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This compilation is in 3 volumes

Volume 1:	**sections 1–18** **Schedule 1 (sections 6-1 to 97-35)**
Volume 2:	Schedule 1 (sections 105-1 to 990-5)
Volume 3:	Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Taxation Administration Act 1953* that shows the text of the law as amended and in force on 1 July 2019 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the administration of certain Acts relating to Taxation, and for purposes connected therewith

Part I—Preliminary

1 Short title

This Act may be cited as the *Taxation Administration Act 1953*.

2 Interpretation

(1) In this Act (except Schedule 1), unless the contrary intention appears:

approved form has the meaning given by Schedule 1.

ASIO means the Australian Security Intelligence Organisation.

assessable amount has the meaning given by subsection 155-5(2) in Schedule 1.

Australia, when used in a geographical sense, has the same meaning as in the *Income Tax Assessment Act 1997*.

Commissioner means the Commissioner of Taxation.

Deputy Commissioner means any Deputy Commissioner of Taxation.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

eligible recipient has the meaning given by section 14ZZV.

eligible whistleblower has the meaning given by section 14ZZU.

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engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

excess concessional contributions determination has the same meaning as in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

excise law has the meaning given by the *Income Tax Assessment Act 1997*.

exempt Australian government agency has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

failure to notify penalty means the penalty worked out under Division 2 of Part IIA.

fuel tax law has the meaning given by the *Fuel Tax Act 2006*.

general interest charge means the charge worked out under Part IIA.

Immigration Department has the meaning given by the *Income Tax Assessment Act 1997*.

Immigration Secretary has the meaning given by the *Income Tax Assessment Act 1997*.

indirect tax law has the meaning given by the *Income Tax Assessment Act 1997*.

ineligible income tax remission decision has the meaning given by section 14ZS.

late reconciliation statement penalty means the penalty worked out under Division 3 of Part IIA.

migration officer means:

(a) the Immigration Secretary; or

(b) an employee of the Immigration Department.

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objection decision has the meaning given by subsection 14ZY(2).

officer means a person appointed or engaged under the *Public Service Act 1999*.

private indirect tax ruling means a private ruling, to the extent that it relates to an indirect tax law (other than the fuel tax law).

private ruling has the meaning given by section 359-5 in Schedule 1.

registered tax agent or BAS agent has the same meaning as in the *Tax Agent Services Act 2009*.

Second Commissioner means a Second Commissioner of Taxation.

taxation law has the meaning given by the *Income Tax Assessment Act 1997*.

Note: See also subsection (2).

tax liability means a liability to the Commonwealth arising under, or by virtue of, a taxation law.

Tribunal means the Administrative Appeals Tribunal.

(2) Despite the definition of ***taxation law*** in subsection (1), an Excise Act (as defined in subsection 4(1) of the *Excise Act 1901*) is not a taxation law for the purposes of Part III of this Act.

2A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

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2B Act binds the Crown

This Act binds the Crown in each of its capacities. However, it does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

3 Application

This Act extends to every external Territory referred to in the definition of ***Australia***.

3AA Schedule 1

(1) Schedule 1 has effect.

Definitions in Schedule 1 do not apply to rest of Act

(1A) So far as a provision in Schedule 1 gives an expression a particular meaning, the provision does *not* also have effect for the purposes of this Act (other than Schedule 1), except as provided in this Act (other than Schedule 1).

Application of interpretation provisions of Income Tax Assessment Act 1997

(2) An expression has the same meaning in Schedule 1 as in the *Income Tax Assessment Act 1997*.

(3) Division 950 of the *Income Tax Assessment Act 1997* (which contains rules for interpreting that Act) applies to Schedule 1 to this Act as if the provisions in that Schedule were provisions of that Act.

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Part IA—Administration

3A General administration of Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1.

3B Annual report

(1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act.

(1AA) A report under subsection (1) in relation to a year ending on 30 June shall:

(b) set out:

(i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-55(1) in Schedule 1 (about disclosures to Ministers); and

(ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and

(iii) the Ministers to whom the information was disclosed; and

(c) set out:

(i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-70(1) in Schedule 1 (about disclosures for law enforcement and related purposes); and

(ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and

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(iii) the types of entities and the names of the courts and tribunals to which the information was disclosed; and

(iv) if the information was disclosed under table item 1 or 6 in subsection 355-70(1)—the general categories of offences in relation to which the information was disclosed; and

(d) set out the number (if any) of taxation officers (within the meaning of the *Income Tax Assessment Act 1997*) found guilty of the offence in section 355-25 in Schedule 1 (about disclosure of protected information); and

(e) set out information on the exercise during the year of the Commissioner's powers under Subdivision 370-A in Schedule 1 (Commissioner's remedial power).

(1C) Subsection (1) does not apply in relation to Part III and sections 15 and 15A insofar as that Part and those sections apply in relation to the *Tax Agent Services Act 2009*.

(2) The Minister shall cause a copy of a report furnished under subsection (1) 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.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

(4) In this section:

this Act does not include Part IVC.

3C Reporting of information about corporate tax entity with reported total income of $100 million or more

(1) This section applies to a corporate tax entity for an income year if, according to information reported to the Commissioner in the entity's income tax return for the income year:

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(a) the entity has total income equal to or exceeding $100 million for the income year and, at the end of the income year:

(i) the entity is not an Australian resident that is a private company for the income year; or

(ii) the entity is a member of a wholly-owned group that has a foreign resident ultimate holding company; or

(iii) the percentage of foreign shareholding in the entity is greater than 50%; or

(b) the entity has total income equal to or exceeding $200 million for the income year and, at the end of the income year, the entity is an Australian resident that is a private company for the income year.

An expression used in this subsection that is also used in the *Income Tax Assessment Act 1997* has the same meaning as in that Act.

(2) The Commissioner must, as soon as practicable after the end of the income year, make publicly available the information mentioned in subsection (3).

(3) The information is as follows:

(a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;

(b) the entity's total income for the income year, according to information reported to the Commissioner in the entity's income tax return (within the meaning of that Act) for the income year;

(c) the entity's taxable income or net income (if any) for the income year, according to information reported to the Commissioner in that income tax return;

(d) the entity's income tax payable (if any) for the financial year corresponding to the income year, according to information reported to the Commissioner in that income tax return.

(4) Subsection (5) applies if:

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(a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and

(b) the notice contains information that corrects the error.

(5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.

(6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

3CA Reporting of information by significant global entities

(1) This section applies to a corporate tax entity for an income year if:

(a) the entity is a significant global entity for the income year; and

(b) at the end of the income year, the entity is:

(i) an Australian resident; or

(ii) a foreign resident who operates an Australian permanent establishment (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*); and

(c) the entity does not lodge a general purpose financial statement for the financial year most closely corresponding to the income year:

(i) with the Australian Securities and Investments Commission; and

(ii) within the time provided under subsection 319(3) of the *Corporations Act 2001* for lodgement of a report for that financial year.

(2) A corporate tax entity to which this section applies for an income year must, on or before the day by which the entity is required to lodge its income tax return for the income year with the Commissioner, give to the Commissioner in the approved form a

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general purpose financial statement for the financial year most closely corresponding to the income year.

Note: Section 286-75 in Schedule 1 provides an administrative penalty for breach of this subsection.

(3) The Commissioner must give a copy of the statement to the Australian Securities and Investments Commission.

(4) The giving of the copy to the Australian Securities and Investments Commission under subsection (3) is taken, for the purposes of the *Corporations Act 2001*, to be lodgement of the document with the Australian Securities and Investments Commission.

Note: Under section 1274 of the *Corporations Act 2001*, a person may inspect, and require to be given a copy or extract of, any document lodged with the Australian Securities and Investments Commission.

(5) For the purposes of this section, a general purpose financial statement in relation to an entity:

(a) must be prepared in accordance with:

(i) the accounting principles; or

(ii) if accounting principles do not apply in relation to the entity—commercially accepted principles relating to accounting; and

(b) if the entity is a member of a group of entities that are consolidated for accounting purposes as a single group—must relate to:

(i) the entity; or

(ii) the entity and some or all of the other members of the group.

(6) An expression used in this section that is also used in the *Income Tax Assessment Act 1997* has the same meaning as in that Act.

3E Reporting of information about entity with PRRT payable

(1) This section applies to an entity if the entity has an amount of PRRT payable for a year of tax, according to information reported

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to the Commissioner in the entity's PRRT return for the year of tax.

(2) The Commissioner must, as soon as practicable after the end of the year of tax, make publicly available the information mentioned in subsection (3).

(3) The information is as follows:

(a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;

(b) the PRRT payable by the entity in respect of the year of tax, according to information reported to the Commissioner in the entity's PRRT return for the year of tax.

(4) Subsection (5) applies if:

(a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and

(b) the notice contains information that corrects the error.

(5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.

(6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

(7) In this section:

PRRT return means a return under section 59 or 60 of the *Petroleum Resource Rent Tax Assessment Act 1987*.

year of tax has the meaning given by the *Petroleum Resource Rent Tax Assessment Act 1987*.

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3F Reporting of information about junior minerals exploration incentive offset

(1) This section applies if the Commissioner makes a determination under section 418-101 of the *Income Tax Assessment Act 1997* allocating exploration credits to an entity for an income year.

(2) The Commissioner must, as soon as practicable after making the determination, make publicly available:

(a) the ABN and name of the entity; and

(b) the amount of the entity's exploration credits allocation for the income year.

(3) An expression used in this section that is also used in the *Income Tax Assessment Act 1997* has the same meaning as in that Act.

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Part II—Commissioner of Taxation, Second Commissioner of Taxation and Deputy Commissioner of Taxation

4 Commissioner and Second Commissioners of Taxation

There shall be a Commissioner of Taxation and 3 Second Commissioners of Taxation, who shall be appointed by the Governor-General.

4A Statutory Agency etc. for purposes of Public Service Act

(1) The staff necessary to assist the Commissioner are to be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:

(a) the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency; and

(b) the Commissioner is the Head of that Statutory Agency.

5 Tenure of Commissioner and Second Commissioners

(1) The Commissioner of Taxation and each Second Commissioner of Taxation shall be appointed for terms of 7 years respectively and shall be eligible for re-appointment.

(3) The Commissioner of Taxation and the Second Commissioners of Taxation are not subject to the *Public Service Act 1999*.

5A Remuneration and allowances of Commissioner and Second Commissioners

(1) The Commissioner of Taxation and the Second Commissioners of Taxation shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that

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remuneration by the Tribunal is in operation, they shall be paid remuneration at the respective rates that were applicable immediately before the commencement of this section.

(2) The Commissioner of Taxation and the Second Commissioners of Taxation shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

6 Leave of absence

(1) The Commissioner and a Second Commissioner have such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant the Commissioner and a Second Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

6A Resignation

The Commissioner or a Second Commissioner may resign his or her office by writing signed by the Commissioner or Second Commissioner, as the case may be, and delivered to the Governor-General.

6B Acting appointments

(1) The Minister may appoint a person to act in the office of Commissioner of Taxation:

(a) during a vacancy in that office; or

(b) during any period, or during all periods, when the person holding that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office.

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Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Minister may appoint a person to act in an office of Second Commissioner of Taxation:

(a) during a vacancy in that office; or

(b) during any period, or during all periods, when the person holding the office of Second Commissioner of Taxation is absent from duty or from Australia, is acting in the office of Commissioner of Taxation or is, for any other reason, unable to perform the functions of the office of Second Commissioner of Taxation.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(6) While a person is acting in the office of Commissioner of Taxation, the person has and may exercise all the powers, and shall perform all the functions, of the Commissioner under this Act or any other law.

(6A) For the purposes of subsection (6), the Commissioner's powers and functions include powers and functions given to the Commissioner in his or her capacity as Registrar of the Australian Business Register.

(7) While a person is acting in an office of Second Commissioner of Taxation, the person has and may exercise all the powers, and shall perform all the functions, of the Second Commissioner under this Act or any other law.

6C Suspension and removal from office of Commissioner or Second Commissioner

(1) The Governor-General may remove the Commissioner or a Second Commissioner from office on an address praying for the removal of the Commissioner or the Second Commissioner, as the case may be, on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

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(2) The Governor-General may suspend the Commissioner or a Second Commissioner from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Governor-General suspends the Commissioner or a Second Commissioner, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.

(5) The suspension of the Commissioner or a Second Commissioner from office under this section does not affect any entitlement of the Commissioner or Second Commissioner, as the case may be, to be paid remuneration and allowances.

(6) If:

(a) the Commissioner or a Second Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(b) the Commissioner or a Second Commissioner engages, except with the approval of the Minister, in paid employment outside the duties of the office of Commissioner or Second Commissioner, as the case may be; or

(c) the Commissioner or a Second Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;

the Governor-General shall remove the Commissioner or Second Commissioner, as the case may be, from office.

(7) The Governor-General may, with the consent of the Commissioner or a Second Commissioner, retire the Commissioner or Second

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Commissioner, as the case may be, from office on the ground of physical or mental incapacity.

(8) The Commissioner or a Second Commissioner shall not be suspended, removed or retired from office except as provided by this section.

6D Powers of Second Commissioner

(1) Subject to subsection (2) and to the regulations, a Second Commissioner has all the powers, and may perform all the functions, of the Commissioner under a taxation law.

(2) Subsection (1) does not apply in relation to:
  (a) section 8 of this Act; or
  (b) a provision of a taxation law that:
    (i) provides that the Commissioner has the general administration of the taxation law; or
    (ii) requires the Commissioner to furnish to the Minister a report on the working of the taxation law during any period.

(3) When a power or function of the Commissioner under a taxation law is exercised or performed by a Second Commissioner, the power or function shall, for the purposes of the taxation law, be deemed to have been exercised or performed by the Commissioner.

(4) The exercise of a power, or the performance of a function, of the Commissioner under a taxation law by a Second Commissioner does not prevent the exercise of the power, or the performance of the function, by the Commissioner.

7 Deputy Commissioners of Taxation

There shall be such Deputy Commissioners of Taxation as are required.

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8 Delegation

(1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Commissioner, delegate to a Deputy Commissioner or any other person all or any of the Commissioner's powers or functions under a taxation law or any other law of the Commonwealth or a Territory, other than this power of delegation.

(1A) For the purposes of this section, the Commissioner's powers and functions include powers and functions given to the Commissioner in his or her capacity as Registrar of the Australian Business Register.

(2) Subject to subsection (5), a power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of the taxation law or the other law, as the case may be, be deemed to have been exercised or performed by the Commissioner.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

(5) A delegation under this section may be made subject to a power of review and alteration by the Commissioner, within a period specified in the instrument of delegation, of acts done in pursuance of the delegation.

(6) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of Commissioner, but, for the purposes of the application of subsection 33(3) of the *Acts Interpretation Act 1901* to a delegation under this section, nothing in any law shall be taken to preclude the revocation or variation of the delegation by the same or a subsequent holder of that office.

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Part IIA—The general interest charge

8AAA Overview

This Part explains how to work out the general interest charge on an amount.

Usually, a person is liable to pay the charge if an amount that the person must pay to the Commissioner is not paid on time. But there are also other circumstances in which a person can be liable.

A person is only liable to pay the charge if a provision of an Act makes the person liable.

8AAB When the general interest charge applies

(1) There are certain provisions of this Act and other Acts that make persons liable to pay the general interest charge. Subsection (4) lists the provisions.

(2) A person is only liable to pay the charge on an amount if a provision specifies that the person is liable to pay the charge on the amount.

(3) The charge does not apply to the Commonwealth or an authority of the Commonwealth.

(4) The following table is an index of the laws that deal with liability to the charge.

Liability to general interest charge

Item	Column 1 Section	Column 2 Act	Column 3 Topic
1	162-100	*A New Tax System (Goods and Services Tax) Act 1999*	payment of GST instalments

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Liability to general interest charge			
Item	**Column 1** **Section**	**Column 2** **Act**	**Column 3** **Topic**
2	168-10	*A New Tax System (Goods and Services Tax) Act 1999*	supplies later found to be GST-free supplies
3	25-10	*A New Tax System (Wine Equalisation Tax) Act 1999*	purchases later found to be GST free supplies
3A	175-65	*Australian Charities and Not-for-profits Commission Act 2012*	payment of administrative penalty
3B	67	*Excise Act 1901*	payment of excise duty for tobacco goods
5	93	*Fringe Benefits Tax Assessment Act 1986*	payment of fringe benefits tax
6	112B	*Fringe Benefits Tax Assessment Act 1986*	payment of fringe benefits tax instalments
7	102UP	*Income Tax Assessment Act 1936*	payment of trustee beneficiary non-disclosure tax
8	128C	*Income Tax Assessment Act 1936*	payment of withholding tax
9	former section 163AA	*Income Tax Assessment Act 1936*	returns by instalment taxpayers
10	former section 163B	*Income Tax Assessment Act 1936*	returns by persons other than instalment taxpayers
10A	172A	*Income Tax Assessment Act 1936*	repayments of excessive tax offset refunds
11	271-80 in Schedule 2F	*Income Tax Assessment Act 1936*	payment of family trust distribution tax
12	5-15	*Income Tax Assessment Act 1997*	unpaid income tax or shortfall interest charge
13	197-75	*Income Tax Assessment Act 1997*	payment of untainting tax
14	214-155	*Income Tax Assessment Act 1997*	payment of franking tax by a corporate tax entity

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Liability to general interest charge

Item	Column 1 Section	Column 2 Act	Column 3 Topic
15	292-390	*Income Tax Assessment Act 1997*	payment of excess non-concessional contributions tax or shortfall interest charge
15A	293-75	*Income Tax Assessment Act 1997*	payment of Division 293 tax or shortfall interest charge
15B	294-250	*Income Tax Assessment Act 1997*	payment of excess transfer balance tax
16A	418-170	*Income Tax Assessment Act 1997*	payment of excess exploration credit tax or shortfall interest charge
17	721-30	*Income Tax Assessment Act 1997*	liability of members of consolidated groups
18	840-810	*Income Tax Assessment Act 1997*	payment of managed investment trust withholding tax
18A	840-910	*Income Tax Assessment Act 1997*	payment of Seasonal Labour Mobility Program withholding tax
19	214-105	*Income Tax (Transitional Provisions) Act 1997*	payment of franking deficit tax
20	85	*Petroleum Resource Rent Tax Assessment Act 1987*	payment of petroleum resource rent tax, shortfall interest charge or instalment transfer interest charge
20A	282-19	*Private Health Insurance Act 2007*	repayment of private health insurance premium reduction or refund
21	35	*Product Grants and Benefits Administration Act 2000*	payment of a designated scheme debt
22	21	*Superannuation Contributions Tax (Assessment and Collection) Act 1997*	increase in liability to pay superannuation contributions surcharge because of amendment of assessment

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Liability to general interest charge			
Item	**Column 1** **Section**	**Column 2** **Act**	**Column 3** **Topic**
23	22	*Superannuation Contributions Tax (Assessment and Collection) Act 1997*	liability to pay superannuation contributions surcharge because of new assessment
24	25	*Superannuation Contributions Tax (Assessment and Collection) Act 1997*	payment of superannuation contributions surcharge or advance instalment
25	18	*Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*	increase in liability to pay superannuation contributions surcharge because of amendment of assessment
26	21	*Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*	payment of superannuation contributions surcharge
27	25	*Superannuation (Government Co-contribution for Low Income Earners) Act 2003*	repayments or underpayments of Government co-contributions that cannot be credited to an account
28	49	*Superannuation Guarantee (Administration) Act 1992*	payment of superannuation guarantee charge
29	15DC	*Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*	payment of superannuation (self managed superannuation funds) supervisory levy
30	17A	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	payment of unclaimed money

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Liability to general interest charge

Item	Column 1 Section	Column 2 Act	Column 3 Topic
31	18C	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment that cannot be credited to an account
32	20F	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	payment of unclaimed superannuation of former temporary residents
33	20M	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment for former temporary resident that cannot be credited to an account
33A	20QE	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	payment in respect of inactive low-balance accounts
33B	20QL	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment in respect of inactive low-balance accounts that cannot be credited to an account
34	24F	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	payment in respect of lost member accounts
35	24L	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment for former lost member that cannot be credited to an account
35A	24NB	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment for inactive low-balance accounts that cannot be credited to an active account
36	8AAZF	*Taxation Administration Act 1953*	RBA deficit debts
37	8AAZN	*Taxation Administration Act 1953*	overpayments made by the Commissioner

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Liability to general interest charge			
Item	**Column 1** **Section**	**Column 2** **Act**	**Column 3** **Topic**
38	16-80 in Schedule 1	*Taxation Administration Act 1953*	payment of PAYG withholding amounts
38A	18-150 in Schedule 1	*Taxation Administration Act 1953*	PAYG withholding non-compliance tax
39	45-80 in Schedule 1	*Taxation Administration Act 1953*	payment of PAYG instalments
40	45-230 in Schedule 1	*Taxation Administration Act 1953*	shortfall in quarterly PAYG instalments worked out on the basis of a varied rate
41	45-232 in Schedule 1	*Taxation Administration Act 1953*	shortfall in quarterly PAYG instalments worked out on the basis of estimated benchmark tax
42	45-235 in Schedule 1	*Taxation Administration Act 1953*	shortfall in annual PAYG instalments
43	45-600 and 45-620 in Schedule 1	*Taxation Administration Act 1953*	tax benefits relating to PAYG instalments
44	45-870 and 45-875 in Schedule 1	*Taxation Administration Act 1953*	head company's liability on shortfall in quarterly PAYG instalments
44Q	95-25 in Schedule 1	*Taxation Administration Act 1953*	payment of excess concessional contributions charge or shortfall interest charge
45	105-80 in Schedule 1	*Taxation Administration Act 1953*	payment of a net fuel amount or an amount of indirect tax
45A	115-10 in Schedule 1	*Taxation Administration Act 1953*	payment of major bank levy
45C	133-115 in Schedule 1	*Taxation Administration Act 1953*	payment of debt account discharge liability
46	263-30 in Schedule 1	*Taxation Administration Act 1953*	payment of a foreign revenue claim

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Liability to general interest charge			
Item	**Column 1** **Section**	**Column 2** **Act**	**Column 3** **Topic**
47	268-75 in Schedule 1	*Taxation Administration Act 1953*	late payment of estimate
48	298-25 in Schedule 1	*Taxation Administration Act 1953*	payment of administrative penalty

8AAC Amount of the general interest charge

(1) The general interest charge for a day is worked out in accordance with this section.

(2) If the charge is payable under section 8AAZF on the RBA deficit at the end of that day, then the charge is worked out by multiplying the general interest charge rate for that day by the RBA deficit at the end of that day.

(3) If the charge is not payable under section 8AAZF, but applies to an amount that remains unpaid (the ***original unpaid amount***), then the charge is worked out by multiplying the general interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the charge from previous days;

(b) the original unpaid amount.

(4) If the charge applies to an amount that is specified in the provision that imposes the charge, but neither subsection (2) nor (3) applies, then the charge is worked out by multiplying the general interest charge rate for that day by the sum of the following amounts:

(a) so much of the charge from previous days as remains unpaid;

(b) the specified amount.

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8AAD What is the *general interest charge rate?*

(1) The ***general interest charge rate*** for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.

(2) The ***base interest rate*** for a day depends on which quarter of the year the day is in. For each day in a quarter in the second column of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in the third column of the table.

Base interest rate

Item	For days in this quarter...	the monthly average yield of 90-day Bank Accepted Bills for this month applies...
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

(3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in the third column of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.

(4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

8AAE When the charge is due and payable

The general interest charge for a day is due and payable to the Commissioner at the end of that day.

Note: For provisions about collection and recovery of the charge, see Part 4-15 in Schedule 1.

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8AAF Notification by Commissioner

(1) The Commissioner may give notice to a person liable to pay the charge of the amount of the charge for a particular day or days.

(4) A notice given to a person by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

8AAG Remission of the charge

(1) The Commissioner may remit all or a part of the charge payable by a person.

(2) However, if a person is liable to pay the charge because an amount remains unpaid after the time by which it is due to be paid, the Commissioner may only remit all or a part of the charge in the circumstances set out in subsection (3), (4) or (5).

(3) The Commissioner may remit all or a part of the charge referred to in subsection (2) if the Commissioner is satisfied that:

(a) the circumstances that contributed to the delay in payment were not due to, or caused directly or indirectly by, an act or omission of the person; and

(b) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances.

(4) The Commissioner may remit all or a part of the charge referred to in subsection (2) if the Commissioner is satisfied that:

(a) the circumstances that contributed to the delay in payment were due to, or caused directly or indirectly by, an act or omission of the person; and

(b) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and

(c) having regard to the nature of those circumstances, it would be fair and reasonable to remit all or a part of the charge.

(5) The Commissioner may remit all or a part of the charge referred to in subsection (2) if the Commissioner is satisfied that:

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(a) there are special circumstances because of which it would be fair and reasonable to remit all or a part of the charge; or

(b) it is otherwise appropriate to do so.

8AAGA Rounding of the charge

If the amount of the charge payable for any period is not a multiple of 5 cents, the Commissioner may round it down to the nearest multiple of 5 cents.

8AAH Judgment for payment of an unpaid amount

(1) This section applies if judgment is given by, or entered in, a court for the payment of:

(a) all or a part of an amount in respect of which a person is, or was, liable to pay the charge because the amount remains unpaid after the time by which it is due to be paid; or

(b) an amount that includes all or a part of the unpaid amount.

(2) The consequences of judgment being given or entered are:

(a) the unpaid amount is not taken, for the purposes of a provision that makes, or would make, the person liable to pay the charge on the unpaid amount, to have ceased to be due and payable by reason only of the giving or entering of the judgment; and

(b) if the judgment debt carries interest, the amount of the charge that the person would, if not for this paragraph, be liable to pay on the unpaid amount is reduced by:

(i) in a case to which paragraph (1)(a) applies—the amount of the interest; or

(ii) in a case to which paragraph (1)(b) applies—the amount worked out using the formula:

$$\frac{\text{Unpaid amount or part of unpaid amount}}{\text{Judgment debt}} \times \text{Interest}$$

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Part IIB—Running balance accounts, application of payments and credits, and related matters

Division 1—Preliminary

8AAZA Definitions

In this Part, unless the contrary intention appears:

company includes any body or association (whether or not it is incorporated), but does not include a partnership or a non-entity joint venture.

compulsory ABSTUDY SSL repayment amount has the same meaning as in the *Student Assistance Act 1973*.

compulsory repayment amount has the same meaning as in the *Higher Education Support Act 2003*.

compulsory SSL repayment amount has the same meaning as in Chapter 2AA of the *Social Security Act 1991*.

compulsory TSL repayment amount has the same meaning as in the *Trade Support Loans Act 2014*.

compulsory VETSL repayment amount has the same meaning as in the *VET Student Loans Act 2016*.

credit includes:

(a) an amount that the Commissioner must pay to a taxpayer under a taxation law (other than the *Product Grants and Benefits Administration Act 2000* or Division 18 (refunds) of the *A New Tax System (Luxury Car Tax) Act 1999*), whether or not described as a credit; and

(b) an amount received by the Commissioner in respect of a taxpayer as a result of the Commissioner having made a

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claim that is similar in nature to a foreign revenue claim (as defined in section 263-10 in Schedule 1).

entity means any of the following:

(a) a company;
(b) a partnership;
(c) a person in a particular capacity of trustee;
(d) a body politic;
(e) a corporation sole;
(f) any other person.

excess non-RBA credit means a credit that arises under section 8AAZLA or 8AAZLB.

FS assessment debt means an FS assessment debt under:

(a) subsection 19AB(2) of the *Social Security Act 1991*; or
(b) the *Student Assistance Act 1973* as in force at a time on or after 1 July 1998.

non-entity joint venture has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

non-RBA tax debt means a tax debt other than an RBA deficit debt.

primary tax debt means any amount due to the Commonwealth directly under a taxation law (other than, except in Division 4, the *Product Grants and Benefits Administration Act 2000*), including any such amount that is not yet payable.

RBA means a running balance account established under section 8AAZC.

RBA deficit debt, in relation to an RBA of an entity, means a balance in favour of the Commissioner, based on:

(a) primary tax debts that have been allocated to the RBA and that are currently payable; and

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(b) payments made in respect of current or anticipated primary tax debts of the entity, and credits to which the entity is entitled under a taxation law, that have been allocated to the RBA.

RBA group means a GST group under Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999*.

RBA statement means a statement prepared by the Commissioner under section 8AAZG.

RBA surplus, in relation to an RBA of an entity, means a balance in favour of the entity, based on:

(a) primary tax debts that have been allocated to the RBA; and

(b) payments made in respect of current or anticipated primary tax debts of the entity, and credits to which the entity is entitled under a taxation law, that have been allocated to the RBA.

secondary tax debt means an amount that is not a primary tax debt, but is due to the Commonwealth in connection with a primary tax debt.

Note: An example of a secondary tax debt is an amount due to the Commonwealth under an order of a court made in a proceeding for recovery of a primary tax debt.

tax debt means a primary tax debt or a secondary tax debt.

tax debtor means:

(a) in relation to a tax debt—the person or persons who are liable for the tax debt; and

(b) in relation to an RBA—the person or persons who are liable for the tax debts that are allocated to the RBA.

8AAZB Trustee to be treated as separate entity for each capacity

For the purposes of this Part, a person who is a trustee in more than one capacity is to be treated as a separate entity in relation to each of those capacities.

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Division 2—Running Balance Accounts (or RBAs)

8AAZC Establishment of RBAs

(1) The Commissioner may establish one or more systems of accounts for primary tax debts.

Note: This section does not prevent the Commissioner from establishing other accounts that are not RBAs.

(2) Each account is to be known as a Running Balance Account (or RBA).

(3) An RBA may be established for any entity.

Note: The same *person* might be part of different *entities*. For example, a person might have a trustee capacity and also be a partner in a partnership. The person would then be a tax debtor in relation to each of the separate RBAs established for the trustee capacity and the partnership.

(4) RBAs for entities may be established on any basis that the Commissioner determines.

(4A) Without limiting subsection (4), separate RBAs may be established for different types of primary tax debts.

(5) Without limiting subsection (4), separate RBAs may be established for:

(a) different businesses or undertakings conducted by the same entity; or

(b) different parts of the same business or undertaking; or

(c) different periods.

8AAZD Allocation of tax debts to RBAs

(1) The Commissioner may allocate a primary tax debt to an RBA that has been established for that type of tax debt.

Note: General interest charge on an RBA deficit debt is not allocated to the RBA: it accrues automatically under section 8AAZF.

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Separate RBAs for one entity

(1A) If 2 or more RBAs for an entity have been established for that kind of tax debt, the Commissioner may allocate the debt to any one of those RBAs, or between any 2 or more of those RBAs, in the manner the Commissioner determines.

Note: Separate RBAs may be established for different businesses or undertakings conducted by the same entity, for different parts of the same business or undertaking or for different periods: see subsection 8AAZC(5).

Definition

(2) In this section:

primary tax debt does not include:

(a) general interest charge; or

(b) an RBA deficit debt.

8AAZF General interest charge on RBA deficit debt

(1) If there is an RBA deficit debt at the end of a day, then general interest charge is payable by the tax debtor on that RBA deficit debt for that day.

(2) The balance of the RBA is altered in the Commissioner's favour by the amount of the general interest charge payable.

8AAZG RBA statements

The Commissioner may at any time prepare a statement for an RBA, containing such particulars as the Commissioner determines.

8AAZH Liability for RBA deficit debt

(1) If there is an RBA deficit debt on an RBA at the end of a day, the tax debtor is liable to pay to the Commonwealth the amount of the debt. The amount is due and payable at the end of that day.

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Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1.

(2) If there are several tax debtors, their liability for the debt is of the same kind as their liability for the tax debts that were allocated to the RBA.

Example: If the tax debtors are jointly and severally liable for the tax debts that were allocated to the RBA, they will also be jointly and severally liable for the RBA deficit debt.

8AAZI RBA statement to be evidence

(1) The production of an RBA statement:
(a) is prima facie evidence that the RBA was duly kept; and
(b) is prima facie evidence that the amounts and particulars in the statement are correct.

(2) In this section:

RBA statement includes a document that purports to be a copy of an RBA statement and is signed by the Commissioner or a delegate of the Commissioner or by a Second Commissioner or Deputy Commissioner.

8AAZJ Evidentiary certificate about RBA transactions etc.

(1) In proceedings for recovery of an RBA deficit debt, a Commissioner's certificate stating any of the following matters in respect of a specified RBA is prima facie evidence of those matters:
(a) that no tax debts (other than general interest charge on the RBA deficit debt) were allocated to the RBA after the balance date shown on a specified RBA statement for the RBA;
(b) that general interest charge is payable on the RBA deficit debt, as specified in the certificate;
(c) that payments and credits were allocated to the RBA, as specified in the certificate;

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(d) that a specified amount was the RBA deficit debt on the date of the certificate.

(2) In this section:

Commissioner's certificate means a certificate signed by the Commissioner or a delegate of the Commissioner, or by a Second Commissioner or Deputy Commissioner.

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Division 3—Treatment of payments, credits and RBA surpluses

8AAZL Amounts covered by this Division

(1) This Division sets out how the Commissioner must treat the following kinds of amount:

(a) a payment the Commissioner receives in respect of a current or anticipated tax debt or tax debts of an entity;

(b) a credit (including an excess non-RBA credit) that an entity is entitled to under a taxation law;

(c) an RBA surplus of an entity.

(2) The Commissioner must treat each such amount using the method set out in section 8AAZLA or 8AAZLB (but not both).

Note: In either case, section 8AAZLC has some additional rules that apply to RBA surpluses and to certain excess non-RBA credits.

(3) However, the Commissioner does not have to treat an amount using either of those methods if doing so would require the Commissioner to apply the amount against a tax debt:

(a) that is due but not yet payable; or

(b) in respect of which the taxpayer has complied with an arrangement under section 255-15 to pay the debt by instalments; or

(c) in respect of which the Commissioner has agreed to defer recovery under section 255-5.

(4) Furthermore, the Commissioner does not have to treat an amount using either of those methods if:

(a) doing so would require the Commissioner to apply the amount against a tax debt; and

(b) the tax debt is a penalty that is due and payable under section 269-20 in Schedule 1 (penalties for directors of non-complying companies).

