or performing services for, the Commonwealth or an authority of the Commonwealth; and
 - (ii) performing functions or exercising powers under or for the purposes of a *taxation law.

Subdivision 355-B—Disclosure of protected information by taxation officers

Guide to Subdivision 355-B

355-20 What this Subdivision is about

The main protection for taxpayer confidentiality is in this Subdivision. It is an offence for taxation officers to disclose tax information that identifies an entity, or is reasonably capable of being used to identify an entity, except in certain specified circumstances.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Table of sections**Operative provisions**

355-25	Offence—disclosure of protected information by taxation officers
355-30	Meaning of <i>protected information</i> and <i>taxation officer</i>
355-35	Consent is not a defence
355-40	Generality of Subdivision not limited
355-45	Exception—disclosure of publicly available information
355-47	Exception—disclosure of periodic aggregate tax information
355-50	Exception—disclosure in performing duties
355-55	Exception—disclosure to Ministers
355-60	Limits on disclosure to Ministers
355-65	Exception—disclosure for other government purposes
355-70	Exception—disclosure for law enforcement and related purposes
355-75	Limits on disclosure to courts and tribunals

Operative provisions**355-25 Offence—disclosure of protected information by taxation officers**

- (1) An entity commits an offence if:
- (a) the entity is or was a *taxation officer; and
 - (b) the entity:
 - (i) makes a record of information; or
 - (ii) discloses information to another entity (other than the entity to whom the information relates or an entity covered by subsection (2)) or to a court or tribunal; and
 - (c) the information is *protected information; and
 - (d) the information was acquired by the first-mentioned entity as a taxation officer.

Penalty: Imprisonment for 2 years.

- (2) An entity (the **covered entity**) is covered by this subsection in relation to *protected information that relates to another entity (the **primary entity**) if:
- (a) the covered entity is the primary entity's *registered tax agent or BAS agent; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the covered entity is a *legal practitioner representing the primary entity in relation to the primary entity's *tax affairs; or
- (c) the primary entity is an *incapacitated entity and the covered entity is a *representative of the incapacitated entity; or
- (d) the covered entity is the primary entity's *legal personal representative; or
- (e) the covered entity is the primary entity's guardian where the primary entity is a minor or suffers from mental incapacity; or
- (f) the covered entity and the primary entity are members of the same *consolidated group or *MEC group; or
- (g) the covered entity is a representative of the primary entity who has been nominated by the primary entity in the *approved form to act on that entity's behalf with respect to protected information.

355-30 Meaning of *protected information* and *taxation officer*

(1) ***Protected information*** means information that:

- (a) was disclosed or obtained under or for the purposes of a law that was a *taxation law (other than the *Tax Agent Services Act 2009*) when the information was disclosed or obtained; and
- (b) relates to the affairs of an entity; and
- (c) identifies, or is reasonably capable of being used to identify, the entity.

Note: Tax file numbers do not constitute protected information because they are not, by themselves, reasonably capable of being used to identify an entity. For offences relating to tax file numbers, see Subdivision BA of Division 2 of Part III.

(2) ***Taxation officer*** means:

- (a) the Commissioner or a *Second Commissioner; or
- (b) an individual appointed or engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office.

Note: This Division applies to certain other entities as if they were taxation officers: see section 355-15.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

355-35 Consent is not a defence

It is not a defence to a prosecution for an offence against section 355-25 that the entity to whom the information relates has consented to:

- (a) the making of the record; or
- (b) the disclosure of the information.

355-40 Generality of Subdivision not limited

Except as provided by section 355-60, nothing in this Subdivision limits the generality of anything else in it.

Note: This means that each provision in this Subdivision (other than section 355-60) has an independent operation and is not to be interpreted by reference to any other provision within the Subdivision.

355-45 Exception—disclosure of publicly available information

Section 355-25 does not apply if the information was already available to the public (otherwise than as a result of a contravention of section 355-25, 355-155 or 355-265).

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

355-47 Exception—disclosure of periodic aggregate tax information

- (1) Section 355-25 does not apply if the information is *periodic aggregate tax information.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (2) **Periodic aggregate tax information** is information that:
- (a) specifies the total amount collected or assessed by the Commissioner during a period, or predicted by the Commissioner to be collected or assessed by the Commissioner during a period, in respect of:
 - (i) tax imposed under a particular Act or particular Acts; or
 - (ii) if an Act imposes duties of excise—a type of duty of excise imposed under that Act; or
 - (iii) if an Act imposes duties of customs—a type of duty of customs imposed under that Act; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) does not identify, nor is reasonably capable of being used to identify, an individual.

355-50 Exception—disclosure in performing duties

- (1) Section 355-25 does not apply if:
- (a) the entity is a *taxation officer; and
 - (b) the record or disclosure is made in performing the entity's duties as a taxation officer.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: An example of a duty mentioned in paragraph (b) is the duty to make available information under sections 3C, 3D and 3E.

- (2) Without limiting subsection (1), records or disclosures made in performing duties as a *taxation officer include those mentioned in the following table:

Records or disclosures in performing duties		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any entity, court or tribunal	is for the purpose of administering any *taxation law.
2	any entity, court or tribunal	is for the purpose of the making, or proposed or possible making, of an order under the <i>Proceeds of Crime Act 2002</i> that is related to a *taxation law.
3	any entity, court or tribunal	is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to a *taxation law.
4	any entity	is for the purpose of responding to a request for a statement of reasons under the <i>Administrative Decisions (Judicial Review) Act 1977</i> in relation to a decision made under a *taxation law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Records or disclosures in performing duties		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	any entity	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment; in connection with administering a *taxation law.
6	any entity	is for the purpose of enabling the entity to understand or comply with its obligations under a *taxation law.
7	the Secretary of the Department of the Treasury	(a) is of information that does not include the name, contact details or *ABN of any entity; and (b) is for the purpose of: (i) the design of a *taxation law; or (ii) the amendment of a taxation law.
8	any board or member of a board performing a function or exercising a power under a *taxation law	is for the purpose of performing that function or exercising that power.
9	a competent authority referred to in an international agreement (within the meaning of section 23 of the <i>International Tax Agreements Act 1953</i>)	is for the purpose of exchanging information under such an international agreement.

355-55 Exception—disclosure to Ministers

- (1) Section 355-25 does not apply if:
- (a) the entity is a *taxation officer; and
 - (b) an item in the table in this subsection covers the making of the record or the disclosure; and
 - (c) if the entity is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:

- (i) the Commissioner;
- (ii) a Second Commissioner;
- (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

Records or disclosures to Ministers		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any Minister	is for the purpose of enabling the Minister to exercise a power or perform a function under a [*] taxation law.
2	the Minister	(a) is about an entity; and (b) is for the purpose of enabling the Minister to respond directly to the entity in relation to a representation made by the entity to: (i) the Minister; or (ii) another member of a House of the Parliament.
3	the Minister	is for the purpose of informing decisions made under the scheme known as the Compensation for Detriment Caused by Defective Administration Scheme.
4	the [*] Finance Minister	is for the purpose of: (a) the making, or possible making, of a payment referred to in section 33 of the <i>Financial Management and Accountability Act 1997</i> (about act of grace payments) in connection with administering a [*] taxation law; or (b) the waiver, or possible waiver, of a [*] tax debt under section 34 of that Act.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Records or disclosures to Ministers

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	any Minister	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 19A of the *Acts Interpretation Act 1901* provides that the expression “the Minister”, as used in table items 2 and 3, refers to the Minister or Ministers administering the relevant provision.

- (2) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

355-60 Limits on disclosure to Ministers

- (1) Sections 355-45 and 355-55 are the only exceptions to the prohibition in section 355-25 on which an entity who has acquired *protected information as a *taxation officer can rely in making a record of the information for, or disclosing the information to, a Minister, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-25 are not affected by this subsection. For example, a taxation officer may disclose information to a Minister if the Minister is the entity to whom the information relates, or is an entity covered by subsection 355-25(2) in relation to the information.

- (2) Subsection (1) has effect despite section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of *protected information by a *taxation officer to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable taxation officers to

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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disclose protected information to a committee of one or both Houses of the Parliament.

355-65 Exception—disclosure for other government purposes

- (1) Section 355-25 does not apply if:
- (a) the entity is a ^{*}taxation officer; and
 - (b) an item in a table in this section covers the making of the record or the disclosure.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Table 1—Records or disclosures relating to social welfare, health or safety

- (2) Table 1 is as follows:

Table 1: Records or disclosures relating to social welfare, health or safety		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an Agency Head (within the meaning of the <i>Public Service Act 1999</i>) of an agency (within the meaning of that Act) dealing with matters relating to the social security law (within the meaning of subsection 23(17) of the <i>Social Security Act 1991</i>)	is for the purpose of administering that law.
2	the [*] Health Secretary	is for the purpose of administering any law of the Australian Capital Territory or of the Northern Territory which is administered by the [*] Health Minister.
3	the Repatriation Commission	is for the purpose of administering any [*] Commonwealth law relating to pensions.
4	the [*] Education Secretary or the [*] Employment Secretary	is for the purpose of administering any [*] Commonwealth law relating to pensions, allowances or benefits.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 1: Records or disclosures relating to social welfare, health or safety

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	the *Education Secretary	is for the purpose of administering any *Commonwealth law relating to financial assistance to students.
5A	(a) the *Families Secretary; or (b) the Chief Executive Officer of Centrelink	is for the purpose of administering the <i>Paid Parental Leave Act 2010</i> .
6	the *Families Secretary or the Chief Executive Centrelink (within the meaning of the <i>Human Services (Centrelink) Act 1997</i>)	is for the purpose of administering the <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> .
7	the Child Support Registrar	is for the purpose of administering the <i>Child Support (Registration and Collection) Act 1988</i> or the <i>Child Support (Assessment) Act 1989</i> .
8	the Chief Executive Medicare (within the meaning of the <i>Human Services (Medicare) Act 1973</i>)	is for the purpose of administering Part 2-2 (about premiums reduction scheme) or 6-4 (about administration of that scheme) of the <i>Private Health Insurance Act 2007</i> .
9	an *Australian government agency	is necessary for the purpose of preventing or lessening: (a) a serious threat to an individual's life, health or safety; or (b) a serious threat to public health or public safety.

Table 2—Records or disclosures relating to superannuation or finance

(3) Table 2 is as follows:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	a financial sector supervisory agency (within the meaning of section 3 of the <i>Australian Prudential Regulation Authority Act 1998</i>)	<p>(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>; and</p> <p>(b) is for the purpose of the agency performing any of its functions or exercising any of its powers.</p>
2	<p>(a) an agency having the function, in Australia or in a foreign country, of supervising or regulating *financial institutions; or</p> <p>(b) any other agency (including a foreign agency) specified in the regulations</p>	<p>(a) is of information that was obtained under or in relation to the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i>; and</p> <p>(b) is for the purpose of performing any of its functions or exercising any of its powers; and</p> <p>(c) is made in accordance with the conditions (if any) imposed by the regulations in relation to the disclosure of information under this item.</p>
3	the Superannuation Complaints Tribunal established by section 6 of the <i>Superannuation (Resolution of Complaints) Act 1993</i>	<p>(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>; and</p> <p>(b) is for the purpose of the Tribunal performing any of its functions or exercising any of its powers.</p>
4	the Australian Prudential Regulation Authority (APRA)	<p>is for the purpose of administering:</p> <p>(a) the <i>Financial Institutions Supervisory Levies Collection Act 1998</i>; or</p> <p>(b) the <i>Superannuation Industry (Supervision) Act 1993</i>.</p>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	APRA	(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; and (b) is for the purpose of APRA performing any of its functions or exercising any of its powers.
6	APRA	is for the purpose of APRA performing any of its functions or exercising any of its powers in relation to *FHSAs.
6A	the Australian Securities and Investments Commission	is for the purpose of administering Part 16 of the <i>Superannuation Industry (Supervision) Act 1993</i> .
7	an individual who is or was an employee (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	(a) is of information that relates to the Commissioner's response to a complaint by the individual about a failure by the individual's employer or former employer to comply with the employer's obligations under the <i>Superannuation Guarantee (Administration) Act 1992</i> in relation to the employee; and (b) does not relate to the general financial affairs of the employer.
8	any entity, court or tribunal	is of information that was obtained under, or for the purposes of the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i> and is for the purpose of all or any of the following: (a) identifying a particular *self managed superannuation fund; (b) enabling members of the public to contact persons who perform functions in relation to a particular self managed superannuation fund;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		<p>(c) enabling the Commissioner to provide an opinion to members of the public as to whether or not a particular self managed superannuation fund is a complying superannuation fund in relation to a particular income year for the purposes of Division 2 of Part 5 of the <i>Superannuation Industry (Supervision) Act 1993</i>;</p> <p>(d) describing activity engaged in, or proposed to be engaged in, by the Commissioner in relation to a breach or suspected breach by a person of a provision of the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i>.</p>
9	an approved clearing house (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	is for the purposes of that body performing its functions in relation to superannuation contributions.
10	<p>(a) a regulated superannuation fund (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>); or</p> <p>(b) a public sector superannuation scheme (within the meaning of that Act); or</p> <p>(c) an *approved deposit fund; or</p> <p>(d) an *RSA provider; or</p> <p>(e) an entity that, as an agent of such a fund, scheme or RSA provider, provides administration services for:</p> <p>(i) beneficiaries (within</p>	<p>is for the purpose of:</p> <p>(a) informing:</p> <p>(i) a beneficiary (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>) of such a fund or scheme; or</p> <p>(ii) a holder (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of an *RSA provided by the *RSA provider; or</p> <p>(iii) an applicant to become such a beneficiary or holder;</p> <p>of one or more of his or her</p>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
	the meaning of that Act) of the fund or scheme; or	*superannuation interests (whether with that fund, scheme or RSA provider or another fund, scheme or RSA provider); or
(ii)	holders (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of *RSAs provided by the RSA provider	(b) assisting such a beneficiary, holder or applicant to choose whether to maintain or create such a superannuation interest; or (c) assisting such a beneficiary, holder or applicant to give effect to such a choice; or (d) informing such a beneficiary, holder or applicant of an amount that is or may become payable, or that may be paid, credited or otherwise dealt with, in relation to the beneficiary, holder or applicant under: <ul style="list-style-type: none"> (i) the <i>Small Superannuation Accounts Act 1995</i>; or (ii) the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>; or (iii) the <i>Superannuation Guarantee (Administration) Act 1992</i>; or (iv) the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>; or (e) assisting such a beneficiary, holder or applicant to give effect to a choice that he or she may make, or undertake an action that he or she may undertake, in relation to an amount mentioned in paragraph (d).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 3—Records or disclosures relating to corporate regulation, business, research or policy

(4) Table 3 is as follows:

Table 3: Records or disclosures relating to corporate regulation, business, research or policy		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	the Australian Securities and Investments Commission (<i>ASIC</i>)	is for the purpose of investigation or enforcement activities relating to a provision of a law that: (a) is administered by ASIC; and (b) imposes a pecuniary penalty or creates an offence.
2	ASIC	(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; and (b) is for the purpose of ASIC performing any of its functions or exercising any of its powers.
3	ASIC	is of information relating to superannuation and is for the purpose of administering: (a) the <i>Superannuation Industry (Supervision) Act 1993</i> ; or (b) Chapter 7 of the <i>Corporations Act 2001</i> (about financial services and markets); or (c) Division 2 of Part 2 of the <i>Australian Securities and Investments Commission Act 2001</i> (about unconscionable conduct and consumer protection in relation to financial services).
4	ASIC	is for the purpose of administering Chapter 5A of the <i>Corporations Act 2001</i> (relating to deregistration, and transfer of registration, of companies).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 3: Records or disclosures relating to corporate regulation, business, research or policy

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	ASIC	is for the purpose of ASIC performing any of its functions or exercising any of its powers in relation to *FHSAs.
6	Innovation Australia established under section 6 of the <i>Industry Research and Development Act 1986</i>	is for the purpose of administering any *Commonwealth law relating to venture capital.
6A	the Secretary of the Department administered by the Minister administering the <i>Shipping Reform (Tax Incentives) Act 2012</i>	is for the purpose of administering that Act.
7	the Secretary of the Department of the Treasury	is for the purpose of: <ul style="list-style-type: none"> (a) briefing the Treasurer in relation to a decision that the Treasurer may make under the <i>Foreign Acquisitions and Takeovers Act 1975</i>; or (b) briefing the Treasurer in relation to a decision that the Treasurer may make in accordance with the document issued by the Treasurer known as Australia's Foreign Investment Policy; or (c) briefing an officer of the Department of the Treasury who is authorised by the Treasurer to make a decision mentioned in paragraph (a) or (b) in relation to the decision.
8	the Secretary of the Department of the Treasury	<ul style="list-style-type: none"> (a) is of information that does not include the name, contact details or *ABN of any entity; and (b) is for the purpose of that Department estimating or analysing taxation revenue or estimating the cost of policy proposals.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 3: Records or disclosures relating to corporate regulation, business, research or policy

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
9	the Parliamentary Budget Officer (within the meaning of the <i>Parliamentary Service Act 1999</i>)	<p>(a) is of information that does not include the name, contact details or *ABN of any entity; and</p> <p>(b) is for the purpose of the Parliamentary Budget Officer performing any of his or her functions, or exercising any of his or her powers, under Part 7 of the <i>Parliamentary Service Act 1999</i>.</p>

Table 4—Records or disclosures relating to other taxation matters

(5) Table 4 is as follows:

Table 4: Records or disclosures relating to other taxation matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	a State taxation officer, or a Territory taxation officer, within the meaning of subsection 13D(1) of this Act	is for the purpose of administering a *State law or *Territory law relating to taxation, if a State taxation officer or a Territory taxation officer is authorised by law to communicate information obtained under the State law or Territory law to the Commissioner.
2	a State taxation officer, or a Territory taxation officer, within the meaning of subsection 13D(1) of this Act	<p>is of:</p> <p>(a) information obtained under or in relation to the <i>First Home Saver Accounts Act 2008</i>; or</p> <p>(b) rental information, residential address information or spousal information;</p> <p>and is for the purpose of administering the <i>First Home Owner Grant Act 2000</i> of New South Wales, or a similar *State law or *Territory law.</p>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 4: Records or disclosures relating to other taxation matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
3	the Development Allowance Authority established by section 94 of the <i>Development Allowance Authority Act 1992</i>	is for the purpose of: (a) administering that Act; or (b) Part III of this Act (prosecutions and offences), in so far as that Part applies in relation to the <i>Development Allowance Authority Act 1992</i> .
4	an individual who holds an office of a State or Territory, being an office prescribed for the purpose of this table item	(a) is of information that relates to alcoholic beverages; and (b) is for the purpose of the individual administering an *arrangement for the rebate, refund or other payment or credit by a State or Territory in respect of alcoholic beverages.

Table 5—Records or disclosures relating to rehabilitation or compensation

(6) Table 5 is as follows:

Table 5: Records or disclosures relating to rehabilitation or compensation

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an authority of the Commonwealth established under a *Commonwealth law relating to rehabilitation or compensation	is for the purpose of performing any of its functions or exercising any of its powers under that law.
2	the *Defence Secretary	is for the purpose of administering any *Commonwealth law relating to payments in respect of dependants of members of the Defence Force.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 5: Records or disclosures relating to rehabilitation or compensation

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
3	an authority of a State or Territory that administers a *workers' compensation law	<p>(a) is of information that relates to amounts withheld under Part 2-5 in Schedule 1 to this Act (about PAYG withholding); and</p> <p>(b) is for the purpose of ensuring that employers comply with their obligations relating to insurance or the imposition of a levy under that law.</p>

Table 6—Records or disclosures relating to the environment

(7) Table 6 is as follows:

Table 6: Records or disclosures relating to the environment

Item	The record is made for or the disclosure is to...	and the record or disclosure...
1	the *Environment Secretary	is for the purpose of administering cleaner fuel grants.
2	the *Environment Secretary	is for the purpose of administering product stewardship (oil) benefits.
3	the Clean Energy Regulator	<p>is for the purpose of:</p> <p>(a) a *taxation officer seeking verification from the Regulator of information provided to the Commissioner under or for the purposes of the <i>Fuel Tax Act 2006</i>; or</p> <p>(b) administering the <i>Clean Energy Act 2011</i> or the associated provisions (within the meaning of that Act).</p>

Table 7—Records or disclosures relating to miscellaneous matters

(8) Table 7 is as follows:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 7: Records or disclosures relating to miscellaneous matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	the Australian Statistician	is for the purpose of administering the <i>Census and Statistics Act 1905</i> .
2	the Chief Executive Officer of Customs	is for the purpose of administering a law of customs (within the meaning of the <i>Customs Administration Act 1985</i>).
2A	the Electoral Commissioner (within the meaning of the <i>Commonwealth Electoral Act 1918</i>)	(a) is of information disclosed to, or obtained by, the Commissioner of Taxation on or after the commencement of this table item; and (b) is for the purpose of administering the <i>Commonwealth Electoral Act 1918</i> or the <i>Referendum (Machinery Provisions) Act 1984</i> .
3	the *Immigration Secretary	is for the purpose of assisting in locating persons who are unlawfully in Australia.
4	the *Immigration Secretary	(a) is of information that relates to a holder or former holder of a visa, or an approved sponsor (within the meaning of the <i>Migration Act 1958</i>) or former approved sponsor of a person for a visa, whose identity is disclosed to a *taxation officer under section 140ZH of that Act; and (b) is for a purpose that is relevant to: (i) the exercise of the Minister's powers under Division 3A of Part 2 of that Act or regulations made under that Division; or (ii) the exercise of the Minister's powers under Part 8D of that Act, to the extent that it relates to a contravention of a civil penalty provision in Division 3A of Part 2 of that Act; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Table 7: Records or disclosures relating to miscellaneous matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		(iii) the administration of Division 3A of Part 2 of that Act or regulations made under that Division.
5	the Fair Work Ombudsman (within the meaning of the <i>Fair Work Act 2009</i>)	(a) is of the fact of an entity's actual or reasonably suspected non-compliance with a *taxation law; and (b) is for the purpose of ensuring the entity's compliance with the <i>Fair Work Act 2009</i> .
5A	the Commissioner of the Australian Charities and Not-for-profits Commission	is for the purpose of administering the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .
6	(a) the Commissioner of the Australian Charities and Not-for-profits Commission; or (b) the Attorney-General of a State or Territory	(a) is of information that relates to non-compliance of a *ancillary fund or charity with an *Australian law; and (b) is for the purpose of the administration of an Australian law governing trusts and charities.