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8AAZLA Method 1—allocating the amount first to an RBA

(1) The Commissioner may, in the manner he or she determines, allocate the amount to an RBA of the entity or, if the entity is a member of an RBA group, to an RBA of another member of the group.

(2) The Commissioner must then also apply the amount against the following kinds of debts (if there are any):
  (a) tax debts that have been allocated to that RBA;
  (b) general interest charge on such tax debts.

(3) To the extent that the amount is not applied under subsection (2), it gives rise to an ***excess non-RBA credit*** in favour of the entity that:
  (a) is equal to the part of the amount that is not applied; and
  (b) relates to the RBA to which the amount was allocated.

8AAZLB Method 2—applying the amount first against a non-RBA tax debt

(1) The Commissioner may, in the manner he or she determines, apply the amount against a non-RBA tax debt of the entity or, if the entity is a member of an RBA group, against a non-RBA tax debt of another member of the group.

(2) If the non-RBA tax debt is:
  (a) a tax debt that has been allocated to an RBA; or
  (b) general interest charge on such a tax debt;
the Commissioner must then also allocate the amount to that RBA.

(3) To the extent that the amount is not applied under subsection (1), it gives rise to an ***excess non-RBA credit*** in favour of the entity that is equal to the part of the amount that is not applied.

(4) The excess non-RBA credit relates to the RBA (if any) that the Commissioner determines and the balance of that RBA is adjusted in the entity's favour by the amount of that credit.

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Separate RBAs for one entity

(5) If the non-RBA tax debt mentioned in subsection (1) has been allocated to 2 or more RBAs, the Commissioner must allocate the amount applied between those RBAs in the proportions in which the tax debt was allocated.

Note: Separate RBAs may be established for different businesses or undertakings conducted by the same entity, for different parts of the same business or undertaking or for different periods: see subsection 8AAZC(5).

8AAZLC RBA surplus and related credits must remain equivalent if one or the other is applied

RBA surpluses

(1) If an RBA surplus is allocated or applied under this Division, the Commissioner must reduce by the same amount excess non-RBA credits that relate to the RBA.

Excess non-RBA credits

(2) If, under this Division, an excess non-RBA credit that relates to an RBA (the ***related RBA***) is:

(a) allocated to an RBA; or

(b) applied against a non-RBA tax debt;

the related RBA is adjusted in the Commissioner's favour by the same amount.

8AAZLD Special priority credits

If, under this Division, the Commissioner is to apply a credit that arises under Schedule 1 to this Act (the PAYG system), the Commissioner must apply it, whether under section 8AAZLA or 8AAZLB:

(aa) first, against any compulsory repayment amount of the entity; and

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(aaa) then against any compulsory VETSL repayment amount of the entity; and

(ab) then against any compulsory SSL repayment amount of the entity; and

(ac) then against any compulsory ABSTUDY SSL repayment amount of the entity; and

(ad) then against any compulsory TSL repayment amount of the entity; and

(b) then against any FS assessment debt of the entity;

before applying it against other non-RBA tax debts of the entity.

8AAZLE Instructions to Commissioner not binding

In doing anything under this Division, the Commissioner is not required to take account of any instructions of any entity.

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Division 3A—Refunds of RBA surpluses and credits

8AAZLF Commissioner must refund RBA surpluses and credits

(1) The Commissioner must refund to an entity so much of:

(a) an RBA surplus of the entity; or

(b) a credit (including an excess non-RBA credit) in the entity's favour;

as the Commissioner does not allocate or apply under Division 3.

Voluntary payments only to be refunded on request

(2) However, the Commissioner is not required to refund an RBA surplus or excess non-RBA credit that arises because a payment is made in respect of an anticipated tax debt of an entity unless the entity later requests, in the approved manner, that the Commissioner do so.

(3) On receiving such a request, the Commissioner must refund so much of the amount as the Commissioner does not allocate or apply under Division 3.

Effect of refunding RBA surplus

(4) If the Commissioner refunds an RBA surplus under this section, the Commissioner must reduce by the same amount excess non-RBA credits that relate to the RBA.

Effect of refunding credit that relates to an RBA

(5) If, under this section, the Commissioner refunds an excess non-RBA credit that relates to an RBA, the RBA is adjusted in the Commissioner's favour by the same amount.

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8AAZLG Retaining refunds until information or notification given

(1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if the entity has not given the Commissioner a notification:

(a) that affects or may affect the amount that the Commissioner refunds to the entity; and

(b) that the entity is required to give the Commissioner under:

(i) any of the BAS provisions (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*); or

(ii) any of the petroleum resource rent tax provisions (as defined in that subsection).

(2) The Commissioner may retain the amount until the entity has given the Commissioner that notification or the Commissioner makes or amends an assessment of the amount, whichever happens first.

Note: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in making the payment under subsection (2).

8AAZLGA Retaining refunds while Commissioner verifies information

Commissioner may retain an amount

(1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if the entity has given the Commissioner a notification that affects or may affect the amount that the Commissioner refunds to the entity, and:

(a) it would be reasonable to require verification of information (the ***notified information***) that:

(i) is contained in the notification; and

(ii) relates to the amount that the Commissioner would have to refund; or

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(b) the entity has requested the Commissioner to retain the amount for verification of the notified information, and the request has not been withdrawn.

(2) In deciding whether to retain the amount under this section, the Commissioner must, as far as the information available to the Commissioner at the time of making the decision reasonably allows, have regard to the following:

(a) the likely accuracy of the notified information;

(b) the likelihood that the notified information was affected by:

(i) fraud or evasion; or

(ii) intentional disregard of a taxation law; or

(iii) recklessness as to the operation of a taxation law;

(c) the impact of retaining the amount on the entity's financial position;

(d) whether retaining the amount is necessary for the protection of the revenue, including the likelihood that the Commissioner could recover any of the amount if the notified information were found to be incorrect after the amount had been refunded;

(e) any complexity that would be involved in verifying the notified information;

(f) the time for which the Commissioner has already retained the amount;

(g) what the Commissioner has already done to verify the notified information;

(h) whether the Commissioner has enough information to make an assessment relating to the amount (including information obtained from making further requests for information);

(i) the extent to which the notified information is consistent with information that the entity previously provided;

(j) any other relevant matter.

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Informing the entity of the retention of the amount

(3) The Commissioner must inform the entity (by serving a document on the entity or by other means) that he or she has retained the amount under this section. He or she must do so by the end of:

(a) in a case to which paragraph 8AAZLF(1)(a) applies—the RBA interest day (within the meaning of section 12AF of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*) for the RBA surplus of the entity; or

(b) in any other case—the 30th day after the entity gives to the Commissioner the notification mentioned in subsection (1) of this section.

(4) In informing the entity that the amount is retained, the Commissioner may request information that he or she is aware will be required for the purposes of verifying the notified information.

How long the amount may be retained

(5) The Commissioner may retain the amount under this section only until:

(a) if paragraph (1)(a) applies—it would no longer be reasonable to require verification of the information; or

(b) if the Commissioner fails to inform the entity, in accordance with subsection (3), that he or she has retained the amount under this section—the end of the day after the time by which, under that subsection, the Commissioner is required to inform the entity; or

(c) in any case—there is a change to how much the Commissioner is required to refund, as a result of:

(i) the Commissioner amending an assessment relating to the amount; or

(ii) the Commissioner making or amending an assessment, under Division 105 in Schedule 1, relating to the amount;

whichever happens first.

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Objecting to the decision to retain the amount

(6) The entity may object to a decision of the Commissioner to retain the amount under this section in the manner set out in Part IVC, if the entity is dissatisfied with the decision.

Note: Interest on the amount may be payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

(7) Before the end of the 7 days after the start of the period during which, under section 14ZW, the entity may object to the decision, the Commissioner must notify the entity, in writing, that the entity may object to the decision.

Note: For the start of the period for objecting to the decision, see paragraph 14ZW(1)(aad) and subsection 14ZW(4).

(8) A failure to comply with subsection (7) does not affect the validity of the decision.

8AAZLGB Retaining refunds until notification under Division 389 or ascertainment of liability

Commissioner may retain an amount

(1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if:
  (a) the Commissioner reasonably believes that the entity has made a payment as a result of which the entity is, or will be, required to notify the Commissioner under section 389-5 in Schedule 1; and
  (b) the entity has not notified the Commissioner of the amount under that section; and
  (c) the notification affects or may affect the amount that the Commissioner refunds to the entity.

(2) The Commissioner must inform the entity that he or she has retained the amount under this section. He or she must do so within 14 days after the day on which the relevant RBA surplus or credit arose.

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How long the amount may be retained

(3) The Commissioner may retain the amount until:

(a) the entity has given the Commissioner that notification (including notification of a nil amount); or

(b) the Commissioner becomes reasonably satisfied that the entity is not required to give that notification; or

(c) the Commissioner becomes reasonably satisfied that the entity does not have a liability (a ***PAYGW liability***) to pay to the Commissioner an amount of a kind referred to in item 1 of the table in subsection 389-5(1) in Schedule 1; or

(d) the Commissioner ascertains (including as a result of making an estimate) the total amount of the entity's outstanding PAYGW liabilities;

whichever happens first.

Note: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in making the payment under subsection (3).

Objecting to the decision to retain the amount

(4) The entity may object to a decision of the Commissioner to retain the amount under this section in the manner set out in Part IVC, if the entity is dissatisfied with the decision.

Note: For the start of the period for objecting to the decision, see paragraph 14ZW(1)(aae) and subsection 14ZW(4).

(5) Before the end of the 7 days after the start of the period during which, under section 14ZW, the entity may object to the decision, the Commissioner must notify the entity, in writing, that the entity may object to the decision.

(6) A failure to comply with subsection (5) does not affect the validity of the decision.

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8AAZLH How refunds are made

(1) This section applies to refunds payable to an entity of RBA surpluses, or excess non-RBA credits that relate to an RBA, if primary tax debts arising under:

(a) any of the BAS provisions (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*); or

(b) any of the petroleum resource rent tax provisions (as defined in that subsection);

have been allocated to that RBA.

(2) The Commissioner must pay those refunds to the credit of a financial institution account nominated in the approved form by the entity. The account nominated must be maintained at a branch or office of the institution that is in Australia.

(2A) The account must be one held by:

(a) the entity, or the entity and some other entity; or

(b) the entity's registered tax agent or BAS agent; or

(c) a legal practitioner as trustee or executor for the entity.

(3) However, the Commissioner may direct that any such refunds be paid to the entity in a different way.

(4) If an entity has not nominated a financial institution account for the purposes of this section and the Commissioner has not directed that any such refunds be paid in a different way, the Commissioner is not obliged to refund any amount to the entity until the entity does so.

(5) If the Commissioner pays a refund to the credit of an account nominated by an entity, the Commissioner is taken to have paid the refund to the entity.

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Division 4—Miscellaneous provisions about tax debts

8AAZM When payments are treated as received

For the purposes of taxation laws, a payment in respect of a tax debt is taken not to have been made until it is received by:

(a) the Commissioner; or

(b) a person acting on behalf of the Commissioner.

8AAZMA Electronic payment of tax debts

(1) An entity that, under subsection 33-10(2) of the *A New Tax System (Goods and Services Tax) Act 1999*, is required to pay an assessed net amount for a tax period electronically must also electronically pay the Commissioner all of its other tax debts that are due to be paid during that period.

(2) A large withholder that, under subsection 16-85(1) in Schedule 1, is required to pay an amount electronically in a particular month must also electronically pay the Commissioner all of its other tax debts that are due to be paid during that month.

8AAZMB Saturdays, Sundays and public holidays

(1) Where, apart from this section, an amount in respect of a tax debt is due and payable by, or on, a day (the ***payment day***) that is not a business day, the payment is due and payable on the first business day after the payment day.

(2) In this section:

business day means a day other than:

(a) a Saturday or a Sunday; or

(b) a day which is a public holiday for the whole of:

(i) any State; or

(ii) the Australian Capital Territory; or

(iii) the Northern Territory.

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tax debt does not include general interest charge.

8AAZN Overpayments made by the Commissioner under taxation laws

(1) An administrative overpayment (the ***overpaid amount***):

(a) is a debt due to the Commonwealth by the person to whom the overpayment was made (the ***recipient***); and

(b) is payable to the Commissioner; and

(c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name.

(2) If:

(a) the Commissioner has given a notice to the recipient in respect of the overpaid amount, specifying a due date for payment that is at least 30 days after the notice is given; and

(b) any of the overpaid amount remains unpaid at the end of that due date;

then the recipient is liable to pay the general interest charge on the unpaid amount for each day in the period that:

(c) started at the beginning of that due date; and

(d) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the overpaid amount;

(ii) general interest charge on any of the overpaid amount.

(3) In this section:

administrative overpayment means an amount that the Commissioner has paid to a person by mistake, being an amount to which the person is not entitled.

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Part III—Prosecutions and offences

Note: Subsection 2(2) specifies laws that are not taxation laws for the purposes of this Part.

Division 1—Preliminary

8A Interpretation

(1) In this Part, unless the contrary intention appears:

corporation means any body corporate.

director, in relation to a corporation, includes:

(a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position; and

(b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act.

instrument includes any document.

prescribed offence means:

(a) an offence against section 8C, subsection 8D(1) or (2) or section 8N or 8Q, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law; or

(b) an offence against section 11.1 of the *Criminal Code* that relates to an offence of a kind referred to in paragraph (a).

prescribed taxation offence means:

(a) a taxation offence (other than a prescribed offence) that is committed by a natural person and punishable by a fine and not by imprisonment;

(b) a prescribed offence (other than a prescribed offence that the Commissioner has elected under subsection 8F(1) or 8S(1) to

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treat otherwise than as a prescribed taxation offence) that is committed by a natural person; or

(c) a taxation offence that is committed by a corporation.

produce, in relation to a book, paper, record or other document, includes permit access to.

taxation offence means:

(a) an offence against a taxation law; or

(b) an offence against:

(i) section 6 of the *Crimes Act 1914*; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

being an offence that relates to an offence against a taxation law.

tax file number means a tax file number as defined in section 202A of the *Income Tax Assessment Act 1936*.

(2) For the purposes of the definition of ***director*** in subsection (1), a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to the person's professional capacity or to the person's business relationship with the directors.

8AC Application of Part to the *Tax Agent Services Act 2009*

This Part applies in relation to the *Tax Agent Services Act 2009* as if references in this Part (other than paragraph 8C(1)(b) and sections 8HA, 8W, 8WC, 8ZE, 8ZG and 8ZH) to the Commissioner, or an office of the Commissioner, were references to the Tax Practitioners Board established by the *Tax Agent Services Act 2009*.

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Division 2—Offences

Subdivision A—Failure to comply with taxation requirements

8B Interpretation

(1) A reference in this Subdivision to a relevant offence is a reference to:

(a) an offence against section 8C, subsection 8D(1) or (2) or section 8H; or

(b) an offence against:

(i) section 6 of the *Crimes Act 1914*; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

being an offence that relates to an offence of a kind referred to in paragraph (a) of this subsection.

(2) For the purposes of this Subdivision, a person who is convicted of an offence against section 8C or subsection 8D(1) or (2) (in this subsection referred to as the ***subsequent offence***) shall be treated as having been previously convicted of a relevant offence (in this subsection referred to as the ***earlier offence***) if:

(a) the person was convicted of the earlier offence on an occasion earlier than, but not more than 5 years earlier than, the person's conviction of the subsequent offence; or

(b) the person is convicted of the earlier offence and the subsequent offence before the same court at the same sitting and the earlier offence was committed:

(i) at a time or on a day earlier than, but not more than 5 years earlier than, the subsequent offence; or

(ii) at the same time, or on the same day, as the subsequent offence.

(3) A reference in subsection 8E(2) or (3) or 8F(1) or subsection (2) of this section to an offence against section 8C or subsection 8D(1) or (2) includes a reference to an offence against section 11.1 of the

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Criminal Code that relates to an offence against section 8C or subsection 8D(1) or (2), as the case may be.

(4) Unless the contrary intention appears, a reference in paragraph (2)(a) or (b) to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

8C Failure to comply with requirements under taxation law

(1) A person who refuses or fails, when and as required under or pursuant to a taxation law to do so:

(a) to give any information or document to the Commissioner or another person; or

(aa) to give information to the Commissioner in the manner in which it is required under a taxation law to be given; or

(b) to lodge an instrument with the Commissioner or another person for assessment; or

(d) to notify the Commissioner or another person of a matter or thing; or

(e) to produce a book, paper, record or other document to the Commissioner or another person; or

(f) to attend before the Commissioner or another person; or

(fa) to comply with an education direction in accordance with subsection 384-15(3) in Schedule 1; or

(g) to apply for registration or cancellation of registration under the *A New Tax System (Goods and Services Tax) Act 1999*; or

(h) to comply with a requirement under subsection 45A(2) of the *Product Grants and Benefits Administration Act 2000*; or

(i) to comply with subsection 82-10F(4) of the *Income Tax (Transitional Provisions) Act 1997*;

commits an offence.

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

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

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(1B) Subsection (1) does not apply to the extent that the person is not capable of complying with the relevant paragraph.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.

(2) For the purposes of paragraphs (1)(a) and (d), a person shall not be taken to have refused or failed to furnish information to the Commissioner or another person, or to notify the Commissioner or another person of a matter or thing, merely because the person has refused or failed to quote the person's tax file number to the Commissioner or other person.

8D Failure to answer questions when attending before the Commissioner etc.

(1) A person who, when attending before the Commissioner or another person pursuant to a taxation law, refuses or fails, when and as required pursuant to a taxation law to do so:

(a) to answer a question asked of the person; or

(b) to produce a book, paper, record or other document;

commits an offence.

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

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

(1B) Subsection (1) does not apply to the extent that the person is not capable of complying with the relevant paragraph.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.

(2) A person who, when attending before the Commissioner or another person pursuant to a taxation law, refuses or fails, when and as required pursuant to a taxation law to do so, either to take an oath or make an affirmation commits an offence.

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8E Penalties for failure to comply with requirements under taxation law

(1) Subject to subsections (2) and (3), an offence against section 8C or subsection 8D(1) or (2) is punishable on conviction by a fine not exceeding 20 penalty units.

(2) Subject to subsection (3), where:

(a) a person is convicted of an offence against section 8C or subsection 8D(1) or (2); and

(b) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 40 penalty units.

(3) Where:

(a) a person is convicted of an offence against section 8C or subsection 8D(1) or (2);

(b) in a case where the person is a natural person—the Commissioner has elected under subsection 8F(1) to treat the offence otherwise than as a prescribed taxation offence; and

(c) the court before which the person is convicted is satisfied that the person has previously been convicted of 2 or more relevant offences;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

8F Election to treat offence otherwise than as prescribed taxation offence

(1) The Commissioner may, before the institution of a prosecution of a natural person for an offence against section 8C or subsection 8D(1) or (2), elect, in writing, to treat the offence otherwise than as a prescribed taxation offence.

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(2) Where a prosecution is instituted for an offence in relation to which an election under subsection (1) has been made, the Commissioner shall cause a copy of the election to be filed in the court in which the prosecution is instituted.

8G Order to comply with requirement

(1) Where:

(a) a person is convicted before a court of an offence against section 8C or subsection 8D(1) or (2); or

(b) a court makes an order under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence against section 8C or subsection 8D(1) or (2);

in relation to the refusal or failure of the person to comply (whether in whole or in part) with a requirement made under or pursuant to a taxation law, the court may, in addition to imposing a penalty on the person or making such an order in relation to the person, as the case may be, and notwithstanding that the time for complying with the requirement or any other such requirement has passed, order the person to comply with:

(c) the requirement; and

(d) such other requirements made, or that could be made, in relation to the person under or pursuant to the taxation law as the court considers necessary to ensure the effectiveness of the first-mentioned requirement;

within a specified time or at a specified place and time.

(2) Where an order under subsection (1) is not given orally by the court to the person to whom the order is addressed, the proper officer of the court shall cause a copy of the order to be served on the person in the prescribed manner.

8H Penalty for failure to comply with order to comply

(1) A person who refuses or fails to comply with an order under subsection 8G(1) commits an offence punishable on conviction by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

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

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

(3) Subsection (1) does not apply to the extent that the person is not capable of complying with the relevant paragraph.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

8HA Court may order payment of amount in addition to penalty

(1) If:

(a) a person (the ***convicted person***) is convicted before a court of an offence against section 8C, 8D or 8H in relation to a refusal or failure to do a particular thing; and

(b) the court is satisfied that the purpose of, or one of the purposes of, the refusal or failure was to facilitate the avoidance of an amount of a tax liability of the convicted person or another person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

(c) if the offence is an offence to which subsection 8E(2) or (3) applies—3 times that amount; or

(d) in any other case—2 times that amount.

(2) A reference in this section to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Subdivision B—Offences relating to statements, records and certain other Acts

8J Interpretation

(1) In this Subdivision:

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accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes:

(a) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up; and

(b) such other documents (if any) as are prescribed.

accounts means ledgers, journals, profit and loss accounts and balance-sheets, and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing.

data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

taxation officer means a person exercising powers or performing functions under, pursuant to or in relation to a taxation law.

(2) A reference in this Subdivision to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device, by way of electronic transmission or in any other form and, without limiting the generality of the foregoing, includes a statement:

(a) made in an application, certificate, declaration, notification, objection, return, claim or other document made, prepared, given or furnished, or purporting to be made, prepared, given or furnished, under or pursuant to a taxation law; or

(b) made in an instrument lodged for assessment under or pursuant to a taxation law; or

(c) made in answer to a question asked of a person under or pursuant to a taxation law; or

(d) made in any information furnished, or purporting to be furnished, under or pursuant to a taxation law; or

(e) made in a document furnished to a taxation officer otherwise than under or pursuant to a taxation law;

but does not include a statement made in a document produced pursuant to:

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(kaa) subparagraph 451(2)(c)(ii) or paragraph 453(1)(e) of the *Income Tax Assessment Act 1936*;

(p) paragraph 13G(1)(c) of this Act; or

(pa) paragraph 353-10(1)(c) in Schedule 1 to this Act; or

(q) paragraph 353-25(1)(b) or (c) in Schedule 1 to this Act.

(2A) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent or BAS agent on behalf of a taxpayer, then, for the purposes of this Subdivision, each statement in the document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.

(3) A reference in this Subdivision to a relevant offence is a reference to:

(a) an offence against:

(i) subsection 8K(1) or (1B) or 8L(1) or (1A) or section 8N, 8Q, 8T or 8U; or

(ii) the *Crimes (Taxation Offences) Act 1980*;

(b) an offence against:

(i) section 6 of the *Crimes Act 1914*; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

being an offence that relates to an offence of a kind referred to in paragraph (a) of this subsection; or

(c) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code*, being an offence that relates to a tax liability.

(4) For the purposes of this Subdivision, a person who is convicted of an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) or section 8N, 8Q, 8T or 8U (in this subsection referred to as the ***subsequent offence***) shall be treated as having been previously convicted of a relevant offence (in this subsection referred to as the ***earlier offence***) if:

(a) the person was convicted of the earlier offence on an occasion earlier than, but not more than 10 years earlier than, the person's conviction of the subsequent offence; or

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(b) the person is convicted of the earlier offence and the subsequent offence before the same court at the same sitting and the earlier offence was committed:

(i) at a time or on a day earlier than, but not more than 10 years earlier than, the subsequent offence; or

(ii) at the same time, or on the same day, as the subsequent offence.

(5) Unless the contrary intention appears, a reference in paragraph (4)(a) or (b) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

(6) A reference in subsection (4) of this section or subsection 8M(2) to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A), as the case may be.

(7) A reference in subsection 8R(2) or 8S(1) or subsection (4) of this section to an offence against section 8N or 8Q includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8N or 8Q, as the case may be.

(8) A reference in subsection 8V(2) or subsection (4) of this section to an offence against section 8T or 8U includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8T or 8U, as the case may be.

(9) A reference in this Subdivision to a statement made to a taxation officer includes a reference to a statement made to a person other than a taxation officer for a purpose in connection with the operation of a taxation law.

(10) A reference in subsection (9) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of a taxation law is a reference to such a statement made orally, in writing, in a data processing device or in any other form

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and, without limiting the generality of the foregoing, includes such a statement:

(a) made in an application, certificate, declaration, notification or other document, made, given or furnished to the person; or

(aa) made in:

(i) a tax invoice (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(ii) an adjustment note (within the meaning of that Act); or

(iii) a third party adjustment note (within the meaning of that Act);

given to the person; or

(b) made in answer to a question asked by the person; or

(c) made in any information furnished to the person.

(11) Where a person omits from a return furnished under or pursuant to the *Income Tax Assessment Act 1936* or the regulations under that Act, being a return of income derived by the person, a partnership or a trust estate during a period, any assessable income derived by the person, partnership or the trust estate, as the case may be, during the period, the person shall, for the purposes of this Subdivision, be taken to have made a statement in the return to the effect that the person, the partnership or the trust estate, as the case requires, did not derive the assessable income during the period.

(12) Where:

(a) a person issues a notice to another person under section 265B of the *Income Tax Assessment Act 1936*;

(b) a person to whom a notice is issued under that section gives the notice to another person in connection with the transfer of a qualifying security to the other person; or

(c) a person gives advice in writing to another person, in connection with the transfer of a qualifying security, of a variation or partial redemption of the qualifying security;

any statement in the notice when so issued or given, or in the advice when so given, to the other person shall, for the purposes of this Division, be taken to have been made by the issuer or person

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giving the notice or advice, as the case may be, to the other person for a purpose in connection with the operation of a taxation law.

(13) Where:

(a) the holder of a qualifying security transfers the security to another person;

(b) by virtue of the application of section 128AA of the *Income Tax Assessment Act 1936*, the holder is liable to pay withholding tax in relation to the transfer of the qualifying security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice issued to the holder under section 265B of that Act identifying the security;

(d) after the notice was issued to the holder, the security was varied or partially redeemed; and

(e) the holder did not advise the transferee in writing of the variation or partial redemption;

the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the qualifying security was not so varied or partially redeemed.

(14) Where:

(a) the holder of a qualifying security who acquired the security on transfer (in this subsection referred to as the ***current acquisition transfer***) transfers the security to another person;

(b) by virtue of the application of section 128AA of the *Income Tax Assessment Act 1936*, the holder is liable to pay withholding tax in relation to the transfer of the security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a certificate issued to the holder under section 128AB of that Act identifying the security; and

(d) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

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the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the certificate relates to the current acquisition transfer.

(15) Where:

(a) a qualifying security is redeemed or partially redeemed from the holder;

(b) the holder acquired the security on transfer (in this subsection referred to as the ***current acquisition transfer***);

(c) the holder is liable to pay withholding tax in relation to the redemption or partial redemption of the security;

(d) before the security was redeemed or partially redeemed, the holder gave to the issuer, in connection with the redemption or partial redemption, a certificate issued to the holder under section 128AB of the *Income Tax Assessment Act 1936* identifying the security; and

(e) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the certificate relates to the current acquisition transfer.

(16) Subject to subsection (17), for the purposes of subsections (12) to (15) (inclusive):

(a) expressions used in those subsections that are also used in Division 16E of Part III of the *Income Tax Assessment Act 1936* have the same respective meanings as in that Division; and

(b) sections 159GV (other than subsection 159GV(2)) and 159GZ of the *Income Tax Assessment Act 1936* apply as if references in those sections to "this Division" were references to "section 8J of the *Taxation Administration Act 1953*".

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(17) Subsection (16) applies as if paragraph (c) of the definition of ***qualifying security*** in subsection 159GP(1) of the *Income Tax Assessment Act 1936* were omitted.

8K False or misleading statements

(1) A person commits an offence if:
  (a) the person makes a statement to a taxation officer; and
  (b) the statement is false or misleading in a material particular.

(1A) In subsection (1), absolute liability applies to the circumstance, that the statement is false or misleading in a material particular.

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(1B) A person commits an offence if:
  (a) the person makes a statement to a taxation officer; and
  (b) the person omits any matter or thing from the statement; and
  (c) the statement is misleading in a material particular because of the omission.

(1C) In subsection (1B), absolute liability applies to:
  (a) the conduct, that the person omits a matter or thing; and
  (b) the circumstance, that the statement is misleading in a material particular.

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(2) In a prosecution of a person for an offence against subsection (1) or (1B), it is a defence if the person proves that the person:
  (a) did not know; and
  (b) could not reasonably be expected to have known;

that the statement to which the prosecution relates was false or misleading.

Note: The defendant bears a legal burden in relation to the matter in subsection (2), see section 13.4 of the *Criminal Code*.

(2A) Subsection (1) or (1B) does not apply if:

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(a) the statement (the ***original statement***) was made under section 389-5 in Schedule 1 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) in that Schedule (and no other item in that table); and

(b) the original statement related to the financial year in which it was made; and

(c) the person who made the original statement makes a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and

(d) the further statement:

(i) is in the approved form; and

(ii) if subsection 389-25(1) in that Schedule provides for a period for correcting the original statement—is made within that period; and

(iii) without limiting subparagraph (ii), is made within 14 days after the end of the financial year in which the original statement was made.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

(2B) Subsection (1) or (1B) does not apply if:

(a) the statement (the ***original statement***) was made under section 390-5 in Schedule 1; and

(b) the person who made the original statement makes a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and

(c) subsection 390-7(1) in Schedule 1 provides for a period for correcting the original statement; and

(d) the further statement:

(i) is in the approved form; and

(ii) is made within the period referred to in paragraph (c) of this subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B): see subsection 13.3(3) of the *Criminal Code*.

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(3) For the purposes of subsection (1B), a person shall not be taken to have omitted a matter or thing from a statement made to a taxation officer merely because the person has, in making the statement, failed to quote the person's tax file number.

8L Incorrectly keeping records etc.

(1) A person commits an offence if:

(a) the person is required under, or pursuant to, a taxation law to keep any accounts, accounting records or other records; and

(b) the person keeps the accounts or records; and

(c) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate.

(1A) A person commits an offence if:

(a) the person is required under, or pursuant to, a taxation law to make a record of any matter, transaction, act or operation; and

(b) the person makes the record; and

(c) the record does not correctly record the matter, transaction, act or operation.

(1B) An offence under subsection (1) or (1A) is an offence of absolute liability.

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(2) In a prosecution of a person for an offence against subsection (1) or (1A), it is a defence if the person proves that the person:

(a) did not know; and

(b) could not reasonably be expected to have known;

that:

(c) in the case of a prosecution for an offence against subsection (1)—the accounts, accounting records or other records to which the prosecution relates did not correctly record and explain the matters, transactions, acts or operations to which they relate; or

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(d) in the case of a prosecution for an offence against subsection (1A)—the record to which the prosecution relates did not correctly record the matter, transaction, act or operation to which the record relates.

Note: The defendant bears a legal burden in relation to the matter in subsection (2), see section 13.4 of the *Criminal Code*.

8M Penalties for offences against subsections 8K(1) and (1B) and 8L(1) and (1A)

(1) Subject to subsection (2), an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) is punishable on conviction by a fine not exceeding 20 penalty units.

(2) Where:

(a) a person is convicted of an offence against subsection 8K(1) or (1B) or 8L(1) or (1A); and

(b) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 40 penalty units.

8N Recklessly making false or misleading statements

(1) A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way) to a taxation officer; and

(b) the statement:

(i) is false or misleading in a material particular; or

(ii) omits any matter or thing without which the statement is misleading in a material particular; and

(c) the person is reckless as to whether the statement:

(i) is false or misleading in a material particular; or

(ii) omits any matter or thing without which the statement is misleading in a material particular.

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(2) This section does not apply if:

(a) the statement (the ***original statement***) was made under section 389-5 in Schedule 1 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) in that Schedule (and no other item in that table); and

(b) the original statement related to the financial year in which it was made; and

(c) the person who made the original statement makes a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and

(d) the further statement:

(i) is in the approved form; and

(ii) if subsection 389-25(1) in that Schedule provides for a period for correcting the original statement—is made within that period; and

(iii) without limiting subparagraph (ii), is made within 14 days after the end of the financial year in which the original statement was made.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

(3) This section does not apply if:

(a) the statement (the ***original statement***) was made under section 390-5 in Schedule 1; and

(b) the person who made the original statement makes a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and

(c) subsection 390-7(1) in Schedule 1 provides for a period for correcting the original statement; and

(d) the further statement:

(i) is in the approved form; and

(ii) is made within the period referred to in paragraph (c) of this subsection.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

8Q Recklessly incorrectly keeping records etc.

(1) A person commits an offence if:

(a) the person is required under, or pursuant to, a taxation law to keep any accounts, accounting records or other records; and

(b) the person keeps the accounts or records; and

(ba) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate; and

(c) the person is reckless as to whether the accounts or records correctly record and explain the matters, transactions, acts or operations to which they relate.

(2) A person commits an offence if:

(a) the person is required under, or pursuant to, a taxation law to make a record of any matter, transaction, act or operation; and

(b) the person makes the record; and

(ba) the record does not correctly record the matter, transaction, act or operation; and

(c) the person is reckless as to whether the record correctly records the matter, transaction, act or operation.

(3) In subsections (1) and (2), strict liability applies to the circumstance, that the person is required under, or pursuant to, a taxation law to keep the accounts, accounting records or other records.

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

8R Penalties for offences against sections 8N and 8Q

(1) Subject to subsection (2), an offence against section 8N or 8Q is punishable on conviction by a fine not exceeding 30 penalty units.

(2) Where:

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(a) a person is convicted of an offence against section 8N or 8Q;
(b) in a case where the person is a natural person—the Commissioner has elected under subsection 8S(1) to treat the offence otherwise than as a prescribed taxation offence; and
(c) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

8S Election to treat offence otherwise than as prescribed taxation offence

(1) The Commissioner may, before the institution of a prosecution of a natural person for an offence against section 8N, or 8Q, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law, elect, in writing, to treat the offence otherwise than as a prescribed taxation offence.

(2) Where a prosecution is instituted for an offence in relation to which an election under subsection (1) has been made, the Commissioner shall cause a copy of the election to be filed in the court in which the prosecution is instituted.

8T Incorrectly keeping records with intention of deceiving or misleading etc.