- (9) To avoid doubt, the exception in table item 7 in table 2 in subsection (3) has effect even if at the time the complaint referred to in that item is made it is in dispute or uncertain whether the individual is an employee or former employee of the employer.

355-70 Exception—disclosure for law enforcement and related purposes

- (1) Section 355-25 does not apply if:
- (a) the entity is the Commissioner or a *taxation officer authorised by the Commissioner to make the record or disclosure; and
 - (b) an item in the table in this subsection covers the making of the record or the disclosure; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) if the entity is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:
- (i) the Commissioner;
 - (ii) a Second Commissioner;
 - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: The Commissioner is required to include in an annual report information about disclosures made under this subsection: see section 3B.

Records or disclosures for law enforcement and related purposes		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an *authorised law enforcement agency officer, or a court or tribunal	is for the purpose of: <ul style="list-style-type: none"> (a) investigating a *serious offence; or (b) enforcing a law, the contravention of which is a serious offence; or (c) the making, or proposed or possible making, of a *proceeds of crime order.
2	an *authorised ASIO officer	is for the purpose of performing ASIO's functions under subsection 17(1) of the <i>Australian Security Intelligence Organisation Act 1979</i> .
3	a *Project Wickenby officer, or a court or tribunal	<ul style="list-style-type: none"> (a) is for or in connection with a *purpose of the Project Wickenby taskforce; and (b) is made before 1 July 2015, or a later prescribed day.
4	a *taskforce officer of a prescribed taskforce, or a court or tribunal	<ul style="list-style-type: none"> (a) is for or in connection with a purpose of the prescribed taskforce; and (b) is made within the time limit, if any, prescribed by the regulations.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Records or disclosures for law enforcement and related purposes		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	a Royal Commission in respect of which Letters Patent issued by the Governor-General declare that the Royal Commission is a Royal Commission to which this table item applies, or a member of such a Royal Commission	is for the purpose of the Royal Commission conducting its inquiry.
6	one or more of the following bodies: (a) a Royal Commission of a State or a Territory prescribed by the regulations for the purposes of this table item; (b) a commission of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item; (c) a board of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item	is for the purpose of: (a) investigating a *serious offence; or (b) enforcing a law, the contravention of which is a serious offence; or (c) the making, or proposed or possible making, of a *proceeds of crime order.

- (2A) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

Meaning of various terms

- (2) **Authorised ASIO officer** means:

- (a) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*; or
- (b) any other individual employed under paragraph 84(1)(a) or (b) of that Act who has been authorised in writing by the Director-General of Security to perform the functions of an authorised ASIO officer under this Act.

- (3) **Authorised law enforcement agency officer** means:

- (a) the head of a *law enforcement agency; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) an officer of a law enforcement agency, or a person engaged by, or otherwise performing services for, a law enforcement agency, authorised in writing by the head of the agency to perform the functions of an authorised law enforcement agency officer under this Act.

(4) ***Law enforcement agency*** means:

- (a) the Australian Federal Police; or
- (b) the police force of a State or Territory; or
- (c) the Office of the Director of Public Prosecutions established by section 5 of the *Director of Public Prosecutions Act 1983*; or
- (d) the Australian Commission for Law Enforcement Integrity; or
- (e) the Australian Crime Commission; or
- (f) the Independent Commission Against Corruption established by the *Independent Commission Against Corruption Act 1988* of New South Wales; or
- (g) the New South Wales Crime Commission; or
- (h) the Police Integrity Commission of New South Wales; or
- (i) the Independent Broad-based Anti-corruption Commission of Victoria; or
- (j) the Crime and Misconduct Commission of Queensland; or
- (k) the Corruption and Crime Commission of Western Australia; or
- (l) the Australian Securities and Investments Commission.

(5) ***Proceeds of crime order*** means:

- (a) an order, relating to an entity's commission of a *serious offence, under:
 - (i) Chapter 2 (about confiscation of property in relation to certain offences) or Division 1 of Part 3-1 (about examination orders) of the *Proceeds of Crime Act 2002*; or
 - (ii) Part II (about confiscation) or III (about control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or
 - (iii) a *State law or *Territory law corresponding to a law referred to in subparagraph (i) or (ii); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (iv) Division 3 of Part XIII (about recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*; or
 - (b) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*); or
 - (c) an order under a State law or Territory law corresponding to an order referred to in paragraph (b).
- (6) An entity is a **Project Wickenby officer** if the entity:
 - (a) holds an office in, is employed in, or is performing services for:
 - (i) a *Project Wickenby taskforce agency; or
 - (ii) a *Project Wickenby taskforce supporting agency; and
 - (b) performs duties that relate to a *purpose of the Project Wickenby taskforce.
- (7) The following agencies are **Project Wickenby taskforce agencies**:
 - (a) the Australian Taxation Office;
 - (b) the Australian Crime Commission;
 - (c) the Australian Federal Police;
 - (d) the Australian Securities and Investments Commission;
 - (e) the Office of the Director of Public Prosecutions;
 - (f) a prescribed agency.
- (8) The following agencies are **Project Wickenby taskforce supporting agencies**:
 - (a) the Attorney-General's Department;
 - (b) the Australian Transaction Reports and Analysis Centre;
 - (c) the Australian Government Solicitor;
 - (d) a prescribed agency.
- (9) The **purposes of the Project Wickenby taskforce** are to:
 - (a) detect; and
 - (b) deter; and
 - (c) investigate; and
 - (d) enforce the law relating to;
the promotion of or participation in *arrangements of an international character, or purported international character, that relate to one or more of the following:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (e) tax avoidance or evasion;
 - (f) breaches of laws regulating financial markets and corporations;
 - (g) criminal activity in the nature of fraud or obtaining benefits by deception (including deceiving investors or creditors);
 - (h) money laundering;
 - (i) concealing income or assets.
- (10) **Serious offence** means an offence against an *Australian law that is punishable by imprisonment for a period exceeding 12 months.
- (11) An entity is a **taskforce officer** of a prescribed taskforce if:
- (a) the entity holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce; and
 - (b) the entity's duties relate to a purpose of the prescribed taskforce.
- (12) The regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection (1). A major purpose of the taskforce must be protecting the public finances of Australia.
- (13) Without limiting subsection (12), regulations made for the purposes of item 4 of the table in subsection (1) may deal with the following matters:
- (a) the purposes of the taskforce;
 - (b) the agencies in the taskforce.

355-75 Limits on disclosure to courts and tribunals

An entity who is or was a *taxation officer is not to be required to disclose to a court or tribunal *protected information that was acquired by the entity as a taxation officer except where it is necessary to do so for the purpose of carrying into effect the provisions of a *taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Subdivision 355-C—On-disclosure of protected information by other people

Guide to Subdivision 355-C

355-150 What this Subdivision is about

Someone who is not a taxation officer is prohibited from disclosing protected information, except in certain specified circumstances.

Table of sections

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355-172	Exception—disclosure of periodic aggregate tax information
355-175	Exception—on-disclosure for original purpose
355-180	Exception—on-disclosure to Ministers in relation to statutory powers or functions
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355-190	Exception—on-disclosure in relation to ASIO
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Operative provisions

355-155 Offence—on-disclosure of protected information by other people

An entity commits an offence if:

- (a) the entity:
 - (i) makes a record of information; or
 - (ii) discloses information to another entity (other than the entity to whom the information relates or that entity's

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

agent in relation to the information) or to a court or tribunal; and

- (b) the information was acquired by the first-mentioned entity under an exception in this Subdivision or in Subdivision 355-B; and
- (c) the first-mentioned entity did not acquire the information as a *taxation officer.

Penalty: Imprisonment for 2 years.

Note: This section also covers information acquired by an entity (other than as a taxation officer) before the commencement of this section under certain repealed or amended provisions: see item 124 of Schedule 2 to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010*.

355-160 Consent is not a defence

It is not a defence to a prosecution for an offence against section 355-155 that the entity to whom the information relates has consented to:

- (a) the making of the record; or
- (b) the disclosure of the information.

355-165 Generality of Subdivision not limited

Except as provided in section 355-210 (about limits on disclosure to Ministers), nothing in this Subdivision limits the generality of anything else in it.

Note: This means that each provision in this Subdivision (other than section 355-210) has an independent operation and is not to be interpreted by reference to any other provision within the Subdivision.

355-170 Exception—on-disclosure of publicly available information

Section 355-155 does not apply if the information was already available to the public (otherwise than as a result of a contravention of section 355-25, 355-155 or 355-265).

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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355-172 Exception—disclosure of periodic aggregate tax information

Section 355-155 does not apply if the information is *periodic aggregate tax information.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

355-175 Exception—on-disclosure for original purpose

- (1) Section 355-155 does not apply if:
- (a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the *original purpose*); and
 - (b) the information was acquired by the entity under this section or an exception in Subdivision 355-B; and
 - (c) the record or disclosure is made by the entity for the original purpose, or in connection with the original purpose.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Instances of disclosures in connection with the original purpose

- (2) Without limiting subsection (1), a record or disclosure is made by the entity in connection with the original purpose if:
- (a) the record is made for, or the disclosure is to, any entity, court or tribunal; and
 - (b) the record or disclosure is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to the original purpose.

Multiple purposes

- (3) Subsection (1) has effect as if a record or disclosure made by the entity for a purpose specified in column 3 of the following table were made in connection with the original purpose:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Records or disclosures for purpose connected with the original purpose		
Item	Original purpose	Purpose connected with the original purpose
1	a *purpose of the Project Wickenby taskforce	another purpose of that taskforce.
2	a purpose of a prescribed taskforce	another purpose of that taskforce.
3	one of the purposes specified in column 3 of item 1 of the table in subsection 355-70(1)	the other of those purposes.
4	one of the purposes specified in column 3 of item 6 of the table in subsection 355-70(1)	one of the other purposes specified in column 3 of item 6 of that table.

355-180 Exception—on-disclosure to Ministers in relation to statutory powers or functions

Section 355-155 does not apply if:

- (a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the *original purpose*); and
- (b) the record is made for, or the disclosure is to, a Minister who has a statutory power or function in relation to the original purpose; and
- (c) the record or disclosure is for the purpose of enabling the Minister to:
 - (i) decide whether to exercise the power or perform the function; or
 - (ii) exercise the power or perform the function.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

355-185 Exception—on-disclosure in relation to IGIS

- (1) Section 355-155 does not apply if:
 - (a) the entity is an *authorised ASIO officer; and
 - (b) the record is made for, or the disclosure is to, the Inspector-General of Intelligence and Security holding office under the *Inspector-General of Intelligence and Security Act*

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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1986 or a member of staff appointed to assist the Inspector-General under that Act; and

- (c) the record or disclosure is for the purpose of performing the Inspector-General's, or the member of staff's, duties in relation to ASIO or officers or employees of ASIO.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (2) Section 355-155 does not apply if:

- (a) the entity is the Inspector-General of Intelligence and Security holding office under the *Inspector-General of Intelligence and Security Act 1986* or a member of staff appointed to assist the Inspector-General under that Act; and
- (b) the information was acquired by the entity under subsection (1) or this paragraph; and
- (c) the record or disclosure is for the purpose of performing the Inspector-General's, or the officer's, duties in relation to ASIO or officers or employees of ASIO.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

355-190 Exception—on-disclosure in relation to ASIO

- (1) Section 355-155 does not apply if:

- (a) the entity is an *authorised ASIO officer; and
- (b) the record is made for, or the disclosure is to, an officer of a *law enforcement agency; and
- (c) the record or disclosure is for the purpose of, or in connection with:
 - (i) investigating a *serious offence; or
 - (ii) enforcing a law, the contravention of which is a serious offence; or
 - (iii) the making, or proposed or possible making, of a *proceeds of crime order.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (2) Section 355-155 does not apply if:

- (a) the entity is an officer of a *law enforcement agency; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the information was acquired by the entity under subsection (1) or this paragraph; and
- (c) the record or disclosure is for the purpose of, or in connection with:
 - (i) investigating a *serious offence; or
 - (ii) enforcing a law, the contravention of which is a serious offence; or
 - (iii) the making, or proposed or possible making, of a *proceeds of crime order.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

355-195 Exception—on-disclosure by Royal Commissions

- (1) Section 355-155 does not apply if:
 - (a) the entity is a member of a Royal Commission to which column 2 of item 5 of the table in subsection 355-70(1) relates; and
 - (b) the information was acquired by the entity under item 5 of the table in subsection 355-70(1); and
 - (c) the record or disclosure is in accordance with section 6P of the *Royal Commissions Act 1902*.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 6P of the *Royal Commissions Act 1902* sets out the circumstances in which a Royal Commission covered by that Act may disclose information it acquires in the course of its inquiry.

- (2) Section 355-155 does not apply to particular information if the information was disclosed under subsection (1).

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

355-200 Exception—records made in compliance with Australian laws

Section 355-155 does not apply if the record is made in compliance with a requirement of an *Australian law.

Example: The Australian Taxation Office obtains information about an entity from a credit reporting body by giving a notice under section 264 of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the *Income Tax Assessment Act 1936*. The body is not committing an offence under section 355-155 by making a written note of the disclosure as required by subsection 20E(5) of the *Privacy Act 1988*.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

355-205 Limits on on-disclosure to courts or tribunals

An entity is not to be required to disclose to a court or tribunal *protected information that was acquired by the entity under Subdivision 355-B or this Subdivision, except where it is necessary to do so for the purpose of carrying into effect the provisions of a *taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

355-210 Limits on on-disclosure to Ministers

- (1) Sections 355-170, 355-180 and 355-195 are the only exceptions to the prohibition in section 355-155 on which an entity who has acquired *protected information (otherwise than as a *taxation officer) can rely in making a record of the information for, or disclosing the information to, a Minister, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-155 are not affected by this subsection. For example, an entity may disclose information to a Minister if the Minister is the entity to whom the information relates, or is another entity's agent in relation to the information.

- (2) Subsection (1) has effect despite section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of *protected information by the entity to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable an entity to disclose protected information to a committee of one or both Houses of the Parliament.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 355-D—Disclosure of protected information that has been unlawfully acquired**Guide to Subdivision 355-D****355-260 What this Subdivision is about**

The disclosure of protected tax information that has been unlawfully acquired is prohibited.

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| 355-265 | Offence—disclosure of protected information acquired in breach of a taxation law |
| 355-270 | Exception—disclosure of publicly available information |
| 355-275 | Exception—disclosure in relation to a taxation law |
| 355-280 | Limits on disclosure to courts and tribunals |

Operative provisions**355-265 Offence—disclosure of protected information acquired in breach of a taxation law**

An entity commits an offence if:

- (a) the entity:
 - (i) makes a record of information; or
 - (ii) discloses information to another entity (other than the entity to whom the information relates or that entity's agent in relation to the information) or to a court or tribunal; and
- (b) the information is *protected information; and
- (c) the information was acquired by the entity in breach of a provision of a *taxation law (including this provision); and
- (d) the information was not acquired by the entity as a *taxation officer.

Penalty: Imprisonment for 2 years.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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355-270 Exception—disclosure of publicly available information

Section 355-265 does not apply if the information was already available to the public (otherwise than as a result of a contravention of that section, or section 355-25 or 355-155).

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

355-275 Exception—disclosure in relation to a taxation law

Section 355-265 does not apply:

- (a) to the extent that the entity's actions are required or permitted by a *taxation law or reasonably necessary in order to comply with an obligation imposed by a taxation law; or
- (b) if the record was made for or the information was disclosed:
 - (i) to a *taxation officer; and
 - (ii) for a purpose connected with administering a *taxation law.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

355-280 Limits on disclosure to courts and tribunals

An entity is not to be required to disclose to a court or tribunal *protected information that was acquired by the entity under this Subdivision, except where it is necessary to do so for the purpose of carrying into effect the provisions of a *taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 355-E—Other matters**Guide to Subdivision 355-E****355-320 What this Subdivision is about**

The Commissioner may require a taxation officer to make an oath of affirmation to protect information.

The Federal Court has power to grant an injunction restraining an entity from engaging in conduct that would constitute an offence against this Division.

The Commissioner must issue instructions relating to the disclosure of protected tax information.

Table of sections**Operative provisions**

- 355-325 Oath or affirmation to protect information
- 355-330 Injunctions to prevent contravention of non-disclosure provisions
- 355-335 Procedures for disclosing protected information

Operative provisions**355-325 Oath or affirmation to protect information**

- (1) A *taxation officer must, if and when required by the Commissioner to do so, make an oath or affirmation to protect information in accordance with this Division.
- (2) The Commissioner may determine, in writing:
 - (a) the form of the oath or affirmation; and
 - (b) the manner in which the oath or affirmation must be made.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 355-330

355-330 Injunctions to prevent contravention of non-disclosure provisions

Injunctions

- (1) If an entity has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence against this Division, the Federal Court of Australia may, on the application of the Commissioner, grant an injunction:
 - (a) restraining the entity from engaging in the conduct; and
 - (b) if in the court's opinion it is desirable to do so—requiring the entity to do any act or thing.

Interim injunctions

- (2) If an application is made to the court for an injunction under subsection (1), the court may, before considering the application, grant an interim injunction restraining an entity from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

Discharge or variation of injunctions

- (3) The court may discharge or vary an injunction granted under this section.

Exercise of power to grant injunctions

- (4) If an application is made to the court for the grant of an injunction restraining an entity from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised:
 - (a) if the court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any other entity if the entity engages in conduct of that kind.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (5) The power of the court to grant an injunction requiring an entity to do a particular act or thing may be exercised:
- (a) if the court is satisfied that the entity has refused or failed to do that act or thing—whether or not it appears to the court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the entity will refuse or fail to do that act or thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any other entity if the entity refuses or fails to do that act or thing.

No undertakings as to damages

- (6) If the Commissioner makes an application to the court for the grant of an injunction under this section, the court must not require the Commissioner or any other entity, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

Other powers of the court unaffected

- (7) The powers conferred on the court under this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise.

355-335 Procedures for disclosing protected information

- (1) The Commissioner must issue instructions in relation to the procedures to be followed by ^{*}taxation officers in disclosing ^{*}protected information under the exceptions in sections 355-55 (about disclosures to Ministers), 355-65 (about disclosures for other government purposes) and 355-70 (about disclosures for law enforcement and related purposes).
- (2) The instructions must:
- (a) be issued within 6 months after the commencement of this section; and
 - (b) be in writing; and
 - (c) provide for the matters mentioned in subsection (3); and
 - (d) be published on the Australian Taxation Office website.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (3) The matters are:
 - (a) the processes to be followed before *protected information can be disclosed by a *taxation officer under the exceptions in sections 355-55, 355-65 and 355-70; and
 - (b) the processes involved in obtaining and giving the agreement mentioned in paragraphs 355-55(1)(c) and 355-70(1)(c); and
 - (c) other matters the Commissioner considers appropriate.
- (4) Without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Commissioner may vary or revoke the instructions.
- (5) A failure to comply with the time limit in paragraph (2)(a) does not:
 - (a) prevent the Commissioner from issuing the instructions after this time; or
 - (b) affect the validity of the instructions when issued.
- (6) A failure to comply with the instructions does not, of itself, mean that a *taxation officer is not entitled to rely on the exceptions in sections 355-55, 355-65 and 355-70.
- (7) The instructions are not a legislative instrument.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 356—General administration of tax laws

Table of Subdivisions

Guide to Division 356

356-A Indirect tax laws

Guide to Division 356

356-1 What this Division is about

<p>This Division gives the Commissioner the general administration of the indirect tax laws.</p>
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Subdivision 356-A—Indirect tax laws

Table of sections

356-5 Commissioner has general administration of indirect tax laws

356-5 Commissioner has general administration of indirect tax laws

The Commissioner has the general administration of each *indirect tax law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 5-5—Rulings

Division 357—Object and common rules

Table of Subdivisions

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357-A	Object of this Part
357-B	Common rules for rulings

Guide to Division 357

357-1 What this Division is about

This Division sets out the object of this Part, and common rules that apply to public, private and oral rulings. (For the rules specific to each of those kinds of ruling, see Divisions 358, 359 and 360.)

A ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you.

A ruling binds the Commissioner if it applies to you and you act in accordance with it. If you do act in accordance with it and the law turns out to be less favourable to you than the ruling provides, you are protected by the ruling from any adverse consequences.

The Division also sets out some other general rules for rulings.

Subdivision 357-A—Object of this Part

Table of sections

357-5	Object of this Part
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357-5 Object of this Part

- (1) The object of this Part is to provide a way for you to find out the Commissioner's view about how certain laws administered by the Commissioner apply to you so that the risks to you of uncertainty

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

when you are self assessing or working out your tax obligations or entitlements are reduced.

- (2) This object is achieved by:
- (a) making advice in the form of rulings by the Commissioner available on a wide range of matters and to many taxpayers; and
 - (b) ensuring that the Commissioner provides rulings in a timely manner; and
 - (c) enabling the Commissioner to obtain, and make rulings based on, relevant information; and
 - (d) protecting you from increases in tax and from penalties and interest where you rely on rulings; and
 - (e) protecting you from decreases in entitlements where you rely on rulings; and
 - (f) limiting the ways the Commissioner can alter rulings to your detriment; and
 - (g) giving you protection from interest charges where you rely on other advice from the Commissioner, or on the Commissioner's general administrative practice.

Subdivision 357-B—Common rules for rulings

Table of sections

Rules for all rulings

357-50	Scope of Division
357-55	The provisions that are relevant for rulings
357-60	When rulings are binding on the Commissioner
357-65	Stopping relying on a ruling
357-70	Commissioner may apply the law if more favourable than the ruling
357-75	Inconsistent rulings
357-80	Contracts for schemes
357-85	Effect on ruling if relevant provision re-enacted
357-90	Validity of ruling not affected by formal defect

Common rules for public and private rulings

357-95	Electronic communications
357-100	Evidence

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 357-50

Common rules for private and oral rulings

- 357-105 Further information must be sought
- 357-110 Assumptions in making private or oral ruling
- 357-115 Additional information provided by applicant
- 357-120 Commissioner may take into account information from third parties
- 357-125 Applications and objections not to affect obligations and powers

Rules for all rulings

357-50 Scope of Division

This Division applies to *public rulings, *private rulings and *oral rulings.

357-55 The provisions that are relevant for rulings

Provisions of Acts and regulations of which the Commissioner has the general administration are relevant for rulings if the provisions are about any of the following:

- (a) *tax;
- (b) *Medicare levy;
- (c) fringe benefits tax;
- (d) *franking tax;
- (e) *withholding tax;
- (f) *mining withholding tax;
- (faa) *MRRT;
- (fa) *petroleum resource rent tax;
- (fb) *indirect tax;
- (fc) *excise duty;
- (g) the administration or collection of those taxes, levies and duties;
- (h) a grant or benefit mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000*, or the administration or payment of such a grant or benefit;
- (i) a *net fuel amount, or the administration of a net fuel amount;
- (ia) an *assessed net fuel amount, or the collection or payment of an assessed net fuel amount;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (j) a *net amount, or the administration of a net amount;
- (ja) an *assessed net amount, or the collection or payment of an assessed net amount;
- (k) a *wine tax credit, or the administration or payment of a wine tax credit.

357-60 When rulings are binding on the Commissioner

- (1) Subject to subsection (5), a ruling binds the Commissioner in relation to you (whether or not you are aware of the ruling) if:
 - (a) the ruling applies to you; and
 - (b) you rely on the ruling by acting (or omitting to act) in accordance with the ruling.

Example 1: A public ruling is expressed to apply to a class of entities in relation to a particular scheme. Tim is a member of that class of entities and he is one of a number of taxpayers who enter into that scheme. The ruling applies to Tim.

Tim relies on the ruling by lodging an income tax return that is in accordance with the ruling.

Under the ruling, Tim's deductions in relation to the scheme are worked out to be a particular amount. Because Tim has relied on the ruling, the Commissioner must use that amount in making Tim's assessment (unless Tim stops relying on the ruling or the law is more favourable to him: see sections 357-65 and 357-70).

Example 2: Cecelia applies for, and obtains, a private ruling that, when she makes a payment in specified circumstances, she would not have to withhold an amount under a relevant provision. Cecelia makes the payment in the circumstances specified in the ruling, so the ruling applies to her.

Cecelia relies on the ruling by not withholding an amount from the payment. The Commissioner must not apply the provision in relation to Cecelia in a way that is inconsistent with the ruling (unless Cecelia stops relying on the ruling or the law is more favourable to her: see sections 357-65 and 357-70).

Example 3: Cathie obtains a private ruling that a type of supply she makes is GST-free. She relies on the ruling by:

- (a) giving her customers invoices that show no GST payable on the supplies; and
- (b) lodging her GST return on the basis that the supplies are GST-free.

The Commissioner must administer the GST law in relation to Cathie on the basis that the supplies to which the ruling relates are GST-free. This does not apply if Cathie stops relying on the ruling, such as by

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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issuing tax invoices that show GST payable on the supplies: see paragraph (1)(b).

Note 1: A ruling about the amount of tax payable that binds the Commissioner provides protection in relation to that amount. There is no shortfall interest charge or tax shortfall penalty payable in respect of that amount as there can be no shortfall in tax payable.

Note 2: A ruling about the operation of a provision would stop applying to you if the provision is repealed, or is amended to have a different effect. However, if the provision is re-enacted and expresses the same ideas as the old provision, the ruling would still apply: see section 357-85.

- (2) You may rely on the ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law. It is not necessary to do so at the first opportunity.

GST rulings

- (3) The *GST payable on a *supply or importation is the amount worked out in accordance with a ruling (if any) that:
- (a) relates to the GST payable on the supply or importation; and
 - (b) binds the Commissioner in relation to the supplier or importer.

Note: The ruling will stop affecting the GST payable if the supplier or importer stops relying on the ruling: see paragraph (1)(b).

- (4) Subsection (3) does not apply for the purposes of an objection to the ruling under section 359-60.

Indirect tax rulings

- (5) An *indirect tax or excise ruling (except to the extent that the ruling relates to an *excise law) binds the Commissioner in relation to:
- (a) an entity (the **representative entity**) that is:
 - (i) the *representative member of a *GST group; or
 - (ii) the *joint venture operator of a *GST joint venture; or
 - (iii) the *representative of an *incapacitated entity; and
 - (b) an entity (the **member entity**) that is:
 - (i) a *member of the GST group; or
 - (ii) a *participant in the GST joint venture; or
 - (iii) the incapacitated entity;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 357-65

if, and only if, both the representative entity and the member entity rely on the ruling by acting (or omitting to act) in accordance with the ruling.

- (6) Subsection (5) applies if:
- (a) the ruling applies to the member entity; and
 - (b) the ruling relates to what would be:
 - (i) a liability of the member entity to *indirect tax; or
 - (ii) an entitlement of the member entity to a credit (other than a *fuel tax credit) under an *indirect tax law; or
 - (iii) an *increasing adjustment, a *decreasing adjustment, or a luxury car tax adjustment (within the meaning of the *Luxury Car Tax Act), that the member entity has;if the rules in the indirect tax law relating to *GST groups, *GST joint ventures or *incapacitated entities did not apply; and
 - (c) because of those rules:
 - (i) if that indirect tax were payable, it would be payable by the representative entity; or
 - (ii) if there was an entitlement to that credit, it would be an entitlement of the representative entity; or
 - (iii) if any entity had that adjustment, it would be an adjustment that the representative entity had.

357-65 Stopping relying on a ruling

- (1) You can stop relying on a ruling. You do this by acting (or omitting to act) in a way that is not in accordance with the ruling.

Note: There is no penalty for a shortfall resulting from failing to follow a ruling. However, there are penalties for shortfalls resulting from failing to take reasonable care, and from taking a position about a large income tax item that is not reasonably arguable: see Division 284.

- (2) You may stop relying on a ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law.
- (3) Having stopped relying on a ruling, you may rely on the ruling again unless prevented from doing so by a time limit imposed by a *taxation law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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357-70 Commissioner may apply the law if more favourable than the ruling

- (1) The Commissioner may apply a relevant provision to you in the way it would apply if you had not relied on a ruling if:
 - (a) doing so would produce a more favourable result for you; and
 - (b) the Commissioner is not prevented from doing so by a time limit imposed by a *taxation law.
- (2) The Commissioner does not have a duty to consider whether to apply subsection (1) to you, whether he or she is requested to do so by you or by any other entity.

357-75 Inconsistent rulings

- (1) The rules in this table have effect if:
 - (a) a ruling and a later ruling both apply to you; and
 - (b) the 2 rulings are inconsistent.However, the rules in the table only apply to the extent of the inconsistency, and do not apply to *indirect tax or excise rulings.

Inconsistent rulings (other than indirect tax or excise rulings)			
Item	If the earlier ruling is:	And the later inconsistent ruling is:	The result is:
1	A *public ruling	Any ruling	You may rely on either ruling.
2	A *private ruling or an *oral ruling	A private ruling or an oral ruling	If you informed the Commissioner about the existence of the earlier ruling when you applied for the later ruling, the earlier ruling is taken not to have been made. Otherwise, the later ruling is taken not to have been made.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Inconsistent rulings (other than indirect tax or excise rulings)			
Item	If the earlier ruling is:	And the later inconsistent ruling is:	The result is:
3	A *private ruling or an *oral ruling	A *public ruling	<p>The earlier ruling is taken not to have been made if, when the later ruling is made:</p> <p>(a) the income year or other period to which the rulings relate has not begun; and</p> <p>(b) the *scheme to which the rulings relate has not begun to be carried out.</p> <p>Otherwise, you may rely on either ruling.</p>

(1A) If:

(a) 2 inconsistent *indirect tax or excise rulings apply to you; and

(b) the rulings are both *public rulings;

then, to the extent of the inconsistency, you may rely on either of the rulings.

(1B) If:

(a) 2 inconsistent *indirect tax or excise rulings apply to you; and

(b) at least one of the rulings is not a *public ruling;

then, to the extent of the inconsistency:

(c) the later ruling is taken to apply from the later of:

(i) the time it is made; and

(ii) the time (if any) specified in the ruling as being the time from which it begins to apply; and

(d) the earlier ruling is taken to cease to apply at that later time.

(2) If 3 or more rulings apply to you and the rulings are inconsistent, apply the rules in this section to each combination of 2 rulings in the order in which they were made.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 357-80

357-80 Contracts for schemes

For the purposes of this Part, if a contract requiring a *scheme has been entered into, the scheme is taken to have begun to be carried out.

357-85 Effect on ruling if relevant provision re-enacted

If:

- (a) the Commissioner makes a ruling about a relevant provision (the *old provision*); and
- (b) that provision is re-enacted or remade (with or without modifications, and whether or not the old provision is repealed);

the ruling is taken also to be a ruling about that provision as re-enacted or remade (the *new provision*), but only so far as the new provision expresses the same ideas as the old provision.

Note 1: Section 357-55 specifies the relevant provisions.

Note 2: Ideas in taxation provisions are not necessarily different just because different forms of words are used: see section 15AC of the *Acts Interpretation Act 1901* and section 1-3 of the *Income Tax Assessment Act 1997*.

357-90 Validity of ruling not affected by formal defect

The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with.

Common rules for public and private rulings

357-95 Electronic communications

A communication between the Commissioner and another entity made for the purposes of a *public ruling or *private ruling may be made electronically.

357-100 Evidence

The production of:

- (a) a *public ruling or *private ruling; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) a document signed by the Commissioner, a *Second Commissioner or a *Deputy Commissioner, purporting to be a copy of the ruling or of a notice of withdrawal of a public ruling;

is conclusive evidence of the proper making of the ruling, or of the withdrawal of the public ruling.

Common rules for private and oral rulings

357-105 Further information must be sought

- (1) If the Commissioner considers that further information is required to make a *private ruling or an *oral ruling, the Commissioner must request the applicant to give that information to him or her.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner requests further information under this section, that period is extended: see subsection 359-50(2).

- (2) The Commissioner may decline to make the ruling if the applicant does not give the information to the Commissioner within a reasonable time.

Note: The Commissioner must give the applicant written reasons for declining to make a private ruling: see section 359-35.

357-110 Assumptions in making private or oral ruling

- (1) If the Commissioner considers that the correctness of a *private ruling or an *oral ruling would depend on which assumptions were made about a future event or other matter, the Commissioner may:
- (a) decline to make the ruling; or
 - (b) make such of the assumptions as the Commissioner considers to be most appropriate.
- (2) Before making the ruling, the Commissioner must:
- (a) tell the applicant which assumptions (if any) the Commissioner proposes to make; and
 - (b) give the applicant a reasonable opportunity to respond.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner tells the applicant about assumptions the Commissioner proposes to make under this section, that period is extended: see subsection 359-50(2).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 357-115

357-115 Additional information provided by applicant

In considering an application for a *private ruling or an *oral ruling, the Commissioner may take into account additional information provided by the applicant after the application was made (whether in response to a request under section 357-105 or otherwise).

357-120 Commissioner may take into account information from third parties

In making a *private ruling or an *oral ruling, the Commissioner may take into account any relevant information provided by an entity other than the applicant (whenever it was provided) if the Commissioner:

- (a) tells the applicant what that information is and that the Commissioner intends to take the information into account; and
- (b) gives the applicant a reasonable opportunity to respond before making the ruling.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner tells the applicant about third party information under this section, that period is extended: see subsection 359-50(2).

357-125 Applications and objections not to affect obligations and powers

The fact that you have applied for a *private ruling or an *oral ruling, or have made an objection against a private ruling, does not affect:

- (a) your obligation to lodge a return or do anything else; or
- (b) the Commissioner's power to make or amend an assessment or do anything else.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 358—Public rulings

Guide to Division 358

358-1 What this Division is about

A public ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to entities generally or a class of entities.

The Commissioner must publish the ruling.

A public ruling may be withdrawn.

Note: Division 357 has some rules that relate to rulings generally.

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Making public rulings

- 358-5 What is a public ruling?
- 358-10 Application of public rulings
- 358-15 When a public ruling ceases to apply

Withdrawing public rulings

- 358-20 Withdrawing public rulings

Making public rulings

358-5 What is a public ruling?

- (1) The Commissioner may make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to:
 - (a) entities generally or a class of entities; or
 - (b) entities generally, or a class of entities, in relation to a class of *schemes; or
 - (c) entities generally, or a class of entities, in relation to a particular scheme.

Note: Section 357-55 specifies the relevant provisions.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 358-10

- (2) Such a ruling may cover any matter involved in the application of the provision.
- (3) Such a ruling is a **public ruling** if it:
 - (a) is published; and
 - (b) states that it is a public ruling.
- (4) The Commissioner must publish notice of the making of a *public ruling in the *Gazette*.

Note: The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with: see section 357-90.

358-10 Application of public rulings

- (1) A *public ruling applies from the time it is published or from such earlier or later time as is specified in the ruling.
- (2) A *public ruling, other than an *indirect tax or excise ruling, that relates to a *scheme does not apply to you if the scheme has begun to be carried out when the ruling is published and:
 - (a) the ruling changes the Commissioner's general administrative practice; and
 - (b) the ruling is less favourable to you than the practice.

358-15 When a public ruling ceases to apply

- (1) A *public ruling may specify the time at which it ceases to apply.
- (2) If a *public ruling does not do this, it applies until it is withdrawn.

Withdrawing public rulings

358-20 Withdrawing public rulings

- (1) The Commissioner may withdraw a *public ruling, either wholly or to an extent, by publishing notice of the withdrawal.
- (2) The withdrawal takes effect from the time specified in the notice. That time must not be before the time the notice is published.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 358-20

- (3) To the extent that a *public ruling, other than an *indirect tax or excise ruling, is withdrawn, it continues to apply to *schemes to which it applied that had begun to be carried out before the withdrawal but does not apply to schemes that begin to be carried out after the withdrawal.

Note: A scheme is taken to have begun to be carried out if a contract requiring the scheme has been entered into: see section 357-80.

- (4) The Commissioner must publish notice of the withdrawal of a *public ruling in the *Gazette*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 359-1

Division 359—Private rulings

Guide to Division 359

359-1 What this Division is about

A private ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you in relation to a specified scheme. Private rulings are usually made on application by you, your agent or your legal personal representative.

The Commissioner must make the ruling applied for, except in certain cases. If you are entitled to receive a ruling, you can object if the Commissioner takes too long to make it.

The Commissioner must record the ruling in writing and give a copy of it to you. The ruling must include certain details.

If you are dissatisfied with the ruling, you may object to it.

Note: Division 357 has some common rules that affect private rulings.

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359-65	Commissioner may consider new information on objection
359-70	Successful objection decision alters ruling

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Private rulings

359-5 Private rulings

- (1) The Commissioner may, on application, make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to you in relation to a specified *scheme. Such a ruling is called a ***private ruling***.

Note: Section 357-55 specifies the relevant provisions.

- (2) A *private ruling may cover any matter involved in the application of the provision.

359-10 Applying for a private ruling

- (1) You, your *agent or your *legal personal representative may apply to the Commissioner for a *private ruling.
- (2) An application for a *private ruling must be made in the *approved form.
- (3) You, your *agent or your *legal personal representative may withdraw the application at any time before the ruling is made. The Commissioner must confirm the withdrawal in writing.

359-15 Private rulings to be given to applicants

The Commissioner makes a *private ruling by recording the ruling in writing and giving a copy of it to the applicant. The copy may be given electronically.

359-20 Private rulings must contain certain details

- (1) A *private ruling must state that it is a private ruling.
- (2) A *private ruling must identify the entity to whom it applies and specify the relevant *scheme and the relevant provision to which it relates.

Note 1: The Commissioner must tell the applicant which assumptions the Commissioner made in making the ruling: see section 357-110.

Note 2: Section 357-55 specifies the relevant provisions.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 359-25

359-25 Time of application of private rulings

- (1) A *private ruling may specify the time from which it begins to apply and the time at which it ceases to apply.
- (2) The specified start time, or end time, may be before, when, or after the *private ruling is made and may be determined by reference to a specified event.
- (3) A *private ruling that does not specify a start time applies from the time when it is made.
- (4) A *private ruling, other than an *indirect tax or excise ruling, that does not specify an end time ceases to apply at the end of the income year or other accounting period in which it started to apply.

Note: A private ruling that:

- (a) is an indirect tax or excise ruling; and
 - (b) does not specify an end time;
- continues to apply until it is overridden by a later indirect tax or excise ruling: see subsection 357-75(1B).

359-30 Ruling for trustee of a trust

A *private ruling given to or for the trustee of a trust and relating to the affairs of the trust also applies to:

- (a) if the ruling is not an *indirect tax or excise ruling—the beneficiaries of the trust; and
- (b) in any case—another trustee who is appointed to replace a trustee.

359-35 Dealing with applications

- (1) The Commissioner must comply with an application for a *private ruling and make the ruling. However, this obligation is subject to subsections (2) and (3).
- (2) The Commissioner may decline to make a *private ruling if:
 - (a) the Commissioner considers that making the ruling would prejudice or unduly restrict the administration of a *taxation law; or
 - (b) the matter sought to be ruled on is already being, or has been, considered by the Commissioner for you.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) The Commissioner may also decline to make a *private ruling if the matter sought to be ruled on is how the Commissioner would exercise a power under a relevant provision and the Commissioner has decided or decides whether or not to exercise the power.

Example: Michael applies for a private ruling on the way in which the Commissioner might exercise the Commissioner's discretion under section 255-10 (deferring the payment time). Rather than make the ruling, the Commissioner decides to defer the time at which an amount would otherwise be payable by Michael.

Note: The Commissioner may also decline to make a private ruling if:

- (a) the Commissioner has requested the applicant to give further information under section 357-105 and the applicant has not given it to the Commissioner within a reasonable time; or
- (b) the Commissioner considers that the correctness of a private ruling would depend on which assumptions were made about a future event or other matter (see section 357-110).