A person who:

(a) keeps any accounts, accounting records or other records in such a way that they:
(i) do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
(ii) are (whether in whole or in part) illegible, indecipherable, incapable of identification or, if they are kept in the form of a data processing device, incapable of being used to reproduce information;

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(b) makes a record of any matter, transaction, act or operation in such a way that it does not correctly record the matter, transaction, act or operation;

(c) engages in conduct that results in the alteration, defacing, mutilation, falsification, damage, removal, concealing or destruction of any accounts, accounting records or other records (whether in whole or in part); or

(d) does or omits to do any other act or thing to any accounts, accounting records or other records;

with any of the following intentions, namely:

(e) deceiving or misleading the Commissioner or a particular taxation officer;

(f) hindering or obstructing the Commissioner or a particular taxation officer (otherwise than in the investigation of a taxation offence);

(g) hindering or obstructing the investigation of a taxation offence;

(h) hindering, obstructing or defeating the administration, execution or enforcement of a taxation law; or

(j) defeating the purposes of a taxation law;

(whether or not the person had any other intention) commits an offence.

8U Falsifying or concealing identity with intention of deceiving or misleading etc.

A person who:

(a) engages in conduct that results in the falsification or concealing of the identity of, or the address or location of a place of residence or business of, the person or another person; or

(b) does or omits to do any act or thing the doing or omission of which facilitates the falsification or concealment of the identity of, or the address or location of a place of residence or business of, the person or another person;

with any of the following intentions, namely:

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(c) deceiving or misleading the Commissioner or a particular taxation officer;

(d) hindering or obstructing the Commissioner or a particular taxation officer (otherwise than in the investigation of a taxation offence);

(e) hindering or obstructing the investigation of a taxation offence;

(f) hindering, obstructing or defeating the administration, execution or enforcement of a taxation law; or

(g) defeating the purposes of a taxation law;

(whether or not the person had any other intention) commits an offence.

8V Penalties for offences against sections 8T and 8U

(1) Subject to subsection (2), an offence against section 8T or 8U is punishable on conviction by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

(2) Where:

(a) a person is convicted of an offence against section 8T or 8U; and

(b) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

8W Court may order payment of amount in addition to penalty

(1) Where:

(a) a person (in this subsection referred to as the ***convicted person***) is convicted before a court of:

(i) an offence against subsection 8K(1) or (1B) or section 8N, or against Division 136 or 137 of the

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Criminal Code in relation to a taxation law, in relation to a statement made to a taxation officer; or

(ii) an offence against subsection 8L(1) or (1A) or section 8Q in relation to the keeping of any accounts, accounting records or other records (in paragraph (b) referred to as the ***relevant accounts***) or the making of a record; and

(b) the court is satisfied that the proper amount of a tax liability of the convicted person or another person exceeds the amount that would have been the amount of the tax liability if it were assessed or determined, as the case requires, on the basis that the statement were not false or misleading, on the basis of the relevant accounts as they were kept or on the basis that the record were correct, as the case may be;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

(c) in a case where the offence is an offence to which subsection 8R(2) applies or that is against Division 136 or 137 of the *Criminal Code* in relation to a taxation law—3 times the amount of the excess; or

(d) in any other case—double the amount of the excess.

(1C) If the conditions in section 705-315 of the *Income Tax Assessment Act 1997* are satisfied, then for the purposes of any application of subsection (1) of this section in relation to the errors mentioned in that section that were made in a statement that was made before the Commissioner became aware of the errors, the references in paragraphs (1)(c) and (d) of this section to the excess are taken instead to be references to 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:

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(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 earliest income year for which the Commissioner could amend the head company's assessment to correct any 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 (within the meaning of the *Income Tax Assessment Act 1997*) that the head company makes as a result of CGT event L6 happening as mentioned in section 104-525 of that Act; and

(b) the corporate tax rate (within the meaning of that Act) in respect of taxable income for the income year in which that CGT event happens.

(2) Where:

(a) a person (in this subsection referred to as the ***convicted person***) is convicted before a court of an offence against section 8T or 8U in relation to an act or omission; and

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(b) the court is satisfied that the purpose of, or one of the purposes of, the act or omission was to facilitate the avoidance of an amount of a tax liability of the convicted person or another person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

(c) in a case where the offence is an offence to which subsection 8V(2) applies—3 times that amount; or

(d) in any other case—double that amount.

(2A) If:

(a) a person (the ***convicted person***) is convicted before a court of:

(i) an offence against subsection 8K(1) or (1B) or section 8N, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law, in relation to a statement made to a taxation officer; or

(ii) an offence against subsection 8L(1) or (1A) or section 8Q in relation to the keeping of any records; and

(b) the offence relates to the *Product Grants and Benefits Administration Act 2000*; and

(c) the court is satisfied that the amount that would have been the amount of a product grant or benefit payable to the convicted person or another person, determined on the basis that:

(i) the statement were not false or misleading; or

(ii) on the basis of those records as they were kept;

as the case may be, exceeds the proper amount of the product grant or benefit payable to the convicted person or the other person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

(d) in a case where the offence is an offence to which subsection 8R(2) applies, or that is against Division 136 or

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137 of the *Criminal Code* in relation to a taxation law—3 times the amount of the excess; or

(e) in any other case—double the amount of the excess.

(3) A reference in this section to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

(4) In this section:

CGT event has the same meaning as in the *Income Tax Assessment Act 1997*.

head company has the same meaning as in the *Income Tax Assessment Act 1997*.

product grant or benefit means a grant or benefit payable under the *Product Grants and Benefits Administration Act 2000*.

subsidiary member has the same meaning as in the *Income Tax Assessment Act 1997*.

tax cost setting amount has the same meaning as in the *Income Tax Assessment Act 1997*.

Subdivision BAA—Offences relating to electronic sales suppression tools

8WAA Object of this Subdivision

The object of this Subdivision is to deter the production, use and distribution of tools to manipulate or falsify electronic point of sale records to facilitate tax evasion.

8WAB Interpretation

In this Subdivision:

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electronic sales suppression tool means a device, software program or other thing, a part of any such thing, or a combination of any such things or parts, that meets the following conditions:

(a) it is capable of falsifying, manipulating, hiding, obfuscating, destroying, or preventing the creation of, a record that:

(i) an entity is required by a taxation law to keep or make; and

(ii) is, or would be, created by a system that is or includes an electronic point of sale system;

(b) a reasonable person would conclude that one of its principal functions is to falsify, manipulate, hide, obfuscate, destroy, or prevent the creation of, such records.

right to use includes right to possess.

supply has the meaning given by section 9-10 of the *A New Tax System (Goods and Services Tax) Act 1999*.

8WAC Producing or supplying electronic sales suppression tools

(1) A person commits an offence if the person manufactures, develops or publishes an electronic sales suppression tool.

Penalty: 5,000 penalty units.

(2) A person commits an offence if the person:

(a) makes a supply of, or makes available for use, an electronic sales suppression tool or a right to use an electronic sales suppression tool; or

(b) provides a service to an entity that involves the use of an electronic sales suppression tool.

Penalty: 5,000 penalty units.

(3) Subsections (1) and (2) do not apply to conduct undertaken by the person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

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(4) An offence against subsection (1) or (2) is an offence of strict liability.

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

(5) Section 15.4 (extended geographical jurisdiction—category D) of the *Criminal Code* applies to an offence against subsection (1) if the electronic sales suppression tool is, at any time, used to modify records that a taxation law requires an entity to keep or make.

(6) Section 15.4 (extended geographical jurisdiction—category D) of the *Criminal Code* applies to an offence against subsection (2) if the person makes a supply of, or makes available for use, the electronic sales suppression tool or the right to use the tool to an entity that is required by a taxation law to keep or make any record.

8WAD Possessing electronic sales suppression tools

(1) A person commits an offence if:

(a) the person is required under, or pursuant to, a taxation law to keep or make a record; and

(b) the person acquires, or has possession or control of, an electronic sales suppression tool or a right to use an electronic sales suppression tool.

Penalty: 500 penalty units.

(2) Subsection (1) does not apply to conduct undertaken by a person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) An offence against subsection (1) is an offence of strict liability.

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

8WAE Incorrectly keeping records using electronic sales suppression tools

(1) A person commits an offence if:

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(a) the person is required under, or pursuant to, a taxation law to keep or make a record; and

(b) the record is kept, made or altered with the use of an electronic sales suppression tool, or is prevented by the use of an electronic sales suppression tool from being kept, made or altered; and

(c) as a result of the use:

(i) the record does not correctly record and explain the matter, transaction, act or operation to which it relates; or

(ii) the person does not keep or make the record in accordance with the taxation law.

Penalty: 1,000 penalty units.

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

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

Subdivision BA—Offences relating to tax file numbers

8WA Unauthorised requirement etc. that tax file number be quoted

(1) A person must not require or request another person to quote the other person's tax file number.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(1AA) Subsection (1) does not apply if:

(a) provision is made by or under a taxation law or legislation described in paragraph 202(e) of the *Income Tax Assessment Act 1936* for the person to quote the number; or

(b) the first-mentioned person requires or requests the number to be quoted in connection with that person exercising powers or performing functions under, or in relation to, or complying with an obligation imposed by, a taxation law or a law of the Commonwealth of the kind referred to in paragraph 202(c), (d), (g), (ga), (gaa), (h), (hab), (hac), (ha), (hb), (hc), (i), (ia),

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(j), (kb), (la), (m), (r), (s) or (t) of the *Income Tax Assessment Act 1936*; or

(c) the first-mentioned person requires or requests the number to be quoted in connection with the first-mentioned person acting on the other person's behalf in the conduct of the other person's affairs.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1AA), see subsection 13.3(3) of the *Criminal Code*.

(1A) A person does not contravene subsection (1) by asking another person to quote the other person's tax file number if the request is made so that the number can be included in an application for the registration of an entity under the *A New Tax System (Australian Business Number) Act 1999*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(2) Nothing in subsection (1) shall be read as prohibiting a person from requesting the production of a document, or a copy of a document, on which another person's tax file number is recorded if the other person is not prevented from removing the tax file number from the document.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

(3) For the purposes of this section, a person who makes to another person a statement that the other person could reasonably understand to mean that the other person is required or requested to quote the other person's tax file number shall be taken to require or request the other person to quote the number.

(4) Nothing in this section shall be read as imposing on a person an obligation to require another person to quote a tax file number.

8WB Unauthorised recording etc. of tax file number

(1) A person must not:

(a) record another person's tax file number or maintain such a record; or

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(b) use another person's tax file number in a manner connecting it with the other person's identity; or

(c) divulge or communicate another person's tax file number to a third person.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(1A) Subsection (1) does not apply:

(a) to the extent required or permitted by, or reasonably necessary in order to comply with an obligation imposed by, a taxation law or a law of the Commonwealth of a kind referred to in paragraph 202(c), (d), (e), (g), (ga), (gaa), (h), (hab), (hac), (ha), (hb), (hc), (i), (ia), (j), (ka), (kb), (la), (m), (o), (q), (r), (s) or (t) of the *Income Tax Assessment Act 1936*; or

(b) in connection with the first-mentioned person exercising powers or performing functions under, or in relation to, a taxation law or a law of the Commonwealth of a kind referred to in paragraph 202(c), (d), (e), (g), (ga), (gaa), (h), (hab), (hac), (ha), (hb), (hc), (i), (ia), (j), (ka), (kb), (la), (m), (o), (q), (r), (s) or (t) of the *Income Tax Assessment Act 1936*; or

(c) in connection with the first-mentioned person acting on the other person's behalf in the conduct of the other person's affairs.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(2) Without affecting any obligation imposed by or under a law of the Commonwealth other than this section, nothing in subsection (1A) shall be read as imposing on a person an obligation to do an act referred to in paragraph (1)(a), (b) or (c).

8WC Conducting affairs so as to avoid tax file number requirements

(1) Where:

(a) a person is an investor in relation to 2 or more investments of a similar kind; and

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(b) having regard to:

(i) the manner in which the person became an investor in relation to the investments; and

(ii) any explanation made by the person as to becoming such an investor in that manner;

it would be reasonable to conclude that the person became such an investor in that manner for the sole or dominant purpose of ensuring, or attempting to ensure that:

(iii) although the person has not, under Part VA of the *Income Tax Assessment Act 1936*, quoted the person's tax file number in connection with those investments (in this subparagraph called the ***non-TFN investments***):

(A) amounts would not be deducted under Division 3B of that Act, or withheld under section 12-140 or 12-145 in Schedule 1 to this Act, from income in respect of one or more of the non-TFN investments; and

(B) amounts would not be paid to the Commissioner under section 14-5 in Schedule 1 to this Act, in relation to income in respect of one or more of the non-TFN investments; and

(C) TFN withholding tax would not be payable under section 14-55 in Schedule 1 to this Act in respect of one or more of the non-TFN investments; or

(iv) the investments are not referred to in a report under the regulations made under that Act;

the person commits an offence.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) In this section:

investment means an investment of a kind mentioned in section 202D of the *Income Tax Assessment Act 1936*.

investor means an investor within the meaning of that section.

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Subdivision C—Miscellaneous

8XA Unauthorised access to taxation records

A person must not take action with the intention of obtaining information about another person's affairs that:

(a) is contained in records in the possession of the Commissioner; and

(b) is held or was obtained by the Commissioner under or for the purposes of a taxation law;

unless the person takes the action:

(c) under the *Freedom of Information Act 1982*; or

(d) in accordance with the processes of a court or the Tribunal; or

(e) in the course of exercising powers or performing functions under or in relation to a taxation law.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

8Y Liability of officers etc. of corporations

(1) Where a corporation does or omits to do an act or thing the doing or omission of which constitutes a taxation offence, a person (by whatever name called and whether or not the person is an officer of the corporation) who is concerned in, or takes part in, the management of the corporation shall be deemed to have committed the taxation offence and is punishable accordingly.

(2) In a prosecution of a person for a taxation offence by virtue of subsection (1), it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the act or omission of the corporation concerned; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the corporation.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (2), see section 13.4 of the *Criminal Code*.

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Note 2: Subsection (2) does not apply in relation to a prosecution under Part 2.4 of the *Criminal Code*.

(3) For the purposes of subsection (1), an officer of a corporation shall be presumed, unless the contrary is proved, to be concerned in, and to take part in, the management of the corporation.

(4) In this section, ***officer***, in relation to a corporation, means:

(a) a director or secretary of the corporation;

(b) a receiver and manager of property of the corporation;

(ba) an administrator, within the meaning of the *Corporations Act 2001*, of the corporation;

(bb) an administrator of a deed of company arrangement executed by the corporation under Part 5.3A of that Act;

(d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; or

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

8Z Evidentiary certificate relating to previous convictions

(1) The Commissioner may, for the purposes of subsection 8E(2) or (3), 8M(2), 8R(2) or 8V(2), issue a certificate setting out such facts as the Commissioner considers relevant with respect to:

(a) the conviction of a person of an offence against a provision of Subdivision A or B or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law; or

(b) the conviction of a person of an offence against the *Crimes (Taxation Offences) Act 1980*; or

(c) the conviction of a person of an offence against:

(i) section 6 of the *Crimes Act 1914*; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

being an offence that relates to an offence of a kind referred to in paragraph (a) or (b) of this subsection; or

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(d) the conviction of a person of an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code*, being an offence that relates to a tax liability; or

(e) the making of an order under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence of a kind referred to in paragraph (a), (b), (c) or (d) of this subsection; or

(f) the conviction of a person of an offence against Division 136 or 137 of the *Criminal Code*, being an offence that relates to a taxation law.

(2) A document purporting to be a certificate issued under subsection (1) shall be received in evidence in a court without further proof and is, for those purposes, prima facie evidence of the facts stated in it.

(3) The provisions of this section are in addition to, and not in derogation of, any other law of the Commonwealth or any law of a State or Territory.

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Division 3—Prosecution of taxation offences

8ZA Prosecution of taxation offences

(1) A taxation offence that is punishable by imprisonment for a period exceeding 12 months is, when committed by a natural person, an indictable offence.

(2) A taxation offence that is punishable by imprisonment for a period not exceeding 12 months is, when committed by a natural person, punishable on summary conviction.

(3) A prescribed taxation offence, when committed by a natural person, is punishable on summary conviction.

(4) A taxation offence, when committed by a corporation, is punishable on summary conviction.

(5) In spite of anything in the preceding provisions of this section, if:

(a) a person is convicted of 2 or more offences against section 8T or 8U, or both, before the same court at the same sitting; and

(b) assuming that the person had only been convicted of one of those offences, that offence would have been punishable on summary conviction;

all those offences are punishable on summary conviction.

(6) A reference in subsection (5) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

(7) A reference in subsection (5) to an offence against section 8T or 8U includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8T or 8U, as the case may be.

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8ZB Prosecution may be commenced at any time

(1) A prosecution for a taxation offence may be commenced at any time.

(2) Subsection (1) has effect notwithstanding anything contained in section 15B of the *Crimes Act 1914*.

8ZC Place where offence committed

(1) Where a person commits a taxation offence by doing an act, the taxation offence may be taken to have been committed at:

(a) the place where the act was done;

(b) if the person is a natural person—the usual place of residence or business of the person or the place of residence or business of the person last known to the Commissioner; or

(c) if the person is a corporation—the head office, a registered office or a principal office of the corporation;

and the person may be charged with, and convicted of, the taxation offence as if it had been committed at any of those places.

(2) Where a person commits a taxation offence by omitting to do an act, the taxation offence may be taken to have been committed at:

(a) the place where the act should have been done;

(b) if the person is a natural person—the usual place of residence or business of the person or the place of residence or business of the person last known to the Commissioner; or

(c) if the person is a corporation—the head office, a registered office or a principal office of the corporation;

and the person may be charged with, and convicted of, the taxation offence as if it had been committed at any of those places.

(3) This section has effect subject to section 80 of the Constitution.

Note: This section does not apply as an averment. For averments, see section 8ZL of this Act and section 13.6 of the *Criminal Code*.

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8ZD Conduct by employees or agents of corporations

(1) Where, in a prosecution for a taxation offence constituted by an act done, or omitted to be done, by a corporation, it is necessary to establish the intention of the corporation, it is sufficient to show that an employee or agent of the corporation by whom the act was done or omitted to be done, as the case may be, had the intention.

(2) In a prosecution for a taxation offence, any act done, or omitted to be done, on behalf of a corporation by:

(a) a director, employee or agent of the corporation; or

(b) any other person:

(i) at the direction; or

(ii) with the consent or agreement (whether express or implied);

of a director, employee or agent of the corporation;

shall be deemed to have been done, or omitted to have been done, as the case may be, also by the corporation.

(3) Part 2.5 of the *Criminal Code* does not apply to taxation offences.

8ZE Civil penalty not payable if prosecution instituted

If:

(a) a person is liable to pay by way of penalty (other than for an offence) an amount under a taxation law because of an act or omission of the person; and

(b) a prosecution is instituted against the person for a taxation offence constituted by the act or omission;

then (whether or not the prosecution is withdrawn):

(c) the person is not liable to pay the amount; and

(d) any amount paid, or applied by the Commissioner, in total or partial discharge of that liability is to be refunded to the person, or applied by the Commissioner in total or partial discharge of another tax liability of the person.

Note: An example of a penalty referred to in paragraph (a) is a penalty payable under section 284-75 in Schedule 1.

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8ZF Penalties for corporations

Where a corporation is convicted of:

(a) a taxation offence (other than a prescribed offence) that, if committed by a natural person, is punishable by imprisonment; or

(b) a prescribed offence to which subsection 8E(3) or 8R(2) applies;

the penalty that the court before which the corporation is convicted may impose is a fine not exceeding 5 times the maximum fine that, but for this section, the court could impose as a penalty for the taxation offence.

8ZG Enforcement of orders for payment

(1) Where:

(a) upon the conviction of a person for a taxation offence, the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commissioner; and

(b) the court has civil jurisdiction to the extent of the amount;

the order is enforceable in all respects as a final judgment of the court in favour of the Commissioner.

(2) Where:

(a) upon conviction of a person for a taxation offence, the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commissioner; and

(b) the court:

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount;

the proper officer of the court shall issue to the Commissioner a certificate in the prescribed form containing the prescribed particulars.

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(3) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be paid to the Commissioner.

(4) Upon registration under subsection (3), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commissioner.

(5) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.

8ZH Penalties not to relieve from tax

The adjudgment or payment of:

(a) a penalty in respect of a taxation offence; or

(b) an amount ordered by a court, upon the conviction of a person for a taxation offence, to be paid by the person to the Commissioner;

does not relieve any person from liability to assessment or payment of any amount (whether by way of tax, duty, charge or otherwise) for which the person would otherwise be liable.

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Division 4—Prescribed taxation offences

8ZJ Prosecution of prescribed taxation offences

(1) A prosecution for a prescribed taxation offence shall take the form of a proceeding by the Commonwealth for the recovery of a pecuniary penalty.

(2) A prosecution for a prescribed taxation offence may be instituted by a person authorized under subsection (8) on behalf of, and in the official name of, the Commissioner by information or complaint in a court of summary jurisdiction.

(3) A prosecution of a person for a prescribed taxation offence that is punishable by a fine exceeding the prescribed amount in relation to the person may be instituted by a person authorized under subsection (8) on behalf of, and in the official name of, the Commissioner by action in the Supreme Court of a State or Territory.

(4) Where a court of summary jurisdiction convicts a person of a prescribed taxation offence, the penalty that the court may impose is a fine not exceeding the prescribed amount in relation to the person.

(5) Where:

(a) a prosecution of a person for a prescribed taxation offence that is punishable by a fine exceeding the prescribed amount in relation to the person is instituted in accordance with subsection (2); and

(b) before the expiration of the period of 14 days after service of process on the person in respect of the prescribed taxation offence, the person elects, in the prescribed manner, to have the case tried in the Supreme Court of the State or Territory in which the prosecution was instituted;

the prosecution shall, by force of this subsection and without any order of the Supreme Court, be removed to the Supreme Court.

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(6) Where a prosecution for a prescribed taxation offence is instituted in the Supreme Court of a State or Territory in accordance with subsection (3) or is removed to the Supreme Court of a State or Territory by force of subsection (5), the prosecution may be conducted in accordance with:

(a) the usual practice and procedure of the Supreme Court in civil cases; or

(b) the directions of the Supreme Court or a Justice or Judge of the Supreme Court.

(7) The jurisdiction of the Supreme Court of a State or Territory under this section shall be exercised by a single Justice or Judge of the Supreme Court.

(8) The Commissioner may, by writing, authorize a person to institute a prosecution for:

(a) a specified prescribed taxation offence;

(b) a prescribed taxation offence included in a specified class of prescribed taxation offences; or

(c) any prescribed taxation offence.

(9) A reference in this section to the prescribed amount in relation to a person is a reference to:

(a) if the person is a natural person—$5,000; or

(b) if the person is a corporation—$25,000.

8ZK Protection of witnesses

A witness called on behalf of the Commissioner in any prosecution for a prescribed taxation offence shall not be compelled:

(a) to disclose:

(i) the fact that the witness received any information;

(ii) the nature of any information received by the witness; or

(iii) the name of any person from whom the witness received any information; or

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(b) if the witness is an officer, to produce any reports:
(i) made or received by the witness confidentially in the witness' official capacity; or
(ii) containing confidential information.

8ZL Averment

(1) In a prosecution for a prescribed taxation offence, a statement or averment contained in the information, claim or complaint is prima facie evidence of the matter so stated or averred.

(2) This section applies in relation to any matter so stated or averred although:
(a) evidence in support or rebuttal of the matter stated or averred, or of any other matter, is given; or
(b) the matter averred is a mixed question of law and fact, but, in that case, the statement or averment is prima facie evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter so stated or averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) This section:
(a) does not apply to any fault element of an offence; and
(aa) does not apply in relation to any offence for which imprisonment is a penalty; and
(b) does not lessen or affect any onus of proof otherwise falling on a defendant.

8ZM Evidence of authority to institute proceedings

(1) Where a prosecution for a prescribed taxation offence is instituted by a person in the official name of the Commissioner, the prosecution shall be presumed, unless the contrary is proved, to have been instituted with the authority of the Commissioner.

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(2) In a prosecution for a prescribed taxation offence, the mere production of an instrument, telegram or copy of a telex message purporting to have been issued or sent by the Commissioner, a Second Commissioner or a Deputy Commissioner and purporting to notify a person that the person is authorized by the Commissioner to institute the prosecution, to institute prosecutions for a class of prescribed taxation offences in which the prescribed taxation offence is included or to institute prosecutions for any prescribed taxation offence is conclusive evidence of the authority of the person to institute the prosecution on behalf of, and in the official name of, the Commissioner.

8ZN Costs

In a prosecution for a prescribed taxation offence, the court may award costs against any party.

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Division 5—Service of summons for prescribed taxation offences

9 Interpretation

In this Division, unless the contrary intention appears:

defendant, in relation to a prescribed taxation offence, means a person to whom a summons has been sent in the manner permitted by subsection 10(1) in relation to the prescribed taxation offence (whether or not the summons has been delivered to, or received by, the person).

summons, in relation to a person, means a writ or process notifying or directing the person to appear on a designated day before a specified court.

10 Service of summons by post

(1) A summons for the appearance before a court of summary jurisdiction of a person charged with having committed a prescribed taxation offence may be served upon the person to whom it is directed by sending a copy of the summons, not less than 21 days before the day on which the person is required by the summons to appear before the court, by ordinary prepaid post addressed to the person at the person's last known place of residence or last known place of business.

(1A) Subsection (1) has effect without prejudice to any other method of service provided for under any other law of the Commonwealth or under a law of a State or Territory.

(2) Where a summons is served in the manner permitted by subsection (1), the court may require the summons to be re-served if the court has reasonable cause to believe that the summons has not come to the notice of the person to whom it is directed.

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11 Notice of conviction *in absentia*

(1) Where a defendant who has not entered a plea in relation to a prescribed taxation offence is, in the defendant's absence, convicted of the prescribed taxation offence, the proper officer of the court concerned shall cause to be served on the defendant notice in writing of:

(a) the conviction;

(b) the order of the court;

(c) where the order of the court includes the imposition of a fine—the time allowed by the court for payment of the fine; and

(d) the right of the defendant to make an application under section 13A for an order setting aside the conviction.

(2) Without prejudice to any other method of service provided for under any other law of the Commonwealth or under a law of a State or Territory, a notice under subsection (1) may be served on the defendant by sending the notice to the defendant by ordinary prepaid post addressed to the defendant at the defendant's last known place of residence or last known place of business.

12 Notice of intention to issue warrant in default of payment

Where:

(a) a defendant, not being a body corporate, has been served with a notice under subsection 11(1), being a notice that includes notice of a fine imposed on him or her in consequence of a conviction;

(b) the fine is not paid in full within the time allowed by the court for payment of the fine; and

(c) a period of not less than 21 days has elapsed after the date of service of the notice;

the proper officer of the court concerned may cause to be served personally on the defendant a notice (in this section referred to as the ***personal notice***) informing the defendant that unless:

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(d) the fine is paid in full before the expiration of 21 days after the date of service of the personal notice; or

(e) an application in accordance with section 13A for the setting aside of the conviction is made before the expiration of 14 days after the date of service of the personal notice;

a warrant for his or her commitment to prison may be issued.

13 Limitation of action to enforce payment of fine

Notwithstanding anything contained in any other law of the Commonwealth or in a law of a State or Territory, where a defendant who has not entered a plea in relation to a prescribed taxation offence is, in the defendant's absence, convicted of the prescribed taxation offence and the order of the court includes the imposition of a fine:

(a) a warrant for commitment of the defendant to prison for failure to pay the fine shall not be issued unless:

(i) a notice has been served on the defendant under section 12 in relation to the fine; and

(ii) a period of not less than 21 days has elapsed after the date of service of the notice; and

(b) no other action for enforcement of payment of the fine shall be taken unless:

(i) a notice has been served on the defendant in relation to the conviction under subsection 11(1); and

(ii) a period of not less than 21 days has elapsed after the date of service of the notice.

13A Setting aside of conviction or order

(1) Where a defendant has been served with a notice under section 11 in relation to a conviction or order of a court, the defendant may:

(a) where a fine was imposed by the court—before the expiration of:

(i) the period allowed by the court for payment of the fine; or

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(ii) a period of 21 days after the date of service of the notice;

whichever is the longer; or

(b) where no fine was imposed by the court—within 21 days after the date of service of the notice;

make an application in writing to the court, or to another court of summary jurisdiction that would have had jurisdiction to make the conviction or order, for an order setting aside the conviction or order.

(2) Where a defendant has been served with a notice under section 12 in relation to a conviction or order of a court, the defendant may, within 14 days after the date of service of the notice, make an application in writing to the court, or to another court of summary jurisdiction that would have had jurisdiction to make the conviction or order, for an order setting aside the conviction or order.

(3) Any person who was a party to the proceedings in which the conviction or order to which an application under subsection (1) or (2) relates was made shall be a party to proceedings in respect of the application.

(4) Where a court is satisfied, on an application made by a defendant in accordance with subsection (1) or (2) in relation to a conviction or order, that:

(a) in the case of an application under subsection (1):

(i) the defendant did not receive notice of the proceedings in which the conviction or order was made, or did not receive such notice in sufficient time to enable the defendant to attend the proceedings; or

(ii) the defendant failed to attend the proceedings in which the conviction or order was made for reasons that, in the opinion of the court, render it desirable, in the interests of justice, that the conviction or order be set aside and the matter re-heard; or

(b) in the case of an application under subsection (2):

(i) the defendant:

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(A) did not receive notice of the proceedings in which the conviction or order was made, or did not receive such notice in sufficient time to enable the defendant to attend the proceedings; and

(B) did not receive notice of the conviction or order, or did not receive such notice in sufficient time to enable the defendant to apply, within the time specified in paragraph (1)(a), for an order setting aside the conviction or order; or

(ii) the defendant failed to attend the proceedings in which the conviction or order was made, and failed to make an application in accordance with subsection (1) in relation to the notice served on the defendant under section 11 in relation to the conviction or order, for reasons that, in the opinion of the court, render it desirable, in the interests of justice, that the conviction or order be set aside and the matter re-heard;

the court shall set aside the conviction or order and shall:

(c) proceed forthwith to re-hear and determine the matter; or

(d) adjourn the proceedings for re-hearing the matter to such time and place as the court thinks fit.

(5) Where an application is made to a court (in this subsection referred to as the ***relevant court***) under this section for the setting aside of a conviction or order of a court, the proper officer of the relevant court shall forthwith:

(a) cause notice of the making of the application to be given to each party to the application other than the defendant; and

(b) where the conviction or order was made by a court other than the relevant court—cause notice of the making of the application to be given to that other court.

(6) Where, under subsection (4), a court sets aside a conviction or order of another court, the proper officer of the first-mentioned court shall forthwith cause notice of the setting aside of that conviction or order to be given to the other court.

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13B Proof of service of summons or notice

Service of a summons in accordance with section 10 or of a notice in accordance with section 11 or 12 may be proved by the oath of the person who served it or by affidavit or otherwise.

13C Application of other laws

(1) The provisions of this Division have effect in addition to, and not in derogation of, any other law of the Commonwealth or a State or Territory that makes provision for, or in relation to, the service of summonses.

(2) Without limiting the generality of section 79 of the *Judiciary Act 1903*, the laws (if any) of a State or Territory relating to any procedure whereby a person may, without appearing in court in obedience to a summons, enter a plea in relation to a charge of having committed an offence apply in like manner, *mutatis mutandis*, to a defendant charged with having committed a prescribed taxation offence.

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Division 6—Setting aside etc. of conviction or order on application of Commissioner

13CA Setting aside etc. of conviction or order on application of Commissioner

(1) Where a person has been convicted in his or her absence of a prescribed taxation offence (whether before or after the commencement of this section), the Commissioner may apply to a court (in this section called the ***quashing court***) for:

(a) an order setting aside the conviction or setting aside the order of the convicting court in respect of the conviction; or

(b) an order varying the order of the convicting court in respect of the conviction so as to reduce its severity.

(2) The application shall be made in writing:

(a) to the convicting court; or

(b) to any other court of summary jurisdiction that would have had jurisdiction to make the conviction or order.

(3) The proper officer of the quashing court shall, without delay, cause notice of the making of the application to be given to each party to the application (other than the Commissioner).

(4) Any person who was a party to the proceedings in which the defendant was convicted shall be made a party to the proceedings in respect of the application.

(5) If the quashing court is satisfied that:

(a) the conviction or order was made in circumstances that, in the opinion of the court, make it desirable, in the interests of justice, that:

(i) the conviction or order be set aside; or

(ii) the order be varied by reducing its severity; or

(b) because of other special circumstances (whether or not existing at the time the conviction or order was made) it is

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desirable, in the interests of justice, or in order to avoid undue hardship, that:

(i) the order be set aside; or

(ii) the order be varied so as to reduce its severity;

the court may set aside the conviction, or set aside or vary the order, as the case may be, on such terms as to costs or otherwise as the court thinks just.

(6) If the court sets aside the conviction, or sets aside or varies the order in respect of the conviction, the court shall also set aside any warrant issued in consequence of the conviction.

(7) If the quashing court:

(a) is not the convicting court; and

(b) sets aside the conviction, or sets aside or varies the order, of the convicting court;

the proper officer of the quashing court shall without delay cause notice of the setting aside or variation to be given to the convicting court.

(8) A reference in this section to a conviction includes a reference to the making of an order under section 19B of the *Crimes Act 1914*.

(9) The setting aside of a conviction or order under this section is a bar to any further legal proceeding against the defendant for the same matter in any court (other than on appeal).

(10) This section is in addition to, and not in derogation of, any other law of the Commonwealth or any law of a State or Territory.

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Part IIIA—Co-operation between Commonwealth and State taxation authorities

Division 1—Interpretation

13D Interpretation

(1) In this Part, unless the contrary intention appears:

Australian Capital Territory includes the Jervis Bay Territory.

officer means:

(a) a person appointed or engaged under the *Public Service Act 1999*; or

(b) a State taxation officer.

State includes the Northern Territory.

State Minister means:

(a) in relation to a State other than the Northern Territory—a Minister of the Crown of the State; or

(b) in relation to the Northern Territory—a Minister of the Northern Territory.

State taxation officer means:

(a) a person or authority, not being a State Minister, who or which is for the time being authorised under a law of a State to perform the functions of a State taxation officer under this Part; or

(b) a person, not being a State Minister, authorised by writing signed by a person or authority referred to in paragraph (a) to act under this Part.

State tax law means a law of a State relating to taxation.

Territory means the Australian Capital Territory.

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Territory taxation officer means:

(a) a person or authority, not being a Minister of State of the Commonwealth, who or which is for the time being authorised under a law of the Territory to perform the functions of a Territory taxation officer under this Part; or

(b) a person, not being a Minister of State of the Commonwealth, authorised by writing signed by a person or authority referred to in paragraph (a) to act under this Part.

Territory tax law means a law of the Territory relating to taxation.

(2) A reference in Division 3 or 4 to a State tax law includes a reference to a Territory tax law.

(3) A reference in Division 3 or 4 to a State taxation officer includes a reference to a Territory taxation officer.

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Division 2—Trans-border investigations

13E State taxation officers may refer matters to Commissioner for investigation

A State taxation officer may, by writing signed by the officer, refer a matter arising under a State tax law to the Commissioner for investigation in the Territory.

13F Access to documents etc.

(1) Where, under section 13E, a matter is referred to the Commissioner for investigation, the Commissioner may, by writing signed by the Commissioner, authorise an officer to conduct an investigation into that matter.

(2) For the purposes of conducting an investigation into a matter referred to the Commissioner under section 13E, an officer authorised under subsection (1) of this section to conduct the investigation:

(a) may, at all reasonable times, enter upon any land in the Territory;

(b) shall have full and free access at all reasonable times to all documents in the Territory; and

(c) may take extracts from, and make copies of, any documents in the Territory.

(3) An officer who enters upon land pursuant to subsection (2) is not authorised to remain on the land if, on request by the occupier of the land, the officer does not produce a certificate issued by the Commissioner stating that he or she is an officer authorised under subsection (1) to conduct an investigation into a matter specified in the certificate.

(4) The occupier of land entered or proposed to be entered by an officer under subsection (2) shall provide the officer with all

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reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty for a contravention of this subsection: 10 penalty units.

13G Commissioner may obtain information and evidence

(1) Where, under section 13E, a matter is referred to the Commissioner for investigation, the Commissioner may, for the purposes of conducting the investigation in the Territory, by notice in writing, require any person, including any officer employed in or in connection with any department of a government or by any public authority:

(a) to furnish the Commissioner with such information as the Commissioner requires;

(b) to attend before the Commissioner, or before an officer authorised by the Commissioner for the purpose, at a time and place specified in the notice and there answer questions; and

(c) to produce to the Commissioner, or to an officer authorised by the Commissioner for the purpose, any documents in the custody or under the control of the person.

(2) The Commissioner may require the information or answers to be verified or furnished, as the case may be, on oath or affirmation and either orally or in writing, and for that purpose the Commissioner or an officer authorised by the Commissioner may administer an oath or affirmation.

(3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the information is or the answers will be true.

(4) The Commissioner may cause copies to be made of, or extracts to be taken from, any documents that are produced pursuant to paragraph (1)(c).

(5) A person required pursuant to paragraph (1)(b) to attend before the Commissioner or an officer authorised by the Commissioner is

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entitled to payment of an allowance in respect of his or her expenses of an amount determined by the Commissioner in accordance with the regulations.

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Division 4—Certification by State taxation officer of copies of, and extracts from, documents

13K Certification by State taxation officer of copies of, and extracts from, documents

(1) Where a document is obtained pursuant to a State tax law, a State taxation officer may certify a copy of the document to be a true copy.

(2) Where, pursuant to a State tax law, a copy is made of a document, a State taxation officer may certify the copy to be a true copy.

(3) Where a document is obtained pursuant to a State tax law, a State taxation officer may certify an extract taken from the document to be a true extract.

(4) Where, pursuant to a State tax law, an extract is taken from a document, a State taxation officer may certify the extract to be a true extract.

(5) Subject to subsection (6), a document purporting to be a copy or extract certified under subsection (1), (2), (3) or (4) shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original.

(6) Subsection (5) does not apply in relation to a document if:
  (a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy or a true extract; or
  (b) in any other case—it is proved that the document is not a true copy or a true extract.

(7) Where:
  (a) pursuant to a State tax law, a copy (in this section referred to as the ***primary copy***) is made of, or an extract (in this section

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referred to as the ***primary extract***) is taken from, a document (in this section referred to as the ***original document***); and

(b) pursuant to subsection (2) or (4), a State taxation officer has certified the primary copy to be a true copy of, or the primary extract to be a true extract taken from, the original document;

a State taxation officer may:

(c) certify a copy of the primary copy or primary extract to be a true copy; or

(d) certify an extract taken from the primary copy or primary extract to be a true extract.

(8) Subject to subsection (9), a document purporting to be:

(a) a copy, certified under subsection (7), of a primary copy of, or a primary extract taken from, an original document; or

(b) an extract, certified under subsection (7), taken from a primary copy of, or a primary extract taken from, an original document;

shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original document.

(9) Subsection (8) does not apply in relation to a document if:

(a) in the case of proceedings for an offence, evidence is adduced that:

(i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or

(ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document; or

(b) in any other case, it is proved that:

(i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or

(ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document.

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Division 5—Australian Taxation Office may perform functions under State/Territory debits tax laws

13L Australian Taxation Office may perform functions under State/Territory debits tax laws

(1) In this section:

accounts, in relation to a financial institution, includes accounts kept by way of withdrawable share capital in, or money deposited with, the financial institution.

co-operative housing society means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

financial institution includes:

(a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; and

(b) a co-operative housing society; and

(c) a registered entity under the *Financial Sector (Collection of Data) Act 2001*.

State/Territory debits tax law means:

(a) a State tax law; or

(b) a Territory tax law;

relating to the taxation of debits made to accounts kept with financial institutions.

(2) The Commissioner may make an arrangement with an appropriate officer or authority of a State or the Territory about any matter in connection with the administration of a State/Territory debits tax law.

(3) In particular, an arrangement may provide:

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(a) for the Commissioner or the Second Commissioners to perform functions, or exercise powers, conferred on them by a State/Territory debits tax law; or

(b) for the services of officers or employees under the control of the Commissioner to be made available to the State or the Territory or to an authority of the State or of the Territory for the purposes of matters relating to the administration of a State/Territory debits tax law.

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Part IVA—Departure from Australia of certain tax debtors

Division 1—Interpretation

14Q Interpretation

(1) In this Part, unless the contrary intention appears:

authorized officer means a person who is:

(a) an officer for the purposes of the *Customs Act 1901*; or

(b) a member of the Australian Federal Police.

departure authorization certificate means a certificate under subsection 14U(1).

departure prohibition order means an order under subsection 14S(1).

(2) A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

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Division 2—Prohibition and authorisation of departure of certain tax debtors

14R Departure from Australia of certain tax debtors prohibited

(1) A person in respect of whom a departure prohibition order is in force, and who knows that such an order is in force in respect of him or her, shall not depart from Australia for a foreign country.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) Subsection (1) does not apply if the departure is authorised by a departure authorization certificate.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

14S Departure prohibition orders

(1) Where:

(a) a person is subject to a tax liability; and

(b) the Commissioner believes on reasonable grounds that it is desirable to do so for the purpose of ensuring that the person does not depart from Australia for a foreign country without:

(i) wholly discharging the tax liability; or

(ii) making arrangements satisfactory to the Commissioner for the tax liability to be wholly discharged;

the Commissioner may, by order in accordance with the prescribed form, prohibit the departure of the person from Australia for a foreign country.

(2) Subject to subsection (3), a departure prohibition order remains in force unless and until revoked under section 14T or set aside by a court.

(3) A departure prohibition order made in respect of a person shall be taken, by virtue of this subsection, not to be in force in respect of

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the person during any period during which an order is in force under the *Migration Act 1958* for the deportation of the person.

(4) Where a departure prohibition order is made in respect of a person, the Commissioner shall forthwith:

(a) cause the person to be informed, as prescribed, of the making of the order; and

(b) subject to subsection (5), cause a copy of the order, and such information as the Commissioner considers is likely to facilitate the identification of the person, to be given to:

(i) the Immigration Secretary; and

(ii) such other persons as the Commissioner considers appropriate, being persons prescribed, or included in a class of persons prescribed, for the purposes of this paragraph.

(5) Where a departure prohibition order is made in respect of a person whom the Commissioner is satisfied is an Australian citizen, the Commissioner shall not cause a copy of the order, or any information likely to facilitate the identification of the person, to be given to the Immigration Secretary unless the Commissioner is of the opinion that it is desirable to do so.

14T Revocation and variation of departure prohibition orders

(1) Where a departure prohibition order is in force in respect of a person and:

(a) the tax liabilities to which the person is subject have been wholly discharged and the Commissioner is satisfied that it is likely that the tax liabilities to which the person may become subject in respect of, or arising out of, matters that have occurred will be:

(i) wholly discharged; or

(ii) completely irrecoverable; or

(b) the Commissioner is satisfied that the tax liabilities to which the person is subject are completely irrecoverable;

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the Commissioner shall, on application being made to the Commissioner by the person to do so or on the Commissioner's own motion, revoke the departure prohibition order.

(2) Where a departure prohibition order is in force in respect of a person, the Commissioner may, in the Commissioner's discretion and on application being made to the Commissioner to do so or on the Commissioner's own motion, revoke or vary the departure prohibition order.

(3) A reference in paragraph (1)(a) to tax liabilities having been wholly discharged includes a reference to arrangements satisfactory to the Commissioner having been made for those tax liabilities to be wholly discharged and a reference in that paragraph to the Commissioner being satisfied that it is likely that tax liabilities to which a person may become subject will be wholly discharged includes a reference to the Commissioner being satisfied that it is likely that arrangements satisfactory to the Commissioner will be made for those tax liabilities to be wholly discharged.

(4) As soon as practicable after a departure prohibition order made in respect of a person is revoked or varied under this section, the Commissioner shall:

(a) cause to be served, as prescribed, on the person; and

(b) cause to be given to each person to whom a copy of the departure prohibition order was given;

notification of the revocation or variation of the departure prohibition order.

(5) As soon as practicable after a decision is made under subsection (1) or (2) refusing to revoke a departure prohibition order made in respect of a person, the Commissioner shall cause to be served, as prescribed, on the person notification of the decision.

14U Departure authorisation certificates

(1) Where, on application made by a person in respect of whom a departure prohibition order is in force:

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(a) the Commissioner is satisfied:

(i) that, if a departure authorization certificate is issued in respect of the person, it is likely that:

(A) the person will depart from Australia and will return to Australia within such period as the Commissioner considers to be appropriate in relation to the person; and

(B) circumstances of the kind referred to in paragraph 14T(1)(a) will come into existence within such period as the Commissioner considers to be appropriate in relation to the person; and

(ii) that it is not necessary or desirable for the person to give security under subsection (2) for the person's return to Australia; or

(b) in a case where the Commissioner is not satisfied with respect to the matters referred to in paragraph (a):

(i) the person has given security under subsection (2) to the satisfaction of the Commissioner for the person's return to Australia; or

(ii) if the person is unable to give such security, the Commissioner is satisfied that:

(A) a departure authorization certificate should be issued in respect of the person on humanitarian grounds; or

(B) a refusal to issue a departure authorization certificate in respect of the person would be detrimental to the interests of Australia;

the Commissioner shall issue a certificate authorizing the person to depart from Australia for a foreign country on or before the seventh day after a day (being a day later than, but not more than 7 days later than, the day on which the certificate is issued) specified in the certificate.

(2) For the purposes of this section:

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(a) a person may give security, by bond, deposit or any other means, for the person's return to Australia by such day as is agreed between the person and the Commissioner;

(b) the Commissioner may, in the Commissioner's discretion and on application by the person or on the Commissioner's own motion, substitute a later day for the day so agreed (including a day substituted by virtue of a previous application of this paragraph); and

(c) the Commissioner may refuse to substitute such a later day unless the person:

(i) increases, to the satisfaction of the Commissioner, the value of the security given by the person under this subsection; or

(ii) gives a further security, to the satisfaction of the Commissioner, by bond, deposit or any other means, for the person's return to Australia by that later day.

(3) As soon as practicable after a departure authorization certificate is issued in respect of a person, the Commissioner shall:

(a) cause a copy of the departure authorization certificate to be served, as prescribed, on the person; and

(b) cause a copy of the departure authorization certificate to be given to each person to whom a copy of the departure prohibition order made in respect of the person was given.

(4) As soon as practicable after a decision is made under subsection (1) refusing to issue a departure authorization certificate in respect of a person or a decision is made under subsection (2) refusing to substitute a later day in relation to the return of a person to Australia, the Commissioner shall cause to be served, as prescribed, on the person notification of the decision.

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Division 3—Appeals from, and review of, decisions of the Commissioner

14V Appeals to courts against making of departure prohibition orders

(1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Supreme Court of a State or Territory against the making of the departure prohibition order.

(2) This section has effect:
  (a) subject to chapter III of the Constitution; and
  (b) notwithstanding anything contained in section 9 of the *Administrative Decisions (Judicial Review) Act 1977*.

14W Jurisdiction of courts

(1) The jurisdiction of a court under section 14V shall be exercised by a single Judge or Justice.

(2) An appeal lies to the Federal Court of Australia from a judgment or order of the Supreme Court of a State or Territory exercising jurisdiction under section 14V.

(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (2).

(4) Except as provided in subsection (2) or (3), no appeal lies from a judgment or order referred to in subsection (2).

14X Orders of court on appeal

A court hearing an appeal under section 14V against the making of a departure prohibition order may, in its discretion:
  (a) make an order setting aside the departure prohibition order; or

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(b) dismiss the appeal.

14Y Applications for review of certain decisions

(1) Applications may be made to the Tribunal for review of decisions of the Commissioner under section 14T or 14U.

(2) In subsection (1), ***decision*** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

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Division 4—Enforcement

14Z Powers of authorised officers

(1) Where an authorized officer believes on reasonable grounds that:

(a) a person is about to depart from Australia for a foreign country;

(b) a departure prohibition order is in force in respect of the person; and

(c) the departure is not authorized by a departure authorization certificate;

the authorized officer may:

(d) take such steps as are reasonably necessary to prevent the departure of the person, including, but without limiting the generality of the foregoing, steps to prevent the person going on board, or steps to remove the person from, a vessel or aircraft in which the authorized officer believes on reasonable grounds the departure will take place; and

(e) require the person to answer questions or produce documents to the authorized officer, or both, for the purposes of ascertaining whether:

(i) a departure prohibition order is in force in respect of the person; and

(ii) if a departure prohibition order is in force in respect of the person—the departure of the person from Australia for a foreign country is authorized by a departure authorization certificate.

(2) A person who refuses or fails, when and as required to do so pursuant to subsection (1), to answer a question or produce a document, commits an offence punishable on conviction by a fine not exceeding 10 penalty units.

(2A) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

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Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

(4) Section 8C does not apply in relation to a requirement made pursuant to subsection (1) of this section.

(5) Subsection 8K(1) and (1B) and section 8N do not apply in relation to an answer given to a question asked, or a document produced, pursuant to subsection (1).

14ZA Certain tax debtors to produce authority to depart etc.

(1) Where:

(a) a person in respect of whom a departure prohibition order is in force is about to depart from Australia for a foreign country; and

(b) the departure is authorized by a departure authorization certificate;

the person shall, if required to do so pursuant to this subsection by an authorized officer, produce a copy of the departure authorization certificate for inspection by the authorized officer.

Penalty: 5 penalty units.

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

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

(2) Section 8C does not apply in relation to a requirement made pursuant to subsection (1) of this section.

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Part IVC—Taxation objections, reviews and appeals

Division 1—Introduction

14ZL Part applies to taxation objections

(1) This Part applies if a provision of an Act or of regulations (including the provision as applied by another Act) provides that a person who is dissatisfied with an assessment, determination, notice or decision, or with a failure to make a private ruling, may object against it in the manner set out in this Part.

(2) Such an objection is in this Part called a ***taxation objection***.

14ZM Division 2—Interpretive

Division 2 contains interpretive provisions necessary for this Part.

14ZN Division 3—Taxation objections

Division 3 describes how taxation objections are to be made and how they are to be dealt with by the Commissioner.

14ZO Division 4—Tribunal review

Division 4 contains provisions about applications to the Tribunal for review of decisions by the Commissioner in relation to certain taxation objections and requests for extension of time.

14ZP Division 5—Federal Court appeals

Division 5 contains provisions about appeals to the Federal Court against decisions by the Commissioner in relation to certain taxation objections.

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Division 2—Interpretive provisions

14ZQ General interpretation provisions

In this Part:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

AAT extension application means an application under subsection 29(7) of the AAT Act that relates to a review of a reviewable objection decision or an extension of time refusal decision.

delayed administration (beneficiary) objection means a taxation objection made under:

(b) subsection 220(3) of the *Income Tax Assessment Act 1936* (including that subsection as applied by any other Act); or

(g) subsection 260-145(5) in Schedule 1 (because of paragraph (a) of that subsection).

delayed administration (trustee) objection means a taxation objection made under:

(a) subsection 220(7) of the *Income Tax Assessment Act 1936* (including that subsection as applied by any other Act); or

(b) subsection 260-145(5) in Schedule 1 (because of paragraph (b) of that subsection).

extension of time refusal decision means a decision of the Commissioner under subsection 14ZX(1) to refuse a request by a person.

Family Court means the Family Court of Australia.

Family Court Judge means a Judge of the Family Court (including the Chief Justice, the Deputy Chief Justice or a Senior Judge).

Federal Court means the Federal Court of Australia.

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reviewable objection decision means an objection decision that is not an ineligible income tax remission decision.

taxation decision means the assessment, determination, notice or decision against which a taxation objection may be, or has been, made.

taxation objection has the meaning given by section 14ZL.

14ZR Taxation decisions covered by single notice to be treated as single decision

(1) If:

(a) a provision of an Act (including a provision as applied by another Act) provides that a person who is dissatisfied with a taxation decision may object against it in the manner set out in this Part; and

(b) a notice incorporates notice of 2 or more such taxation decisions;

then, for the purposes of the provision and of this Part, the taxation decisions are taken to be one taxation decision.

(2) If:

(a) under subsection (1), 2 or more taxation decisions are taken to be a single taxation decision (in this subsection called the ***deemed single taxation decision***); and

(b) the Commissioner makes an objection decision in relation to the deemed single taxation decision; and

(c) the objection decision is to any extent an ineligible income tax remission decision;

then, this Part has effect, in relation to any review or appeal, as if so much of the objection decision as consists of one or more ineligible income tax remission decisions were taken to be a separate objection decision.

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14ZS Ineligible income tax remission decisions

(1) An objection decision is an ***ineligible income tax remission decision*** if it relates to the remission of additional tax payable by a taxpayer under the *Income Tax Assessment Act 1936* (other than Division 11 of former Part IIIAA), except where the additional tax is payable under former section 163B, 224, 225, 226, 226G, 226H, 226J, 226K, 226L or 226M of that Act, whatever its amount, or is payable under a provision of former Part VII of that Act other than any of the preceding sections and its amount, after the decision is made, exceeds:

(a) in the case of additional tax payable under former section 222 of that Act because of the refusal or failure to furnish a return, or any information, relating to a year of income—the amount calculated, in respect of the period commencing on the last day allowed for furnishing the return or information and ending on:

(i) the day on which the return or information is furnished; or

(ii) the day on which the assessment of the additional tax is made;

whichever first happens, at the rate of 20% per year of the tax properly payable by the taxpayer in respect of the year of income; or

(d) if the amount calculated in accordance with paragraph (a) is less than $20—$20.

(2) A reference in this section to a provision of the *Income Tax Assessment Act 1936* includes a reference to that provision as applied by any other Act.

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Division 3—Taxation objections

14ZU How taxation objections are to be made

A person making a taxation objection must:

(a) make it in the approved form; and

(b) lodge it with the Commissioner within the period set out in section 14ZW; and

(c) state in it, fully and in detail, the grounds that the person relies on.

Note: A person who objects against the Commissioner's failure to make a private ruling must lodge a draft private ruling with the objection: see subsection 359-50(4).

14ZV Limited objection rights in the case of certain amended taxation decisions

If the taxation objection is made against a taxation decision, being an assessment or determination that has been amended in any particular, then a person's right to object against the amended assessment or amended determination is limited to a right to object against alterations or additions in respect of, or matters relating to, that particular.

14ZVA Limited objection rights because of other objections

If there has been a taxation objection against:

(a) a private ruling; or

(b) a determination under subsection 960-555(3) of the *Income Tax Assessment Act 1997*; or

(c) a determination under subsection 136-10(1) in Schedule 1 to this Act (about excess transfer balance);

the right of objection under this Part against an assessment, or against a decision made under an indirect tax law or an excise law, relating to the matter ruled or determined is limited to a right to

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object on grounds that neither were, nor could have been, grounds for the taxation objection against the ruling or determination.

14ZVB Objections relating to excess concessional contributions

Taxation decisions to which section applies

(1) This section applies to the following taxation decisions:

(a) an assessment against which a taxation objection may be made under section 175A of the *Income Tax Assessment Act 1936*;

(b) an excess concessional contributions determination;

(c) a determination under section 291-465 of the *Income Tax Assessment Act 1997*;

(d) a decision not to make a determination under that section;

(e) 2 or more taxation decisions that are taken to be a single taxation decision under subsection (2).

Decisions treated as single decision for common objection ground

(2) If:

(a) a person makes a taxation objection at a particular time, on a particular ground, against a taxation decision to which this section applies; and

(b) at that time, the person also objects, or could also object, on that ground, against another taxation decision to which this section applies;

then, for the purposes of this Part, those taxation decisions are taken to be one taxation decision.

Limited objection rights because of earlier objection

(3) A person cannot object under this Part against a taxation decision to which this section applies on a particular ground if:

(a) the ground was a ground for an objection the person has made against another decision to which this section applies; or

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(b) the ground could have been a ground for an objection the person has made against another decision to which this section applies.

14ZVC Objections relating to non-concessional contributions

Taxation decisions to which section applies

(1) This section applies to the following taxation decisions:

(a) an assessment against which a taxation objection may be made under section 175A of the *Income Tax Assessment Act 1936*;

(b) an excess non-concessional contributions determination (within the meaning of the *Income Tax Assessment Act 1997*);

(c) an assessment against which a taxation objection may be made under section 292-245 of the *Income Tax Assessment Act 1997*;

(d) a determination under section 292-465 of the *Income Tax Assessment Act 1997*, or a decision not to make a determination under that section;

(e) a direction under section 292-467 of the *Income Tax Assessment Act 1997*, or a decision not to make a direction under that section;

(f) 2 or more taxation decisions that are taken to be a single taxation decision under subsection (2).

Decisions treated as single decision for common objection ground

(2) If:

(a) a person makes a taxation objection at a particular time, on a particular ground, against a taxation decision to which this section applies; and

(b) at that time, the person also objects, or could also object, on that ground, against another taxation decision to which this section applies;

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then, for the purposes of this Part, those taxation decisions are taken to be a single taxation decision.

Limited objection rights because of earlier objection

(3) A person cannot object under this Part against a taxation decision to which this section applies on a particular ground if:

(a) the ground was a ground for an objection the person has made against another decision to which this section applies; or

(b) the ground could have been a ground for an objection the person has made against another decision to which this section applies.

14ZW When taxation objections are to be made

(1) Subject to this section, the person must lodge the taxation objection with the Commissioner within:

(aa) if the taxation objection is made under section 175A of the *Income Tax Assessment Act 1936*:

(i) if item 1, 2 or 3 of the table in subsection 170(1) of that Act applies to the assessment concerned—2 years after notice of the assessment is given to the person; or

(ii) otherwise—4 years after notice of the assessment concerned is given to the person; or

(aaa) if the taxation objection is made under section 78A of the *Fringe Benefits Tax Assessment Act 1986* or former section 160AL of the *Income Tax Assessment Act 1936*—4 years after notice of the taxation decision to which it relates has been given to the person; or

(aaaa) if the taxation objection is made under subsection 112-36(5) or 116-120(5) of the *Income Tax Assessment Act 1997*—60 days after the notice mentioned in paragraph (b) of that subsection is given to the person; or

(aab) if the taxation objection is made under section 292-245 of the *Income Tax Assessment Act 1997*—4 years after notice of the assessment concerned is given to the person; or

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(aac) if the taxation objection is made under section 97-10 in Schedule 1 on a particular ground—within the same period that the person:

(i) must lodge a taxation objection on that ground under section 175A of the *Income Tax Assessment Act 1936*; or

(ii) would be required to lodge such a taxation objection, if, disregarding subsection 175A(2) of that Act, one could be made; or

(aaca) if the taxation objection is made on a particular ground under any of the following provisions:

(i) section 175A of the *Income Tax Assessment Act 1936*;

(ii) section 97-35 in Schedule 1 to this Act;

(iii) section 292-245, 292-465 or 292-467 of the *Income Tax Assessment Act 1997*;

within the same period that the person must lodge a taxation objection on that ground under section 292-245 of the *Income Tax Assessment Act 1997*; or

(aad) if the taxation objection is made under subsection 8AAZLGA(6) of this Act (retaining refunds while Commissioner verifies information)—the period:

(i) starting at the end of the 60 day period after the end of the day before which, under subsection 8AAZLGA(3), the Commissioner is required to inform the entity mentioned in section 8AAZLGA that the Commissioner has retained an amount under that section; and

(ii) ending on the day (if any) on which there is a change, of a kind mentioned in paragraph 8AAZLGA(5)(c), to how much the Commissioner is required to refund in relation to the amount; or

(aae) if the taxation objection is made under subsection 8AAZLGB(4) of this Act (retaining refunds until notification under Division 389 or ascertainment of liability)—the period:

(i) starting at the end of the 60 day period after the end of the day before which, under subsection 8AAZLGB(2),

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the Commissioner is required to inform the entity mentioned in section 8AAZLGB that the Commissioner has retained an amount under that section; and

(ii) ending on the day (if any) on which, under subsection 8AAZLGB(3), the Commissioner ceases to be entitled to retain the amount; or

(ab) if the taxation objection is a delayed administration (beneficiary) objection made under subsection 260-145(5) in Schedule 1 (because of paragraph (a) of that subsection) or subsection 220(3) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—4 years after notice of the taxation decision to which it relates has been first published; or

(ac) if the taxation objection is a delayed administration (trustee) objection made under subsection 260-145(5) in Schedule 1 (because of paragraph (b) of that subsection) or subsection 220(7) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—4 years after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or

(a) if the taxation objection is a delayed administration (beneficiary) objection to which paragraph (ab) does not apply—60 days after notice of the taxation decision to which it relates has been first published; or

(b) if the taxation objection is a delayed administration (trustee) objection to which paragraph (ac) does not apply—60 days after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or

(ba) if the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling—60 days after the end of the period of 30 days referred to in that subsection; or

(bb) if the taxation objection is made under section 66 of the *Petroleum Resource Rent Tax Assessment Act 1987* to an

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assessment under that Act—4 years after notice of the assessment is given to the person; or

(bd) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a notice given to a superannuation provider under section 20C of that Act and the person is not the superannuation provider—2 years after the notice was given to the superannuation provider; or

(be) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a decision under Division 4 or 5 of Part 3A of that Act and the person is not a superannuation provider (as defined in that Act)—2 years after the person was given notice of the decision; or

(bf) if the taxation objection is made under subsection 155-30(2) in Schedule 1 to this Act—60 days after the end of the period of 30 days mentioned in that subsection; or

(bg) if the taxation objection is made under Subdivision 155-C in Schedule 1 to this Act—the period mentioned in paragraph 155-35(2)(a) in that Schedule in relation to the assessment concerned; or

(bi) if the taxation objection is made under section 265-110 in Schedule 1 to this Act (about directions to pay superannuation guarantee charge)—the period specified for the purposes of paragraph 265-90(3)(c) in the direction given to the person (subject to subsection 265-115(2)); or

(bj) if the taxation objection is made under section 384-40 in Schedule 1 to this Act (about education directions)—the period specified for the purposes of subsection 384-15(2) in the direction given to the person (subject to subsection 384-35(7)); or

(c) in any other case—60 days after notice of the taxation decision to which it relates has been served on the person.

(1AAC) The person cannot lodge a taxation objection against a private indirect tax ruling after the end of whichever of the following ends last:

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(a) 60 days after the ruling was made;
(b) 4 years after the last day allowed to the person for lodging a return relating to the assessment of the assessable amount to which the ruling relates.

(1A) The person cannot lodge a taxation objection against a private ruling (other than a private indirect tax ruling, or a ruling that relates to an excise law) that relates to a year of income after the end of whichever of the following ends last:
(a) 60 days after the ruling was made;
(b) whichever of the following is applicable:
(i) if item 1, 2 or 3 of the table in subsection 170(1) of the *Income Tax Assessment Act 1936* applies to the person's assessment for that income year—2 years after the last day allowed to the person for lodging a return in relation to the person's income for that year of income;
(ii) otherwise—4 years after that day.

(1AA) The person cannot lodge a taxation objection against a private ruling that relates to a year of tax and a petroleum project under the *Petroleum Resource Rent Tax Assessment Act 1987* after the end of whichever of the following ends last:
(a) the 60 days after the ruling was made;
(b) the 4 years after the last day allowed to the person for lodging a return in relation to the year of tax and the project.

(1B) If:
(a) section 14ZV applies to a taxation objection; and
(b) apart from this subsection, subparagraph (1)(aa)(ii) or paragraph (1)(aaa), (aab), (ab), (ac), (bb), (bf) or (bg) would apply to the taxation objection;

the person must lodge the taxation objection before the end of whichever of the following ends last:
(c) the 4 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;

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(d) the 60 days after the notice of the amended assessment or amended determination to which the taxation objection relates has been served on the person.

(1BA) If:

(a) section 14ZV applies to a taxation objection; and

(b) apart from this subsection, subparagraph (1)(aa)(i) would apply to the taxation objection;

the person must lodge the taxation objection before the end of whichever of the following ends last:

(c) 2 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;

(d) 60 days after the notice of the amended assessment to which the taxation objection relates has been served on the person.

(1BB) If:

(a) the taxation objection is against an assessment by the Commissioner of the amount of an administrative penalty under Division 284; and

(b) that penalty relates to an assessment of the person; and

(c) the person has longer than 60 days to lodge a taxation objection against the assessment referred to in paragraph (b);

the person must lodge the taxation objection within that longer period.

(1C) For the purposes of paragraph (1B)(c), if an assessment or determination has been amended more than once, the notice is the notice of the first assessment or determination in relation to the year of income, franking year or year of tax, as the case requires.

(2) If the period within which an objection by a person is required to be lodged has passed, the person may nevertheless lodge the objection with the Commissioner together with a written request asking the Commissioner to deal with the objection as if it had been lodged within that period.

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(3) The request must state fully and in detail the circumstances concerning, and the reasons for, the person's failure to lodge the objection with the Commissioner within the required period.

(4) The 60 day period mentioned in subparagraph (1)(aad)(i) (including the period as extended by a previous application of this subsection) is extended by the number of days during that period in relation to which the following paragraphs apply:

(a) on or before the day, but during the period, the Commissioner requests information from the entity for the purposes of verifying the notified information mentioned in section 8AAZLGA;

(b) the Commissioner does not receive the requested information before the day.

14ZX Commissioner to consider applications for extension of time

(1) After considering the request, the Commissioner must decide whether to agree to it or refuse it.

(2) The Commissioner must give the person written notice of the Commissioner's decision.

(3) If the Commissioner decides to agree to the request, then, for the purposes of this Part, the objection is taken to have been lodged with the Commissioner within the required period.

(4) If the Commissioner decides to refuse the request, the person may apply to the Tribunal for review of the decision.

14ZY Commissioner to decide taxation objections

(1) Subject to subsection (1A), if the taxation objection has been lodged with the Commissioner within the required period, the Commissioner must decide whether to:

(a) allow it, wholly or in part; or

(b) disallow it.

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(1A) If the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling, the Commissioner must:

(a) make a private ruling in the same terms as the draft ruling lodged with the objection; or

(b) make a different private ruling.

(1B) If the taxation objection is an objection under subsection 155-30(2) in Schedule 1 against the Commissioner's failure to make an assessment of an assessable amount, the Commissioner must decide to make an assessment of the assessable amount.

(2) A decision of the Commissioner mentioned in subsection (1), (1A) or (1B) is an ***objection decision***.

(3) The Commissioner must cause to be served on the person written notice of the Commissioner's objection decision.

14ZYA Person may require Commissioner to make an objection decision

(1) This section applies if the taxation objection (other than one under subsection 155-30(2) or 359-50(3) in Schedule 1) has been lodged with the Commissioner within the required period and the Commissioner has not made an objection decision by whichever is the later of the following times:

(a) the end of the period (in this section called the ***original 60-day period***) of 60 days after whichever is the later of the following days:

(i) the day on which the taxation objection is lodged with the Commissioner;

(ii) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision is made;

(b) if the Commissioner, by written notice served on the person within the original 60-day period, requires the person to give information relating to the taxation objection—the end of the

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period of 60 days after the Commissioner receives that information.

(2) The person may give the Commissioner a written notice requiring the Commissioner to make an objection decision.

(3) If the Commissioner has not made an objection decision by the end of the period of 60 days after being given the notice, then, at the end of that period, the Commissioner is taken to have made a decision under subsection 14ZY(1) to disallow the taxation objection.

14ZYB Requiring Commissioner to make a private ruling

(1) This section applies if the taxation objection is an objection under subsection 155-30(2) or 359-50(3) in Schedule 1 and the Commissioner has not made an objection decision by the end of 60 days after the later of these days:

(a) the day on which the taxation objection was lodged with the Commissioner;

(b) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision was made.

Note 1: Subsection 155-30(2) provides for objections against the Commissioner's failure to make an assessment of an assessable amount.

Note 2: Subsection 359-50(3) provides for objections against the Commissioner's failure to make a private ruling.

(2) The Commissioner is taken, at the end of that 60 day period, to have disallowed the objection.

14ZZ Person may seek review of, or appeal against, Commissioner's decision

(1) If the person is dissatisfied with the Commissioner's objection decision (including a decision under paragraph 14ZY(1A)(b) to make a different private ruling), the person may:

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(a) if the decision is a reviewable objection decision—either:
(i) apply to the Tribunal for review of the decision; or
(ii) appeal to the Federal Court against the decision; or
(b) otherwise—appeal to the Federal Court against the decision.