- (4) The Commissioner must give the applicant written reasons for declining to make a *private ruling.

359-40 Valuations

- (1) If making a *private ruling would require determining the value of any thing, the Commissioner may:
- (a) refer the valuation to a valuer; or
 - (b) refer a valuation provided by the applicant to a valuer for review.

Note: The Commissioner may request further information: see section 357-105.

- (2) If the Commissioner refers the valuation to a valuer, the Commissioner must tell the applicant that he or she has done so.
- (3) When the valuer has completed its work in relation to the valuation, the Commissioner must tell the applicant that it has done so.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner refers a valuation to a valuer under this section, that period is extended: see subsection 359-50(2).

- (4) The Commissioner may charge the applicant an amount in accordance with the regulations for the valuer making or reviewing the valuation.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 359-45

- (5) This section does not apply to a valuation of a gift or contribution for the purposes of Division 30 of the *Income Tax Assessment Act 1997*.

359-45 Related rulings

If the Commissioner is making a *private ruling (the ***first ruling***) you sought on the way in which, in the Commissioner's opinion, a relevant provision applies or would apply to you, the Commissioner may:

- (a) make the first ruling a ruling on the way in which another relevant provision applies or would apply to you; or
- (b) make an additional private ruling on the way in which:
 - (i) another relevant provision applies or would apply; or
 - (ii) a relevant provision applies or would apply to you in relation to a *scheme related to the scheme to which the first ruling applies.

Note: Section 357-55 specifies the relevant provisions.

359-50 Delays in making private rulings

- (1) The applicant for a *private ruling may give the Commissioner a written notice requiring him or her to make the ruling if, at the end of 60 days after the application was made, the Commissioner has neither:
 - (a) made the ruling; nor
 - (b) told the applicant that the Commissioner has declined to make the ruling.
- (2) The 60 day period mentioned in subsection (1) is extended in a circumstance applicable under the table by the extension period applicable to that circumstance. If 2 or more circumstances are applicable, ignore any overlap between the periods of extension.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 359-55

Extending the 60 day period

Item	If the Commissioner, during the 60 day period:	The 60 day period is extended by the number of days in this period:
1	requests further information under section 357-105	the period starting on the day the information was requested and ending on the day it is received by the Commissioner
2	tells the applicant about assumptions the Commissioner proposes to make under section 357-110	the period starting on the day the Commissioner tells the applicant and ending on the day on which the Commissioner receives the applicant's response about the assumptions
3	tells the applicant about information provided by a third party that the Commissioner proposes to take into account under section 357-120	the period starting on the day the Commissioner tells the applicant and ending on the day on which the Commissioner receives the applicant's response about the information
4	refers a valuation to a valuer under section 359-40	the period starting on the day the Commissioner tells the applicant about the referral and ending on the day on which the Commissioner tells the applicant that the valuer has completed its work in relation to the valuation

- (3) The applicant may object, in the manner set out in Part IVC, against the Commissioner's failure to make the ruling if the Commissioner:
- (a) does not make the ruling within 30 days of the notice under subsection (1) being given; and
 - (b) has not otherwise declined to make the ruling by the end of that period.
- (4) The applicant must lodge with the objection a draft *private ruling.

359-55 Revised private rulings

- (1) The Commissioner may make a revised *private ruling that applies to you if:
- (a) the Commissioner had previously made a private ruling that applies to you; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) if the ruling is not an *indirect tax or excise ruling—when the Commissioner makes the revised private ruling:
 - (i) the *scheme to which the earlier ruling relates has not begun to be carried out; and
 - (ii) if the earlier ruling relates to an income year or other accounting period—that year or period has not begun.

Note: Your private ruling may be affected by a later inconsistent ruling: see section 357-75.

- (2) The Commissioner must give you a copy of the revised *private ruling. The copy may be given electronically.
- (3) The Commissioner may make the revised *private ruling whether or not there is an application for the revised ruling.
- (4) When the revised *private ruling is made, the ruling in its initial form stops applying to you.
- (5) However, if:
 - (a) the *private ruling is an *indirect tax or excise ruling; and
 - (b) the revised private ruling specifies the time from which the revision begins to apply (being a time after the time the revision is made);the ruling in its initial form stops applying to you at the time so specified.

359-60 Objections, reviews and appeals relating to private rulings

- (1) You may object against a *private ruling that applies to you in the manner set out in Part IVC if you are dissatisfied with it.
- (2) The ruling is taken to be a taxation decision (within the meaning of that Part).
- (3) However, you cannot object against a *private ruling if:
 - (a) there is an assessment for you for the income year or other accounting period to which the ruling relates; or
 - (b) the ruling relates to *withholding tax or *mining withholding tax that has become due and payable; or
 - (c) all of the following subparagraphs apply:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) the ruling relates to *excise duty, or another amount, payable in relation to the goods under an *excise law;
- (ii) the Commissioner has made a decision about the excise duty, or other amount, payable in relation to those goods;
- (iii) the decision is reviewable under an excise law.

359-65 Commissioner may consider new information on objection

- (1) In deciding whether to allow (wholly or in part), or to disallow, an objection under Part IVC against a *private ruling, the Commissioner may consider any additional information that the Commissioner did not consider when making the ruling.
- (2) For information you do not have, the Commissioner must tell you what the information is and give you a reasonable opportunity to respond before allowing or disallowing the objection.
- (3) However, if the Commissioner considers that the additional information is such that the *scheme to which the application related is materially different from the scheme to which the ruling relates:
 - (a) the Commissioner must request the applicant to make an application for another *private ruling; and
 - (b) the objection is taken not to have been made.

359-70 Successful objection decision alters ruling

- A *private ruling has effect as altered by an objection decision (within the meaning of Part IVC) made by the Commissioner if:
- (a) the Commissioner made the decision allowing, wholly or in part, a taxation objection (within the meaning of that Part) against the ruling; and
 - (b) the period in which an appeal against, or an application for the review of, the decision may be made has ended without such an appeal or application being made.

Note: See sections 14ZZC and 14ZZN for the time limits.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Division 360—Oral rulings

Guide to Division 360

360-1 What this Division is about

An oral ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you. Oral rulings are given on oral application by you or your legal personal representative.

Oral rulings can only be given for individuals.

The Commissioner must give the ruling unless he or she considers that the advice you are seeking relates to a business matter or a complex matter.

The Commissioner must give the ruling orally and must give you a registration identifier for the ruling.

Note: Division 357 has some common rules that affect oral rulings.

Table of sections

Oral rulings

- 360-5 Applying for and making of oral rulings
- 360-10 Withdrawing an application for an oral ruling
- 360-15 Commissioner determinations

Oral rulings

360-5 Applying for and making of oral rulings

Applying for oral rulings

- (1) If you are an individual, you or your *legal personal representative may apply to the Commissioner for advice on the way in which the Commissioner considers a relevant provision (other than a provision about *MRRT) applies or would apply to you in relation to a specified *scheme.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 360-10

Note: Section 357-55 specifies the relevant provisions.

- (2) An application under this section must be made orally and in the manner determined under section 360-15.
- (2A) You or your *legal personal representative must not apply for advice under this section in relation to:
 - (a) an *indirect tax law (other than the *fuel tax law); or
 - (b) an *excise law.

Making of oral rulings

- (3) The Commissioner must give you or your *legal personal representative that advice unless:
 - (a) the Commissioner considers that the advice sought relates to a *business matter or a complex matter; or
 - (b) the matter sought to be ruled on is already being, or has been, considered by the Commissioner for you.

That advice is an ***oral ruling***.

- Note: The Commissioner may also decline to make an oral ruling if:
- (a) the Commissioner has requested you to give further information under section 357-105 and you have not given it to the Commissioner; or
 - (b) the Commissioner considers that the correctness of an oral ruling would depend on which assumptions were made about a future event or other matter (see section 357-110).

- (4) The Commissioner must give that advice orally and in the manner determined under section 360-15. That advice must include a registration identifier for the ruling.

Note: The Commissioner must tell you which assumptions the Commissioner made in making the ruling: see section 357-110.

- (5) You are not entitled to receive a written record of that advice.

Note: However, you may be able to apply for a private ruling on the matter under Division 359.

360-10 Withdrawing an application for an oral ruling

- (1) You or your *legal personal representative may withdraw an application under section 360-5 before the Commissioner makes the *oral ruling.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 360-15

- (2) The withdrawal must be done orally and in the manner determined under section 360-15.

360-15 Commissioner determinations

The Commissioner must, by writing, determine:

- (a) the manner in which oral applications are to be made under section 360-5 or are to be withdrawn; and
- (b) the manner in which the Commissioner is to give oral advice under that section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 361—Non-ruling advice and general administrative practice

Table of sections

361-5 Non-ruling advice and general administrative practice

361-5 Non-ruling advice and general administrative practice

- (1) You are not liable to pay the *general interest charge or the *shortfall interest charge under a relevant provision to the extent that the charge would relate to a *shortfall amount or a *scheme shortfall amount that was caused by:
 - (a) you reasonably relying in good faith on:
 - (i) advice (other than a ruling) given to you or your *agent by the Commissioner; or
 - (ii) a statement in a publication approved in writing by the Commissioner;unless the advice, or the statement or publication, is labelled as non-binding; or
 - (b) you reasonably relying in good faith on the Commissioner's general administrative practice.

Note: Section 357-55 specifies the relevant provisions.

- (2) However, subsection (1) does not apply to any *general interest charge accruing more than 21 days after the Commissioner notifies you of the correct position.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 382-1

Part 5-25—Record-keeping and other obligations of taxpayers

Division 382—Record-keeping

Table of Subdivisions

Guide to Division 382

382-A Keeping records of indirect tax transactions

382-B Record keeping obligations of deductible gift recipients

Guide to Division 382

382-1 What this Division is about

You are required to keep records of indirect tax transactions in accordance with this Division.

Deductible gift recipients are required to keep records in accordance with this Division.

Subdivision 382-A—Keeping records of indirect tax transactions

Table of sections

382-5 Keeping records of indirect tax transactions

382-5 Keeping records of indirect tax transactions

Records of transactions

- (1) You must:
 - (a) keep records that record and explain all transactions and other acts you engage in that are relevant to a *supply, importation, acquisition, dealing, manufacture or entitlement to which this subsection applies; and
 - (b) retain those records for the longest of:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) 5 years after the completion of the transactions or acts to which they relate; and
 - (ii) the *period of review for any assessment of an *assessable amount to which those records, transactions or acts relate; and
 - (iii) if such an assessment has been amended under Subdivision 155-B—the period of 4 years mentioned in paragraph 155-70(2)(a) (which provides for a refreshed period of review) that applies to the latest such amendment.
- (2) Subsection (1) applies to:
- (a) a *taxable supply, *taxable importation, *creditable acquisition or *creditable importation made by you; or
 - (b) a *supply made by you that is *GST-free or *input taxed; or
 - (c) a *wine taxable dealing on which you are liable for *wine tax; or
 - (d) any other assessable dealing within the meaning of the *Wine Tax Act made by you; or
 - (e) your entitlement to a *wine tax credit; or
 - (f) a *taxable supply of a luxury car, or a *taxable importation of a luxury car, made by you; or
 - (g) your entitlement to a special credit under the *A New Tax System (Goods and Services Tax Transition) Act 1999* or the *A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999*; or
 - (h) if you are entitled to a *fuel tax credit for fuel that you acquire, manufacture or import—the acquisition, manufacture or importation; or
 - (i) if you are liable, as a recipient of a taxable supply, to pay the *GST on a taxable supply because of section 15C of the *A New Tax System (Goods and Services Tax Transition) Act 1999*—the taxable supply.
- (3) If you give the Commissioner a return that takes into account:
- (a) an *input tax credit that is attributable to a *tax period under subsection 29-10(4) of the *GST Act; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) a *fuel tax credit that is attributable to a tax period or *fuel tax return period under subsection 65-5(4) of the *Fuel Tax Act 2006*;

you must:

- (c) keep records that record and explain all transactions and other acts you engage in that are relevant to the acquisition or importation in question; and
- (d) retain those records for at least 5 years after the return was given to the Commissioner.

Records of elections, choices, estimates, determinations and calculations

- (4) If you make any election, choice, estimate, determination or calculation under an *indirect tax law, you must:
 - (a) keep records containing particulars of:
 - (i) the election, choice, estimate, determination or calculation; and
 - (ii) in the case of an estimate, determination or calculation—the basis on which, and the method by which, the estimate, determination or calculation was made; and
 - (b) retain those records:
 - (i) if the indirect tax law specifies circumstances in which the election, choice, estimate, determination or calculation ceases to have effect—for at least 5 years after the election, choice, estimate, determination or calculation ceased to have effect; or
 - (ii) in any other case—for at least 5 years after the election, choice, estimate, determination or calculation was made.
- (5) This section requires a record of an *arrangement entered into under section 153-50 of the *GST Act to be kept and retained by the party entering into the arrangement as principal. It does not require such a record to be kept or retained by the party entering into the arrangement as intermediary (within the meaning of that section).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (6) This section requires records of a notice given under subsection 153-65(2) of the *GST Act to be kept and retained by both the entity giving the notice and the entity receiving it.
- (7) Without limiting subsection (4), if you choose to apply Division 63 (non-profit sub-entities) of the *GST Act, you must:
 - (a) keep records that record:
 - (i) your choice to apply that Division; and
 - (ii) each branch that is treated as a separate entity for the purposes of the *GST law; and
 - (iii) each branch that has ceased to be treated as a separate entity for the purposes of the GST law; and
 - (b) retain those records for at least 5 years after you revoke the choice.

Requirements of records

- (8) The records must be:
 - (a) in English, or readily accessible and easily convertible into English; and
 - (b) such as to enable your liabilities and entitlements under an *indirect tax law to be readily ascertained.

Offence

- (9) An entity commits an offence if:
 - (a) the entity is required to keep or retain a record under this section; and
 - (b) the entity does not keep or retain the record in accordance with this section.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 3: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (10) Subsection (9) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence

- (11) Subsection (9) does not apply if:

- (a) the Commissioner notifies the entity that the entity does not need to retain the record; or
- (b) the entity is a company that has been finally dissolved.

Note: A defendant bears an evidential burden in relation to the matters in subsection (10): see subsection 13.3(3) of the *Criminal Code*.

- (12) For the purposes of section 288-25, this section does not require an entity to retain a record if:

- (a) the Commissioner notifies the entity that the entity does not need to retain the record; or
- (b) the entity is a company that has been finally dissolved.

Note: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

Subdivision 382-B—Record keeping obligations of deductible gift recipients

Table of sections

382-15 Deductible gift recipients to keep records

382-15 Deductible gift recipients to keep records

- (1) A *deductible gift recipient must:

- (a) keep records that record and explain all transactions and other acts the deductible gift recipient engages in that are relevant to the deductible gift recipient's status as a deductible gift recipient; and
- (b) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.

Note 1: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

Note 2: The Commissioner may request information from certain deductible gift recipients: see sections 353-20 and 426-40.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Requirements of records

- (2) The records must be:
- (a) in English, or readily accessible and easily convertible into English; and
 - (b) such as to show that the *deductible gift recipient uses each of the following only for the principal purpose of the fund, authority or institution:
 - (i) gifts of money or property for that purpose;
 - (ii) contributions described in item 7 or 8 of the table in section 30-15 of the *Income Tax Assessment Act 1997* in relation to a *fund-raising event held for that purpose;
 - (iii) money received by the deductible gift recipient because of such gifts or contributions.

Exception

- (3) For the purposes of section 288-25, this section does not require a *deductible gift recipient to retain a record if:
- (a) the Commissioner notifies the deductible gift recipient that the deductible gift recipient does not need to retain the record; or
 - (b) the deductible gift recipient is a company that has been finally dissolved.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Division 388—Requirements about giving material to the Commissioner

Table of Subdivisions

- 388-A Object of Division
- 388-B General provisions

Subdivision 388-A—Object of Division

388-5 Object of Division

The object of this Division is to set out requirements to ensure the integrity and efficiency of giving material to the Commissioner.

Subdivision 388-B—General provisions

Table of sections

- 388-50 Approved forms
- 388-52 Saturdays, Sundays and public holidays
- 388-55 Commissioner may defer time for lodgment
- 388-60 Declaration by entity
- 388-65 Declaration by entity where agent gives document
- 388-70 Declaration by agent
- 388-75 Signing declarations
- 388-80 Electronic notification of BAS amounts
- 388-85 Truncating amounts

388-50 Approved forms

- (1) A return, notice, statement, application or other document under a *taxation law is in the *approved form* if, and only if:
 - (a) it is in the form approved in writing by the Commissioner for that kind of return, notice, statement, application or other document; and
 - (b) it contains a declaration signed by a person or persons as the form requires (see section 388-75); and
 - (c) it contains the information that the form requires, and any further information, statement or document as the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 388-52

Commissioner requires, whether in the form or otherwise;
and

- (d) for a return, notice, statement, application or document that is required to be given to the Commissioner—it is given in the manner that the Commissioner requires (which may include electronically).
- (1A) Despite subsection (1), a document that satisfies paragraphs (1)(a), (b) and (d) but not paragraph (1)(c) is also in the **approved form** if it contains the information required by the Commissioner. The Commissioner must specify the requirement in writing.
- (2) The Commissioner may combine in the same *approved form more than one return, notice, statement, application or other document.
- (3) The Commissioner may approve a different *approved form for different entities.

Example: The Commissioner may require high wealth individuals to lodge a different income tax return to that required to be lodged by an individual whose only income is a salary.

388-52 Saturdays, Sundays and public holidays

Where an *approved form is required to be given to the Commissioner or to another entity by, or on, a day (the **lodgment day**) that is not a *business day, the approved form may be given on the first business day after the lodgment day.

388-55 Commissioner may defer time for lodgment

- (1) The Commissioner may defer the time within which an *approved form is required to be given to the Commissioner or to another entity.
- (2) A deferral under subsection (1) does not defer the time for payment of any amount to the Commissioner.

Note: Section 255-10 allows the Commissioner to defer the time for payment of an amount of a tax-related liability.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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388-60 Declaration by entity

If you give a return, notice, statement, application or other document to the Commissioner in the *approved form, you must make a declaration in the approved form that any information in the document is true and correct.

388-65 Declaration by entity where agent gives document

- (1) If a return, notice, statement, application or other document of yours is to be given to the Commissioner in the *approved form by an agent on your behalf, you must make a declaration in writing:
 - (a) stating that you have authorised the agent to give the document to the Commissioner; and
 - (b) declaring that any information you provided to the agent for the preparation of the document is true and correct.
- (2) You must give the declaration to the agent.
- (3) You must retain the declaration or a copy of it for:
 - (a) 5 years after it is made; or
 - (b) a shorter period determined by the Commissioner in writing for you; or
 - (c) a shorter period determined by the Commissioner by legislative instrument for a class of entities that includes you.
- (3A) A determination under paragraph (3)(c) may specify different periods for different classes of entities.
- (4) You must produce the declaration or copy if requested to do so within that period by the Commissioner.
- (5) The agent must not give the document to the Commissioner before you make the declaration.
- (6) You must sign the declaration.

388-70 Declaration by agent

If an agent gives a return, notice, statement, application or other document to the Commissioner in the *approved form on behalf of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

another entity, the agent must, if the document so requires, make a declaration in the approved form stating that:

- (a) the document has been prepared in accordance with the information supplied by the other entity; and
- (b) the agent has received a declaration from the other entity stating that the information provided to the agent is true and correct; and
- (c) the agent is authorised by the other entity to give the document to the Commissioner.

388-75 Signing declarations

- (1) You must sign a declaration in a return, notice, statement, application or other document you give to the Commissioner in paper form.
- (2) If your agent gives a return, notice, statement, application or other document to the Commissioner on your behalf in paper form, the document must contain:
 - (a) if the document so requires—a declaration made by you with your signature; and
 - (b) if the document so requires—a declaration made by your agent with the agent's signature.
- (3) Any return, notice, statement, application or other document of yours that is *lodged electronically:
 - (a) if you give it to the Commissioner—must contain your declaration (see section 388-60) with your *electronic signature; or
 - (b) if your agent gives it to the Commissioner—must contain the agent's declaration (see section 388-70) with the agent's electronic signature.
- (4) Any return, notice, statement, application or other document of yours that is given by telephone:
 - (a) if you give it—must contain your *telephone signature; or
 - (b) if your agent gives it—must contain your agent's telephone signature.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 388-80

388-80 Electronic notification of BAS amounts

An entity that, under section 31-25 of the *GST Act, chooses or is required to *lodge a *GST return electronically must also electronically notify the Commissioner of all other *BAS amounts whose notification is required on the same day as the GST return (ignoring any extension allowed by the Commissioner under section 31-10 of that Act or a deferral under section 388-55).