(2) Treat a reference in subsection (1) to appealing to the Federal Court as being a reference to appealing to a designated court (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) if:
(a) the person may appeal to the designated court against an objection decision under that Act (the ***ACNC objection decision***); and
(b) the objection decision mentioned in subsection (1) (the ***taxation objection decision***) and the ACNC objection decision are related, or it would be efficient for the designated court to consider the decisions together.

Note: In the *Australian Charities and Not-for-profits Commission Act 2012*, ***designated court*** means the Federal Court of Australia or a Supreme Court of a State or Territory that has jurisdiction in relation to matters arising under that Act.

(3) An appeal to the designated court against the taxation objection decision must be made together with the appeal against the ACNC objection decision as mentioned in section 170-30 of the *Australian Charities and Not-for-profits Commission Act 2012*, if the designated court is not the Federal Court.

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Division 4—AAT review of objection decisions and extension of time refusal decisions

14ZZA Modified AAT Act to apply

The AAT Act applies in relation to:

(a) the review of reviewable objection decisions; and

(b) the review of extension of time refusal decisions; and

(c) AAT extension applications;

subject to the modifications set out in this Division.

14ZZB Sections 27, 28, 41 and 44A of the AAT Act not to apply to certain decisions

(1) Sections 27 and 41 of the AAT Act do not apply in relation to:

(a) a reviewable objection decision; or

(b) an extension of time refusal decision.

(2) Sections 28 and 44A of the AAT Act do not apply in relation to a reviewable objection decision.

14ZZC Modification of section 29 of the AAT Act

Section 29 of the AAT Act applies in relation to a reviewable objection decision as if subsections (1) to (6) (inclusive) of that section were omitted and the following subsection were substituted:

"(1) An application to the Tribunal for a review of a decision:

(a) must be in writing; and

(c) must set out a statement of the reasons for the application; and

(d) must be lodged with the Tribunal within 60 days after the person making the application is served with notice of the decision.".

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14ZZD Modification of section 30 of the AAT Act

Section 30 of the AAT Act applies in relation to a reviewable objection decision or an extension of time refusal decision as if subsection (1A) of that section were omitted and the following subsection were substituted:

"(1A) If an application has been made by a person to the Tribunal for the review of a reviewable objection decision or an extension of time refusal decision:

(a) any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding; and

(b) the Tribunal may, in its discretion, by order, if it is satisfied that the person making the application consents to the order, make that person a party to the proceeding.".

14ZZE Hearings before Tribunal to be held in private if applicant so requests

Despite section 35 of the AAT Act, the hearing of a proceeding before the Tribunal for:

(a) a review of a reviewable objection decision; or

(b) a review of an extension of time refusal decision; or

(c) an AAT extension application;

is to be in private if the party who made the application requests that it be in private.

14ZZF Modification of section 37 of the AAT Act

(1) Section 37 of the AAT Act applies in relation to an application for review of a reviewable objection decision as if:

(a) the requirement in subsection (1) of that section to lodge with the Tribunal a copy of:

(i) a statement giving the reasons for the decision; and

(ii) the notice of the taxation decision concerned; and

(iii) the taxation objection concerned; and

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(iv) the notice of the objection decision; and

(v) every other document that is in the Commissioner's possession or under the Commissioner's control and is considered by the Commissioner to be necessary to the review of the objection decision concerned; and

(vi) a list of the documents (if any) being lodged under subparagraph (v); and

(b) the power of the Tribunal under subsection (2) of that section to cause a notice to be served containing a statement and imposing a requirement on a person were instead:

(i) a power to make such a statement and impose such a requirement orally at a conference held in accordance with subsection 34(1) of the AAT Act; and

(ii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, a copy of each of those other documents that is in the person's possession or under the person's control; and

(iii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, a copy of a list of the documents in the person's possession or under the person's control considered by the person to be relevant to the review of the objection decision concerned.

(2) Paragraph (1)(b) does not affect any powers that the Tribunal has apart from that paragraph.

(3) The imposition of a requirement covered by subparagraph (1)(b)(iii) does not prevent the subsequent imposition of a requirement covered by subparagraph (1)(b)(ii).

14ZZG Modification of section 38 of the AAT Act

Section 38 of the AAT Act applies in relation to an application for a review of a reviewable objection decision as if the reference to

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paragraph 37(1)(a) of that Act were instead a reference to subparagraph 14ZZF(1)(a)(i) of this Act.

14ZZJ Modification of section 43 of the AAT Act

Section 43 of the AAT Act applies in relation to:

(a) a review of a reviewable objection decision; and

(b) a review of an extension of time refusal decision; and

(c) an AAT extension application;

as if the following subsections were inserted after subsection (2B):

"(2C) If a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public, that fact does not prevent the Tribunal from publishing its reasons for the decision.

"(2D) If:

(a) a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public; and

(b) a notice of appeal has not been lodged with the Federal Court;

the Tribunal must ensure, as far as practicable, that its reasons for the decision are framed so as not to be likely to enable the identification of the person who applied for the review.

"(2E) In subsections (2C) and (2D):

reasons for decision includes findings on material questions of fact and references to the evidence or other material on which those findings were based.".

14ZZK Grounds of objection and burden of proof

On an application for review of a reviewable objection decision:

(a) the applicant is, unless the Tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and

(b) the applicant has the burden of proving:

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(i) if the taxation decision concerned is an assessment—that the assessment is excessive or otherwise incorrect and what the assessment should have been; or

(ii) in any other case—that the taxation decision concerned should not have been made or should have been made differently.

14ZZL Implementation of Tribunal decisions

(1) When the decision of the Tribunal on the review of a reviewable objection decision or an extension of time refusal decision becomes final, the Commissioner must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.

(2) For the purposes of subsection (1), if no appeal is lodged against the Tribunal's decision within the period for lodging an appeal, the decision becomes final at the end of the period.

14ZZM Pending review not to affect implementation of taxation decisions

The fact that a review is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no review were pending.

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Division 5—Court appeals against objection decisions

14ZZN Time limit for appeals

An appeal to the Federal Court against an objection decision must be lodged with the Court within 60 days after the person appealing is served with notice of the decision.

14ZZO Grounds of objection and burden of proof

In proceedings on an appeal under section 14ZZ to a court against an objection decision:

(a) the appellant is, unless the court orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and

(b) the appellant has the burden of proving:

(i) if the taxation decision concerned is an assessment—that the assessment is excessive or otherwise incorrect and what the assessment should have been; or

(ii) in any other case—that the taxation decision should not have been made or should have been made differently.

14ZZP Order of court on objection decision

Where a court hears an appeal against an objection decision under section 14ZZ, the court may make such order in relation to the decision as it thinks fit, including an order confirming or varying the decision.

14ZZQ Implementation of court order in respect of objection decision

(1) When the order of the court in relation to the decision becomes final, the Commissioner must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.

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(2) For the purposes of subsection (1):

(a) if the order is made by the court constituted by a single Judge and no appeal is lodged against the order within the period for lodging an appeal—the order becomes final at the end of the period; and

(b) if the order is made by the court constituted other than as mentioned in paragraph (a) and no application for special leave to appeal to the High Court against the order is made within the period of 30 days after the order is made—the order becomes final at the end of the period.

14ZZR Pending appeal not to affect implementation of taxation decisions

The fact that an appeal is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no appeal were pending.

14ZZS Transfer of certain proceedings to Family Court

(1) If:

(a) a proceeding is pending in the Federal Court on an appeal under section 14ZZ in relation to an objection decision; and

(b) the taxation decision to which the objection decision relates was made under the *Income Tax Assessment Act 1936*;

the Federal Court may, on the application of a party to the proceeding or on its own initiative, transfer the proceeding to the Family Court.

(2) Subject to subsection (3), if the proceeding is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding; and

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether because of paragraph (a) or otherwise):

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(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies; and

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding; and

(d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*, the Rules of the Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression "the Court or a Judge") included a reference to the Family Court; and

(ii) a reference to a Judge of the Federal Court (other than in the expression "the Court or a Judge") included a reference to a Family Court Judge; and

(iii) a reference to the expression "the Court or a Judge" when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and

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(iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

(3) If any difficulty arises in the application of paragraphs (2)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or on its own initiative, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

(4) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Part to the Family Court.

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Part IVD—Protection for whistleblowers

14ZZT Disclosures qualifying for protection under this Part

(1) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser is an eligible whistleblower in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*); and

(b) the disclosure is made to the Commissioner; and

(c) the discloser considers that the information may assist the Commissioner to perform his or her functions or duties under a taxation law in relation to the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity.

(2) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser is an eligible whistleblower in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*); and

(b) the disclosure is made to an eligible recipient in relation to the entity; and

(c) the discloser has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity; and

(d) the discloser considers that the information may assist the eligible recipient to perform functions or duties in relation to the tax affairs of the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity.

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(3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

(4) In this section:

tax affairs means affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner.

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.

14ZZU Eligible whistleblowers

An individual is an ***eligible whistleblower*** in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*) if the individual is, or has been, any of the following:

(a) an officer (within the meaning of the *Corporations Act 2001*) of the entity;

(b) an employee of the entity;

(c) an individual who supplies services or goods to the entity (whether paid or unpaid);

(d) an employee of a person that supplies services or goods to the entity (whether paid or unpaid);

(e) an individual who is an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity;

(f) a spouse or child of an individual referred to in any of paragraphs (a) to (e);

(g) a dependant of an individual referred to in any of paragraphs (a) to (e), or of such an individual's spouse;

(h) an individual prescribed by the regulations for the purposes of this paragraph in relation to the entity.

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14ZZV Eligible recipients

(1) Each of the following is an ***eligible recipient*** in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*):

(a) an auditor, or a member of an audit team conducting an audit, of the entity;

(b) a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*) who provides tax agent services (within the meaning of that Act) or BAS services (within the meaning of that Act) to the entity;

(c) a person authorised by the entity to receive disclosures that may qualify for protection under this Part;

(d) a person or body prescribed for the purposes of this paragraph in relation to the entity.

(2) If the entity is a body corporate, each of the following is an ***eligible recipient*** in relation to the entity:

(a) a director, secretary or senior manager (within the meaning of the *Corporations Act 2001*) of the body corporate;

(b) any other employee or officer (within the meaning of the *Corporations Act 2001*) of the body corporate who has functions or duties that relate to the tax affairs (within the meaning of section 14ZZT) of the body corporate.

(3) If the entity is a trust, each of the following is an ***eligible recipient*** in relation to the entity:

(a) a trustee of the trust;

(b) a person authorised by a trustee of the trust to receive disclosures that may qualify for protection under this Part.

(4) If the entity is a partnership, each of the following is an ***eligible recipient*** in relation to the entity:

(a) a partner in the partnership;

(b) a person authorised by a partner in the partnership to receive disclosures that may qualify for protection under this Part.

(5) Subsections (1), (2), (3) and (4) do not limit each other.

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14ZZW Confidentiality of whistleblower's identity

(1) A person (the ***first person***) commits an offence if:

(a) another person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Part; and

(b) the first person discloses any of the following (the ***confidential information***):

(i) the identity of the discloser;

(ii) information that is likely to lead to the identification of the discloser; and

(c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and

(d) the disclosure referred to in paragraph (b) is not authorised under subsection (2).

Penalty: Imprisonment for 6 months or 60 penalty units, or both.

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

(a) is made to the Commissioner; or

(b) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(c) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or

(d) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or

(e) is made with the consent of the discloser.

(3) Subsection (1) does not apply if:

(a) the disclosure referred to in paragraph (1)(b):

(i) is not of the identity of the discloser; and

(ii) is reasonably necessary for the purposes of investigating misconduct, or an improper state of affairs or

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circumstances, to which the qualifying disclosure relates; and

(b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure referred to in paragraph (1)(b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

14ZZX Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Part:

(a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure; and

(c) if the disclosure was a disclosure of information to the Commissioner—the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Note: Except as provided for by paragraph (c), this subsection does not prevent the person being subject to any civil, criminal or administrative liability for conduct of the person that is revealed by the disclosure.

(2) Without limiting subsection (1):

(a) the person has qualified privilege in respect of the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

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14ZZY Victimisation prohibited

Actually causing detriment to another person

(1) A person (the ***first person***) commits an offence if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes any detriment to another person (the ***second person***); and

(c) when the first person engages in the conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(d) the belief or suspicion referred to in paragraph (c) is the reason, or part of the reason, for the conduct.

Penalty: Imprisonment for 2 years or 240 penalty units, or both.

Threatening to cause detriment to another person

(2) A person (the ***first person***) commits an offence if:

(a) the first person makes to another person (the ***second person***) a threat to cause any detriment to the second person or to a third person; and

(b) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because a person:

(i) makes a disclosure that qualifies for protection under this Part; or

(ii) may make a disclosure that would qualify for protection under this Part.

Penalty: Imprisonment for 2 years or 240 penalty units, or both.

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Threats

(3) For the purposes of subsection (2), a threat may be:
  (a) express or implied; or
  (b) conditional or unconditional.

(4) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

14ZZZ Compensation and other remedies—circumstances in which an order may be made

(1) A court may make an order under section 14ZZZA in relation to a person (the ***first person***) if:
  (a) the first person engages in conduct (***detrimental conduct***) that:
    (i) causes any detriment to another person (the ***second person***); or
    (ii) constitutes the making of a threat to cause any such detriment to another person (the ***second person***); and
  (b) when the first person engages in the detrimental conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  (c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct.

(2) A court may make an order under section 14ZZZA in relation to a person (the ***first person***) if:
  (a) the first person is or was an officer (within the meaning of the *Corporations Act 2001*) or employee of a body corporate; and
  (b) paragraphs (1)(a), (b) and (c) of this section apply to the body corporate because of detrimental conduct engaged in by the body corporate; and

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(c) the first person:

(i) aided, abetted, counselled or procured the detrimental conduct; or

(ii) induced, whether by threats or promises or otherwise, the detrimental conduct; or

(iii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the detrimental conduct; or

(iv) conspired with others to effect the detrimental conduct.

(2A) A court may make an order under section 14ZZZA in relation to a person (the ***first person***) that is a body corporate if:

(a) another person (the ***third person***) engages in conduct (***detrimental conduct***) that:

(i) causes any detriment to a person (the ***second person***) other than the first person or the third person; or

(ii) constitutes the making of a threat to cause any such detriment to a person (the ***second person***) other than the first person or the third person; and

(b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and

(d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and

(e) the first person fails in part or whole to fulfil that duty.

Burden of proof

(2B) In proceedings where a person seeks an order under section 14ZZZA in relation to another person:

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(a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:
  (i) if subsection (1) of this section applies—paragraph (1)(a); or
  (ii) if subsection (2) of this section applies—paragraph (1)(a), as mentioned in paragraph (2)(b); or
  (iii) if subsection (2A) of this section applies—paragraphs (2A)(a) and (d); and
(b) if that onus is discharged—the other person bears the onus of proving that the claim is not made out.

Threats

(3) For the purposes of this section, a threat may be:
  (a) express or implied; or
  (b) conditional or unconditional.

(4) In proceedings for the purposes of section 14ZZZA, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

14ZZZAA Detriment

In sections 14ZZY and 14ZZZ, ***detriment*** includes (without limitation) any of the following:
(a) dismissal of an employee;
(b) injury of an employee in his or her employment;
(c) alteration of an employee's position or duties to his or her disadvantage;
(d) discrimination between an employee and other employees of the same employer;
(e) harassment or intimidation of a person;
(f) harm or injury to a person, including psychological harm;
(g) damage to a person's property;
(h) damage to a person's reputation;

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(i) damage to a person's business or financial position;

(j) any other damage to a person.

14ZZZA Compensation and other remedies—orders that may be made

(1) For the purposes of subsections 14ZZZ(1), (2) and (2A), a court may make any of the following orders:

(a) an order requiring the first person to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct;

(b) if the court is satisfied that the first person engaged in the detrimental conduct in connection with the first person's position as an employee:

(i) an order requiring the first person to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct, and an order requiring the first person's employer to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct; or

(ii) an order requiring the first person and the first person's employer jointly to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct; or

(iii) an order requiring the first person's employer to compensate the second person, or any other person, for loss, damage or injury as a result of the detrimental conduct;

(c) an order granting an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct;

(d) an order requiring the first person to apologise to the second person, or any other person, for engaging in the detrimental conduct;

(e) if the second person is or was employed in a particular position and the detrimental conduct wholly or partly

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consists, or consisted, of the termination, or purported termination, of the second person's employment—an order that the second person be reinstated in that position or a position at a comparable level;

(f) if the court thinks it is appropriate—an order requiring the first person to pay exemplary damages to the second person, or any other person;

(g) any other order the court thinks appropriate.

(2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person's employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.

(3) In deciding whether to make an order under paragraph (1)(b) in relation to the first person's employer, the court may have regard to the following:

(a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;

(b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) of the *Corporations Act 2001* (whether or not section 1317AI of that Act requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;

(c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

(4) If the court makes an order under subparagraph (1)(b)(ii), the first person and the first person's employer are jointly and severally liable to pay the compensation concerned.

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14ZZZB Identifying information not to be disclosed etc. to courts or tribunals

If a person (the ***discloser***) makes a disclosure of information that qualifies for protection under this Part, the discloser or any other person is not to be required:

(a) to disclose to a court or tribunal:

(i) the identity of the discloser; or

(ii) information that is likely to lead to the identification of the discloser; or

(b) to produce to a court or tribunal a document containing:

(i) the identity of the discloser; or

(ii) information that is likely to lead to the identification of the discloser;

except where:

(c) it is necessary to do so for the purposes of giving effect to this Part; or

(d) the court or tribunal thinks it necessary in the interests of justice to do so.

Note: A discloser may also be able to apply to the court or tribunal, in accordance with the rules of the court or tribunal, for an order protecting the discloser's identity.

14ZZZC Costs only if proceedings instituted vexatiously etc.

(1) This section applies to a proceeding (including an appeal) in a court in relation to a matter arising under section 14ZZZA in which a person (the ***claimant***) is seeking an order under subsection 14ZZZA(1).

(2) The claimant must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (3) of this section.

(3) The claimant may be ordered to pay the costs only if:

(a) the court is satisfied that the claimant instituted the proceedings vexatiously or without reasonable cause; or

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(b) the court is satisfied that the claimant's unreasonable act or omission caused the other party to incur the costs.

14ZZZD Interaction between civil proceedings and criminal offences

To avoid doubt, a person may bring civil proceedings under section 14ZZZA in relation to conduct even if a prosecution for a criminal offence against section 14ZZY in relation to the conduct has not been brought, or cannot be brought.

14ZZZE Compensation for acquisition of property

(1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) Payments under this section are to be made out of money appropriated by the Parliament by another Act.

(4) To avoid doubt, section 16 does not apply to a payment under this section.

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Part V—Miscellaneous

15 Appearance by Commissioner etc.

(1) In any action, prosecution or other proceeding under, or arising out of, a taxation law instituted by or on behalf of the Commissioner, a Second Commissioner or a Deputy Commissioner, to which the Commissioner, a Second Commissioner or a Deputy Commissioner is a party or in which the Commissioner, a Second Commissioner or a Deputy Commissioner intervenes or seeks to intervene, the Commissioner, Second Commissioner or Deputy Commissioner, as the case may be, may appear personally or may be represented by:

(a) a person enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of a federal court or of the Supreme Court of a State or Territory; or

(b) a person authorized by the Commissioner, a Second Commissioner or a Deputy Commissioner, by instrument in writing, to appear.

(2) The appearance of a person, and the statement of the person that the person appears by authority of the Commissioner, a Second Commissioner or a Deputy Commissioner, is prima facie evidence of that authority.

(3) This section applies in relation to the *Tax Agent Services Act 2009* as if:

(a) references in this section to the Commissioner were references to the Tax Practitioners Board (within the meaning of that Act); and

(b) references in this section to a Second Commissioner or to a Deputy Commissioner were omitted.

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15A Certification by Commissioner of copies of, and extracts from, documents

(1) Where a document is obtained pursuant to a taxation law, the Commissioner may certify a copy of the document to be a true copy.

(2) Where, pursuant to a taxation law, a copy is made of a document, the Commissioner may certify the copy to be a true copy.

(3) Where a document is obtained pursuant to a taxation law, the Commissioner may certify an extract taken from the document to be a true extract.

(4) Where, pursuant to a taxation law, an extract is taken from a document, the Commissioner may certify the extract to be a true extract.

(5) Subject to subsection (6), a document purporting to be a copy or extract certified under subsection (1), (2), (3) or (4) shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original.

(6) Subsection (5) does not apply in relation to a document if:

(a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy or a true extract; or

(b) in any other case—it is proved that the document is not a true copy or a true extract.

(7) Where:

(a) pursuant to a taxation law, a copy (in this section referred to as the ***primary copy***) is made of, or an extract (in this section referred to as the ***primary extract***) is taken from, a document (in this section referred to as the ***original document***); and

(b) pursuant to subsection (2) or (4), the Commissioner has certified the primary copy to be a true copy of, or the primary extract to be a true extract taken from, the original document;

the Commissioner may:

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(c) certify a copy of the primary copy or primary extract to be a true copy; or

(d) certify an extract taken from the primary copy or primary extract to be a true extract.

(8) Subject to subsection (9), a document purporting to be:

(a) a copy, certified under subsection (7), of a primary copy of, or a primary extract taken from, an original document; or

(b) an extract, certified under subsection (7), taken from a primary copy of, or a primary extract taken from, an original document;

shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original document.

(9) Subsection (8) does not apply in relation to a document if:

(a) in the case of proceedings for an offence, evidence is adduced that:

(i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or

(ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document; or

(b) in any other case, it is proved that:

(i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or

(ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document.

(12) This section applies in relation to the *Tax Agent Services Act 2009* as if references in this section to the Commissioner were references to the Chair of the Tax Practitioners Board (within the meaning of that Act).

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15B Recoverable advances

(1) The Commissioner may make an advance to a person (the ***recipient***) on account of an amount to which the recipient may become entitled under a taxation law.

(2) The Commissioner must not make an advance under subsection (1) unless:

(a) if the advance is made in conjunction with other advances under that subsection—the Commissioner is satisfied that the total of the costs that would be likely to be incurred by:

(i) the Commonwealth; and

(ii) the recipients; and

(iii) persons other than the Commonwealth or the recipients;

if the advance and the other advances were not made is likely to exceed the total of the advance and the other advances; or

(b) otherwise—the Commissioner is satisfied that the total of the costs that would be likely to be incurred by:

(i) the Commonwealth; and

(ii) the recipient; and

(iii) persons other than the Commonwealth or the recipient;

if the advance were not made is likely to exceed the amount of the advance.

(3) An advance under subsection (1) may:

(a) be recovered under subsection (4); or

(b) be the subject of a determination under subsection (5).

(4) If an advance is made under subsection (1) to a person (the ***recipient***), the advance:

(a) is a debt due to the Commonwealth by the recipient; and

(b) is payable to the Commissioner; and

(c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name;

whether or not the recipient has become entitled to an amount under a taxation law.

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Advance may discharge Commonwealth liability

(5) If:

(a) an advance is made to a person (the ***recipient***) under subsection (1); and

(b) the advance has not been fully recovered under subsection (4); and

(c) an amount is payable to the recipient by the Commonwealth under a taxation law (the ***Commonwealth liability***);

the Commissioner may, by written notice given to the recipient, determine that the making of the advance is taken to have discharged so much of the Commonwealth liability as equals the whole, or a specified part, of the amount of the advance.

(6) A part of an advance must not be specified in a determination under subsection (5) if it has already been specified in a previous determination under subsection (5).

(7) If the whole, or a part, of an advance is the subject of a determination under subsection (5), the whole, or the part, as the case may be, of the advance is not recoverable under subsection (4).

(8) Subsection (5) does not limit Part IIB.

(9) For the purposes of any rules made for the purposes of paragraph 103(c) of the *Public Governance, Performance and Accountability Act 2013*, a determination under subsection (5) of this section is taken to be a method of debt recovery.

15C Recoverable payments

(1) If, apart from this subsection, the Commissioner does not have power under a taxation law to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as an amount to which the recipient is entitled to under a taxation law, then the Commissioner may pay the relevant amount to the recipient.

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Recovery

(2) If a payment is made under subsection (1) to the recipient, the relevant amount:

(a) is a debt due to the Commonwealth by the recipient; and

(b) is payable to the Commissioner; and

(c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name.

(3) If:

(a) a payment is made under subsection (1) to the recipient; and

(b) an amount is payable to the recipient by the Commonwealth under a taxation law (the ***Commonwealth liability***);

then:

(c) the relevant amount; or

(d) such part of the relevant amount as the Commissioner determines;

may, if the Commissioner so directs, be recovered by deduction from the Commonwealth liability.

(4) For the purposes of a designated recovery provision, in determining whether an amount is payable, disregard subsection (1) of this section.

(5) If the relevant amount is recovered under a designated recovery provision, the relevant amount cannot be recovered under subsection (2) or (3) of this section.

(6) If the relevant amount is recovered under subsection (2) or (3) of this section, the relevant amount cannot be recovered under a designated recovery provision.

(7) Except as provided by subsection (6), subsection (3) does not limit Part IIB.

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Designated recovery provisions

(8) For the purposes of this section, each of the following provisions is a ***designated recovery provision***:

(a) section 8AAZN of this Act;

(b) section 70 of the *Superannuation Guarantee (Administration) Act 1992*;

(d) section 24 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

(e) a similar provision of a taxation law.

(9) For the purposes of a designated recovery provision, in determining:

(a) whether a person is entitled to an amount; or

(b) whether an amount is payable;

disregard subsection (1).

15D Reports about recoverable advances and recoverable payments

(1) During the applicable publication period for a reporting period, the Commissioner must publish, in such manner as the Commissioner thinks fit, a report that sets out:

(a) both:

(i) the number of advances made under subsection 15B(1) during the reporting period; and

(ii) the total amount of those advances; and

(b) both:

(i) the number of payments made under subsection 15C(1) during the reporting period; and

(ii) the total amount of those payments.

(2) However, a report is not required if:

(a) the number mentioned in subparagraph (1)(a)(i) is zero; and

(b) the number mentioned in subparagraph (1)(b)(i) is zero.

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Deferred reporting

(3) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, an Australian Taxation Office official was aware the payment was made under subsection 15C(1).

(4) For the purposes of this section, if:

(a) a payment was made under subsection 15C(1) in a reporting period; and

(b) because of subsection (3) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and

(c) during a later reporting period, an Australian Taxation Office official becomes aware that the payment was made under subsection 15C(1);

the payment is subject to a ***deferred reporting obligation*** in relation to the later reporting period.

(5) If one or more payments made under subsection 15C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Commissioner must, during the applicable publication period for the later reporting period:

(a) prepare a report that sets out:

(i) the number of those payments; and

(ii) the total amount of those payments; and

(iii) the reporting period during which the payments were made; and

(b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and

(c) if paragraph (b) does not apply—publish, in such manner as the Commissioner thinks fit, the paragraph (a) report.

Reporting period

(6) For the purposes of this section, a ***reporting period*** is:

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(a) a financial year; or

(b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

(7) For the purposes of this section, the ***applicable publication period*** for a reporting period is the period of:

(a) 4 months; or

(b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;

beginning immediately after the end of the reporting period.

Australian Taxation Office official

(8) For the purposes of this section, ***Australian Taxation Office official*** means an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the Australian Taxation Office.

16 Payments out of Consolidated Revenue Fund

(1) Where the Commissioner is required or permitted to pay an amount to a person by or under a provision of a taxation law other than:

(a) a general administration provision; or

(b) a provision prescribed for the purposes of this paragraph;

the amount is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

(2) Where:

(a) an amount is required or permitted to be paid to a person:

(i) by or under a provision of a taxation law other than:

(A) a general administration provision; or

(B) a provision prescribed for the purposes of this sub-subparagraph; or

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(ii) by way of the repayment, whether in whole or in part, to the person of an amount paid to the Commonwealth;

(b) except as mentioned in paragraph (c), there is no provision of a taxation law by or under which the Commissioner is required or permitted to pay the amount; and

(c) the Commissioner is required or permitted to pay the amount by or under a general administration provision;

the amount shall be taken, for the purposes of subsection (1), to be an amount that the Commissioner is required or permitted to pay to the person by or under a provision of a taxation law of the kind referred to in that subsection.

(3) In this section, ***general administration provision*** means a provision of a taxation law that provides that the Commissioner has the general administration of the taxation law.

16A Regulations may provide for methods of payment of tax liabilities etc.

(1) This section applies to a liability to or of the Commonwealth arising under, or by virtue of, any of the following laws:

(a) this Act;

(b) any other Act of which the Commissioner has the general administration;

(c) regulations under an Act covered by paragraph (a) or (b).

(2) The regulations may make provision for and in relation to the methods by which the amount of the liability may be paid.

(3) Without limiting subsection (2), the regulations may make provision for and in relation to the making of payments using:

(a) collection agents; or

(b) electronic funds transfer systems; or

(c) credit cards; or

(d) debit cards.

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16B Certain liabilities to be reduced to nearest multiple of 5 cents

If the amount of a tax-related liability that arises by way of penalty or because it is assessed by the Commissioner (other than an RBA deficit or a liability to pay the general interest charge) is not a multiple of 5 cents, the amount is decreased to the nearest multiple of 5 cents.

17 Powers of taxation officers in relation to references to currency etc.

(1) In this section:

decimal currency means the currency provided for by the *Currency Act 1965*.

law of the Commonwealth has the same meaning as in section 10 of the *Currency Act 1965*.

officer includes the Commissioner and a Second Commissioner.

taxation law means any law of the Commonwealth of which the Commissioner has the general administration.

the previous currency means the currency provided for by the *Coinage Act 1909*.

(2) An officer may, in the exercise of, or for the purpose of exercising, any power under a taxation law or in the performance of, or for the purpose of performing, any function under a taxation law:

(a) treat:

(i) a reference in a law of the Commonwealth;

(ii) a reference in a bill of exchange, promissory note, security for money, contract or agreement (whether the contract or agreement is in writing or not), deed or other instrument; or

(iii) a reference in any other manner;

to an amount of money in the previous currency as a reference to a corresponding amount of money in decimal

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currency and treat such a reference to an amount of money in decimal currency as a reference to a corresponding amount of money in the previous currency;

(b) treat an amount of money in the previous currency as a corresponding amount of money in decimal currency and treat an amount of money in decimal currency as a corresponding amount of money in the previous currency; and

(c) express an amount of money in either decimal currency or the previous currency.

(3) For the purposes of paragraphs (2)(a), (b) and (c):

(a) the amount of money in decimal currency that corresponds with an amount of money in the previous currency; and

(b) the amount of money in the previous currency that corresponds with an amount of money in decimal currency;

shall be calculated on the basis of the equivalents specified in subsection 8(4) of the *Currency Act 1965*.

17A Powers of Federal Court and Federal Circuit Court in respect of taxation matters

(1) The Federal Court of Australia shall not, in relation to a review by the Court of a decision of the Tribunal in connection with proceedings under a taxation law, exercise a power conferred on it by section 15, or paragraph 16(1)(d), (2)(b) or (3)(c) or subsection 16(4), of the *Administrative Decisions (Judicial Review) Act 1977* so as to prevent or restrain the recovery, under that law, of tax or duty, further tax or further duty or additional tax or additional duty.

(2) The Federal Circuit Court of Australia must not, in relation to a review by the Court of a decision of the Tribunal in connection with proceedings under a taxation law, exercise a power conferred on it by section 15A, or paragraph 16(1)(d), (2)(b) or (3)(c) or subsection 16(4), of the *Administrative Decisions (Judicial Review) Act 1977* so as to prevent or restrain the recovery, under that law, of:

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(a) tax or duty; or
(b) further tax or further duty; or
(c) additional tax or additional duty.

18 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and, in particular, prescribing penalties not exceeding a fine of 5 penalty units for offences against the regulations.

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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 and liability to repay debts under certain income-contingent loan schemes.

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).

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

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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*.

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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, 22 and 27, 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

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

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Summary of withholding payments

Item	Withholding payment	Section
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
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

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

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Summary of withholding payments		
Item	**Withholding payment**	**Section**
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
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 withholding MIT	12-385
26	A payment by a *custodian or other entity	12-390
27	A payment under the *first home super saver scheme	12-460

(2) These can also be treated as withholding payments:

(aa) a payment that arises because of the operation of section 12A-205 (see Division 12A);

(a) alienated personal services payments (see Division 13);

(b) non-cash benefits, and capital proceeds involving foreign residents and certain kinds of taxable Australian property (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 or capital proceeds.

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

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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
(caa) amounts of liabilities to the Commonwealth under Part 3A of the *VET Student Loans Act 2016*; and
(cb) amounts of liabilities to the Commonwealth under Chapter 2AA of the *Social Security Act 1991*; and
(cc) amounts of liabilities to the Commonwealth under Part 2 of the *Student Assistance Act 1973*; and
(cd) amounts of liabilities to the Commonwealth under Chapter 3 of the *Trade Support Loans Act 2014*; 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
(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

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

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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*.

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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 withholding MIT income
12-J FHSS released amounts

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

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

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(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.

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 an exempt benefit under section 22 of that Act (about reimbursement of car expenses on the basis of distance travelled).

Capped defined benefit income stream

(4) This section does not apply in relation to a payment if the whole of the payment is a *superannuation income stream benefit that is paid from a *capped defined benefit income stream.

Note: For withholding amounts from a superannuation income stream, see section 12-80.

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

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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).

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 *withholding MITs	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)

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

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Specific rules for determining priority among withholding provisions			
Item	**Apply:**	**Which is about:**	**In priority to:**
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)
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.

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

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(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.

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

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

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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 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.

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

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(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 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

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

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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.

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

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

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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;

(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.

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

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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

(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*.

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

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(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

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
12-152 Limited application of section 12-140 to payment covered by section 12A-205
12-155 When investor may quote ABN as alternative

*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
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.

Note: If the investment body is an AMIT, under subsection 12A-205(2) amounts may be treated, for the purposes of this Part, as having been paid to the other entity by the investment body.

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

(2) If a *Part VA investment consists of:

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

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(a) units in a unit trust (as defined in section 202A of the *Income Tax Assessment Act 1936*); or

(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.

(3) If:

(a) because of subsection 12A-205(2), an entity is treated as having made a payment to another entity; and

(b) under subsection (2) of this section, the entity has withheld an amount from that payment, and paid the amount to the Commissioner;

the entity may recover from the other entity, as a debt, the amount withheld.

(4) The entity is entitled to set off an amount that the entity can recover from the other entity under subsection (3) against debts due by the entity to the other entity.

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

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

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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 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.

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

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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.

12-152 Limited application of section 12-140 to payment covered by section 12A-205

(1) If a payment is treated under section 12A-205 as having been made, section 12-140 does not apply to the payment to the extent that it covers a *pre-AMMA actual payment from which section 12-140 has required an amount to be withheld.

(2) If a payment is a *post-AMMA actual payment, section 12-140 does not apply to the payment to the extent that it covers either or both of the following:

(a) a *pre-AMMA actual payment from which section 12-140 has required an amount to be withheld;

(b) a payment that is treated under section 12A-205 as having been made from which section 12-140 has required an amount to be withheld.

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).

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*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.

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

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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

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

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(c) the trustee is not required to make a correct TB statement under Division 6D of Part III of that Act (about trustee 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.

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

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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.

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.

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

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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.

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:

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

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(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.

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

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

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(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 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

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

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(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.

(7) In working out, for the purposes of this section, whether an enterprise is *carried on in Australia, ignore any part of Australia that is not in the indirect tax zone (within the meaning of the *GST Act).

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 the indirect tax zone under the *A New Tax System (Australian Business Number) Act 1999*.

Subdivision 12-F—Dividend, interest and royalty payments

Table of sections

Dividends

12-210 Dividend payment to overseas person
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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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12-220 Application to part of a dividend
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Interest

12-245 Interest payment to overseas person
12-250 Interest payment received for foreign resident
12-255 Interest payment derived by lender in carrying on business through overseas permanent establishment
12-255 Interest payment derived by lender in carrying on business through overseas permanent establishment
12-260 Lender to notify borrower if interest derived through overseas permanent establishment

Royalties

12-280 Royalty payment to overseas person
12-285 Royalty payment received for foreign resident

General

12-300 Limits on amount withheld under this Subdivision

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.

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

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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.

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.

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

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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

(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

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

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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;

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.

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

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(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
    (ii) to have the entity credit to the foreign resident, or otherwise deal with on the foreign resident's behalf or

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

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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*.

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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:

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

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(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 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

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

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(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.

(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

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

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(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

(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

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

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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.

(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.

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

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(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

(ii) the employee holds a Temporary Work (International Relations) Visa (subclass 403).

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

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

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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:
  (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

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

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(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 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.

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 or *petroleum

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

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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 withholding MIT income

Guide to Subdivision 12-H

12-375 What this Subdivision is about

A withholding MIT 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 withholding MIT is required to make information available to the recipient outlining certain details in relation to the payment.

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.

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

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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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Operative provisions

12-383 Meaning of *withholding MIT*

(1) A trust is a ***withholding MIT*** in relation to an income year if:

(a) it is a *managed investment trust in relation to that income year because of paragraph 275-10(1)(a) or subsection 275-10(2) of the *Income Tax Assessment Act 1997*; and

(b) 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;

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

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(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.

(2) For the purposes of ascertaining whether a trust is a *managed investment trust in relation to that income year for the purposes of paragraph (1)(a), treat as a *fund payment by the trustee of the trust any amount that, under subsection 12A-205(2), would be treated as a payment by the trustee if the trust were an *AMIT.

Note: The making of a fund payment is a requirement for the trust to be a managed investment trust under paragraph 275-10(1)(a) and subsection 275-10(3) of the *Income Tax Assessment Act 1997*.

12-385 Withholding by withholding MITs

(1) A trustee of a trust that is a *withholding MIT 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) 15% for *fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or

(ii) 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 (except to the extent mentioned in subparagraph (iii)); or

(iii) 30% for fund payments, to the extent that they are attributable to *non-concessional MIT income (see section 12-435); 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 *withholding MIT 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 withholding MIT, or 2 or more fund payments made by one or more withholding MITs. One or more of those withholding MITs may be AMITs.

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) 15% for *fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or

(ii) 10% for fund payments, to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust (except to the extent mentioned in subparagraph (iii)); or

(iii) 30% for fund payments, to the extent that they are attributable to *non-concessional MIT income (see section 12-435); or

(b) otherwise—30%.

Withholding by other entities

(4) An entity that is not a *withholding MIT 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

(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 1: The covered part referred to in paragraph (4)(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. One or more of those managed investment trusts may be AMITs.

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

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Note 2: If the recipient is 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) 15% for *fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or

(ii) 10% for fund payments, to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust (except to the extent mentioned in subparagraph (iii)); or

(iii) 30% for fund payments, to the extent that they are attributable to *non-concessional MIT income (see section 12-435); 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

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

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(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:

(a) 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; or

(b) the entity is acting on behalf of an entity that is carrying on such a business pursuant to such a 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.

12-395 Requirement to give notice or make information available

Withholding MITs and custodians

(1) An entity that is a *withholding MIT 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

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

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(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

(ab) must specify the extent (if any) to which the payment is, or is attributable to, *non-concessional MIT income (see section 12-435); and

(b) must specify the income year of the *withholding MIT 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 *withholding MIT or a *custodian must comply with subsection (5) if:

(a) the entity receives a payment; and

(b) another entity (also the ***recipient***) is or becomes entitled:

(i) to receive 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 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

(ab) must specify the extent (if any) to which the payment is, or is attributable to, *non-concessional MIT income (see section 12-435); and

(b) must specify the income year of the *withholding MIT 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*.

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12-405 Meaning of *fund payment*—general case

(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 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.

(1A) This section applies to a trust that is *not* an *AMIT for an income year.

Note: For the definition of ***fund payment*** in respect of a trust that is an AMIT for an income year, see section 12A-110.

(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, and increase it by any amounts to which subsection (2A) or (2B) applies for the income year (except to the extent that capital gains against which those amounts are applied are included in the actual payment made in relation to the income year).

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

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Step 2. Work out what it is reasonable to expect will be the *net income of the trust for the income year:

(aa) increasing the net income by any amounts to which subsection (2A) or (2B) applies for the income year; and

(a) disregarding (except to the extent that they are amounts to which subsection (2A) or (2B) applies for the income year) 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

(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.

(2A) If:

(a) during an income year, a *capital loss from a *CGT event happens in relation to a *CGT asset that is not *taxable Australian property; and

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

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(b) in relation to that income year, some or all of the capital loss is applied against a *capital gain from a CGT event that happens in relation to a CGT asset that is taxable Australian property;

this subsection applies, for that income year, to the amount that is so applied.

(2B) If:

(a) the trust has a *net capital loss for an income year; and

(b) one or more of the *capital losses the trust made during that income year were from *CGT events that happened in relation to *CGT assets that were not *taxable Australian property; and

(c) in relation to a later income year, some or all of the net capital loss is applied against a *capital gain from a CGT event that happens in relation to a CGT asset that is taxable Australian property;

this subsection applies, for the later income year, to an amount equal to so much of the net capital loss that is so applied as related to capital losses mentioned in paragraph (b).

(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

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

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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.

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.

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

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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 *withholding MIT 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

(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.

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

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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

(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

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*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.

(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.

12-435 Meaning of *non-concessional MIT income*

Non-concessional MIT income means any of the following:

(a) *MIT cross staple arrangement income;

(b) *MIT trading trust income;

(c) *MIT agricultural income;

(d) *MIT residential housing income.

12-436 Meaning of *asset entity*, *operating entity*, *cross staple arrangement* and *stapled entity*

(1) An ***asset entity*** in relation to an income year is a trust or partnership that is *not* covered by subsection 275-10(4) of the *Income Tax Assessment Act 1997* in relation to the income year.

(2) An ***operating entity*** in relation to an income year is a trust, partnership or company that is covered by subsection 275-10(4) of the *Income Tax Assessment Act 1997* in relation to the income year.

(3) For the purposes of this section, in determining whether a partnership or company is covered by subsection 275-10(4) of the *Income Tax Assessment Act 1997*, treat the partnership or company as a trust.

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

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(4) A ***cross staple arrangement*** is an *arrangement that is entered into by 2 or more entities (the ***arrangement entities***) if:

(a) at least one of the arrangement entities is an *asset entity; and

(b) at least one of the arrangement entities is an *operating entity; and

(c) the following conditions are satisfied:

(i) one or more other entities (the ***external entities***) each hold a *total participation interest in each arrangement entity;

(ii) the sum of the total participation interests held by the external entities in each arrangement entity is 80% or more.

(5) For the purposes of subparagraph (4)(c)(ii), in working out the sum of the *total participation interests held by the external entities in each arrangement entity, take into account:

(a) a particular *direct participation interest; or

(b) a particular *indirect participation interest;

held in the arrangement entity only once if it would otherwise be counted more than once.

(6) Subsection (7) applies if:

(a) an external entity holds *total participation interests in 2 or more arrangement entities; and

(b) either:

(i) the amount (the ***lowest participation interest amount***) of one of those participation interests falls short of the amount of each of the other participation interests; or

(ii) the amount (the ***lowest participation interest amount***) of 2 or more of those participation interests is the same but falls short of the amount of each of the other participation interests.

(7) For the purposes of paragraph (4)(c), treat the amount of the *total participation interest held by the external entity in each of the

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

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arrangement entities as being equal to the lowest participation interest amount.

(8) Each of the entities that entered into the *cross staple arrangement is a ***stapled entity*** in relation to the cross staple arrangement.

12-437 Meaning of *MIT cross staple arrangement income*

(1) This section applies if:

(a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and

(b) the amount mentioned in paragraph (a) is, or is attributable to, an amount derived, received or made from another entity (the ***second entity***); and

(c) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).

(2) The amount is ***MIT cross staple arrangement income*** of the *managed investment trust if:

(a) either:

(i) the *managed investment trust is an *asset entity in relation to the income year and is a *stapled entity in relation to a *cross staple arrangement; or

(ii) the second entity is an asset entity in relation to the income year and is a stapled entity in relation to a cross staple arrangement; and

(b) either:

(i) if subparagraph (a)(i) applies—the second entity is an *operating entity in relation to the income year and is a stapled entity in relation to the cross staple arrangement; or

(ii) if subparagraph (a)(ii) applies—another entity (the ***third entity***) is an operating entity in relation to the income

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

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year and is a stapled entity in relation to the cross staple arrangement; and

(c) either:

(i) if subparagraph (a)(i) applies—the amount is derived, received or made by the managed investment trust from the second entity; or

(ii) if subparagraph (a)(ii) applies—the amount is attributable to an amount derived, received or made by the second entity from the third entity.

(3) The amount is *not* ***MIT cross staple arrangement income*** of the *managed investment trust under subsection (2) to the extent that it is attributable to an amount that satisfies the following requirements:

(a) the amount is derived, received or made by a *stapled entity in relation to the *cross staple arrangement from an entity that is not a stapled entity in relation to the cross staple arrangement;

(b) the amount mentioned in paragraph (a) is *rent from land investment.

(4) The amount is *not* ***MIT cross staple arrangement income*** of the *managed investment trust under subsection (2) to the extent that it is, or is attributable to, an amount covered by subsection 12-438(1).

Note: The managed investment trust may be an asset entity in relation to the cross staple arrangement. If so, it may have no MIT cross staple arrangement income for the income year as a result of the operation of this subsection.

(5) The amount is *not* ***MIT cross staple arrangement income*** of the *managed investment trust under subsection (2) to the extent that it is, or is attributable to, *rent from land investment that is:

(a) attributable to a facility, or an improvement to a facility; and

(b) referable to a time in the income year when the facility, or the improvement to the facility, is covered by section 12-439.

(6) Subsection (7) applies if:

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

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(a) an *asset entity in relation to the income year mentioned in paragraph (1)(a) makes a *capital gain because an *operating entity in relation to the income year *acquires an asset from the asset entity; and

(b) the asset entity and the operating entity are *stapled entities in relation to the *cross staple arrangement.

(7) The amount is *not **MIT cross staple arrangement income*** of the *managed investment trust under subsection (2) to the extent that it is attributable to the *capital gain.

12-438 MIT cross staple arrangement income—de minimis exception

(1) For the purposes of subsection 12-437(4), this subsection covers an amount if:

(a) the amount is *MIT cross staple arrangement income for the income year of an *asset entity in relation to the *cross staple arrangement; and

(b) the MIT cross staple arrangement income of the asset entity for the previous income year does not exceed 5% of the amount mentioned in subsection (3).

(2) For the purposes of subsection (1), in working out the *MIT cross staple arrangement income of the *asset entity for the previous income year, disregard subsections 12-437(4) and (5).

(3) The amount is:

(a) if the *asset entity is not an *AMIT for the income year—the assessable income of the asset entity for the previous income year (worked out for the purposes of determining the *net income of the asset entity for the income year); or

(b) if the asset entity is an AMIT for the income year—the total assessable income (as mentioned in subsection 276-265(2) of the *Income Tax Assessment Act 1997*) of the asset entity for the previous income year.

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

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(4) For the purposes of subsection (3), in working out the assessable income, or the total assessable income, of the *asset entity for the previous income year, disregard any *net capital gain of the asset entity for that year.

(5) If the *asset entity did not exist in the previous income year:
   (a) treat references in this section to the previous income year as instead being references to the income year; and
   (b) treat references in this section to the *MIT cross staple arrangement income of the asset entity as instead being references to a reasonable estimate of the MIT cross staple arrangement income of the asset entity; and
   (c) treat references in this section to the assessable income of the asset entity as instead being references to a reasonable estimate of the assessable income of the asset entity; and
   (d) treat references in this section to the total assessable income of the asset entity as instead being references to a reasonable estimate of the total assessable income of the asset entity.

(6) If the *asset entity exists in an income year, but is not a *managed investment trust in relation to that income year, for the purposes of this section, treat it as a managed investment trust in relation to that income year that is not an *AMIT for that income year.

12-439 MIT cross staple arrangement income—approved economic infrastructure facility exception

(1) This section covers a facility at a time if:
   (a) the facility is covered by an approval of the Treasurer under this section that is in force at that time; and
   (b) that time is no later than the end of the period of 15 years beginning on the day on which an asset that is part of the facility is first put to use.

(2) This section covers an improvement to a facility at a time if:

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

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(a) the improvement to the facility is covered by an approval of the Treasurer under this section that is in force at that time; and

(b) that time is no later than the end of the period of 15 years beginning on the day on which an asset that is part of the facility is first put to use after it has been improved under the improvement.

(3) An *Australian government agency (other than the Commonwealth) may make an application to the Treasurer in respect of a facility, or an improvement to a facility, specified in the application.

(4) The Treasurer may approve the facility, or the improvement to the facility, specified in the application under subsection (2) if the Treasurer is satisfied that the following criteria are met:

(a) the facility is an *economic infrastructure facility;

(b) in the case of an application in respect of a facility:

(i) the estimated capital expenditure on the facility is $500 million or more; and

(ii) the facility is yet to be constructed; and

(iii) the facility will significantly enhance the long-term productive capacity of the economy; and

(iv) approving the facility is in the national interest;

(c) in the case of an application in respect of an improvement to a facility:

(i) the estimated capital expenditure on the improvement is $500 million or more; and

(ii) the improvement is yet to be constructed; and

(iii) the improvement will significantly enhance the long-term productive capacity of the economy; and

(iv) approving the improvement is in the national interest.

(5) An ***economic infrastructure facility*** is a facility that is any of the following:

(a) transport infrastructure;

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

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(b) energy infrastructure;
(c) communications infrastructure;
(d) water infrastructure.

(6) An approval under subsection (4):
(a) must be in writing; and
(b) must specify the facility, or the improvement, that is approved; and
(c) must specify the date on which the approval comes into force; and
(d) may contain any other information that the Treasurer considers appropriate.

(7) The Treasurer may publish an approval under subsection (4) in any way that he or she considers appropriate.

(8) If the Treasurer decides not to approve the facility, or the improvement to a facility, specified in the application under subsection (3), the Treasurer must notify the applicant of the decision, in writing, as soon as practicable after making the decision.

12-440 Transitional—MIT cross staple arrangement income

(1) This section applies if:
(a) before 27 March 2018, an *Australian government agency:
(i) decided to approve the *acquisition, creation or lease of a facility; and
(ii) publicly announced that decision; and
(iii) took significant preparatory steps to implement that decision; and
(b) either:
(i) a *cross staple arrangement was entered into in relation to the facility before 27 March 2018; or

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

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(ii) it was reasonable on 27 March 2018 to conclude that a cross staple arrangement will be entered into in relation to the facility; and

(c) all the entities that are *stapled entities in relation to the cross staple arrangement already existed before 27 March 2018; and

(d) each entity that is a stapled entity in relation to the cross staple arrangement has made a choice in accordance with subsection (5).

(2) This section also applies if:

(a) any of the following applies:

(i) an entity entered into a contract before 27 March 2018 for the *acquisition, creation or lease of a facility;

(ii) an entity owns, or is the lessee of, a facility at a time before 27 March 2018; and

(b) either:

(i) a *cross staple arrangement was entered into in relation to the facility before 27 March 2018; or

(ii) it was reasonable on 27 March 2018 to conclude that a cross staple arrangement will be entered into in relation to the facility; and

(c) all the entities that are *stapled entities in relation to the cross staple arrangement already existed before 27 March 2018; and

(d) each entity that is a stapled entity in relation to the cross staple arrangement has made a choice in accordance with subsection (5).

(3) An amount included in the assessable income for an income year of a *managed investment trust is *not* ***MIT cross staple arrangement income*** of the managed investment trust if:

(a) the amount is, or is attributable to, an amount derived, received or made from another entity (the ***second entity***); and

(b) the amount relates to the facility; and

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

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(c) the second entity is a *stapled entity in relation to the *cross staple arrangement; and

(d) either:

(i) if subparagraph 12-437(2)(a)(i) applies—the amount is *rent from land investment paid from an *operating entity in relation to the cross staple arrangement to the managed investment trust; or

(ii) if subparagraph 12-437(2)(a)(ii) applies—the amount is attributable to rent from land investment paid from an operating entity in relation to the cross staple arrangement to an *asset entity in relation to the cross staple arrangement; and

(e) the time when the amount was derived, received or made by the managed investment trust meets the requirements in subsection (4).

(4) The time meets the requirements in this subsection if:

(a) where the facility to which the *cross staple arrangement relates is *not* an *economic infrastructure facility—the time is before 1 July 2031 and before the later of:

(i) 1 July 2026; and

(ii) the end of the period of 7 years beginning on the earliest day on which an asset that is part of that facility is first put to use for the purpose of producing assessable income; or

(b) where the facility to which the cross staple arrangement relates is an economic infrastructure facility—the time is before 1 July 2039 and before the later of:

(i) 1 July 2034; and

(ii) the end of the period of 15 years beginning on the earliest day on which an asset that is part of that facility is first put to use for the purpose of producing assessable income.

(5) An entity makes a choice in accordance with this subsection if:

(a) the entity makes the choice in the *approved form; and

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

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(b) the entity makes the choice no later than:
(i) 30 June 2019; or
(ii) a later time allowed by the Commissioner; and
(c) the entity gives the choice to the Commissioner within 60 days after the entity makes the choice.

(6) The choice cannot be revoked.

12-441 Integrity rule—concessional cross staple rent cap

(1) This section applies if:
(a) a *managed investment trust in relation to an income year derives, receives or makes an amount of *excepted MIT CSA income for the income year; and
(b) if the amount is excepted MIT CSA income because of subsection 12-440(3)—paragraph 12-440(4)(b) applies (15 year concession); and
(c) the amount of excepted MIT CSA income is, or is attributable to, *rent from land investment under a lease (the ***cross staple lease***) entered into by:
(i) the *asset entity mentioned in paragraph 12-437(2)(a) (the ***relevant asset entity***); and
(ii) the *operating entity mentioned in paragraph 12-437(2)(b) (the ***relevant operating entity***).

(2) To the extent (if any) that the amount of the relevant asset entity's *excepted MIT CSA income exceeds its *concessional cross staple rent cap for the income year, the following provisions do not apply to the amount of the *managed investment trust's excepted MIT CSA income mentioned in paragraph (1)(a):
(a) subsection 12-437(5);
(b) subsection 12-440(3).

(3) If the relevant asset entity is not a *managed investment trust in relation to the income year, for the purposes of subsection (2), treat it as a managed investment trust in relation to the income year.

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

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12-442 Meaning of *excepted MIT CSA income*

An amount is ***excepted MIT CSA income*** of a *managed investment trust in relation to an income year if it would be *MIT cross staple arrangement income of the managed investment trust but for any of the following provisions:

(a) subsection 12-437(5);

(b) subsection 12-440(3).

12-443 Concessional cross staple rent cap—existing lease with specified rent or rent method

(1) This section applies if:

(a) the amount mentioned in subsection 12-441(1) is *excepted MIT CSA income because of subsection 12-440(3); and

(b) the cross staple lease was entered into before 27 March 2018; and

(c) the cross staple lease, or associated documents, specified any of the following before 27 March 2018:

(i) the amount of annual rent under the lease for the first year of the lease that ends after 27 March 2018;

(ii) an objective method for determining the amount of annual rent under the lease; and

(d) if subparagraph (c)(ii) applies—the method is set out in the cross staple lease, or the associated documents, before 27 March 2018.

(2) If subparagraph (1)(c)(ii) applies, the ***concessional cross staple rent cap*** for an income year of the *managed investment trust is the amount of annual rent determined for the income year under the method mentioned in that subparagraph.

(3) If subparagraph (1)(c)(ii) does not apply, the ***concessional cross staple rent cap*** for an income year of the *managed investment trust is:

(a) for an income year where the lease, or the associated documents, specify the amount of annual rent for the

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

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corresponding year of the lease under subsection (4)—that amount; or

(b) for an income year where that amount is not so specified—the amount worked out under paragraph (a) in relation to the most recent year of the lease for which an amount is so specified, indexed annually in accordance with Subdivision 960-M of the *Income Tax Assessment Act 1997*.

(4) An income year and a year of the lease correspond to each other under this subsection if both of those years end:

(a) after a particular 27 March; and

(b) on or before the next 27 March.

12-444 Concessional cross staple rent cap—general

(1) This section applies if section 12-443 does not apply.

(2) The ***concessional cross staple rent cap*** for an income year of the *managed investment trust is worked out as follows:

(a) first, work out a reasonable estimate of whichever of the following is applicable:

(i) if the relevant asset entity is a trust that is not an *AMIT—the relevant asset entity's *net income, or *tax loss, for the income year;

(ii) if the relevant asset entity is an AMIT—the sum of the relevant asset entity's *trust components with the character of assessable income, or the relevant asset entity's tax loss, for the income year;

(iii) if the relevant asset entity is a partnership—the relevant asset entity's net income, or partnership loss (within the meaning of section 90 of the *Income Tax Assessment Act 1936*), for the income year;

(b) next, work out a reasonable estimate of whichever of the following is applicable:

(i) if the relevant operating entity is a trust that is not an AMIT—the operating asset entity's net income, or tax loss, for the income year;

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

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(ii) if the relevant operating entity is a partnership—the relevant operating entity's net income, or partnership loss (within the meaning of section 90 of the *Income Tax Assessment Act 1936*), for the income year;

(iii) otherwise—the relevant operating entity's taxable income or tax loss for the income year;

(c) next, add the results of paragraphs (a) and (b);

(d) next, multiply the result of paragraph (c) by 0.8;

(e) next, subtract the result of paragraph (a) from the result of paragraph (d);

(f) next, add the amount of *excepted MIT CSA income mentioned in subsection 12-441(1) to the result of paragraph (e).

If the result of paragraph (f) is a positive number, the ***concessional cross staple rent cap*** is that result. Otherwise, the ***concessional cross staple rent cap*** is nil.

(3) For the purposes of paragraphs (2)(a) and (b):

(a) treat the amount of a *tax loss, or of a partnership loss (within the meaning of section 90 of the *Income Tax Assessment Act 1936*), as a negative number; and

(b) disregard any *tax loss for a previous income year of the relevant asset entity or relevant operating entity.

12-445 Asset entity to allocate deductions first against rental income that is not MIT cross staple arrangement income

(1) This section applies if:

(a) an entity is an *asset entity in relation to an income year and is a *stapled entity in relation to a *cross staple arrangement; and

(b) the entity is entitled to a deduction for the income year against its assessable income that arises from *rent from land investment that it derives or receives in the income year; and

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

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(c) the entity derives, receives or makes an amount of *excepted MIT CSA income in the income year (disregarding this section and subsection 12-441(2)); and

(d) the amount of that excepted MIT CSA income exceeds the entity's *concessional cross staple rent cap for the income year.

(2) The amount of the deduction can only be deducted against an amount of assessable income of the *asset entity as follows:

(a) first, the amount can only be deducted against an amount of assessable income that is *excepted MIT CSA income, to the extent that the excepted MIT CSA income does not exceed the entity's *concessional cross staple rent cap for the income year;

(b) next, if an amount of the deduction remains after applying the rule in paragraph (a), the amount can only be deducted against an amount of assessable income that is *MIT cross staple arrangement income;

(c) next, if an amount of the deduction remains after applying the rules in paragraphs (a) and (b), the amount can be deducted against an amount of assessable income in accordance with other provisions of this Act.

(3) If the *asset entity is not a *managed investment trust in relation to the income year, for the purposes of determining whether an amount of its assessable income for the income year is *MIT cross staple arrangement income, treat it as a managed investment trust in relation to the income year.

12-446 Meaning of *MIT trading trust income*

(1) This section applies if:

(a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and

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

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(b) the amount mentioned in paragraph (a) is, or is attributable to, an amount derived, received or made from another entity (the ***second entity***); and

(c) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).

(2) The amount is ***MIT trading trust income*** of the *managed investment trust if:

(a) the managed investment trust holds a *total participation interest in the second entity of greater than nil; and

(b) the amount arises because of that total participation interest; and

(c) the second entity:

(i) is a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to the income year; or

(ii) is a partnership or a trust that is not a unit trust, but would be such a trading trust in relation to the income year if it were a unit trust throughout the income year; and

(d) the second entity is not a *public trading trust in relation to the income year.

(3) The amount is *not* ***MIT trading trust income*** of the *managed investment trust under subsection (2) to the extent that it is attributable to a *capital gain made from *CGT event E4 or *CGT event E10.

12-447 Transitional—*MIT trading trust income*

(1) This section applies if:

(a) an amount (the ***relevant amount***) included in the assessable income for an income year of a *managed investment trust is *MIT trading trust income of the managed investment trust (disregarding this section); and

(b) immediately before 27 March 2018, the managed investment trust held a *total participation interest (the

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

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pre-announcement TPI) of greater than nil in the second entity mentioned in subsection 12-446(1) (the ***second entity***); and

(c) the relevant amount was derived, received or made by the managed investment trust before 1 July 2026.

(2) Treat part of the relevant amount as not being *MIT trading trust income of the *managed investment trust.

(3) That part is equal to the relevant amount multiplied by the fraction worked out under subsections (4) and (5).

(4) If the *total participation interest (the ***post-announcement TPI***) held by the *managed investment trust in the second entity at the end of the most recent income year ending before it derived, received or made the relevant amount exceeds the pre-announcement TPI, work out that fraction by dividing:

(a) the pre-announcement TPI;

by:

(b) the post-announcement TPI.

(5) Otherwise, the fraction is 1.

12-448 Meaning of *MIT agricultural income*, *Australian agricultural land for rent* and *Division 6C land*

(1) This section applies if:

(a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and

(b) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).

(2) The amount is ***MIT agricultural income*** of the *managed investment trust to the extent that it is attributable to an asset that is

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

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*Australian agricultural land for rent (whether or not held by the managed investment trust).

(3) ***Australian agricultural land for rent*** is *Division 6C land situated in Australia that:

(a) is used, or could reasonably be used, for carrying on a *primary production business; and

(b) is held primarily for the purposes of deriving or receiving rent.

(4) For the purposes of this section, if an *economic infrastructure facility is a fixture on *Australian agricultural land for rent:

(a) treat the economic infrastructure facility as being separate from the Australian agricultural land for rent; and

(b) treat the economic infrastructure facility as *not* being Australian agricultural land for rent.

(5) ***Division 6C land*** is land (within the meaning of Division 6C of Part III of the *Income Tax Assessment Act 1936*), and includes a thing if an investment in the thing would be an investment in land under subsection 102MB(1) of that Act.

12-449 Transitional—MIT agricultural income

(1) This section applies if:

(a) an amount (the ***relevant amount***) is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and

(b) the relevant amount would be *MIT agricultural income (disregarding this section) of the managed investment trust because it is attributable to an asset that is *Australian agricultural land for rent; and

(c) the managed investment trust derived, received or made the relevant amount before 1 July 2026; and

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

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(d) if the managed investment trust derived, received or made the relevant amount because the managed investment trust held the asset:

(i) the managed investment trust held the asset just before 27 March 2018; or

(ii) before 27 March 2018, the managed investment trust entered into a contract for the *acquisition or lease of the asset; and

(e) if the managed investment trust derived, received or made the relevant amount because another entity (the ***second entity***) held the asset:

(i) the second entity held the asset just before 27 March 2018; or

(ii) before 27 March 2018, the second entity entered into a contract for the acquisition or lease of the asset; and

(f) if paragraph (e) applies—immediately before 27 March 2018, the managed investment trust held a *total participation interest (the ***pre-announcement TPI***) of greater than nil in the second entity.

(2) If paragraph (1)(d) applies, treat the relevant amount as not being *MIT agricultural income of the *managed investment trust.

(3) If paragraph (1)(e) applies, treat part of the relevant amount as not being *MIT agricultural income of the *managed investment trust.

(4) That part is equal to the relevant amount multiplied by the fraction worked out under subsections (5) and (6).

(5) If the *total participation interest (the ***post-announcement TPI***) held by the *managed investment trust in the second entity at the end of the most recent income year ending before it derived, received or made the relevant amount exceeds the pre-announcement TPI, work out that fraction by dividing:

(a) the pre-announcement TPI;

by:

(b) the post-announcement TPI.

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

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(6) Otherwise, the fraction is 1.

12-450 Meaning of *MIT residential housing income*

(1) This section applies if:

(a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and

(b) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).

(2) The amount is ***MIT residential housing income*** of the *managed investment trust to the extent that it is attributable to a *residential dwelling asset (whether or not held by the managed investment trust).

Asset used to provide affordable housing

(3) The amount is *not* ***MIT residential housing income*** of the *managed investment trust under subsection (2) to the extent that it is referable to the use of the *residential dwelling asset to *provide affordable housing.

(4) If the amount is, or is attributable to, a *capital gain from a *CGT event, subsection (3) applies only if:

(a) the entity that held the *residential dwelling asset just before the time (the ***CGT event time***) when the CGT event happened had held it for at least 3,650 days (consecutive or not); and

(b) each of those days satisfies the following requirements:

(i) the day is on or after 1 July 2017 and before the CGT event time;

(ii) the residential dwelling asset was used on the day to *provide affordable housing.

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

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12-451 Transitional—MIT residential housing income

(1) This section applies if:

(a) an amount (the ***relevant amount***) is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and

(b) the relevant amount would be *MIT residential housing income (disregarding this section) of the *managed investment trust because it is attributable to a facility that consists of or contains a *residential dwelling asset; and

(c) the managed investment trust derived, received or made the relevant amount before 1 October 2027; and

(d) if the managed investment trust derived, received or made the relevant amount because the managed investment trust held the facility:

(i) the managed investment trust held the facility just before the time mentioned in subsection (7); or

(ii) before the time mentioned in subsection (7), the managed investment trust entered into a contract for the *acquisition, creation or lease of the facility; and

(e) if the managed investment trust derived, received or made the relevant amount because another entity (the ***second entity***) held the facility:

(i) the second entity held the facility just before the time mentioned in subsection (7); or

(ii) before the time mentioned in subsection (7), the second entity entered into a contract for the acquisition, creation or lease of the facility; and

(f) if paragraph (e) applies—immediately before the time mentioned in subsection (7), the managed investment trust held a *total participation interest (the ***pre-announcement TPI***) of greater than nil in the second entity.

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

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(2) If paragraph (1)(d) applies, treat the relevant amount as *not* being *MIT residential housing income of the *managed investment trust.

(3) If paragraph (1)(e) applies, treat part of the relevant amount as *not* being *MIT residential housing income of the *managed investment trust.

(4) That part is equal to the relevant amount multiplied by the fraction worked out under subsections (5) and (6).

(5) If the *total participation interest (the ***post-announcement TPI***) held by the *managed investment trust in the second entity at the end of the most recent income year ending before it derived, received or made the relevant amount exceeds the pre-announcement TPI, work out that fraction by dividing:

(a) the pre-announcement TPI;

by:

(b) the post-announcement TPI.

(6) Otherwise, the fraction is 1.

(7) The time is 4.30 pm, by legal time in the Australian Capital Territory, on 14 September 2017.

12-452 Meaning of *residential dwelling asset*

(1) A ***residential dwelling asset*** is an asset that:

(a) is a *dwelling; and

(b) is *taxable Australian real property; and

(c) is *residential premises (other than *commercial residential premises); and

(d) is *not* a dwelling that:

(i) is used primarily to provide specialist disability accommodation (within the meaning of the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018*); and

(ii) is enrolled in accordance with section 6 of that Rule; and

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

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(e) is *not* a dwelling that:
(i) is used primarily to provide disability accommodation; and
(ii) is a dwelling of a kind prescribed by the regulations for the purposes of this subparagraph.

(2) Section 118-120 (Extension to adjacent land) applies in relation to this section in the same way as it applies in relation to Subdivision 118-B.

(3) To avoid doubt, for the purposes of applying section 118-120 in relation to this section, a *dwelling's *adjacent land may include land used primarily for private or domestic purposes in association with the dwelling and with one or more other dwellings.

12-453 MIT agricultural income and MIT residential housing income—capital gains in relation to membership interests

(1) Subsection (2) applies if:
(a) any of the following provisions apply in relation to an amount:
(i) section 12-448;
(ii) section 12-450; and
(b) the amount is, or is attributable to, a *capital gain from a *CGT event in relation to an asset that is a *membership interest in an entity; and
(c) just before the CGT event happened, the entity held, directly or indirectly, one or more assets that are any of the following;
(i) *Australian agricultural land for rent;
(ii) a *residential dwelling asset.