388-85 Truncating amounts

If an *approved form that you are required to give the Commissioner specifies that amounts set out in the form are to be expressed in whole dollars, you truncate the amounts to the nearest whole dollar.

Example: Stefan Pty Ltd calculates that its PAYG instalment for a quarter is \$8,496.73. Because the approved form requires amounts to be truncated, the amount would be reported in its BAS as \$8,496.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 390—Superannuation reporting

Table of Subdivisions

	Guide to Division 390
390-A	Member information statements and roll-over superannuation benefit statements
390-B	Statements relating to release authorities
390-C	Other statements

Guide to Division 390

390-1 What this Division is about

Superannuation providers must give the Commissioner information about superannuation plans (such as contributions to superannuation plans) periodically.

Superannuation providers are also required to give information about roll-over superannuation benefits paid from superannuation plans.

Note: For requirements for payment summaries in relation to superannuation lump sums, see section 16-165.

Subdivision 390-A—Member information statements and roll-over superannuation benefit statements

390-5 Member information statements

- (1) A *superannuation provider in relation to a *superannuation plan must give the Commissioner a statement in relation to an individual if the individual held a *superannuation interest in the plan at any time during the period specified in a determination under subsection (6).

Note 1: Section 286-75 provides an administrative penalty for breach of this subsection.

Note 2: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of*

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 390-5

Complaints) Act 1993 if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under this section.

- (4) A statement under subsection (1) must be in the *approved form.
- (5) The statement must be given to the Commissioner on a day specified in the determination under subsection (6).

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
- (6) The Commissioner may determine, by legislative instrument:
 - (a) the period mentioned in subsection (1); and
 - (b) the day on which a statement must be given to the Commissioner.
- (7) The period specified in the determination:
 - (a) may be:
 - (i) all or part of an income year; or
 - (ii) all or part of a financial year; or
 - (iii) any other period; and
 - (b) may be different:
 - (i) for different kinds of *superannuation provider; and
 - (ii) in relation to any other matter.
- (8) Subsection (7) does not limit the way in which the determination may specify the period.
- (9) The *approved form may require the statement to contain the following information:
 - (a) information relating to the contributions made to the *superannuation plan, including the amount and type of the contributions;
 - (b) the *value of any *superannuation interest, or superannuation account, the individual held in the superannuation plan at a particular time;
 - (c) if no contributions were made to the superannuation plan in respect of the individual during the period—a statement to that effect.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (9A) Treat the following as contributions for the purposes of this section:
- (a) *notional taxed contributions in relation to a *defined benefit interest in the *superannuation plan;
 - (b) amounts, mentioned in subsection 291-25(3) or paragraph 292-90(4)(a) of the *Income Tax Assessment Act 1997*, allocated by the *superannuation provider in relation to the superannuation plan;
 - (c) amounts mentioned in paragraph 292-90(4)(c) of that Act;
 - (d) *defined benefit contributions in relation to a *defined benefit interest in the superannuation plan.
- (10) Subsection (9) does not limit the information that the *approved form may require the statement to contain.
- (11) The *approved form may require the statement to contain the *tax file number of:
- (a) the *superannuation provider; and
 - (b) the *superannuation plan; and
 - (c) the individual who holds the *superannuation interest in the plan if:
 - (i) the individual has quoted the individual's tax file number to the superannuation provider; or
 - (ii) a person has quoted the individual's tax file number to the superannuation provider (and had authority to do so).

390-10 Statements about roll-over superannuation benefits etc.

- (1) This section applies if:
- (a) a *superannuation provider (the **first provider**) in relation to a *superannuation plan (the **first plan**) pays a *roll-over superannuation benefit to another superannuation provider in relation to another superannuation plan; or
 - (b) a superannuation provider (also the **first provider**) in relation to a superannuation plan (also the **first plan**) pays to another superannuation provider in relation to another superannuation plan a *superannuation benefit (other than a roll-over superannuation benefit) in these circumstances:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) the first plan or the other superannuation plan is, or both are, a *non-complying superannuation plan for the income year in which the benefit is paid; or
 - (ii) the first plan or the other superannuation plan was, or both were, a non-complying superannuation plan for the previous income year.
 - (2) The first provider in relation to the first plan must:
 - (a) give the other superannuation provider a statement in relation to the benefit within 7 days after the day on which the benefit is paid; and
 - (b) give the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.
- Note: Section 286-75 provides an administrative penalty for breach of this subsection.
- (3) A statement under subsection (2) must be in the *approved form.
- Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
- (4) The *approved form may require the statement to contain the following information:
 - (a) information relating to contributions made to the first plan in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;
 - (b) other information relating to the benefit, including the *tax free component, *taxable component, *element taxed in the fund and *element untaxed in the fund (as applicable) of the benefit.
 - (5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).
 - (6) The period specified in the determination:
 - (a) may be:
 - (i) all or part of an income year; or
 - (ii) all or part of a financial year; or
 - (iii) any other period; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 390-12

- (b) may be different:
 - (i) for different kinds of *superannuation provider; and
 - (ii) in relation to any other matter.
- (7) Subsection (6) does not limit the way in which the determination may specify the period.
- (8) The *approved form may require the statement to contain different information depending on whether paragraph (1)(a) or (b) applies.
- (9) Subsections (4) and (8) do not limit the information that the *approved form may require the statement to contain.
- (10) The *approved form may require the statement to contain the *tax file number of:
 - (a) the first provider; and
 - (b) the first plan; and
 - (c) the individual in respect of whom the benefit is paid if:
 - (i) the individual has quoted the individual's tax file number to the first provider; or
 - (ii) a person who made at least some of the contributions mentioned in paragraph (4)(a) has quoted the individual's tax file number to the first provider (and had authority to do so).

390-12 Statements about benefits paid to KiwiSaver schemes

- (1) This section applies if the trustee of a *complying superannuation fund pays a *superannuation benefit to a *KiwiSaver scheme provider.
- (2) The trustee must:
 - (a) give to the *KiwiSaver scheme provider a statement under this section within 7 days after the day on which the benefit is paid; and
 - (b) give to the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 390-15

- (3) A statement under subsection (2) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (4) The *approved form may require the statement to contain the following information:
- (a) information relating to contributions made to the *complying superannuation fund in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;
 - (b) other information relating to the benefit, including the *tax free component and *taxable component (as applicable) of the benefit.
- (5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).
- (6) The period specified in the determination:
- (a) may be:
 - (i) all or part of an income year; or
 - (ii) all or part of a *financial year; or
 - (iii) any other period; and
 - (b) may be different:
 - (i) for different kinds of trustee; and
 - (ii) in relation to any other matter.
- (7) Subsection (6) does not limit the way in which the determination may specify the period.
- (8) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

390-15 Superannuation statements to members

- (1) An individual, or the trustee of an individual's estate:
- (a) may ask a *superannuation provider who has given information in a statement under section 390-5, 390-10 or 390-12 in relation to the individual to give the individual or the trustee the same information; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 390-65

- (b) may ask the superannuation provider to give the information in writing.
 - (2) The *superannuation provider must:
 - (a) comply with the request within 30 days after receiving the request; and
 - (b) if the individual or the trustee asked for the information to be given in writing—give the information in the *approved form.
- Note 1: Section 286-75 provides an administrative penalty for breach of this subsection.
- Note 2: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
- (3) Subsection (2) does not apply if the *superannuation provider has given the same information to the individual or the trustee previously (whether or not on request by the individual or trustee).
 - (4) If the individual or the trustee does not ask for the information to be given in writing, the *superannuation provider may give the information to the individual or trustee in a way that the provider considers appropriate.

Subdivision 390-B—Statements relating to release authorities

390-65 Statements relating to release authorities

- (1) A *superannuation provider in relation to a *superannuation plan must give the Commissioner a statement under this section if the superannuation provider has:
 - (a) been given a release authority in accordance with:
 - (i) section 292-410 of the *Income Tax Assessment Act 1997*; or
 - (ii) section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; or
 - (iii) Subdivision 135-B in this Schedule; and
 - (b) paid an amount out of the plan in accordance with the release authority.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 390-115

- (2) The statement must be given within 30 days after the amount is paid out of the plan.
- (3) A statement under subsection (1) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
- (4) The *approved form must require the statement to contain information relating to the release authority.
- (5) The *approved form may require the statement to contain the following information:
 - (a) the amount paid;
 - (b) details relating to the *superannuation provider in relation to the *superannuation plan;
 - (c) the individual in respect of whom the release authority was given to the superannuation provider.
- (6) Subsection (5) does not limit the information that the *approved form may require the statement to contain.
- (7) The *superannuation provider must also give the individual to whom the release authority relates a copy of the statement within 30 days after the amount is paid out of the plan.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

Subdivision 390-C—Other statements

390-115 Change or omission in information given to the Commissioner

- (1) If a *superannuation provider in relation to a *superannuation plan becomes aware of a material change or material omission in any information given to the Commissioner in relation to the plan under this Division, the provider must:
 - (a) tell the Commissioner of the change in the *approved form; or
 - (b) give the omitted information to the Commissioner in the approved form.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 390-115

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) Information required by subsection (1) must be given no later than 30 days after the *superannuation provider becomes aware of the change or omission.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 391-1

Division 391—First home saver account reporting

Table of Subdivisions

Guide to Division 391

391-A Account activity statements

391-B Transfer statements

Guide to Division 391

391-1 What this Division is about

FHSA providers must give the Commissioner information periodically about FHSAs (such as information about contributions made to FHSAs).

FHSA providers are also required to give information to other FHSA providers when making transfer payments from FHSAs to other FHSAs or to superannuation interests.

Subdivision 391-A—Account activity statements

Table of sections

391-5 FHSA account activity statements

391-5 FHSA account activity statements

- (1) An *FHSA provider must give the Commissioner the following statements under this section:
 - (a) a statement in relation to the amount of *personal FHSA contributions (if any) made to each *FHSA provided by the provider during the period mentioned in subsection (3) for that kind of statement;
 - (b) a statement in relation to the balance of an FHSA provided by the provider during the period mentioned in subsection (3) for that kind of statement;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) a statement in relation to each FHSA opened or issued (if any) by the provider during the period specified in subsection (3) for that kind of statement;
- (d) a statement in relation to each FHSA closed (if any) by the provider during the period specified in subsection (3) for that kind of statement;
- (e) a statement in relation to payments (other than a payment of a kind mentioned in subparagraph 31(1)(b)(iii) or paragraph (1)(f), (g) or (h) of the *First Home Saver Accounts Act 2008*) (if any) made from each FHSA provided by the provider during the period specified in subsection (3) for that kind of statement.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of any of these paragraphs. A breach of any of these paragraphs may also be an offence under section 8C of that Act.

- (2) However, the provider is not required to give a statement mentioned in paragraph (1)(a) if, during the period, the provider transferred the balance of the *FHSA to another FHSA.
- (3) The period for a particular kind of statement under subsection (1) is:
 - (a) a financial year; or
 - (b) if the Commissioner determines another period under subsection (4) for the kind of statement—that period.
- (4) The Commissioner may determine, by legislative instrument, a period mentioned in subsection (1) for a kind of statement.
- (5) A statement under subsection (1) must be in the *approved form.
- (6) A statement must be given to the Commissioner on or before a day specified in the determination under subsection (7) for the statement.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (7) The Commissioner may determine, by legislative instrument, the day, on or before which, a statement under subsection (1) must be given to the Commissioner.

- (8) The day specified in the determination may be different:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) for different kinds of *FHSA provider; and
 - (b) in relation to any other matter.
- (9) Subsection (8) does not limit the way in which the determination may specify the day.
- (10) The *approved form may require a statement to contain the following:
 - (a) the *tax file number of the *FHSA holder;
 - (b) the tax file number of the *FHSA provider.
- (11) Subsection (10) does not limit the information that the *approved form may require a statement to contain.

Subdivision 391-B—Transfer statements

Table of sections

391-10 Statements about transfer payments between FSAs etc.

391-10 Statements about transfer payments between FSAs etc.

- (1) This section applies if an *FHSA provider (the ***first provider***) in relation to an *FHSA (the ***first FHS***) makes a payment from the FHS:
 - (a) to an FHS provided by another FHS provider, in accordance with section 35 of the *First Home Saver Accounts Act 2008*; or
 - (b) to a *superannuation provider in relation to a *complying superannuation plan, in accordance with section 22 or 34 of that Act.
- (2) The first provider must:
 - (a) give the other *FHSA provider or *superannuation provider a statement in relation to the payment within 7 days after the day on which the payment is made; and
 - (b) give the individual for whose benefit the payment is made a statement in relation to the payment within 30 days after the day on which the payment is made.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (3) A statement under subsection (2) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (4) The *approved form may require the statement to contain the following information:
- (a) information relating to *personal FHSA contributions made to the first FHSA;
 - (b) information relating to the FHSA holder, including whether the individual is in breach of the account balance cap and whether the condition in subparagraph 32(1)(c)(i) of the *First Home Saver Accounts Act 2008* has been met in relation to the individual.
- (5) Subsection (4) does not limit the information that the *approved form may require the statement to contain.
- (6) The *approved form may require the statement to contain the *tax file number of:
- (a) the first provider; and
 - (b) the *FHSA holder.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Division 392—Employee share scheme reporting

Table of Subdivisions

	Guide to Division 392
392-A	Statements
392-B	Miscellaneous

Guide to Division 392

392-1 What this Division is about

A company that provides ESS interests to an individual under an employee share scheme during a year must, at the end of the year (and, in certain cases, at the end of a later year), give certain information to the Commissioner and to the individual.

Note: For the tax treatment of employee share schemes, see Division 83A of the *Income Tax Assessment Act 1997*.

Subdivision 392-A—Statements

Table of sections

392-5	Statements by providers
392-10	Change or omission in information given to the Commissioner

392-5 Statements by providers

Statements

- (1) An entity (the **provider**) must give a statement to the Commissioner and to an individual for a *financial year if:
 - (a) both of the following subparagraphs apply:
 - (i) the provider provides *ESS interests to the individual during the year;
 - (ii) Subdivision 83A-B or 83A-C of the *Income Tax Assessment Act 1997* (about employee share schemes) applies to the interests; or
 - (b) all of the following subparagraphs apply:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) the provider has provided ESS interests to the individual (whether during the year or during an earlier year);
- (ii) Subdivision 83A-C of the *Income Tax Assessment Act 1997* (about employee share schemes) applies to the interests;
- (iii) the *ESS deferred taxing point for the interests occurs during the year.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

Form of statements

- (2) The statement must be in the *approved form.
- (3) The *approved form may require the statement to contain the following information:
 - (a) the provider's *ABN;
 - (b) the following information about the individual:
 - (i) the individual's name and address;
 - (ii) if the individual has quoted his or her *tax file number to the provider—that tax file number;
 - (iii) if the individual acquired the interests in relation to any services provided to the provider, or to a *subsidiary of the provider, in the course or furtherance of an *enterprise *carried on by the individual, and the individual has *quoted his or her ABN to the provider—that ABN;
 - (c) the following information about any interests to which both paragraph (1)(a) of this section and Subdivision 83A-B of the *Income Tax Assessment Act 1997* apply:
 - (i) the number of the interests;
 - (ii) the amount paid, at or before the time of acquisition, towards acquiring the interests;
 - (iii) the provider's estimate of the *market value of the interests at the time of acquisition;
 - (iv) the amount of *TFN withholding tax (ESS) paid or payable by the provider in respect of the interests during the year;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (d) the following information about any interests to which both paragraph (1)(a) of this section and Subdivision 83A-C of the *Income Tax Assessment Act 1997* apply:
 - (i) the number of the interests;
 - (ii) the amount paid, at or before the time of acquisition, towards acquiring the interests;
- (e) the following information about any interests to which paragraph (1)(b) applies:
 - (i) the number of the interests;
 - (ii) the amount paid, after the time of acquisition but not after the *ESS deferred taxing point, towards acquiring the interests;
 - (iii) the provider's estimate of the market value of the interests at the ESS deferred taxing point;
 - (iv) the amount of TFN withholding tax (ESS) paid or payable by the provider in respect of the interests during the year.

Note: Regulations made for the purposes of section 83A-315 of the *Income Tax Assessment Act 1997* may substitute different amounts for the market values of the ESS interests: see section 392-15 in this Schedule.

- (4) Subsection (3) does not limit the information that the *approved form may require the statement to contain.

When statements must be given

- (5) The statement must be given:
 - (a) to the individual no later than 14 July after the end of the year; and
 - (b) to the Commissioner no later than 14 August after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Disregard 30 day rule for ESS deferred taxing point if provider does not know when shares are disposed of etc.

- (6) For the purposes of Subdivision 14-C (about TFN withholding tax (ESS)) and this Division, in working out the *ESS deferred taxing point for an *ESS interest, disregard subsection 83A-115(3) or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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83A-120(3) (whichever is applicable) of the *Income Tax Assessment Act 1997* (about the 30 day rule) if the provider does not know the time worked out under that subsection at the earlier of:

- (a) the time (if any) the provider gives a statement to the relevant individual under this section for the *financial year mentioned in subsection (7); and
 - (b) the later of:
 - (i) 14 July after the end of the financial year mentioned in subsection (7); and
 - (ii) if, under section 388-55, the Commissioner defers to a later time the time within which the statement under this section for that financial year is required to be given to the individual—that later time.
- (7) The *financial year is the financial year in which the *ESS deferred taxing point for the *ESS interest occurs, disregarding subsection 83A-115(3) or 83A-120(3) (whichever is applicable) of the *Income Tax Assessment Act 1997* (about the 30 day rule).

392-10 Change or omission in information given to the Commissioner

- (1) If the provider becomes aware of a material change or material omission in any information given to the individual or the Commissioner under this Division, the provider must:
 - (a) tell the individual or the Commissioner, as applicable, of the change in the *approved form; or
 - (b) give the omitted information to the individual or the Commissioner, as applicable, in the approved form.
- (2) Information required by subsection (1) must be given no later than 30 days after the provider becomes aware of the change or omission.

Note 1: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Note 2: Section 286-75 provides an administrative penalty for breach of this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Subdivision 392-B—Miscellaneous

Table of sections

392-15 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

**392-15 Application of certain provisions of Division 83A of the
*Income Tax Assessment Act 1997***

The following provisions of the *Income Tax Assessment Act 1997* have effect for the purposes of this Division in the same way as they have for the purposes of Division 83A of that Act:

- (a) section 83A-130 (about takeovers and restructures);
- (b) section 83A-305 (about associates);
- (c) section 83A-315 (about market values and discounts);
- (d) section 83A-320 (about trusts);
- (e) section 83A-325 (about relationships similar to employment);
- (f) section 83A-335 (about stapled securities);
- (g) section 83A-340 (about indeterminate rights).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 394—Reporting about forestry managed investment schemes

Guide to Division 394

394-1 What this Division is about

A forestry manager of a forestry managed investment scheme must give the Commissioner information about initial contributions by participants in the scheme. The forestry manager must also inform the Commissioner if the trees are not established under the scheme within 18 months of the first investment in the scheme.

Table of sections

394-5	Statements about initial contributions to scheme
394-10	Statements about failure to establish trees within 18 months

394-5 Statements about initial contributions to scheme

- (1) The *forestry manager of a *forestry managed investment scheme must give the Commissioner a statement in relation to the scheme if:
- (a) the scheme satisfies the requirement in paragraph 394-10(1)(c) of the *Income Tax Assessment Act 1997* (the *70% DFE rule); and
 - (b) the forestry manager (or an *associate of the forestry manager) receives an amount under the scheme that is included in the forestry manager's (or the associate's) assessable income under section 15-46 of that Act; and
 - (c) that amount is the amount that is first paid under the scheme by a *participant in the scheme.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) A statement under subsection (1) must be in the *approved form.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (3) The statement must be given to the Commissioner within 3 months after the end of the income year in which the *forestry manager (or the *associate) receives the amount.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (4) The *approved form may require the statement to contain the following information:
- (a) the name of the scheme;
 - (b) information relating to the identity of the *forestry manager (or the *associate);
 - (c) information relating to the amounts paid or payable under the scheme by *participants in the scheme.
- (5) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

394-10 Statements about failure to establish trees within 18 months

- (1) If:
- (a) a *forestry managed investment scheme satisfies the requirement in paragraph 394-10(1)(c) of the *Income Tax Assessment Act 1997* (the *70% DFE rule); and
 - (b) the condition in subsection 394-10(4) of that Act is not satisfied in relation to the scheme;
- the *forestry manager of the scheme must give the Commissioner a statement in relation to the reasons why that condition was not satisfied.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) A statement under subsection (1) must be in the *approved form.
- (3) The statement must be given to the Commissioner within 3 months after the end of the 18 months mentioned in subsection 394-10(4) of the *Income Tax Assessment Act 1997*.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (4) The *approved form may require the statement to contain the following information:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 394-10

- (a) the name of the scheme;
 - (b) information relating to the identity of the *forestry manager;
 - (c) information relating to the circumstances that gave rise to the condition not being satisfied.
- (5) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Division 396—FATCA

Guide to Division 396

396-1 What this Division is about

This Subdivision gives effect to the FATCA Agreement between the Government of Australia and the Government of the United States of America.