(2) For the purposes of subsections 12-448(2) and 12-450(2):
(a) in a case where the *membership interest mentioned in subsection (1) passes the principal asset test in section 855-30 of the *Income Tax Assessment Act 1997* immediately before the time the *CGT event happens:

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

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(i) if the assets mentioned in paragraph (1)(c) are all *Australian agricultural land for rent—treat the *capital gain as being wholly attributable to the Australian agricultural land for rent; or

(ii) if the assets mentioned in paragraph (1)(c) are all *residential dwelling assets—treat the capital gain as being wholly attributable to residential dwelling assets; or

(iii) if all the assets mentioned in paragraph (1)(c) are Australian agricultural land for rent and residential dwelling assets, and the *market value of the membership interest that is attributable to Australian agricultural land for rent equals or exceeds the market value of the membership interest that is attributable to residential dwelling assets—treat the capital gain as being wholly attributable to Australian agricultural land for rent; or

(iv) if all the assets mentioned in paragraph (1)(c) are Australian agricultural land for rent and residential dwelling assets, and the market value of the membership interest that is attributable to Australian agricultural land for rent falls short of the market value of the membership interest that is attributable to residential dwelling assets—treat the capital gain as being wholly attributable to residential dwelling assets; or

(b) in any other case—treat the capital gain:

(i) as not being attributable to Australian agricultural land for rent; and

(ii) as not being attributable to residential dwelling assets.

(3) For the purposes of subsection (2), in determining whether the *membership interest passes the principal asset test, treat references in section 855-30 of the *Income Tax Assessment Act 1997* to *taxable Australian real property as instead being references to an asset that is any of the following:

(a) *Australian agricultural land for rent;

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

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(b) a *residential dwelling asset.

(4) For the purposes of this section, in working out the *market value of an asset, work out that market value just before the time the *CGT event mentioned in paragraph (1)(b) happens.

Subdivision 12-J—FHSS released amounts

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12-460 FHSS released amounts

12-460 FHSS released amounts

The Commissioner must withhold an amount from the *FHSS released amounts paid in respect of a person.

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

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Division 12A—Distributions by AMITs (including deemed payments)

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12A-A Distributions by AMITs relating to dividend, interest and royalties

12A-B Distributions by AMITs relating to Subdivision 12-H fund payments

12A-C Deemed payments by AMITs etc.

Guide to Division 12A

12A-1 What this Division is about

When a withholding MIT that is an AMIT gives a member an AMMA statement, the trustee is deemed to have made a payment to the member.

The deemed payment can flow through one or more custodians, giving rise to subsequent deemed payments.

Withholding liabilities under Subdivisions 12-F and 12-H do not apply in relation to deemed payments (although analogous liabilities may arise under Subdivision 12A-C).

AMIT trustees, custodians and other entities may be required to give notices etc. to recipients of such deemed payments.

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

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Subdivision 12A-A—Distributions by AMITs relating to dividend, interest and royalties

Guide to Subdivision 12A-A

12A-5 What this Subdivision is about

> Withholding liabilities under Subdivision 12-F do not apply in relation to deemed payments arising under Subdivision 12A-C relating to dividends, interest or royalties (although analogous liabilities may arise under Subdivision 12A-C).
>
> AMIT trustees, custodians and other entities may be required to give notices etc. to recipients of such deemed payments.

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12A-15 Dividend, interest or royalty payments relating to AMIT—requirement to give notice or make information available
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12A-30 Meaning of ***AMIT dividend payment***
12A-35 Meaning of ***AMIT interest payment***
12A-40 Meaning of ***AMIT royalty payment***

Operative provisions

12A-10 Deemed payments—no obligation to withhold under Subdivision 12-F (dividend, interest and royalty payments)

(1) If the entity that receives a payment as mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) is the trustee of an

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

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*AMIT, the entity need not withhold an amount under that subsection from the payment if the payment arises because of the operation of section 12A-205 (deemed payments).

Note: The trustee may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(2) Subsection (3) applies if:

(a) the entity that receives a payment as mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) is a *custodian; and

(b) it received the payment from an *AMIT.

(3) The entity need not withhold an amount under that subsection from the payment mentioned in that subsection if:

(a) the payment arises because of the operation of section 12A-205 (deemed payments); or

(b) the payment is a *post-AMMA actual payment in respect of a payment that so arises.

Note: Either or both of the trustee of the AMIT concerned and the custodian may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(4) Disregard this section for the purposes of section 12A-15.

12A-15 Dividend, interest or royalty payments relating to AMIT—requirement to give notice or make information available

AMITs and custodians

(1) An entity that is an *AMIT 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 Subdivision 12-F if:

(i) the entity were a company; and

(ii) the payment had been made to a foreign resident; and

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

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(iii) the condition in either or both of paragraphs 12-210(a) or (b), of paragraphs 12-245(a) or (b) or of paragraphs 12-280(a) or (b) (as the case requires) were satisfied; and

(b) an amount is not required to be withheld from the payment because:

(i) the recipient is *not* a foreign resident; or

(ii) the recipient is a foreign resident carrying on business in Australia at or through a permanent establishment (within the meaning of subsection 128B(3F) of the *Income Tax Assessment Act 1936*) of the recipient in Australia, and the payment is attributable to the permanent establishment; and

(c) the payment is any of the following:

(i) a payment that arises because of the operation of section 12A-205 (deemed payments);

(ii) a *pre-AMMA actual payment in respect of a payment that so arises.

(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

(b) must specify the income year of the *AMIT 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 12A-20.

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

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Other entities

(4) An entity that is not an *AMIT or a *custodian must comply with subsection (5) if:

(a) the entity receives a payment; and

(b) another entity (the ***subsequent recipient***) is or becomes entitled:

(i) to receive from the entity; or

(ii) to have the entity credit to the subsequent recipient, or otherwise deal with on the subsequent recipient's behalf or as the subsequent 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 12-215(1), 12-250(1) or 12-285(1) if the subsequent recipient had been a foreign resident; and

(d) an amount is not required to be withheld from the payment because:

(i) the subsequent recipient is *not* a foreign resident; or

(ii) the subsequent recipient is a foreign resident carrying on business in Australia at or through a permanent establishment (within the meaning of subsection 128B(3F) of the *Income Tax Assessment Act 1936*) of the subsequent recipient in Australia, and the payment is attributable to the permanent establishment; and

(e) the payment is any of the following:

(i) a payment that arises because of the operation of section 12A-205 (deemed payments);

(ii) a *pre-AMMA actual payment in respect of a payment that so arises.

(5) The entity must:

(a) give to the subsequent recipient a written notice containing the details specified in subsection (6); or

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

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(b) make those details available on a website in a way that the details are readily accessible to the subsequent 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 subsequent recipient, or is dealt with on the subsequent recipient's behalf or as the subsequent 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

(b) must specify the income year of the *AMIT 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 12A-20.

12A-20 Failure to give notice or make information available under section 12A-15: administrative penalty

An entity that:

(a) is required to give a notice, or make details available on a website, under section 12A-15 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 section 12-300) 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.

12A-25 Meaning of *AMIT DIR payment*

An ***AMIT DIR payment*** means any of the following:

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

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(a) an *AMIT dividend payment;
(b) an *AMIT interest payment;
(c) an *AMIT royalty payment.

12A-30 Meaning of *AMIT dividend payment*

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *AMIT dividend payments that the trustee of the *AMIT makes in relation to the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the total of the *determined member components for the *AMIT for the income year of the character of a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F.

(4) A payment (the ***actual or deemed payment***) that the trustee of a trust makes in relation to an income year is an ***AMIT dividend payment*** in relation to that year. However, the amount of the AMIT dividend payment is worked out under the following method statement, and may be:
(a) the amount of the actual or deemed payment; or
(b) the amount of the actual or deemed payment, increased or reduced as a result of the method statement.

Note: The payment by the trustee may be an actual payment, or a deemed payment under section 12A-205.

Method statement

Step 1. Work out what it is reasonable to expect will be the amount mentioned in subsection (3).

Step 2. The ***AMIT dividend payment*** is so much of the step 1 amount as is reasonable having regard to:

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

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(a) the object of this section; and

(b) the amounts of any earlier AMIT dividend payments made by the trustee in relation to the income year; and

(c) the expected amounts of any later AMIT dividend payments the trustee expects to make in relation to the income year.

(5) The amount mentioned in subsection (3) and the expected amounts of any later *AMIT dividend payments are to be worked out on the basis of the trustee's knowledge when the payment is made.

(6) Subsection (5) does not apply if the payment is a payment arising because of the operation of section 12A-205 (deemed payments).

(7) However, the payment is not an ***AMIT dividend payment*** in relation to the income year if:
(a) the payment is a *post-AMMA actual payment in respect of another payment; and
(b) the other payment arises because of the operation of section 12A-205; and
(c) the other payment is an AMIT dividend payment.

12A-35 Meaning of *AMIT interest payment*

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *AMIT interest payments that the trustee of the *AMIT makes in relation to the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the total of the *determined member components for the *AMIT for the income year of the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment*

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

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Act 1936) that is subject to a requirement to withhold under Subdivision 12-F.

(4) To work out the amount of an ***AMIT interest payment***, apply subsections 12A-30(4), (5), (6) and (7). For this purpose:

(a) treat references in those subsections to AMIT dividend payments as instead being references to AMIT interest payments; and

(b) treat the reference in subsection 12A-30(4) to "the amount mentioned in subsection (3)" as instead being a reference to "the amount mentioned in subsection 12A-35(3)".

12A-40 Meaning of *AMIT royalty payment*

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *AMIT royalty payments that the trustee of the *AMIT makes in relation to the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the total of the *determined member components for the *AMIT for the income year of the character of a *royalty that is subject to a requirement to withhold under Subdivision 12-F.

(4) To work out the amount of an ***AMIT royalty payment***, apply subsections 12A-30(4), (5), (6) and (7). For this purpose:

(a) treat references in those subsections to AMIT dividend payments as instead being references to AMIT royalty payments; and

(b) treat the reference in subsection 12A-30(4) to "the amount mentioned in subsection (3)" as instead being a reference to "the amount mentioned in subsection 12A-40(3)".

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

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Subdivision 12A-B—Distributions by AMITs relating to Subdivision 12-H fund payments

Guide to Subdivision 12A-B

12A-100 What this Subdivision is about

> Withholding liabilities under Subdivision 12-H do not apply in relation to deemed payments arising under Subdivision 12A-C analogous to fund payments under Subdivision 12-H (although analogous liabilities may arise under Subdivision 12A-C).
>
> AMIT trustees, custodians and other entities may be required to give notices etc. to recipients of such deemed payments.

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12A-110 Meaning of ***fund payment***—AMITs

Operative provisions

12A-105 Deemed payments—no obligation to withhold under Subdivision 12-H

(1) The trustee mentioned in subsection 12-385(1) need not withhold an amount under that subsection from the payment mentioned in that subsection if the payment arises because of the operation of section 12A-205 (deemed payments).

Note: The trustee may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(2) The *custodian mentioned in subsection 12-390(1) need not withhold an amount under that subsection from the later payment mentioned in that subsection if:

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

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(a) the later payment arises because of the operation of section 12A-205 (deemed payments); or

(b) the later payment is a *post-AMMA actual payment in respect of a payment of a kind mentioned in paragraph (a).

Note: Either or both of the trustee of the AMIT concerned and the custodian may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(3) The entity mentioned in subsection 12-390(4) need not withhold an amount under that subsection from the payment mentioned in that subsection if:

(a) the payment arises because of the operation of section 12A-205 (deemed payments); or

(b) the payment is a *post-AMMA actual payment in respect of a payment of a kind mentioned in paragraph (a).

Note: The entity may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(4) Disregard this section for the purposes of section 12-395.

12A-110 Meaning of *fund payment*—AMITs

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *fund payments that the trustee of the *AMIT makes in relation to the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the sum of the following amounts:

(a) total of the *determined member components for the *AMIT for the income year of a character relating to assessable income, disregarding determined member components (the ***excluded components***) of any of the following characters:

(i) the character of a *discount capital gain from a *CGT asset that is *not* *taxable Australian property;

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

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(ii) the character of a *capital gain (other than a discount capital gain) from a CGT asset that is *not* taxable Australian property;

(iii) the character of a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;

(iv) the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;

(v) the character of a *royalty that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;

(vi) the character of *ordinary income, or *statutory income, from a source *other than* an *Australian source;

(vii) if a legislative instrument under subsection (4) specifies a character—that character;

(b) the total of each *capital loss of the AMIT from a *CGT event that:

(i) happened in the income year to a CGT asset that is not taxable Australian property; and

(ii) has been applied against a capital gain from a CGT event that happened in relation to a CGT asset that is taxable Australian property;

but only to the extent that each such capital loss has been so applied in the income year;

(c) the total of each amount to which subsection (3A) applies in relation to the income year.

(3A) If:

(a) the AMIT has a *net capital loss for an earlier income year; and

(b) one or more of the *capital losses the trust made during that earlier income year were from *CGT events that happened in

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

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relation to *CGT assets that were not *taxable Australian property; and

(c) in relation to the income year mentioned in paragraph (3)(c), some or all of the net capital loss is applied against a *capital gain from a CGT event that happens in relation to a CGT asset that is taxable Australian property;

this subsection applies, for the income year mentioned in paragraph (3)(c), to an amount equal to so much of the net capital loss that is so applied as related to capital losses mentioned in paragraph (b) of this subsection.

(4) The Commissioner may, by legislative instrument, specify one or more characters for the purposes of subparagraph (3)(a)(vii).

(5) A payment (the ***actual or deemed payment***) that the trustee of a trust makes in relation to an income year is a ***fund payment*** in relation to that year. However, the amount of the fund payment is worked out under the following method statement, and may be:

(a) the amount of the actual or deemed payment; or

(b) the amount of the actual or deemed payment, increased or reduced as a result of the method statement.

Note: The payment by the trustee may be an actual payment, or a deemed payment under section 12A-205.

Method statement

Step 1. Reduce the actual or deemed payment by so much of it that is attributable to the excluded components.

Step 2. Work out what it is reasonable to expect will be the amount mentioned in subsection (3).

Do so 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.

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

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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 (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.

(6) The amount mentioned in subsection (3) and the expected amounts of any later *fund payments are to be worked out on the basis of the trustee's knowledge when the payment is made.

(7) Subsection (6) does not apply if the payment is a payment arising because of the operation of section 12A-205 (deemed payments).

(8) However, the payment is not a ***fund payment*** in relation to the income year if:
  (a) the payment (the ***actual payment***) is a *post-AMMA actual payment in respect of another payment; and
  (b) the other payment arises because of the operation of section 12A-205; and
  (c) the other payment is a fund payment.

(9) An amount is also 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 years) allowed by the Commissioner.

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

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(10) The Commissioner may allow a longer period as mentioned in paragraph (9)(c) only if the Commissioner is of the opinion that:

(a) if the other payment arises at a time because of the operation of section 12A-205 (deemed payments)—the *AMIT complied with subsection 276-455(1) of the *Income Tax Assessment Act 1997* in respect of the income year (requirement to give AMMA statements within 3 months); or

(b) otherwise—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.

Subdivision 12A-C—Deemed payments by AMITs etc.

Guide to Subdivision 12A-C

12A-200 What this Subdivision is about

When a withholding MIT that is an AMIT gives a member an AMMA statement, the trustee is deemed to have made a payment to the member.

The payment is generally the sum of the determined member components reflected in the statement that are of a character relating to assessable income, reduced by any previous actual payments related to those components.

The deemed payment can flow through one or more custodians, giving rise to subsequent deemed payments.

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Operative provisions

12A-205 Issue of AMMA statement etc. deemed to be payment
12A-210 ***Post-AMMA actual payment*** and ***pre-AMMA actual payment*** in respect of deemed payment

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

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12A-215 AMIT payment to the Commissioner in respect of deemed payments to offshore entities etc.
12A-220 Custodian payment to the Commissioner in respect of deemed payments to offshore entities etc.

Operative provisions

12A-205 Issue of AMMA statement etc. deemed to be payment

(1) This section applies if:

(a) an entity (the ***first recipient***) is or was a *member of a *withholding MIT in respect of an income year; and

(b) the withholding MIT is an *AMIT for the income year; and

(c) the AMIT gives the first recipient an *AMMA statement for the income year.

(2) For the purposes of this Part, Subdivision 840-M of the *Income Tax Assessment Act 1997* and Division 11A of Part III of the *Income Tax Assessment Act 1936*:

(a) treat the trustee of the *AMIT as having made a payment (the ***first deemed payment***) of an amount to the first recipient at the time the AMIT gave the first recipient the *AMMA statement; and

(b) treat the amount of the first deemed payment as being the amount worked out as follows:

(i) first, work out the total of all the *determined member components of all the *members of the AMIT of a character relating to assessable income for the income year;

(ii) next, identify each of the *pre-AMMA actual payments (if any) made to those members in respect of all payments by the trustee to those members that arise from the operation of paragraph (a);

(iii) next, identify every *AMIT DIR payment (if any) and each *fund payment (if any) that arises from each such pre-AMMA actual payment;

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

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(iv) next, reduce the result of subparagraph (i) by the sum of each such AMIT DIR payment and fund payment;

(v) next, work out how much of the result of subparagraph (iv) is referable to the first recipient.

(3) Also, for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, treat the first recipient as having derived the first deemed payment just before the end of the income year to which the *AMMA statement relates.

(4) Subsection (5) applies if:

(a) the first recipient is a *custodian; and

(b) another entity (the ***subsequent recipient***):

(i) starts to have, at a time, an entitlement to an amount that is reasonably attributable to all or part of the first deemed payment; or

(ii) would start to have, at a time, such an entitlement if the first deemed payment were an actual payment of an amount.

(5) For the purposes of this Part, Subdivision 840-M of the *Income Tax Assessment Act 1997* and Division 11A of Part III of the *Income Tax Assessment Act 1936*:

(a) treat the first recipient as having made a payment (the ***subsequent deemed payment***) of an amount to the subsequent recipient at that time; and

(b) treat the amount of the subsequent deemed payment as being the amount of the entitlement mentioned in subparagraph (4)(b)(i) or (ii); and

(c) treat the amount of the subsequent deemed payment as being attributable to the first deemed payment.

(6) Also, for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, treat the subsequent recipient as having derived the subsequent deemed payment at the time the subsequent deemed payment arises.

(7) If:

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

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(a) an entity is a subsequent recipient mentioned in subsection (4) (including as a result of a previous operation of this subsection); and

(b) subsection (5) applies with the result that a payment is treated as having been made to the entity; and

(c) the entity is a *custodian;

apply subsections (4), (5) and (6) again as if the entity were the first recipient mentioned in subsection (4).

Note: This means that the entity is treated under subsection (5) as having made a payment to another entity if the other entity has (or would have) an entitlement as mentioned in paragraph (4)(b).

12A-210 *Post-AMMA actual payment* and *pre-AMMA actual payment* in respect of deemed payment

(1) A payment that does *not* arise because of the operation of section 12A-205 is a ***post-AMMA actual payment*** in respect of a payment (the ***deemed payment***) that *does* arise because of the operation of that section if:

(a) the payment and the deemed payment are both attributable to the same *member component for the *AMIT mentioned in that section; and

(b) the actual payment is made *at or after* the time the deemed payment arises.

(2) A payment that does *not* arise because of the operation of section 12A-205 is a ***pre-AMMA actual payment*** in respect of a payment (the ***deemed payment***) that *does* arise because of the operation of that section if:

(a) the payment and the deemed payment are both attributable to the same *member component for the *AMIT mentioned in that section; and

(b) the actual payment is made *before* the time the deemed payment arises.

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

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12A-215 AMIT payment to the Commissioner in respect of deemed payments to offshore entities etc.

(1) A trustee of a trust that is an *AMIT for an income year must pay an amount to the Commissioner if:

(b) the trustee makes a payment (the ***deemed payment***) that arises because of the operation of section 12A-205; and

(c) the payment is made to an entity (the ***recipient***) that is:

(i) if the payment is a *fund payment and the trust is a *withholding MIT in relation to the income year—an entity covered by section 12-410; or

(ii) if the payment is an *AMIT DIR payment made in relation to the income year—an entity that is not an Australian resident.

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 subparagraph (c)(i) or (ii), 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 sections 12-395 and 12A-15.

(2) The amount that the trustee must pay is equal to the amount that the trustee would, if the assumptions in subsection (3) were made, have had to withhold under:

(a) if the deemed payment is a *fund payment—section 12-385; or

(b) if the deemed payment is an *AMIT DIR payment—section 12-210, 12-245 or 12-280.

(3) The assumptions are that:

(a) the deemed payment had *not* arisen because of the operation of section 12A-205; and

(b) the deemed payment had instead been an actual payment; and

(c) if the deemed payment is an *AMIT DIR payment:

(i) where it corresponds to the character of a dividend (as defined in Division 11A of Part III of the *Income Tax*

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

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Assessment Act 1936) that is subject to a requirement to withhold under Subdivision 12-F—the trust had been a company, and it had paid it as a dividend; or

(ii) where it corresponds to the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—it were the payment of interest; or

(iii) where it corresponds to the character of a *royalty that is subject to a requirement to withhold under Subdivision 12-F—it were the payment of a royalty; and

(d) if the deemed payment is an AMIT DIR payment—the condition in either or both of paragraphs 12-210(a) or (b), of paragraphs 12-245(a) or (b) or of paragraphs 12-280(a) or (b) (as the case requires) were satisfied.

(4) The trustee may recover from the recipient as a debt an amount that the trustee has paid to the Commissioner under subsection (1).

(5) The trustee is entitled to set off an amount that the trustee can recover from the recipient under subsection (4) against debts due by the trustee to the recipient.

12A-220 Custodian payment to the Commissioner in respect of deemed payments to offshore entities etc.

(1) A *custodian must pay an amount to the Commissioner if:

(a) the trustee of a trust that was an *AMIT for an income year and was a *withholding MIT in relation to the income year made a payment (the ***first deemed payment***) that:

(i) arose because of the operation of section 12A-205; and

(ii) was a *fund payment or an *AMIT DIR payment; and

(b) the custodian makes a payment (the ***subsequent deemed payment***) that arises because of the operation of section 12A-205; and

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

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(c) the first deemed payment gave rise to the subsequent deemed payment, because of one or more operations of section 12A-205; and

(d) the subsequent deemed payment or part of it (the ***covered part***) was covered by a notice or information under:

(i) if the first deemed payment was a fund payment—section 12-395; or

(ii) if the first deemed payment was an AMIT DIR payment—section 12A-15; and

(e) the subsequent deemed payment is made to an entity (the ***recipient***) that is:

(i) if the first deemed payment was a fund payment—covered by section 12-410; or

(ii) if the first deemed payment was an AMIT DIR payment—*not* an Australian resident.

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 subparagraph (e)(i) or (ii), 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 sections 12-395 and 12A-15.

(2) The amount that the *custodian must pay is the amount that the custodian would, if the assumptions in subsection (3) were made, have had to withhold under:

(a) if the first deemed payment was a *fund payment—subsection 12-390(1); or

(b) if the first deemed payment was an *AMIT DIR payment—section 12-210, 12-245 or 12-280.

(3) The assumptions are that:

(a) the subsequent deemed payment had *not* arisen because of the operation of section 12A-205; and

(b) the subsequent deemed payment had instead been an actual payment; and

(c) if the first deemed payment was an *AMIT DIR payment:

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

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(i) where the first deemed payment corresponded to the character of a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—the *custodian had been a company, and it had paid the subsequent deemed payment as a dividend; or

(ii) where the first deemed payment corresponded to the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—the subsequent deemed payment were the payment of interest; or

(iii) where the first deemed payment corresponded to the character of a *royalty that is subject to a requirement to withhold under Subdivision 12-F—the subsequent deemed payment were the payment of a royalty; and

(d) if the first deemed payment was an AMIT DIR payment—the condition in either or both of paragraphs 12-210(a) or (b), of paragraphs 12-245(a) or (b) or of paragraphs 12-280(a) or (b) (as the case requires) were satisfied.

(4) The *custodian may recover from the recipient as a debt an amount that the custodian has paid to the Commissioner under subsection (1).

(5) The *custodian is entitled to set off an amount that the custodian can recover from the recipient under subsection (4) against debts due by the custodian to the recipient.

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

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Division 13—Alienated personal services payments

Table of sections

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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:

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

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(a) it receives an *alienated personal services payment that relates to an individual's personal services income; and

(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.

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

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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.

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:

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

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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:

(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*.

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

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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.

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

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

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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.

(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*.

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Division 14—Benefits, gains and taxable supplies for which amounts must be paid to the Commissioner

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14-60 Investment body may recover TFN withholding tax from investor
14-65 Application of rules in Division 18
14-75 Overpayment of TFN withholding tax
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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

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

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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 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

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

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(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;

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.

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

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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:

(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).

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

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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:

(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);

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

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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.

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.

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

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

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14-160 Employer may give individual tax file numbers to provider
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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 *Income Tax Assessment Act 1997*

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:

(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 sections 83A-33 and 83A-35 of the *Income Tax Assessment Act 1997* (about reducing the amount included in the individual's assessable income).

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

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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.

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.

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

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(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:

(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).

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

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Subdivision 14-D—Capital proceeds involving foreign residents and taxable Australian property

Table of sections

14-200 Certain acquisitions of taxable Australian property from foreign residents
14-205 Effect of look-through earnout rights
14-210 Whether an entity is a relevant foreign resident
14-215 Excluded transactions
14-220 Commissioner clearance certificates
14-225 Entity declarations
14-230 Administrative penalties for false or misleading declarations
14-235 Varying amounts to be paid to the Commissioner

14-200 Certain acquisitions of taxable Australian property from foreign residents

(1) You must pay to the Commissioner an amount if:

(a) you become the owner of a *CGT asset as a result of *acquiring it from one or more entities under one or more transactions; and

(b) subsection 14-210(1) (about foreign residents) applies to at least one of those entities at the time one of those transactions is entered into; and

(c) at that time, the CGT asset is:

(i) *taxable Australian real property; or

(ii) an *indirect Australian real property interest; or

(iii) an option or right to acquire such property or such an interest;

unless a transaction referred to in paragraph (a) is excluded under section 14-215.

Note: You must pay the amount on account of income tax possibly payable by the entities on their capital proceeds resulting from your acquisition of the CGT asset.

(2) You must pay the amount to the Commissioner on or before the day you became the *CGT asset's owner.

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

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Note: There are penalties for failing to pay the amount (see Division 16).

(3) The amount to be paid to the Commissioner is:

(a) unless paragraph (b) applies—an amount equal to 12.5% of:

(i) the first element of the *CGT asset's *cost base just after the *acquisition, ignoring paragraphs 112-36(1)(b) and (c) of the *Income Tax Assessment Act 1997* (about the effect of look-through earnout rights); less

(ii) if the acquisition is the result of you exercising an option—any payment you made, and the *market value of any property you gave, for the option (or to renew or extend it); or

(b) the varied amount applying under section 14-235.

(4) This section does not apply if the amount that would otherwise be payable is nil.

14-205 Effect of look-through earnout rights

Acquisitions of taxable Australian property from foreign residents

(1) You must pay to the Commissioner an amount if:

(a) you are required under section 14-200 to pay an amount to the Commissioner in relation to your *acquisition of a *CGT asset; and

(b) under a *look-through earnout right relating to the CGT asset and the acquisition, you provide a *financial benefit to one or more entities; and

(c) subsection 14-210(1) (about foreign residents) would apply to at least one of those entities at the time you provide the financial benefit if section 14-210 were modified as described in subsection (2) of this section; and

(d) an amount is not already required to be withheld from a *withholding payment relating to the financial benefit.

Note 1: To work out the amount payable, see subsection (4).

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

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Note 2: You must pay the amount on account of income tax possibly payable by the entities on their increased capital proceeds from receiving the financial benefit.

Modifications of the relevant foreign residents test

(2) The modifications of section 14-210 are as follows:

Modifications to section 14-210 for the purposes of this section		
	Column 1	**Column 2**
Item	**For a reference in that section to:**	**substitute a reference to:**
1	transaction is entered into	*financial benefit is provided
2	transaction (other than a reference covered by item 1)	*financial benefit
3	14-200	14-205

When you must pay the amount

(3) You must pay the amount to the Commissioner on or before the day you provide the *financial benefit.

Note: There are penalties for failing to pay the amount (see Division 16).

(4) The amount to be paid to the Commissioner is:
(a) unless paragraph (b) applies—an amount equal to 12.5% of the *market value of the *financial benefit; or
(b) the varied amount applying under section 14-235.

14-210 Whether an entity is a relevant foreign resident

Is the entity a foreign resident at the time of the transaction?

(1) This subsection applies to an entity at the time a transaction is entered into if, at that time:
(a) you know that the entity is a foreign resident; or
(b) you reasonably believe that the entity is a foreign resident; or

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

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(c) you do not reasonably 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 your possession, or is kept or maintained on your behalf, about the transaction); or

(ii) you are authorised to provide a related financial benefit to a place outside Australia (whether to the entity or to anyone else); or

(d) the entity has a connection outside Australia of a kind specified in the regulations; or

(e) the *CGT asset to which the transaction relates is:

(i) *taxable Australian real property; or

(ii) an *indirect Australian real property interest, the holding of which causes a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) to arise.

Note: This subsection is relevant to whether you must pay an amount to the Commissioner under section 14-200.

Exception—the entity gives you a clearance certificate

(2) Despite subsection (1), that subsection does not apply to the entity in relation to the transaction if:

(a) before you pay the Commissioner under section 14-200 in relation to the *CGT asset to which the transaction relates, the entity gives you a certificate about the entity that:

(i) was issued under subsection 14-220(1); and

(ii) is for a period covering the time the transaction is entered into; and

(b) the CGT asset is of a kind described in paragraph (1)(e) of this section.

Exception—the entity gives you a residency or interests declaration

(3) Despite subsection (1), that subsection does not apply to the entity in relation to the transaction if:

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

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(a) before you pay the Commissioner under section 14-200 in relation to the *CGT asset to which the transaction relates, the entity gives you a declaration that:
  (i) is about the entity or the CGT asset; and
  (ii) was given under subsection 14-225(1) or (2); and
  (iii) is for a period covering the time the transaction is entered into; and
(b) when you are given the declaration, you do not know the declaration to be false; and
(c) for a declaration given under subsection 14-225(1)—the CGT asset is not of a kind described in paragraph (1)(e) of this section.

14-215 Excluded transactions

Kinds of excluded transactions

(1) A transaction that results in the *acquisition of a *CGT asset is excluded under this section if:
  (a) just after the transaction, the CGT asset:
    (i) is *taxable Australian real property; or
    (ii) is an *indirect Australian real property interest, the holding of which causes a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) to arise;
  and the *market value of the CGT asset is less than $750,000; or
  (b) the transaction is on an *approved stock exchange; or
  (c) the transaction is conducted using a crossing system (within the meaning of the *market integrity rules); or
  (d) an amount is already required to be withheld (other than under Subdivision 14-E) from a *withholding payment relating to the transaction; or
  (e) subsection 26BC(3) of the *Income Tax Assessment Act 1936* (about securities lending arrangements) applies in relation to

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

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the transaction as a result of the transaction being covered by subparagraph (a)(ii) of that subsection; or

(f) any of the entities to which subsection 14-210(1) (about foreign residents) applies at the time of the transaction:
  (i) is a company for which any of the conditions in paragraph 161A(1)(a) of the *Corporations Act 2001* (about insolvency and external administration) is satisfied; or
  (ii) is, under a *foreign law, in the same or a similar position to a company covered by subparagraph (i); or

(g) the transaction arises from any of the following:
  (i) the administration of the estate of a bankrupt;
  (ii) a composition or scheme of arrangement accepted under Division 6 of Part IV of the *Bankruptcy Act 1966*;
  (iii) a debt agreement under Part IX of that Act;
  (iv) a personal insolvency agreement under Part X of that Act;
  (v) circumstances that are, under a foreign law, the same or similar to those in any of the above subparagraphs.

Note: This section is relevant to whether you must pay an amount to the Commissioner under section 14-200.

Dealing with joint ownership etc. of certain CGT assets

(2) For the purposes of paragraph (1)(a), if:
  (a) the *CGT asset is an interest in real property, or an interest in a *mining, quarrying or prospecting right; and
  (b) just after the transaction, there are one or more similar interests in the same real property or right;

treat the *market value of the CGT asset just after the transaction as including the market value of each of those similar interests.

(3) Without limiting subsection (2):
  (a) treat an interest as being similar to the *CGT asset if it is specified in regulations made for the purposes of this paragraph in relation to CGT assets of that kind; and

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

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(b) treat an interest as not being similar to the CGT asset if it is specified in regulations made for the purposes of this paragraph in relation to CGT assets of that kind.

14-220 Commissioner clearance certificates

(1) The Commissioner may certify that, based on information before the Commissioner, there is nothing to suggest that an entity is or will be a foreign resident during a specified period.

Note: Such a certificate could result in you not being required to pay an amount under this Subdivision (see subsection 14-210(2)).

(2) A certificate under subsection (1):
(a) may be issued on application to the Commissioner in the *approved form; and
(b) is to be in writing; and
(c) applies only for the purposes of this Subdivision.

(3) For the purposes of (but without limiting) paragraph 388-50(1)(c), the Commissioner may require an application for a certificate under subsection (1) to state:
(a) whether the applicant holds or will hold specified *CGT assets on behalf of another entity during any part of the period for which the certificate is sought; and
(b) whether the applicant knows or reasonably believes that the other entity is or will be a foreign resident during that period.

Note: Section 388-50 sets out when an application is in the approved form.

(4) A certificate issued under subsection (1) is not a legislative instrument.

14-225 Entity declarations

Declaration that an entity is an Australian resident

(1) An entity may, in writing, declare that, for a specified period, the entity is and will be an Australian resident.

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

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Note: Such a declaration could result in you not being required to pay an amount under this Subdivision (see subsection 14-210(3)).

Declaration that asset not an indirect Australian real property interest

(2) An entity may, in writing, declare that, for a specified period, specified *CGT assets are *membership interests but not *indirect Australian real property interests.

Note: Such a declaration could result in you not being required to pay an amount under this Subdivision (see subsection 14-210(3)).