Reporting Australian Financial Institutions must give the Commissioner certain information about U.S. Reportable Accounts. For the 2015 and 2016 calendar years, they must also give the Commissioner information about payments made to Nonparticipating Financial Institutions.

This Subdivision also creates record-keeping obligations in relation to the requirements to give the Commissioner information.

Table of sections

396-5	Statements about U.S. Reportable Accounts
396-10	Statements about payments to Nonparticipating Financial Institutions
396-15	Meaning of the <i>FATCA Agreement</i>
396-20	Permissions and elections
396-25	Record keeping

396-5 Statements about U.S. Reportable Accounts

- (1) Subsection (2) applies if:
 - (a) an entity is a Reporting Australian Financial Institution (within the meaning of the *FATCA Agreement) at any time in a calendar year; and
 - (b) the entity maintains a U.S. Reportable Account (within the meaning of the FATCA Agreement) at any time in the year.
- (2) The entity must give the Commissioner a statement that contains the information in respect of that U.S. Reportable Account that the Australian Government is required to obtain in order for it to fulfil

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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its obligations under the *FATCA Agreement in respect of that U.S. Reportable Account.

- (3) The information contained in the statement must be determined by the entity by applying the due diligence procedures required under the *FATCA Agreement.

Note: Those due diligence procedures are specified in Annex I to the FATCA Agreement, subject to the application of Article 7 of that Agreement (consistency in the application of FATCA to partner jurisdictions).

- (4) A statement under subsection (2) must be in the *approved form.
- (5) More than one statement under subsection (2) may be included in the same document.
- (6) The statement must be given to the Commissioner no later than the first 31 July after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-10 Statements about payments to Nonparticipating Financial Institutions

- (1) Subsection (2) applies if:
- (a) an entity is a Reporting Australian Financial Institution (within the meaning of the *FATCA Agreement) at any time in a calendar year; and
 - (b) the calendar year is the 2015 or 2016 year; and
 - (c) the entity makes a payment to a Nonparticipating Financial Institution (within the meaning of the FATCA Agreement) at any time in the year.
- (2) The entity must give the Commissioner a statement that contains the information in respect of that payment that the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement in respect of that payment.
- (3) The information contained in the statement must be determined by the entity by applying the due diligence procedures required under the *FATCA Agreement.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: Those due diligence procedures are specified in Annex I to the FATCA Agreement, subject to the application of Article 7 of that Agreement (consistency in the application of FATCA to partner jurisdictions).

- (4) A statement under subsection (2) must be in the *approved form.
- (5) More than one statement under subsection (2) may be included in the same document.
- (6) The statement must be given to the Commissioner no later than the first 31 July after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-15 Meaning of the *FATCA Agreement*

The *FATCA Agreement* is the Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, done at Canberra on 28 April 2014.

Note: The text of the Agreement is set out in Australian Treaty Series [2014] ATNIF 5. In 2014, the text of the Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

396-20 Permissions and elections

- (1) This section applies, for the purposes of this Division:
 - (a) in determining whether the conditions in subsections 396-5(1) and 396-10(1) are satisfied; and
 - (b) in determining which information the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement.
- (2) To the extent that the *FATCA Agreement gives Australia the ability to permit an entity to use or rely on matters provided for in U.S. Treasury Regulations in determining obligations under the FATCA Agreement, assume that the permission has been given.
- (3) To the extent that the *FATCA Agreement gives Australia the ability to provide for an entity to make an election in determining

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

obligations under the FATCA Agreement, assume that the entity may make the election.

396-25 Record keeping

- (1) If an entity is obliged to give the Commissioner a statement under subsection 396-5(2) or 396-10(2), the entity must keep written records that:
 - (a) correctly record the procedures by which the entity determines the information that is required to be contained in the statement; and
 - (b) are in English, or readily accessible and easily convertible into English.
- (2) The entity must retain the records until the expiration of 5 years after the entity gives the Commissioner the statement under subsection 396-5(2) or 396-10(2).

Note: Section 288-25 imposes an administrative penalty if an entity does not keep and retain records as required by this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 398-1

Division 398—Miscellaneous reporting obligations

Table of Subdivisions

Guide to Division 398

398-A Farm Management Deposit reporting

Guide to Division 398

398-1 What this Division is about

<p>This Division contains reporting obligations not covered by other Divisions of this Part.</p>
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Subdivision 398-A—Farm Management Deposit reporting

Table of sections

398-5 Reporting to Agriculture Department

398-5 Reporting to Agriculture Department

FMD provider must provide monthly information

- (1) An *FMD provider must, before the 11th day after the end of a calendar month, give in writing to the *Agriculture Secretary the information specified in subsection (3) if the provider holds a *farm management deposit at the end of that month.

Penalty: 10 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Information required

- (3) The information is:
- (a) the number of *farm management deposits held at the end of that month; and
 - (b) the number of depositors in respect of such deposits at the end of that month; and
 - (c) the sum of the balances of such deposits at the end of that month; and
 - (d) any other information, in relation to farm management deposits held by the *FMD provider at any time in that month, that is required by the regulations for the purposes of this section.

Regulations not to require identity of depositor

- (4) Regulations made for the purposes of paragraph (3)(d) must not require information:
- (a) that discloses the identity of a depositor; or
 - (b) from which the identity of a depositor could reasonably be inferred.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 400-1

Part 5-30—Payment, ABN and identification verification system

Division 400—Guide to Part 5-30

400-1 What Part 5-30 is about

To improve compliance with the tax laws that relate to payments for certain supplies, this Part imposes additional requirements on purchasers and suppliers.

The additional requirements relate to verification of ABNs and to reporting information about payments.

Regulations will specify the supplies that are covered and the additional requirements that apply to payments for those supplies.

400-5 The payment, ABN and identification verification system

- (1) There are 4 components in the payment, ABN and identification verification system:
 - (a) transaction reporting by purchasers (Division 405);
 - (b) transaction reporting by suppliers (Division 410);
 - (c) verification of suppliers' *ABNs by purchasers (Division 415);
 - (d) verification of suppliers' identities by purchasers (Division 417);

One or more of the components may apply to a particular payment. The regulations will specify which components apply.

- (2) Where a component of the system applies to a payment, the requirements of that component must be complied with.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 405—Transaction reporting by purchasers

Table of sections

405-5	Payments to which this Division applies
405-10	Reporting requirements
405-15	Invoices produced by purchasers

405-5 Payments to which this Division applies

- (1) This Division applies to any payments made, or liable to be made, for a *supply where the supply is specified in regulations made for the purpose of this section.
- (2) A payment is liable to be made if the obligation to make the payment is notified in an *invoice.
- (3) Payments to which this Division applies are called ***Division 405 payments***.
- (4) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

405-10 Reporting requirements

- (1) Any entity (the ***purchaser***) that makes, or is liable to make, a *Division 405 payment during a *quarter must give a *Division 405 report to the Commissioner within 21 days after the end of the quarter.
- (2) A ***Division 405 report*** is a written statement in the *approved form that names the purchaser and, for each supplier in relation to whom the purchaser made, or was liable to make, a *Division 405 payment during the *quarter:
 - (a) names the supplier; and
 - (b) specifies the supplier's *ABN (if known by the purchaser); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 405-15

(c) specifies the total of the Division 405 payments that the purchaser made, or was liable to make, to the supplier during the quarter that:

- (i) were notified in an invoice during the quarter (unless the payment was reported in an earlier Division 405 report); or
- (ii) were made during the quarter but for which no invoice had been received before the end of the quarter.

The report must also include any other information that the Commissioner requires.

- (3) The Commissioner may, in writing, require particular information to be included in a *Division 405 report or a class of Division 405 reports.
- (4) The Commissioner may, by written notice, vary any requirements under subsection (1), (2) or (3) in relation to a purchaser or class of purchaser. The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

405-15 Invoices produced by purchasers

If a purchaser produces an *invoice that notifies the purchaser's obligation to make a payment, the purchaser is taken to have been notified of the payment at the time that the invoice is produced.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 410—Transaction reporting by suppliers

Table of sections

410-5	Payments to which this Division applies
410-10	Reporting requirements
410-15	Invoices produced by purchasers

410-5 Payments to which this Division applies

- (1) This Division applies to any payments received, or entitled to be received, for a *supply where the supply is specified in regulations made for the purpose of this section.
- (2) A payment is entitled to be received if the obligation to make the payment is notified in an *invoice.
- (3) Payments to which this Division applies are called ***Division 410 payments***.
- (4) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

410-10 Reporting requirements

- (1) Any entity (the ***supplier***) that receives, or is entitled to receive, a *Division 410 payment during a *quarter must give a *Division 410 report to the Commissioner within 21 days after the end of the quarter.
- (2) A ***Division 410 report*** is a written statement in the *approved form that names the supplier and, for each purchaser in relation to whom the supplier received, or was entitled to receive, a *Division 410 payment during the *quarter:
 - (a) names the purchaser; and
 - (b) specifies the purchaser's *ABN (if known by the supplier); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 410-15

- (c) specifies the total of the Division 410 payments that the supplier received, or was entitled to receive, from the purchaser during the quarter that:
 - (i) were notified in an invoice during the quarter (unless the payment was reported in an earlier Division 410 report); or
 - (ii) were received during the quarter but for which no invoice had been provided before the end of the quarter.

The report must also include any other information that the Commissioner requires.

- (3) The Commissioner may, in writing, require particular information to be included in a *Division 410 report or a class of Division 410 reports.
- (4) The Commissioner may, by written notice, vary any requirements under subsection (1), (2) or (3) in relation to a supplier or class of supplier. The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

410-15 Invoices produced by purchasers

If a purchaser produces an *invoice that notifies the purchaser's obligation to make a payment, the supplier is taken to have notified the purchaser of the payment at the time that the invoice is produced.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 415—Verification of suppliers' ABNs by purchasers

Table of sections

415-5	Payments to which this Division applies
415-10	ABN verification requirements
415-15	Method of obtaining ABN verification
415-20	Verification applies to later payments

415-5 Payments to which this Division applies

- (1) This Division applies if:
 - (a) a payment is made, or is liable to be made, by an entity (the ***purchaser***) to another entity (the ***supplier***) for a **supply*; and
 - (b) the supply is specified in regulations made for the purpose of this section; and
 - (c) the supplier has purported to **quote* his or her **ABN* to the purchaser.
- (2) Payments to which this Division applies are called ***Division 415 payments***.
- (3) Without limiting the ways in which the regulations may specify a **supply*, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

415-10 ABN verification requirements

Before the purchaser makes a **Division 415* payment to the supplier, the purchaser must obtain verification that the **ABN* **quoted* by the supplier is the ABN entered in the **Australian Business Register* with the name given by the supplier.

Note: If the purchaser has reasonable grounds to believe that the supplier has not correctly quoted his or her ABN, the purchaser is required to withhold an amount under section 12-190.

**For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.*

Section 415-15

415-15 Method of obtaining ABN verification

- (1) To obtain verification of a supplier's *ABN, a purchaser must seek the verification in a manner approved in writing by the Commissioner.
- (2) Without limiting the Commissioner's power under subsection (1), the Commissioner may approve verifications being sought orally or by way of electronic transmission.
- (3) Verification of an *ABN may be obtained in such form, including orally or by way of electronic transmission, as the Commissioner approves in writing.
- (4) The Commissioner may, by written notice, vary any requirements under subsection (1) in relation to:
 - (a) a purchaser or class of purchaser; or
 - (b) a supplier or class of supplier.The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

415-20 Verification applies to later payments

- (1) Verification of a supplier's ABN applies to all later *Division 415 payments by the purchaser to the supplier unless there is a period of 2 years during which no *Division 415 payment is made by the purchaser to the supplier. If this occurs, the verification continues to apply to any purchases before 1 July first occurring after the end of the 2 year period.
- (2) However, verification of a supplier's *ABN does not apply to a *Division 415 payment if the purchaser has reasonable grounds to believe that the *ABN *quoted by the supplier is no longer the ABN entered in the *Australian Business Register with the name given by the supplier.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 417—Verification of suppliers' identities by purchasers

Table of sections

417-5	Payments to which this Division applies
417-10	Identity verification requirements
417-15	Method of obtaining identity verification
417-20	Verification applies to later payments

417-5 Payments to which this Division applies

- (1) This Division applies if:
 - (a) a payment is made, or liable to be made, by an entity (the **purchaser**) to another entity (the **supplier**) for a *supply; and
 - (b) the supply is specified in regulations made for the purpose of this section.
- (2) Payments to which this Division applies are called **Division 417 payments**.
- (3) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

417-10 Identity verification requirements

Before the purchaser makes a *Division 417 payment, the purchaser must obtain verification of the supplier's identity.

Note: If the purchaser has reasonable grounds to believe that the supplier has not correctly quoted his or her ABN, the purchaser is required to withhold an amount under section 12-190.

417-15 Method of obtaining identity verification

- (1) To obtain verification of a supplier's identity, a purchaser must carry out the identity verification procedure that is determined, in writing, by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 417-20

- (2) The Commissioner may determine different identity verification procedures for:
 - (a) different purchasers or classes of purchasers; or
 - (b) different suppliers or classes of suppliers.

417-20 Verification applies to later payments

- (1) Verification of a supplier's identity applies to all later *Division 417 payments by the purchaser to the supplier unless there is a period of 2 years during which no *Division 417 payment is made by the purchaser to the supplier. If this occurs, the verification continues to apply to any purchases before 1 July first occurring after the end of the 2 year period.
- (2) However, verification of a supplier's identity does not apply to a later *Division 417 payment if the purchaser has reasonable grounds to believe that the verified identity is not the supplier's true identity.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 420—Penalties for not reporting or verifying

Table of sections

420-5 Failing to report or verify: administrative penalty

420-5 Failing to report or verify: administrative penalty

An entity that fails to:

- (a) give a *Division 405 report to the Commissioner as required by section 405-10; or
 - (b) give a *Division 410 report to the Commissioner as required by section 410-10; or
 - (c) verify a supplier's *ABN as required by section 415-10; or
 - (d) verify a supplier's identity as required by section 417-10;
- is liable to pay to the Commissioner a penalty of 20 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 425-20

Division 425—Other matters

Table of sections

425-20	Constructive payment
425-25	Non-cash benefits

425-20 Constructive payment

- (1) In working out whether an entity has paid an amount to another entity, and when the payment is made, the amount is taken to have been paid to the other entity when the first entity applies or deals with the amount in any way on the other's behalf or as the other directs.
- (2) An amount is taken to be payable by an entity to another entity if the first entity is required to apply or deal with it in any way on the other's behalf or as the other directs.

425-25 Non-cash benefits

For the purposes of this Part, if an entity (the *payer*) provides a *non-cash benefit to another entity (the *recipient*), the payer is taken to have made a payment of an amount equal to the *market value of the benefit provided.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 5-35—Registration and similar processes for various taxes

Division 426—Process of endorsing charities and other entities

Table of Subdivisions

Guide to Division 426

- 426-A Application of Subdivision 426-B to various kinds of endorsement
- 426-B Process of endorsement etc.
- 426-C Entries on Australian Business Register
- 426-D Public and private ancillary funds

Guide to Division 426

426-1 What this Division is about

This Division sets out procedural rules relating to endorsement of charities and other entities (the conditions for entitlement to endorsement are set out in the GST Act, the *Fringe Benefits Tax Assessment Act 1986*, and the *Income Tax Assessment Act 1997*). These rules cover matters such as application for and revocation of endorsement, and entry of the details of endorsement on the Australian Business Register.

Subdivision 426-D deals with types of philanthropic trust funds known as *public ancillary funds* and *private ancillary funds*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-5

Subdivision 426-A—Application of Subdivision 426-B to various kinds of endorsement

Table of sections

426-5	Application of Subdivision 426-B to various kinds of endorsement
426-10	How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the <i>Income Tax Assessment Act 1997</i>

426-5 Application of Subdivision 426-B to various kinds of endorsement

Subdivision 426-B applies separately in relation to each of these kinds of endorsement:

- (a) endorsement of an entity as a charity under subsection 176-1(1) of the *GST Act;
- (ba) endorsement of:
 - (i) a fund as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986*; or
 - (ii) an entity for the operation of a fund as an approved worker entitlement fund under subsection 58PB(3A) of that Act;
- (c) endorsement of an entity as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (e) endorsement of an entity as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (f) endorsement of an entity under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a registered charity covered by table item 1 in subsection 65J(1) of that Act;
- (g) endorsement of an entity as a *deductible gift recipient, or as a deductible gift recipient for the operation of a fund, authority or institution, under section 30-120 of the *Income Tax Assessment Act 1997*;
- (h) endorsement of an entity as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

426-10 How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*

- (1) This section applies in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*.
- (2) Subdivision 426-B applies in relation to a *government entity in the same way as it applies in relation to an entity.
- (3) If, apart from this subsection, section 426-40 or 426-45 (as applied by this section) would impose an obligation on a *government entity:
 - (a) that is an unincorporated association or body; and
 - (b) for whose management a single person is responsible to persons or bodies outside the government entity;the obligation is imposed on that person.
- (4) Subsection (3) has effect despite:
 - (a) subsection (2); and
 - (b) subsection 426-50(2) as it applies because of this section.

Subdivision 426-B—Process of endorsement etc.**Table of sections**

426-15	Applying for endorsement
426-20	Dealing with an application for endorsement
426-25	Notifying outcome of application for endorsement
426-30	Date of effect of endorsement
426-35	Review of refusal of endorsement
426-40	Checking entitlement to endorsement
426-45	Telling Commissioner of loss of entitlement to endorsement
426-50	Partnerships and unincorporated bodies
426-55	Revoking endorsement
426-60	Review of revocation of endorsement

426-15 Applying for endorsement

- (1) An entity may apply to the Commissioner for endorsement.
- (2) The application:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-20

- (a) must be in a form approved by the Commissioner; and
- (b) may be *lodged electronically; and
- (c) must be signed for the entity, or include the entity's *electronic signature if the application is lodged electronically; and
- (d) must be lodged at, or posted to, an office or facility designated by the Commissioner as a receiving centre for applications of that kind.

Note: The Commissioner could approve a form that is part of an application form for an ABN.

- (3) Section 426-5 does not prevent the Commissioner from approving a single form to be used by an entity to make applications for 2 or more kinds of endorsement.

426-20 Dealing with an application for endorsement

Requiring further information or documents

- (1) The Commissioner may require an applicant to give the Commissioner specified information, or a specified document, that the Commissioner needs in order to decide whether the applicant is entitled to endorsement.

Treating application as being refused

- (2) After the time worked out under subsection (3), the applicant may give the Commissioner written notice that the applicant wishes to treat the application as having been refused, if the Commissioner has not given the applicant before that time written notice that the Commissioner endorses or refuses to endorse the applicant.

Note: Section 426-25 requires the Commissioner to give the applicant written notice if the Commissioner endorses or refuses to endorse the applicant.

- (3) The time is the end of the 60th day after the application was made. However, if before that time the Commissioner requires the applicant under subsection (1) to give information or a document, the time is the later of the following (or either of them if they are the same):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-25

- (a) the end of the 28th day after the last day on which the applicant gives the Commissioner information or a document he or she has required;
 - (b) the end of the 60th day after the application was made.
- (4) If the applicant gives notice under subsection (2), section 426-35 operates as if the Commissioner had refused the application on the day on which the notice is given.
- Note: Section 426-35 lets the applicant object against refusal of an application in the manner set out in Part IVC of this Act. That Part provides for review of the refusal objected against.
- (5) The notice given by the applicant:
- (a) may be *lodged electronically; and
 - (b) must be signed for the applicant, or include the applicant's *electronic signature if the application is *lodged electronically.

426-25 Notifying outcome of application for endorsement

- (1) The Commissioner must give the applicant written notice if:
 - (a) the Commissioner endorses the applicant; or
 - (b) the Commissioner refuses to endorse the applicant.
- (2) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

426-30 Date of effect of endorsement

- (1) The endorsement has effect from a date specified by the Commissioner.
- (2) The date specified may be any date (including a date before the application for endorsement was made and a date before the applicant had an *ABN).

426-35 Review of refusal of endorsement

If the applicant is dissatisfied with the Commissioner's refusal to endorse the applicant in accordance with the application, the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-40

applicant may object against the refusal in the manner set out in Part IVC of this Act.

Note: That Part provides for review of the refusal objected against.

426-40 Checking entitlement to endorsement

- (1) The Commissioner may require an entity that is endorsed to give the Commissioner information or a document that is relevant to the entity's entitlement to endorsement. The entity must comply with the requirement.

Note 1: The conditions for an entity to be entitled to be endorsed are set out in:

- (a) subsections 176-1(2) of the GST Act; and
- (b) subsections 123C(2), 123D(2) and 123E(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
- (c) sections 30-120 and 50-105 of the *Income Tax Assessment Act 1997*.

Note 2: Failure to comply with this subsection is an offence against section 8C. Also, the Commissioner may revoke the endorsement of the entity under section 426-55 if it fails to comply with this subsection.

Note 3: Section 426-50 modifies the way this subsection operates in relation to partnerships and unincorporated bodies.

- (2) The requirement:
- (a) is to be made by notice in writing to the entity; and
 - (b) may ask the entity to give the information in writing; and
 - (c) must specify:
 - (i) the information or document the entity is to give; and
 - (ii) the period within which the entity is to give the information or document.

The period specified under subparagraph (c)(ii) must end at least 28 days after the notice is given.

- (3) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.
- (4) If the requirement is for the entity to give information in writing, the document setting out the information:
- (a) must be given to the Commissioner; and
 - (b) may be *lodged electronically; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) must be signed for the entity, or include the entity's
*electronic signature if the document is lodged electronically.

426-45 Telling Commissioner of loss of entitlement to endorsement

- (1) Before, or as soon as practicable after, an entity that is endorsed ceases to be entitled to be endorsed, the entity must give the Commissioner written notice of the cessation.

Note 1: Failure to comply with this subsection is an offence against section 8C.

Note 2: Section 426-50 modifies the way this subsection operates in relation to partnerships and unincorporated bodies.

- (2) The notice:
- (a) may be *lodged electronically; and
 - (b) must be signed for the entity, or include the entity's
*electronic signature if the document is lodged electronically.
- (3) Subsection (1) does not apply to an entitlement to endorsement ceasing because the entity ceases to have an *ABN.

426-50 Partnerships and unincorporated bodies

Application to partnerships

- (1) If, apart from this subsection, section 426-40 or 426-45 would impose an obligation on a partnership, the obligation is imposed on each partner, but may be discharged by any of the partners.

Application to unincorporated bodies

- (2) If, apart from this subsection, section 426-40 or 426-45 would impose an obligation on an unincorporated association or body, the obligation is imposed on each member of the committee of management of the association or body, but may be discharged by any of the members of the committee.

Defences for partners and members of committee of management

- (3) In a prosecution of a person for an offence against section 8C of this Act because of subsection (1) or (2), it is a defence if the person proves that the person:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-55

- (a) did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

426-55 Revoking endorsement

- (1) The Commissioner may revoke the endorsement of an entity if:
 - (a) the entity is not entitled to be endorsed; or
 - (b) the Commissioner has required the entity under section 426-40 to provide information or a document that is relevant to its entitlement to endorsement and the entity has not provided the required information or document within the time specified in the requirement; or
 - (c) in the case of an entity endorsed under section 30-120 of the *Income Tax Assessment Act 1997*—the entity has contravened Subdivision 30-CA of that Act (which requires the entity to ensure that certain things are stated in any receipts it issues for certain gifts).

Note: The conditions for an entity to be entitled to be endorsed are set out in:

- (a) subsections 176-1(2) of the GST Act; and
- (b) subsections 58PB(4) and (4A), 123C(2), 123D(2) and 123E(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
- (c) sections 30-120 and 50-105 of the *Income Tax Assessment Act 1997*.

- (2) The revocation has effect from a day specified by the Commissioner (which may be a day before the Commissioner decided to revoke the endorsement).
- (3) However, if the Commissioner revokes the endorsement because the entity is not entitled to it, the Commissioner must not specify a day before the day on which the entity first ceased to be entitled.
- (4) The Commissioner must give the entity written notice if the Commissioner revokes its endorsement.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (5) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

426-60 Review of revocation of endorsement

If the entity is dissatisfied with the revocation of its endorsement, the entity may object against the revocation in the manner set out in Part IVC of this Act.

Note: That Part provides for review of the revocation objected against.

Subdivision 426-C—Entries on Australian Business Register

Table of sections

426-65 Entries on Australian Business Register

426-65 Entries on Australian Business Register

- (1) If an entity that is endorsed in any of these ways:
- (a) as a charity under subsection 176-1(1) of the **GST Act*;
 - (ba) as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (bb) for the operation of an approved worker entitlement fund under subsection 58PB(3A) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (c) as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (e) as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (f) as a registered charity covered by table item 1 in subsection 65J(1) of the *Fringe Benefits Tax Assessment Act 1986* under subsection 123E(1) of that Act;
 - (g) as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*;
- the **Australian Business Registrar* must enter in the **Australian Business Register* a statement that the entity is so endorsed for a specified period.

**For definition, see section 995-1 of the Income Tax Assessment Act 1997.*

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Note 1: An entry (or lack of entry) of a statement required by this section does not affect concessions available to the entity under the Act for the purposes of which it is endorsed.

Note 2: For entities and government entities that are endorsed under section 30-120 of the *Income Tax Assessment Act 1997*, see section 30-229 of that Act.

- (2) The *Australian Business Registrar may remove the statement from the *Australian Business Register after the end of the period.
- (2A) If the endorsed entity is also registered under the *Australian Charities and Not-for-profits Commission Act 2012* as an entity of a particular type or subtype, the *Australian Business Registrar must also enter in the *Australian Business Register:
 - (a) a statement that the entity is so registered; and
 - (b) a statement as to the date of effect of the registration.
- (2B) The *Australian Business Registrar may remove the statements from the *Australian Business Register if the registration is revoked under the *Australian Charities and Not-for-profits Commission Act 2012*.
- (3) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:
 - (a) change the statement; or
 - (b) remove the statement from the Register if the statement is not true; or
 - (c) remove the statement from the Register and enter another statement in the Register under this section.
- (4) Making, changing or removing an entry in the *Australian Business Register as required or permitted by this section does not contravene section 355-25 or 355-155.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 426-D—Public and private ancillary funds

Guide to Subdivision 426-D

426-100 What this Subdivision is about

This Subdivision deals with types of philanthropic trust funds known as **public ancillary funds** and **private ancillary funds**.

The Minister may make guidelines determining when ancillary funds are entitled to be endorsed as deductible gift recipients.

This Subdivision also provides for:

- (a) penalties for trustees who fail to comply with the public ancillary fund guidelines or private ancillary fund guidelines (whichever are applicable), and the liability of directors of trustees to pay those penalties in certain circumstances; and
- (b) powers for the Commissioner to suspend or remove trustees who breach their obligations.

Table of sections

Public ancillary funds

- 426-102 Public ancillary funds
- 426-103 Public ancillary fund guidelines
- 426-104 Australian Business Register must show public ancillary fund status

Private ancillary funds

- 426-105 Private ancillary funds
- 426-110 Private ancillary fund guidelines
- 426-115 Australian Business Register must show private ancillary fund status

Administrative penalties

- 426-120 Administrative penalties for trustees of ancillary funds

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-102

Suspension and removal of trustees

- 426-125 Suspension or removal of trustees
- 426-130 Commissioner to appoint acting trustee in cases of suspension or removal
- 426-135 Terms and conditions of appointment of acting trustee
- 426-140 Termination of appointment of acting trustee
- 426-145 Resignation of acting trustee
- 426-150 Property vesting orders
- 426-155 Powers of acting trustee
- 426-160 Commissioner may give directions to acting trustee
- 426-165 Property vested in acting trustee—former trustees' obligations relating to books, identification of property and transfer of property

Transfers between ancillary funds

- 426-170 Ancillary funds must not provide funds to other ancillary funds

Public ancillary funds

426-102 Public ancillary funds

- (1) A trust is a **public ancillary fund** if:
 - (a) at least one of the following subparagraphs applies:
 - (i) each trustee of the trust is a *constitutional corporation;
 - (ii) the only trustee of the trust is the Public Trustee of a State or Territory, or each trustee of the trust is prescribed by the regulations for the purposes of this subparagraph; and
 - (b) each trustee of the trust has agreed, in the *approved form given to the Commissioner, to comply with the rules in the *public ancillary fund guidelines, as in force from time to time; and
 - (c) none of the trustees has revoked that agreement in accordance with subsection (2).
- (2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the *approved form.
- (3) Sections 426-125 to 426-165 do not apply to a *public ancillary fund if subparagraph (1)(a)(ii) of this section applies to the fund.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

426-103 Public ancillary fund guidelines

The Minister must, by legislative instrument, formulate guidelines (the ***public ancillary fund guidelines***) setting out:

- (a) rules that *public ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as *deductible gift recipients; and
- (b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to public ancillary funds.

426-104 Australian Business Register must show public ancillary fund status

- (1) If a *public ancillary fund has an *ABN, the *Australian Business Registrar must enter in the *Australian Business Register in relation to the fund a statement that it is a public ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a public ancillary fund.

Note 2: The Australian Business Register will also show if a public ancillary fund is endorsed as a deductible gift recipient: see section 30-229 of the *Income Tax Assessment Act 1997*.

- (2) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:
 - (a) change the statement; or
 - (b) remove the statement from the Register if the statement is not true.

Private ancillary funds

426-105 Private ancillary funds

- (1) A trust is a ***private ancillary fund*** if:
 - (a) each trustee of the trust is a *constitutional corporation; and
 - (b) each trustee has agreed, in the *approved form given to the Commissioner, to comply with the rules in the *private ancillary fund guidelines, as in force from time to time; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-110

- (c) none of the trustees has revoked that agreement in accordance with subsection (2).
- (2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the *approved form.

426-110 Private ancillary fund guidelines

The Minister must, by legislative instrument, formulate guidelines (the *private ancillary fund guidelines*) setting out:

- (a) rules that *private ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as *deductible gift recipients; and
- (b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to private ancillary funds.

426-115 Australian Business Register must show private ancillary fund status

- (1) If a *private ancillary fund has an *ABN, the *Australian Business Registrar must enter in the *Australian Business Register in relation to the fund a statement that it is a private ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a private ancillary fund.

Note 2: The Australian Business Register will also show if a private ancillary fund is endorsed as a deductible gift recipient: see section 30-229 of the *Income Tax Assessment Act 1997*.

- (2) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:
 - (a) change the statement; or
 - (b) remove the statement from the Register if the statement is not true.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Administrative penalties

426-120 Administrative penalties for trustees of ancillary funds

Administrative penalty

- (1) The persons mentioned in subsection (2) are jointly and severally liable to an administrative penalty if:
 - (a) a trustee of an *ancillary fund holds the fund out as being endorsed, entitled to be endorsed, or entitled to remain endorsed, as a *deductible gift recipient; and
 - (b) the fund is not so endorsed or entitled.
 - (2) The persons are:
 - (a) each person who is a trustee of the fund; and
 - (b) each director of each *constitutional corporation that is a trustee of the fund, if:
 - (i) any of the penalty cannot reasonably be recovered from the constitutional corporation; and
 - (ii) the constitutional corporation is neither a licensed trustee company (within the meaning of Chapter 5D of the *Corporations Act 2001*) nor the Public Trustee of a State or Territory.
- Note: A person mentioned in paragraph (2)(a) may, in certain circumstances, not be a constitutional corporation: see item 28 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 4) Act 2009* (former prescribed private funds).
- (3) The amount of the penalty is:
 - (a) the amount specified in the *public ancillary fund guidelines under paragraph 426-103(b), or the *private ancillary fund guidelines under paragraph 426-110(b), whichever are applicable; or
 - (b) the amount worked out in accordance with the method specified under that paragraph.

The guidelines may specify different penalties or methods for different circumstances.

- (4) The penalty must not be reimbursed from the fund.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: Division 298 in this Schedule contains machinery provisions for administrative penalties.

Defences for directors

- (5) Paragraph (2)(b) does not apply to a director if:
 - (a) the director was not aware of the holding out mentioned in paragraph (1)(a) and it would not have been reasonable to expect the director to have been aware of that holding out; or
 - (b) the director took all reasonable steps to ensure that the holding out mentioned in that paragraph did not occur; or
 - (c) there were no such steps that the director could have taken.
- (6) In determining what is reasonable for the purposes of paragraph (5)(a), (b) or (c), have regard to all relevant circumstances.
- (7) A person who wishes to rely on subsection (5) bears an evidential burden in relation to the matters in that subsection.

Power of courts to grant relief

- (8) Section 1318 of the *Corporations Act 2001* (power of Court to grant relief in case of breach of director's duty) does not apply to a liability of a director under this section.

Suspension and removal of trustees

426-125 Suspension or removal of trustees

Suspension

- (1) The Commissioner may suspend all of the trustees of an *ancillary fund if the Commissioner is satisfied that the fund, or any of the trustees of the fund, have breached:
 - (a) the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable); or
 - (b) any other *Australian law.
- (2) The suspension of a trustee:
 - (a) starts when the Commissioner gives the trustee notice of the suspension under subsection (3); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) ends at the time specified in the notice.
- (3) If the Commissioner decides to suspend a trustee under this section, the Commissioner must give to the trustee a written notice:
 - (a) setting out the decision; and
 - (b) giving the reasons for the decision; and
 - (c) setting out the time the suspension ends.

Extension of suspensions

- (4) The Commissioner may change the time the suspension of a trustee ends.
- (5) If the Commissioner decides to change the time the suspension of a trustee ends under this section, the Commissioner must give to the trustee a written notice:
 - (a) setting out the decision; and
 - (b) giving the reasons for the decision; and
 - (c) setting out the new time the suspension ends.

Removal

- (6) The Commissioner may remove all of the trustees of an *ancillary fund if the Commissioner is satisfied that the fund, or any of the trustees of the fund, have breached:
 - (a) the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable); or
 - (b) any other *Australian law.
- (7) If the Commissioner decides to remove a trustee under this section, the Commissioner must give to the trustee a written notice:
 - (a) setting out the decision; and
 - (b) giving the reasons for the decision.

Review of decisions under this section

- (8) A trustee who is dissatisfied with any of the following decisions under this section may object in the manner set out in Part IVC of this Act:
 - (a) a decision to suspend the trustee;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 426-130

- (b) a decision to change the time a suspension of the trustee ends;
- (c) a decision to remove the trustee.

426-130 Commissioner to appoint acting trustee in cases of suspension or removal

Appointment of acting trustee

- (1) If the Commissioner suspends all of the trustees of an *ancillary fund under section 426-125, the Commissioner must appoint a single entity to act as the trustee (the **acting trustee**) of the fund during the period of the suspension.
- (2) If the Commissioner removes all of the trustees of an *ancillary fund under section 426-125, the Commissioner must appoint a single entity to act as the trustee (the **acting trustee**) of the fund until all of the vacancies in the position of trustee are filled.

Acting trustee need not be constitutional corporation

- (3) An acting trustee need not be a *constitutional corporation, and may be the Commissioner. Paragraph 426-105(1)(a) does not apply in relation to an acting trustee.
- (4) An entity that is not a *constitutional corporation may not act as trustee under this section for longer than 6 months.

Acting trustee must have agreed to comply with guidelines

- (5) An entity may only be appointed as acting trustee if the entity has, in accordance with paragraph 426-102(1)(b) or 426-105(1)(b), agreed to comply with the rules in the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable) as in force from time to time.

426-135 Terms and conditions of appointment of acting trustee

- (1) The Commissioner may determine the terms and conditions of the appointment of the acting trustee, including fees. The determination has effect despite anything in:
 - (a) any *Australian law other than this section; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) the *ancillary fund's governing rules.
- (2) Without limiting subsection (1), the Commissioner may make a determination under that subsection to the effect that the acting trustee's fees are to be paid out of the corpus of the *ancillary fund.

426-140 Termination of appointment of acting trustee

The Commissioner may terminate the appointment of the acting trustee at any time.

426-145 Resignation of acting trustee

- (1) The acting trustee may resign by writing given to the Commissioner.
- (2) The resignation does not take effect until the end of the seventh day after the day on which it was given to the Commissioner.

426-150 Property vesting orders

- (1) If the Commissioner appoints an acting trustee, the Commissioner must make a written order vesting the property of the *ancillary fund in the acting trustee.
- (2) If the appointment ends, the Commissioner must make a written order vesting the property of the fund in the new acting trustee, the previously suspended trustee or trustees or the new actual trustee or trustees (whichever is applicable).
- (3) If the Commissioner makes an order under this section vesting property of an *ancillary fund in an entity or entities, then, subject to subsection (4), the property immediately vests in the entity or entities by force of this section.
- (4) If:
 - (a) the property is of a kind whose transfer or transmission may be registered under an *Australian law; and
 - (b) that law enables the registration of such an order, or enables the entity or entities to be registered as the owner of that property;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the property does not vest in the entity or entities until the requirements of the law referred to in paragraph (a) have been complied with.

426-155 Powers of acting trustee

Subject to section 426-150:

- (a) the acting trustee has and may exercise all the rights, title and powers, and must perform all the functions and duties, of the original trustee or trustees; and
- (b) the *ancillary fund's governing rules and every *Australian law apply in relation to the acting trustee as if the acting trustee were the trustee of the fund.

426-160 Commissioner may give directions to acting trustee

- (1) The Commissioner may give the acting trustee a written notice directing the acting trustee to do, or not to do, one or more specified acts or things in relation to the *ancillary fund.
- (2) The acting trustee commits an offence if:
 - (a) the acting trustee engages in conduct (within the meaning of subsection 2(1) of this Act); and
 - (b) that engagement in conduct contravenes a notice given to the acting trustee under subsection (1).

Penalty: 100 penalty units.

- (3) This section does not affect the validity of a transaction entered into in contravention of a notice given under subsection (1).

426-165 Property vested in acting trustee—former trustees' obligations relating to books, identification of property and transfer of property

Books

- (1) An entity commits an offence if:
 - (a) the Commissioner makes an order under subsection 426-150(1) or (2) vesting the property of an *ancillary fund in an acting trustee; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) just before the Commissioner made the order, the property was vested in:
 - (i) the entity (the *former trustee*); or
 - (ii) 2 or more entities (the *former trustees*), including the entity; and
- (c) the former trustee or former trustees do not, within 14 days of the Commissioner making the order, give the acting trustee all books (within the meaning of the *Corporations Act 2001*) relating to the fund's affairs that are in the former trustee's or former trustees' possession, custody or control.

Penalty: 50 penalty units.

Identification of property and transfer of property

- (2) Subsections (3) to (5) apply if:
 - (a) the property of an *ancillary fund is vested in an entity (the *former trustee*) or entities (the *former trustees*); and
 - (b) the Commissioner makes an order under subsection 426-150(1) or (2) vesting the property in an acting trustee.
- (3) The acting trustee may, by notice in writing to the former trustee or former trustees, require the former trustee or former trustees, so far as the former trustee or former trustees can do so:
 - (a) to identify property of the fund; and
 - (b) to explain how the former trustee or former trustees have kept account of that property.
- (4) The acting trustee may, by notice in writing to the former trustee or former trustees, require the former trustee or former trustees to take specified action that is necessary to bring about a transfer of specified property of the fund to the acting trustee.
- (5) The former trustee, or each of the former trustees, commits an offence if:
 - (a) the acting trustee gives the former trustee or former trustees a notice under subsection (3) or (4); and
 - (b) the former trustee or former trustees do not, within 28 days of the notice being given, comply with the requirement in the notice.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Penalty: 50 penalty units.

Strict liability

(6) Subsections (1) and (5) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Transfers between ancillary funds

426-170 Ancillary funds must not provide funds to other ancillary funds

An *ancillary fund must not provide money, property or benefits to another ancillary fund unless permitted to do so by the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 5-45—Application of taxation laws to certain entities

Division 444—Obligations of entities on behalf of other entities

Table of Subdivisions

	Guide to Division 444
444-A	Unincorporated associations and bodies and companies
444-B	Partnerships
444-C	Superannuation funds
444-D	Incapacitated entities
444-E	Indirect tax specific entities
444-F	Trusts

Guide to Division 444

444-1 What this Division is about

This Division imposes onto other entities the liabilities of unincorporated associations or bodies, companies, partnerships, superannuation funds, incapacitated entities, trusts and various indirect tax specific entities.

Subdivision 444-A—Unincorporated associations and bodies and companies

Table of sections

444-5	Unincorporated associations and bodies
444-10	Public officers of companies
444-15	Notifying and serving companies

444-5 Unincorporated associations and bodies

- (1) Obligations that would be imposed under this Schedule, the *MRRT law or an *indirect tax law on an unincorporated association or body of entities are imposed on each member of the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-10

committee of management of the association or body, but may be discharged by any of those members.

- (1A) An amount that is payable under the *MRRT law by an unincorporated association or body of entities is payable by each member of the committee of management of the association or body.
- (1B) If there is more than one such member, those members are jointly and severally liable to pay the amount.
- (2) Any offence against this Schedule, the *MRRT law or an *indirect tax law that is committed by the association or body is taken to have been committed by each member of its committee of management.
- (3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:
 - (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (3) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (3): see section 13.4 of the *Criminal Code*.

444-10 Public officers of companies

- (1) The individual who is the public officer of a company for the purposes of the *Income Tax Assessment Act 1936* is also the public officer of the company for the purposes of an *indirect tax law and the *MRRT law. The public officer's address for service under that Act is also the public officer's address for service for the same purposes.
- (2) The public officer is answerable for doing everything required to be done by the company under an *indirect tax law and the *MRRT law, and in case of default is liable to the same penalties.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-15

- (3) A proceeding under an *indirect tax law or the *MRRT law that is brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.
- (4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company.
- (5) Service of a notice or other document on the public officer or at the public officer's address for service is sufficient service on the company for the purposes of an *indirect tax law and the *MRRT law. If at any time there is no public officer, service on an individual who is acting or appears to be acting in the business of the company is sufficient.

Note: See section 444-15 for alternative ways to give a notice to, or serve a process on, a company (through its officers, attorneys or agents).

- (6) This section does not, by implication, reduce any of the obligations or liabilities of the company.

444-15 Notifying and serving companies

For the purposes of an *indirect tax law or the *MRRT law, if the Commissioner considers it appropriate, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

- (a) a director, the secretary or another officer of the company; or
- (b) an attorney or agent of the company.

Note: See subsection 444-10(5) for alternative ways to serve a notice or another document on a company (through its public officer or someone else acting or appearing to act for the company).

Subdivision 444-B—Partnerships**Table of sections**

444-30 Partnerships

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-30

444-30 Partnerships

- (1) Obligations that are imposed under this Schedule, the *MRRT law or an *indirect tax law on a partnership are imposed on each partner, but may be discharged by any of the partners.
- (2) The partners are jointly and severally liable to pay any amount that is payable under this Schedule, the *MRRT law or an *indirect tax law by the partnership.
- (3) Any offence against this Schedule, the *MRRT law or an *indirect tax law that is committed by a partnership is taken to have been committed by each of the partners.
- (4) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (3), it is a defence if the entity proves that the entity:
 - (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (4) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (4): see section 13.4 of the *Criminal Code*.

Subdivision 444-C—Superannuation funds

Table of sections

444-50 Superannuation funds

444-50 Superannuation funds

If a superannuation fund does not have a trustee of the fund, this Schedule applies to the fund as if:

- (a) the entity that manages the fund were the trustee of the fund;
or
- (b) each of the entities that manage the fund were a trustee of the fund.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: The trustee of a superannuation fund is taken to be an entity: see subsection 960-100(2) of the *Income Tax Assessment Act 1997*.

Subdivision 444-D—Incapacitated entities

Table of sections

444-70 Representatives of incapacitated entities

444-70 Representatives of incapacitated entities

- (1) If:
- (a) there are, at the same time, 2 or more *representatives of the same *incapacitated entity; and
 - (b) the representatives were not appointed to act in different capacities as representatives;
- the representatives are jointly and severally liable to pay any amount that is payable under an *indirect tax law or the *MRRT law by any of the representatives in relation to that same incapacitated entity.
- (2) If:
- (a) there are, at the same time, 2 or more *representatives of the same *incapacitated entity; and
 - (b) the representatives were not appointed to act in different capacities as representatives;
- any offence against an *indirect tax law or the *MRRT law that is committed by one of the representatives is taken to have been committed by each of the representatives.
- (3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:
- (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (3) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-80

Note 2: A defendant bears a legal burden in relation to the matters in subsection (3): see section 13.4 of the *Criminal Code*.

Subdivision 444-E—Indirect tax specific entities

Table of sections

444-80	GST joint ventures
444-85	Non-profit sub-entities
444-90	GST groups

444-80 GST joint ventures

Joint and several liability

- (1) The *participants in a *GST joint venture are jointly and severally liable to pay any amount (an ***indirect tax amount***) that is payable under an *indirect tax law by the *joint venture operator for the joint venture, to the extent that the amount relates to the joint venture.

Indirect tax sharing agreements

- (1A) Despite subsection (1), if:
- (a) before the *joint venture operator for the joint venture is required to give to the Commissioner a *GST return for a *tax period, an agreement (the ***indirect tax sharing agreement***) has been entered into between:
 - (i) the joint venture operator; and
 - (ii) one or more *participants in the joint venture (the ***contributing participant***) (other than the joint venture operator); and
 - (b) a particular amount (the ***contribution amount***) could be determined under the indirect tax sharing agreement for each contributing participant in relation to that tax period; and
 - (c) the contribution amounts for each of the contributing participants under the indirect tax sharing agreement represent a reasonable allocation among:
 - (i) the joint venture operator; and
 - (ii) the contributing participants;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

of the total amount payable, under *indirect tax laws, for which the participants in the joint venture would be jointly or severally liable under subsection (1) in relation to that tax period;

then:

- (d) if the contributing participant leaves the joint venture before the joint venture operator for the joint venture is required to give to the Commissioner a GST return for that tax period, and subsection (1B) applies—the contributing participant is not liable under subsection (1) in relation to an indirect tax amount relating to that tax period; or
- (e) otherwise—the contributing participant's liability under subsection (1) in relation to that tax period is not to exceed that contribution amount.

(1B) This subsection applies if:

- (a) leaving the joint venture was not part of an arrangement, a purpose of which was to prejudice the recovery by the Commissioner of the indirect tax amount; and
- (b) before the day on which the *joint venture operator is required to give to the Commissioner a *GST return for that tax period, the contributing participant pays to the joint venture operator:
 - (i) the contribution amount relating to that tax period; or
 - (ii) if the contribution amount cannot be determined at the time of the payment—an amount that is a reasonable estimate of the contribution amount.

(1C) Subsection (1A) does not apply if:

- (a) the indirect tax sharing agreement was entered into as part of an arrangement; and
- (b) a purpose of the arrangement was to prejudice the recovery by the Commissioner of the indirect tax amount.

(1D) Subsection (1A) does not apply if:

- (a) the Commissioner gives the *joint venture operator of the joint venture written notice under this subsection in relation to the indirect tax sharing agreement (whether before, when or after an indirect tax amount to which the agreement relates becomes payable); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-85

- (b) the notice requires the joint venture operator to give the Commissioner a copy of the agreement in the *approved form within 14 days after the notice is given; and
 - (c) the Commissioner does not receive a copy of the agreement by the time required.
- (1E) Subsection (1A) does not apply if, apart from this subsection, the requirements of subsection (1A) would be satisfied in relation to 2 or more agreements:
 - (a) that were entered into by the *joint venture operator; and
 - (b) that relate to the same tax period.

Criminal liability of participants in GST joint ventures

- (2) Any offence against an *indirect tax law that:
 - (a) is committed by the *joint venture operator for a *GST joint venture; and
 - (b) relates to the joint venture;is taken to have been committed by each of the *participants in the joint venture.
- (3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:
 - (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (3) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (3): see section 13.4 of the *Criminal Code*.

444-85 Non-profit sub-entities

- (1) Obligations that would be imposed under the *GST law or the *fuel tax law on a *non-profit sub-entity are imposed on each entity who is responsible, to entities or bodies outside the sub-entity, for the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-90

management of the sub-entity, but may be discharged by any entity who is so responsible.

- (2) The entities who are so responsible in respect of the sub-entity are jointly and severally liable to pay any amount that is payable under the *GST law or the *fuel tax law by the sub-entity.
- (3) Any offence against the *GST law or the *fuel tax law that is committed by the sub-entity is taken to have been committed by each entity who is responsible, to entities or bodies outside the sub-entity, for the management of the sub-entity.
- (4) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (3), it is a defence if the entity proves that the entity:
 - (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (4) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (4): see section 13.4 of the *Criminal Code*.

444-90 GST groups

Joint and several liability

- (1) The *members of a *GST group are jointly and severally liable to pay any amount (an ***indirect tax amount***) that is payable under an *indirect tax law by the *representative member for the group.

Indirect tax sharing agreements

- (1A) Despite subsection (1), if:
 - (a) before the *representative member of the group is required to give to the Commissioner a *GST return for a *tax period, an agreement (the ***indirect tax sharing agreement***) has been entered into between:
 - (i) the representative member; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) one or more other *members of the group (the *contributing member*); and
 - (b) a particular amount (the *contribution amount*) could be determined under the indirect tax sharing agreement for each contributing member in relation to that tax period; and
 - (c) the contribution amounts for each of the contributing members under the indirect tax sharing agreement represent a reasonable allocation among:
 - (i) the representative member; and
 - (ii) the contributing members;of the total amount payable, under *indirect tax laws, for which the members of the group would be jointly or severally liable under subsection (1) in relation to that tax period;
- then:
- (d) if the contributing member leaves the group before the representative member of the group is required to give to the Commissioner a GST return for that tax period, and subsection (1B) applies—the contributing member is not liable under subsection (1) in relation to an indirect tax amount relating to that tax period; or
 - (e) otherwise—the contributing member’s liability under subsection (1) in relation to that tax period is not to exceed that contribution amount.
- (1B) This subsection applies if:
- (a) leaving the group was not part of an arrangement, a purpose of which was to prejudice the recovery by the Commissioner of the indirect tax amount; and
 - (b) before the day on which the *representative member is required to give to the Commissioner a *GST return for that tax period, the contributing member pays to the representative member:
 - (i) the contribution amount relating to that tax period; or
 - (ii) if the contribution amount cannot be determined at the time of the payment—an amount that is a reasonable estimate of the contribution amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(1C) Subsection (1A) does not apply if:

- (a) the indirect tax sharing agreement was entered into as part of an arrangement; and
- (b) a purpose of the arrangement was to prejudice the recovery by the Commissioner of the indirect tax amount.

(1D) Subsection (1A) does not apply if:

- (a) the Commissioner gives the *representative member of the group written notice under this subsection in relation to the indirect tax sharing agreement (whether before, when or after an indirect tax amount to which the agreement relates becomes payable); and
- (b) the notice requires the representative member to give the Commissioner a copy of the agreement in the *approved form within 14 days after the notice is given; and
- (c) the Commissioner does not receive a copy of the agreement by the time required.

(1E) Subsection (1A) does not apply if, apart from this subsection, the requirements of subsection (1A) would be satisfied in relation to 2 or more agreements:

- (a) that were entered into by the *representative member; and
- (b) that relate to the same tax period.

Effect of prohibitions on certain arrangements

- (2) Subsection (1) does not apply to a *member of a *GST group if an *Australian law has the effect of prohibiting the member from entering into any *arrangement under which the member becomes subject to the liability referred to in that subsection.
- (3) However, a *member to which subsection (2) applies remains liable for any amount payable under an *indirect tax law by the *representative member for the group, to the extent that the liability arises from an act or omission of the member to which subsection (2) applies.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-120

Criminal liability of members of GST groups

- (4) Any offence against an *indirect tax law that is committed by the *representative member for a *GST group is taken to have been committed by each of the *members of the group.
- (5) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (4), it is a defence if the entity proves that the entity:
 - (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (5) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (5): see section 13.4 of the *Criminal Code*.

Subdivision 444-F—Trusts

Table of sections

444-120 Trusts

444-120 Trusts

Obligations

- (1) Subject to subsection (2), an obligation that is imposed under the *MRRT law on a trust is imposed on each of the following entities, but may be discharged by any such entity:
 - (a) an entity that is the trustee of the trust at the time the obligation arises;
 - (b) an entity that is the trustee of the trust at a time that is:
 - (i) after the obligation arises; and
 - (ii) before the obligation has been discharged.
- (2) An amount that is payable under the *MRRT law by a trust is payable as set out in the table:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-120

Amounts payable by trusts		
Item	Column 1 If the amount that is payable by the trust under the MRRT law is:	Column 2 then it is payable by:
1	*MRRT for an *MRRT year	each of the following entities: (a) an entity that is the trustee of the trust at the end of the MRRT year; (b) an entity that is the trustee of the trust at a time that is: (i) after the end of the MRRT year; and (ii) before the MRRT has been paid.
2	*general interest charge on the unpaid amount of *MRRT for an *MRRT year	each of the following entities: (a) an entity that is the trustee of the trust at the end of the MRRT year; (b) an entity that is the trustee of the trust at a time that is: (i) after the end of the MRRT year; and (ii) before the general interest charge has been paid.
3	*shortfall interest charge in relation to an *MRRT year	each of the following entities: (a) an entity that is the trustee of the trust at the end of the MRRT year; (b) an entity that is the trustee of the trust at a time that is: (i) after the end of the MRRT year; and (ii) before the shortfall interest charge has been paid.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 444-120

Amounts payable by trusts		
Item	Column 1 If the amount that is payable by the trust under the MRRT law is:	Column 2 then it is payable by:
4	an instalment for an *instalment quarter payable under Division 115	each of the following entities: (a) an entity that is the trustee of the trust at the end of the instalment quarter; (b) an entity that is the trustee of the trust at a time that is: (i) after the end of the instalment quarter; and (ii) before the instalment has been paid.
5	*general interest charge on the unpaid amount of an instalment referred to in table item 4	each of the following entities: (a) an entity that is the trustee of the trust at the end of the instalment quarter; (b) an entity that is the trustee of the trust at a time that is: (i) after the end of the instalment quarter; and (ii) before the general interest charge has been paid.

Joint and several liability

- (3) If an amount is payable under this section by more than one entity, those entities are jointly and severally liable to pay the amount.

Commissioner has direct access to trust assets

- (4) For the purpose of ensuring the payment of an amount payable by an entity under this section in relation to a liability of a trust, the Commissioner has the same remedies against the property of the trust as the Commissioner would have against the property of the entity.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Right of indemnity

- (5) An entity that pays an amount of a liability it has under this section is entitled to be indemnified out of the assets of the trust for the liability.

Offences

- (6) Any offence against the *MRRT law that is committed by a trust is taken to have been committed by the trustee of the trust, or, if the trust has more than one trustee, by each of the trustees.
- (7) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (6), it is a defence if the entity proves that the entity:
- (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (7) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (7): see section 13.4 of the *Criminal Code*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 446-1

Division 446—Local governing bodies

Guide to Division

446-1 What this Division is about

A local governing body can resolve that its members are subject to Pay As You Go withholding. This also results in the members being treated as employees for a wide range of other taxation purposes.

Table of sections

Operative provisions

446-5 Requirements for unanimous resolutions by local governing bodies

Operative provisions

446-5 Requirements for unanimous resolutions by local governing bodies

When section applies

- (1) This section applies to the following unanimous resolutions made by a *local governing body:
 - (a) a resolution that the remuneration of members of the body be subject to withholding under Part 2-5 (about Pay As You Go withholding);
 - (b) a resolution cancelling a resolution covered by paragraph (a).

When resolution takes effect

- (2) The resolution must specify a day as the day on which the resolution takes effect. The specified day must be within the 28-day period beginning on the day after the day on which the resolution was made.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 446-5*Resolution not affected by change in membership of body*

- (3) The resolution continues in force in spite of a change in the membership of the *local governing body.

Commissioner to be notified of resolution

- (4) The *local governing body must give written notice of the resolution to the Commissioner within 7 days after the resolution was made.

Eligible local governing bodies to be notified in Gazette

- (5) If the Commissioner is notified of the resolution, the Commissioner must cause to be published in the *Gazette* a notice setting out:
- (a) the name of the *local governing body; and
 - (b) the day on which the resolution takes effect.

When resolution applies for purposes of affected provisions

- (6) This table sets out when the resolution applies for the purposes of particular provisions whose operation it affects.

When the resolution applies		
Item	If the resolution affects the operation of ...	the resolution applies to ...
1	section 12-45	amounts that become payable after the day on which the resolution takes effect
2	Subdivision AB of Division 17 of Part III of the <i>Income Tax Assessment Act 1936</i> (about tax offset for lump sum payments in arrears)	*ordinary income *derived, and amounts that become *statutory income, after the day on which the resolution takes effect
3	sections 26-30 and 34-5 of the <i>Income Tax Assessment Act 1997</i> (about deductions for relatives' travel expenses and non-compulsory uniforms)	expenditure incurred after the day on which the resolution takes effect

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 446-5

When the resolution applies		
Item	If the resolution affects the operation of ...	the resolution applies to ...
4	Divisions 28 and 900 of the <i>Income Tax Assessment Act 1997</i> (about car expenses and substantiation)	expenses incurred after the day on which the resolution takes effect
5	section 130-80 of the <i>Income Tax Assessment Act 1997</i> (about capital gains tax and employee share trusts)	* shares and rights to which a beneficiary becomes absolutely entitled after the day on which the resolution takes effect
6	provisions of the <i>Fringe Benefits Tax Assessment Act 1986</i> relating to assessments	<p>(a) in the case of a loan benefit within the meaning of the <i>Fringe Benefits Tax Assessment Act 1986</i>—a loan made after the day on which the resolution takes effect;</p> <p>(b) in the case of a housing benefit within the meaning of that Act—the subsistence, after the day on which the resolution takes effect, of the housing right concerned;</p> <p>(c) in the case of a residual benefit within the meaning of that Act that is *provided during a period—so much of the period as occurs after the day on which the resolution takes effect;</p> <p>(d) any other *fringe benefit provided after the day on which the resolution takes effect.</p>
7	Division 4 of Part II of the <i>Income Tax Rates Act 1986</i> (about pro-rating the tax-free threshold)	amounts that become assessable income after the day on which the resolution takes effect
8	the provisions of the <i>Child Support (Registration and Collection) Act 1988</i>	*ordinary income *derived, and amounts that become *statutory income, after the day on which the resolution takes effect
9	section 9-20 of the *GST Act (about the meaning of <i>enterprise</i>)	activities, or series of activities, done after the day on which the resolution takes effect

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 446-5

When the resolution applies		
Item	If the resolution affects the operation of ...	the resolution applies to ...
10	Division 111 of the *GST Act (about reimbursement of employees)	reimbursements made after the day on which the resolution takes effect

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 850-100

Part 5-100—Miscellaneous

**Division 850—Transactions exempt from application of
taxation laws**

Table of Subdivisions

850-A Declaration relating to security or intelligence agency

**Subdivision 850-A—Declaration relating to security or
intelligence agency**

Table of sections

850-100 Declaration relating to security or intelligence agency

850-100 Declaration relating to security or intelligence agency

Object

- (1) The object of this section is to remove the possibility of a conflict arising between Australia's national security interests and Australia's taxation laws.

Making a declaration

- (2) The Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979* may declare that this section applies to one or more specified entities (the Australian Security Intelligence Organisation itself may be specified) in relation to one or more specified transactions.
- (3) The Director-General of the Australian Secret Intelligence Service (**ASIS**) may declare that this section applies to one or more specified entities (ASIS itself may be specified) in relation to one or more specified transactions.
- (4) A declaration under this section may only be made if the relevant Director-General is satisfied that the making of the declaration is necessary for the proper performance of the functions of:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) for the Director-General of Security—the Australian Security Intelligence Organisation; or
 - (b) for the Director-General of ASIS—ASIS.
- (5) A declaration under this section must be in writing, signed by the relevant Director-General.
 - Note 1: A declaration may specify an entity or transaction by reference to a class of entities or transactions (see subsection 33(3AB) of the *Acts Interpretation Act 1901*). For example, a declaration may specify the subsidiaries of a specified company, or the parties to a specified transaction.
 - Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (6) A declaration may be made even though:
 - (a) a transaction it specifies has already been entered into or carried out; or
 - (b) an entity it specifies has died or ceased to exist;(whether before or after the commencement of this section).
- (7) A written document signed by the relevant Director-General purporting to be a declaration is prima facie evidence that this section has been complied with in making the declaration, but this subsection does not affect the performance of the functions of the Inspector-General of Intelligence and Security.

Effect of declaration

- (8) For an entity specified in a declaration in relation to a specified transaction, the transaction is to be disregarded in determining any of the following:
 - (a) the existence or amount of a liability of the entity relating to taxation under any *Commonwealth law, even if the law requires express words to be used to exempt an entity or transaction from liability to taxation under that law;
 - Example: Examples of liabilities covered by paragraph (a) are a liability to GST (despite section 177-5 of the GST Act), and amounts required to be paid by Part 2-5 in this Schedule (Pay as you go (PAYG) withholding).
 - (b) the existence or amount of any kind of benefit (however the benefit is expressed) relating to taxation under any Commonwealth law;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 850-100

Example: Examples of benefits covered by paragraph (b) are deductions, credits and offsets under the *Income Tax Assessment Act 1997*, and input tax credits under the GST Act.

- (c) the existence or extent of any other obligation (or right) of the entity relating to a liability or benefit of a kind mentioned in paragraph (a) or (b).

Example: Examples of obligations covered by paragraph (c) include the following:

- (a) an obligation to withhold money from a payment;
- (b) an obligation to lodge a return, or to provide information, to the Commissioner of Taxation;
- (c) an obligation to become registered under a taxation law.

- (9) A declaration under this section is not a legislative instrument.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.