Limit on the periods for which declarations have effect

(3) A period specified in a declaration under this section is of no effect to the extent that it includes days later than 6 months after the day the declaration is made.

Declarations are not legislative instruments

(4) A declaration under this section is not a legislative instrument.

14-230 Administrative penalties for false or misleading declarations

Knowingly making false or misleading declarations

(1) You are liable to pay the Commissioner a penalty of 120 penalty units if:

(a) you make a statement; and

(b) the statement is, or purports to be, a declaration under section 14-225; and

(c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it; and

(d) you know, at the time of making the statement, that it is so false or misleading.

Note: Division 298 contains machinery provisions for administrative penalties.

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

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Recklessly making false or misleading declarations

(2) You are liable to pay the Commissioner a penalty of 80 penalty units if:

(a) you make a statement; and

(b) the statement is, or purports to be, a declaration under section 14-225; and

(c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it; and

(d) you were reckless in connection with the making of the statement.

Note: Division 298 contains machinery provisions for administrative penalties.

Not taking reasonable care in making declarations

(3) You are liable to pay the Commissioner a penalty of 40 penalty units if:

(a) you make a statement; and

(b) the statement is, or purports to be, a declaration under section 14-225; and

(c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it; and

(d) you did not take reasonable care in connection with the making of the statement.

Note: Division 298 contains machinery provisions for administrative penalties.

14-235 Varying amounts to be paid to the Commissioner

Policies relevant to varying amounts

(1) In exercising a power under this section to vary an amount, the Commissioner must have regard to the need to protect a creditor's right to recover a debt.

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

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Varying particular amounts

(2) The Commissioner may, in writing, vary a particular amount payable by you to the Commissioner under this Subdivision. The variation takes effect when you become aware of it.

Note: Decisions to vary, or not to vary, are reviewable (see section 20-80).

(3) Any of the following entities may apply to the Commissioner in the *approved form for a variation under subsection (2):

(a) you;

(b) an entity from which you *acquire, or could acquire, the *CGT asset;

(c) an entity that is owed a debt by an entity covered by paragraph (b).

(4) A variation made under subsection (2) is not a legislative instrument.

Varying classes of amounts

(5) The Commissioner may, by legislative instrument, vary classes of amounts payable to the Commissioner under this Subdivision.

Amounts may be reduced to nil

(6) The Commissioner's power under subsection (2) or (5) to vary an amount includes the power to reduce the amount to nil.

Subdivision 14-E—GST payable on taxable supplies of certain real property

Table of sections

14-250 Recipients of certain taxable supplies of real property must pay amounts to Commissioner
14-255 Notification by suppliers of residential premises etc.

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

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14-250 Recipients of certain taxable supplies of real property must pay amounts to Commissioner

Liability to pay an amount

(1) You must pay to the Commissioner an amount if:

(a) you are the recipient (within the meaning of the *GST Act) of a *taxable supply that is, or includes, a *supply to which subsection (2) applies; and

(b) in a case where the supply is a supply of *potential residential land—either:

(i) you are not registered (within the meaning of that Act); or

(ii) you do not acquire the thing supplied for a *creditable purpose.

(2) This subsection applies to a *supply, by way of sale or long-term lease (within the meaning of the *GST Act), of:

(a) *new residential premises that:

(i) have not been created through *substantial renovations of a building; and

(ii) are not *commercial residential premises; or

(b) *potential residential land that:

(i) is included in a *property subdivision plan; and

(ii) does not contain any building that is in use for a commercial purpose;

other than a supply that is of a kind determined by the Commissioner under subsection (3).

(3) The Commissioner may, by legislative instrument, determine that subsection (2) does not apply to a kind of *supply specified in the determination.

When the amount must be paid

(4) You must pay the amount on or before:

(a) the day on which:

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

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(i) any of the *consideration for the *supply (other than consideration provided as a deposit) is first provided; or

(ii) if the supplier is your *associate, and the supply is without consideration—the supply is made; or

(b) if a determination under subsection (5) applies—the day provided under that determination.

(5) The Commissioner may determine, by legislative instrument, circumstances in which amounts under this section are to be paid on or before the day provided under the determination. The determination may provide for amounts to be paid in instalments.

The amount to be paid

(6) The amount to be paid to the Commissioner is an amount equal to:

(a) if the *margin scheme applies to the *supply:

(i) the percentage, of the amount provided under subsection (7), determined by the Minister under subsection (8); or

(ii) if there is no such determination—7% of the amount provided under subsection (7); or

(b) otherwise—$^{1}/_{11}$ of the amount provided under subsection (7).

(7) For the purposes of paragraphs (6)(a) and (b), the amount is:

(a) if the contract for the *supply specifies an amount (the ***contract price***) that is the *price for the supply, subject to normal adjustments that apply on completion of transactions of that kind—that contract price; or

(b) otherwise—the *price for the supply.

(8) The Minister may, by legislative instrument, determine a percentage exceeding 7%, but not exceeding 9%, for the purposes of subparagraph (6)(a)(i).

(9) Despite subsection (6), if:

(a) the supplier is your *associate; and

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

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(b) the *supply is without *consideration or is for consideration that is less than the *GST inclusive market value;

the amount to be paid to the Commissioner is an amount equal to 10% of the *GST exclusive market value (within the meaning of the *GST Act) of the supply.

(10) Despite subsections (6) and (9), if:

(a) the *supply does not consist solely of one or more supplies to which subsection (2) applies; and

(b) it is practicable to ascertain, at the time any of the *consideration for the supply (other than consideration provided as a deposit) is first provided, the amount (the ***reduced amount***) of the amount provided under subsection (6) or (9) that relates to supplies to which subsection (2) applies;

the amount provided under subsection (6) or (9) is taken (other than for the purposes of this subsection) to be the reduced amount.

Multiple recipients

(11) If there is more than one recipient (within the meaning of the *GST Act) of the *supply (the ***original supply***):

(a) treat each recipient as being the recipient of a separate supply; and

(b) treat the amount under subsection (6), (9) or (10) (as the case requires) for such a separate supply as being the same proportion of that amount for the original supply, as the proportion of the original supply that is constituted by that separate supply.

Treat recipients who are joint tenants as a single recipient for the purposes of this subsection.

14-255 Notification by suppliers of residential premises etc.

(1) You must not make a *supply, by way of sale or long-term lease (within the meaning of the *GST Act), of *residential premises or of *potential residential land to another entity unless, before

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

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making the supply, you have given to the other entity a written notice stating:

(a) whether the other entity will be required to make a payment under section 14-250 in relation to the supply; and

(b) if the other entity will be required to make such a payment in relation to the supply:

(i) the name and *ABN of the entity that is liable to pay the *GST on the supply; and

(ii) the amount that the other entity will be required to pay to the Commissioner under section 14-250 in relation to the supply; and

(iii) when the other entity will be required to pay that amount; and

(iv) if some or all of the *consideration for the supply will not be expressed as an amount of *money—the *GST inclusive market value of so much of the consideration as will not be expressed as an amount of money; and

(v) such other matters as are specified in the regulations.

(2) However, subsection (1):

(a) does not apply to a supply of *commercial residential premises; and

(b) does not apply to a supply of *potential residential land to another entity if the other entity:

(i) is registered (within the meaning of the *GST Act); and

(ii) acquires the land for a *creditable purpose.

(3) To avoid doubt, a failure to comply with subsection (1) does not affect the other entity's obligation to make a payment under section 14-250.

Strict liability offence

(4) You must not fail to give a notice required under this section.

Penalty: 100 penalty units.

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

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(5) An offence against subsection (4) is a strict liability offence.

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

Administrative penalty

(6) You are liable to pay the Commissioner a penalty of 100 penalty units if you fail to give a notice required under this section.

Note: Division 298 contains machinery provisions for administrative penalties.

(7) However, you are not liable to a penalty for failing to meet the requirements of paragraph (1)(b) in relation to a supply if, at the time you gave the notice, you reasonably believed that you were not required to meet those requirements in relation to that supply.

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

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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

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

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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 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, 12-FC, 12-G (except one covered by section 12-325) or 12-J 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).

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

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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 withholding MIT income.

(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), (caa), (cb), (cc), (cd), (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.

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

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(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:
  (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;
  (caa) the percentage referred to in the definition of ***applicable percentage of repayment income*** in subsection 23EA(1) (about repayments of accumulated VETSL debts) of the *VET*

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

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Student Loans Act 2016 for any financial year starting on or after 1 July 2019;

(cb) the percentage referred to in the definition of ***applicable percentage of repayment income*** in subsection 1061ZVHA(1) (about repayments of accumulated SSL debt) of the *Social Security Act 1991* for any financial year starting after the commencement of this paragraph;

(cc) the percentage referred to in the definition of ***applicable percentage of HELP repayment income*** in subsection 10F(1) (about repayments of accumulated ABSTUDY SSL debt) of the *Student Assistance Act 1973* for any financial year starting after the commencement of this paragraph;

(cd) the percentage referred to in the definition of ***applicable percentage of repayment income*** in subsection 46(1) (about repayments of accumulated TSL debt) of the *Trade Support Loans Act 2014* for any financial year starting on or after 1 July 2014;

(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 *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;

(fa) in relation to withholding payments that are *working holiday taxable income—whether an entity is registered under section 16-147;

(g) any other prescribed matter.

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

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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 *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 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 matter relating to the individual's income tax or other liability referred to in paragraph 11-1(b), (ca), (caa), (cb), (cc), (cd), (da) or (db) taken into account by the entity in working out the *amount required to be withheld from the payment;

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

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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

(b) if the individual has given another entity a declaration on any 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 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:

(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;

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

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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*.

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Division 16—Payer's obligations and rights

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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 12A, 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
16-7 Treat entity obliged to pay under Subdivision 12A-C as having withheld amount under Division 12
16-20 Payer discharged from liability to recipient for amount withheld

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

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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
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.

16-7 Treat entity obliged to pay under Subdivision 12A-C as having withheld amount under Division 12

For the purposes of this Division:

(a) if an entity must pay an amount to the Commissioner under Subdivision 12A-C, treat the entity as being obliged to withhold the amount under Division 12; and

(b) if an entity has paid an amount to the Commissioner under Subdivision 12A-C, treat the entity as having withheld the amount under Division 12.

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

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

(1) An entity that:

(a) withholds an amount as required by Division 12; or

(b) pays to the Commissioner an amount as required by Division 12A, 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.

(2) An entity is discharged from all liability to pay so much of the total amount payable to *acquire a *CGT asset as is equal to any amount the entity pays to the Commissioner under Subdivision 14-D in relation to the acquisition.

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.

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 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D.

Penalty: 10 penalty units.

Note 1: 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*.

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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 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D;

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

(1) 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 12A, 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).

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

(2) Subsection (1) does not apply in relation to a failure to pay an amount to the Commissioner as required by Subdivision 14-E if:

(a) the amount relates to a *taxable supply of *new residential premises (other than *commercial residential premises); and

(b) the entity was given a notice under section 14-255:

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

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(i) stating that the premises are not new residential premises; or

(ii) indicating that the entity will not be required to pay an amount to the Commissioner under section 14-250 in relation to the supply; and

(c) at the time *consideration for the supply (other than consideration provided as a deposit) is first provided, there was nothing in:

(i) the contract for the supply; or

(ii) any other circumstances relating to the supply;

that made it unreasonable for the entity to believe that the statement or indication was correct.

(3) Subsection (1) does not apply in relation to a failure to pay an amount to the Commissioner in relation to a *taxable supply as required by Subdivision 14-E if:

(a) the entity required to pay the amount in relation to the supply gives the supplier a bank cheque on or before the day *consideration for the supply (other than consideration provided as a deposit) is first provided; and

(b) the bank cheque is for the amount the entity is required to pay to the Commissioner, and is payable to the Commissioner.

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.

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

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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).

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

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

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(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

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When and how to pay amounts to the Commissioner

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16-75 When amounts must be paid to Commissioner
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16-85 How amounts are to be paid

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16-95 Meaning of *large withholder*
16-100 Meaning of *medium withholder*
16-105 Meaning of *small withholder*
16-110 Commissioner may vary withholder's status downwards
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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.

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

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(3) An entity that must pay an amount to the Commissioner under Subdivision 14-B, 14-C, 14-D or 14-E must do so in accordance with sections 16-80 and 16-85.

Note: For provisions about the 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

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:

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

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(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
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

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

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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) or (3) 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

(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:

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

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(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 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.

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

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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

(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:

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

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(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.

(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.

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

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(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

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*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
  (aaa) Division 12A (about deemed payments by AMITs); or
  (aa) Division 13 (about payments in respect of alienated personal services payments); or
  (b) Subdivision 14-A, 14-B, 14-C or 14-D (about payments in respect of non-cash benefits or capital proceeds);

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 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D.

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.

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

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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

(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***.

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

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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

(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 or *capital proceeds 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.

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

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Registration of employers of working holiday makers

16-146 Employers of working holiday makers must be registered

(1) An entity must apply to the Commissioner to register under section 16-147 if:

(a) the entity must pay an amount to the Commissioner under subsection 16-70(1) from salary, wages, commission, bonuses or allowances it pays to an individual as the individual's *working holiday taxable income; and

(b) in a case where a period has been determined under subsection 16-148(5) during which the entity cannot apply under this section—the period has ended.

(2) The entity must apply in the *approved form by the day on which the entity is first required to withhold an amount under Division 12 from salary, wages, commission, bonuses or allowances it pays to an individual as the individual's *working holiday taxable income.

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

(4) An entity that contravenes this section is liable to an administrative 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.

(5) This section does not affect an obligation that an entity has under section 16-140.

16-147 Registering employers of working holiday makers

(1) The Commissioner must register an entity under this section if, and only if, the entity:

(a) has applied under section 16-146 for registration; and

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

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(b) has made a declaration to the Commissioner, in the *approved form, that states that the entity:

(i) has a genuine business requirement to employ one or more *working holiday makers; and

(ii) agrees to comply with the *Fair Work Act 2009* in relation to its employment of any individual who is a working holiday maker; and

(iii) agrees to check that any individual it employs as a working holiday maker holds a visa that causes that person to be a working holiday maker; and

(c) has given to the Commissioner, in the approved form, information relating to its employment, or proposed employment, of working holiday makers.

(2) Subparagraph (1)(b)(i) does not apply if the entity is not carrying on a *business.

(3) The registration takes effect on the day determined by the Commissioner.

Notification of the Commissioner's decision

(4) The Commissioner must notify the entity of:

(a) the Commissioner's decision on the application; and

(b) if the Commissioner decides to register the entity—the day on which the registration takes effect;

within 30 days after the making of the application.

Note: The decision on the application is reviewable (see section 20-80).

(5) If the Commissioner decides to register the entity, the *Australian Business Registrar must enter in the *Australian Business Register a statement that the entity is registered under this section. The statement must specify the day on which the registration takes effect.

(7) A failure to comply with subsection (4) or (5) does not affect the validity of the Commissioner's decision.

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

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Basis of registration

(8) A registration under this section is granted on the basis that:
  (a) the registration may be cancelled under section 16-148; and
  (b) the registration may be cancelled, suspended, varied or made subject to conditions by or under later legislation; and
  (c) no compensation is payable if the registration is cancelled, suspended, varied or made subject to conditions as mentioned in any of the above paragraphs.

16-148 Cancelling the registration of employers of working holiday makers

(1) The Commissioner may cancel an entity's registration under section 16-147 if:
  (a) the entity advises the Commissioner, in the *approved form, that the entity does not employ, and does not intend to employ, any individual who is a *working holiday maker; or
  (b) the Commissioner is satisfied that:
    (i) the entity; or
    (ii) if the entity is a partnership—any of the partners; or
    (iii) if the entity is a company—any director, shareholder or employee of the company who participates in the management or control of the company; or
    (iv) if the entity is a trustee of a trust—any appointer of trustees of the trust, or any person who participates in the control of the trust;

  is not a fit and proper person.

(2) The cancellation takes effect on the day determined by the Commissioner. The day must not be earlier than the day on which notice of the cancellation is given under subsection (6).

(3) If the Commissioner is considering whether the entity, or another person mentioned in subparagraph (1)(b)(ii), (iii) or (iv), is a fit and proper person, the Commissioner must give the entity a notice that:

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

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(a) informs the entity accordingly; and
(b) invites the entity to make submissions to the Commissioner on the matter within 28 days after the Commissioner gives the notice.

(4) Without limiting the matters to which the Commissioner may have regard in considering whether the entity, or another person mentioned in subparagraph (1)(b)(ii), (iii) or (iv), is a fit and proper person, the Commissioner must have regard to:
(a) whether a court has made a finding, in proceedings commenced by the Fair Work Ombudsman, that the entity has contravened the *Fair Work Act 2009*; and
(b) whether the entity has failed to withhold amounts as required by Division 12; and
(c) any relevant information the entity has provided in submissions to the Commissioner within the period specified in paragraph (3)(b).

(5) The Commissioner must, having regard to the reasons for the cancellation, determine a period, starting when the cancellation takes effect, during which the entity cannot apply under section 16-146 for registration.

Notification of the cancellation

(6) The Commissioner must notify the entity of:
(a) the cancellation; and
(b) the day on which the cancellation takes effect; and
(c) the period determined under subsection (5) for the cancellation.

Note: A decision to cancel, including a determination under subsection (5), is reviewable (see section 20-80).

(7) The *Australian Business Registrar must enter in the *Australian Business Register a statement that the entity's registration under section 16-147 has been cancelled. The statement must specify the day on which the cancellation takes effect.

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

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(8) A failure to comply with subsection (6) or (7) does not affect the validity of the Commissioner's decision.

Subdivision 16-C—To provide information

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To the Commissioner

16-150 Commissioner must be notified of amounts

(1) 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

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

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(b) Subdivision 14-A, 14-B, 14-C or 14-D (about payments in respect of non-cash benefits or capital proceeds);

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.

Note: This section does not apply to amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

(2) An entity that must pay an amount (even if it is a nil amount) to the Commissioner under Subdivision 14-E (about payments in respect of taxable supplies of certain real property) must notify the Commissioner of the amount:

(a) on or before the day provided in a determination under subsection (3); or

(b) if there is no such determination—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.

(3) The Commissioner may, by legislative instrument, determine when the Commissioner must be notified for the purposes of paragraph (2)(a).

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

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

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(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).

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

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

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(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.

Note: A report under this subsection will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

(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.

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

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Note: A report under this subsection will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

(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 *withholding MIT (the ***paying trust***) in relation to an income year of that trust.

Note: The entity may be the withholding MIT itself or a custodian or other entity.

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

(a) not later than 14 days after the end of 6 months after the end of the income year of the *withholding MIT 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.

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

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(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
  (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

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

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(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.

Note: A payment summary under this section will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

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:

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

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(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.

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

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

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covered by section 12-385 or 12-390 to the recipient in relation to *fund payments made by a particular *withholding MIT (the ***paying trust***) in relation to an income year of that trust.

Note: The entity may be the withholding MIT 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 *withholding MIT 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*;

other than a payment covered by a previous payment summary (and a copy of it) given under this section.

Note: A payment summary under this section will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

(2) The payer must comply with the request within 14 days after receiving it, unless:

(a) 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

(b) the payer has made *reportable employer superannuation contributions, in respect of the recipient's employment, during the financial year.

(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

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

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(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;

(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*.

Note: A payment summary under this section will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

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.

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

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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

(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

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

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(d) specifies the income year of the relevant *withholding MIT 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.

(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*.

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

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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
  (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*

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

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(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.

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

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

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(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 withholding MIT 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*.

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Division 18—Recipient's entitlements and obligations

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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.

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

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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

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Entitlement to credit: Petroleum resource rent tax

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

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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)).

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:

(a) Subdivision 12-F (Dividend, interest and royalty payments); or

(b) Subdivision 12-FA (Departing Australia superannuation payments); or

(c) Subdivision 12-FC (Seasonal Labour Mobility Program); or

(d) section 12-320 (Mining payments); or

(e) Subdivision 12-H (Distributions of withholding MIT income); or

(f) Division 13 (Alienated personal services payments); or

(g) Subdivision 14-E (GST payable on taxable supplies of certain real property).

(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).

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

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(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: 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 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:

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

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

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.

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:

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

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

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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:

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

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

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(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 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:

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

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(a) the entity's *ordinary income, or *statutory income, includes any of the following:
  (i) 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;
  (ii) an amount that is represented by or reasonably attributable to an *AMIT DIR payment; and
(b) if subparagraph (a)(i) applies—if the entity has borne all or part of an *amount withheld from the dividend, interest or royalty; and
(c) if subparagraph (a)(ii) applies—if the entity has borne all or part of an amount paid under Division 12A in respect of the AMIT DIR payment.

(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:
  (i) an *amount withheld from the payment under Subdivision 12-H; or
  (ii) an amount paid under Division 12A in respect of the fund payment.

(2) The amount of the credit is that amount or part.

(3) Subsection (4) applies if:
(a) all or part of an amount (the ***fund payment part***) is represented by a payment that is a *fund payment; and

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

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(b) under subsection 840-805(4A) of the *Income Tax Assessment Act 1997*, a *foreign pension fund is taken, in respect of the fund payment part, to be a beneficiary in its own right, and not a beneficiary in the capacity of the trustee of another trust; and

(c) there is an *amount withheld from the fund payment under Subdivision 12-H.

(4) For the purposes of paragraph (1)(b):

(a) treat the *foreign pension fund as having borne all or part of the amount withheld; and

(b) treat a beneficiary of the foreign pension fund as *not* having borne all or part of the amount withheld.

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

(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;

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

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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:

(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

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

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(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

(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

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

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(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.

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

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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):

(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:

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

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

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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: 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.

Entitlement to credit: taxable supply of real property

18-60 Credit—payment relating to taxable supply of real property

(1) An entity is entitled to a credit if:
  (a) the entity made a *taxable supply to which subsection 14-250(2) applies; and
  (b) another entity made a payment under section 14-250 in relation to the supply.

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

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(2) The amount of the credit is an amount equal to the amount of the payment.

(3) The credit arises when an assessment has been made of the entity's *net amount for the *tax period of the entity in which the payment was made.

Subdivision 18-B—Refund of certain withheld amounts

Table of sections

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
18-85 Refund by Commissioner of amount withheld from payment in respect of supply of real property

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 (other than Subdivisions 14-D and 14-E) for a *non-cash benefit provided to, or received for, the recipient; and

(b) either:

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

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(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.

(1A) For the purposes of this section, if an entity has paid an amount to the Commissioner purportedly under Subdivision 12A-C (about deemed payments by AMITs), treat the entity as having withheld the amount purportedly under Division 12.

(2) The amount that must be refunded under subsection (1) is a debt recoverable by the recipient from the payer.

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;

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

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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).

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

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

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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 (other than Subdivision 14-D) 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).

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***):

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

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(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; or

(iii) paid to the Commissioner an amount purportedly under Subdivision 14-D for *capital proceeds provided to, or applied on behalf of, 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) if subparagraph (a)(i), (ia) or (ii) applies—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.

(1A) For the purposes of this section, if an entity has paid an amount to the Commissioner purportedly under Subdivision 12A-C (about deemed payments by AMITs), treat the entity as having withheld the amount purportedly under Division 12.

(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

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

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(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

(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.

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

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18-85 Refund by Commissioner of amount withheld from payment in respect of supply of real property

(1) An entity (the ***recipient***) may apply, in the *approved form, to the Commissioner for the refund of an amount if:

(a) another entity (the ***payer***) has made a payment under section 14-250, or purportedly under that section, in relation to a supply by the recipient; and

(b) the payment, or part of the payment, was made in error.

(2) The application must be made no later than 14 days before the day on which *GST is payable on the supply.

(3) The amount of the refund that the recipient may apply for is an amount equal to the amount of the payment, or the part of the payment that was made in error, as the case requires.

(4) The Commissioner must refund the amount under subsection (3) if the Commissioner is satisfied that paragraphs (1)(a) and (b) apply and that it would be fair and reasonable to refund the amount, having regard to:

(a) the circumstances that gave rise to the obligation (if any) to make the payment under section 14-250; and

(b) the nature of the error; and

(c) any other matter the Commissioner considers relevant.

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

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

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

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(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*.

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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

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

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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 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

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

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(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 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);

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

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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.

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:

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

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(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 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;

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

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(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

(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

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

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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, ASIC 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:

(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).

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

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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 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.

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

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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).

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.

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

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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

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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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*.

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(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

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

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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

(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:

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

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(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

(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.

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

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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).

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.

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

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(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 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

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

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(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.

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*.

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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:

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

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(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;

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.

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

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(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:
   (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).

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

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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
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)
14	Decision under subsection 14-220(1) not to issue a certificate on application under subsection 14-220(2)
15	Decision under subsection 14-220(1) to issue a certificate
16	Decision under subsection 14-235(2) not to vary an amount on application under subsection 14-235(3)
17	Decision under subsection 14-235(2) to vary an amount
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

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

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Reviewable decisions	
Item	**Description**
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
62	Decision under section 16-147 not to register an entity that has applied to be registered
63	Decision under section 16-148 to cancel a registration (including making a determination under subsection 16-148(5))
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*.

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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

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

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connection with the entity's account with an *ADI is met wholly or partly; or

(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*.

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Part 2-10—Pay as you go (PAYG) instalments

Division 45—Instalment payments

Table of Subdivisions

Guide to Division 45
45-A Basic rules
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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*.

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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).

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

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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.

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

(caa) amounts of liabilities to the Commonwealth under Part 3A of the *VET Student Loans Act 2016*; and

(cb) amounts of liabilities to the Commonwealth under Chapter 2AA of the *Social Security Act 1991*; and

(cc) amounts of liabilities to the Commonwealth under Part 2 of the *Student Assistance Act 1973*; and

(cd) amounts of liabilities to the Commonwealth under Chapter 3 of the *Trade Support Loans Act 2014*; 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*;

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

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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 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

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

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*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 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.

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

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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.

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).

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

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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:

- 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:

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

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(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 *instalment quarter*
45-61 When quarterly instalments are due—payers of quarterly instalments
45-65 Meaning of *instalment month*
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

(b) a *quarterly payer who pays on the basis of instalment income.

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

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(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*.

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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.

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

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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.

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).

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

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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.

(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:

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

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(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:

(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 *instalment income*

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:

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

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(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.

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.

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

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(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:

$$\text{Applicable instalment rate} \times \text{Your *instalment income for that instalment month}$$

(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

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

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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 *Legislation 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:

(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:

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

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(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.

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.

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

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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;

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 class of its taxable income for the income year that is or includes that period.

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):

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

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(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;

(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.

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

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(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*.

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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

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

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starting instalment quarter in an income year but you choose to pay quarterly instalments on the basis of your instalment income.

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.

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

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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 *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

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

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(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;

(ii) you are not an annual payer, but you satisfy the conditions set out in subsection 45-140(1) for an annual payer;

(iia) 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

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

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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:

(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

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

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(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:

(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;

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

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(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 *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.

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

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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.

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

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

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(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:

(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

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

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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.

Subdivision 45-E—Annual payers

Table of sections

When you start and stop being an annual payer

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

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45-140 Choosing to pay annual instalments
45-145 Meaning of *instalment group*
45-150 Entity stops being annual payer if involved with GST registration or instalment group
45-155 Entity stops being annual payer if notional tax is $8,000 or more, or entity chooses to pay quarterly
45-160 Head company of a consolidated group stops being annual payer

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

(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) 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

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

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(b) any other company of which the first-mentioned company has *majority control.

(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):

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

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(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.

(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:

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

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(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.

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

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

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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.

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

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

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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.

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.

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

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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.

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.

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

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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:

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:

$$\begin{array}{c}\text{Rate}\\ \text{discrepancy}\end{array} \times \begin{array}{c}\text{Your *instalment income for the earlier}\\ \text{instalment quarters in that income year}\end{array}$$

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:

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

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(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:

(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

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

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(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:

(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.

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

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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	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) 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	the lower of: (a) the amount that the Commissioner *would have* 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: • the *acceptable amount of your instalment for the earlier instalment quarter in that income year; from: • 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*.

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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	the lower of: (a) the amount that the Commissioner *would have* 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: • the total of the *acceptable amounts of your instalments for the earlier instalment quarters in that income year; from: • 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	the lower of: (a) the amount that the Commissioner *would have* 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: • the total of the *acceptable amounts of your instalments for the earlier instalment quarters in that income year; from: • 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

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

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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 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	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) 75% 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 *would have* 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: • the *acceptable amount of your instalment for the earlier instalment quarter in that income year; from: • 100% 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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(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:

(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).

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

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Acceptable amount of an instalment		
Item	**If the *instalment quarter is:**	**The acceptable amount of your instalment for that instalment quarter is:**
2	the fourth *instalment quarter in that income year	the lower of: (a) the amount that the Commissioner *would have* 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: • the *acceptable amount of your instalment for the earlier instalment quarter in that income year; from: • 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;

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.

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

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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) 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	the lower of: (a) the amount that the Commissioner *would have* 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: • the *acceptable amount of your instalment for the earlier instalment quarter in that income year; from: • 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

(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:

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

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(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 transitional year for you as a *subsidiary member of a *consolidated group.

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

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(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:

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

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*Acceptable amount of your instalment for the later quarter – Actual amount of your instalment for the later quarter

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:

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

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(a) you choose to estimate the amount of your instalment (the ***estimated instalment amount***) for an income year under paragraph 45-115(1)(c) or former paragraph 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).

(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).

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

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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

(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):

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

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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 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

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

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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:

$$\frac{\text{Your assessable income from the trust for the last income year}}{\text{Trust's *instalment income for that income year}} \times \text{Trust's *instalment income for the current period}$$

(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:

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

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(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 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.

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

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

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(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	×	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:
(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*.

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

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(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.)

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

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

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(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 275-10(3)(a) of the *Income Tax Assessment Act 1997* in relation to the income year that is or includes that period; and

(c) the trust is a *managed investment trust for that income year; 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.)

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

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

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(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 (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:

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

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(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 (d) of this section—all those trusts together have a total of 50 or more beneficiaries.

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

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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.

(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 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 *notional tax*
45-330 Working out your *adjusted taxable income*
45-335 Working out your *adjusted withholding income*
45-340 *Adjusted tax* 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.

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

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

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contributions income for the base year and that the entity was not 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

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

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they apply for the purpose of working out such a company's *notional tax.

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.

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.

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

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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 class for the *base assessment.

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

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Step 5.	Add to the step 4 result the deductions for *tax losses of the *complying superannuation class that were used in making the *base assessment.
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 class, to the extent that they are *unutilised at the end of the *base year; (b) deductions for tax losses of the complying superannuation 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*.

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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:

(aa) section 61-110 of the *Income Tax Assessment Act 1997* (the Low Income tax offset); or

(a) Subdivision 61-G of the *Income Tax Assessment Act 1997* (the private health insurance 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

(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); or

(ga) Subdivision 360-A of the *Income Tax Assessment Act 1997* (the tax offset for early stage investors in innovation companies); or

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

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(h) Subdivision 418-B of the *Income Tax Assessment Act 1997* (the junior minerals exploration incentive tax offset).

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 3AAA. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated VETSL 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 3AA. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated SSL 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 3AB. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated ABSTUDY SSL 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.

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

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Step 3AC. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated TSL 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, 3AAA, 3AA, 3AB, 3AC 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 *benchmark instalment rate*
45-365 Working out your *benchmark tax*
45-370 Working out your *adjusted assessed taxable income* for the variation year
45-375 *Adjusted assessed tax* 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*.

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(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:

$$\frac{\text{Your *benchmark tax}}{\text{Variation year instalment income}} \times 100$$

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

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

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the variation year, assume that the entity had no *no-TFN contributions income for the variation year and that the entity was 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

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

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(c) a *pooled superannuation trust for the variation year.

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 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: (aa) section 61-110 of the *Income Tax Assessment Act 1997* (the Low Income tax offset); or (a) Subdivision 61-G of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or

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

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(ca) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); 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); or

(fa) Subdivision 360-A of the *Income Tax Assessment Act 1997* (the tax offset for early stage investors in innovation companies); or

(g) Subdivision 418-B of the *Income Tax Assessment Act 1997* (the junior minerals exploration incentive tax offset).

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 3AAA. The amount (if any) that you would have been liable to pay for the variation year in respect of an

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

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*accumulated VETSL debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.

Step 3AA. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated SSL debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.

Step 3AB. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated ABSTUDY SSL debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.

Step 3AC. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated TSL 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, 3AAA, 3AA, 3AB, 3AC 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*.

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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 *GDP-adjusted notional tax*

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

*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:**
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
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.

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

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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***).

(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:

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

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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

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.

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

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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:

$$\text{Original amount} \times (1 + \text{GDP adjustment})$$

(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) the percentage (rounded to the nearest whole number, rounding down a number ending in .5) worked out using the following formula; or

(b) if the percentage worked out using the formula is negative—0%:

$$\left(100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}}\right) - 100$$

(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

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

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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.

(6) 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

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

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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.

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.

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

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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.

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.

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

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(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;

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;

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

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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.

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.)

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

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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.

Note: How the credit is applied is set out in Division 3 of Part IIB.

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

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Subdivision 45-N—How this Part applies to the trustee of a trust

Table of sections

Trustees to whom this Part applies

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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***.

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

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(3) This Part applies to the trustee of a trust that is a *public trading trust, for an income year as if the trustee 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

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

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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);

(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.

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

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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.

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.

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

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(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.

45-473 Commissioner must notify you of notional tax

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.

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.

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

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45-480 Working out your *adjusted taxable income*

(1) Your ***adjusted taxable income*** for the *base year is worked out using the formula:

$$\text{Adjusted net income of the trust} \times \frac{\text{Relevant share}}{\text{Reduced net income of the trust}}$$

(2) For the purposes of the formula in subsection (1):

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.

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

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(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:

$$\text{Net withholding income of the trust} \times \frac{\text{Relevant share}}{\text{Reduced net income of the trust}}$$

(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).

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

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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.

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.

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

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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).

Subdivision 45-P—Anti-avoidance rules

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

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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.

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

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

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(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;

(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;

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

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(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 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.

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

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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 *component*:	The amount of that component is:
1	Your instalment for each *instalment quarter in the income year is a ***quarterly instalment component***.	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).
2	Your annual instalment for the income year is the ***annual instalment component***.	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 *quarterly payer).

*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 *component*:**	**The amount of that component is:**
3	A ***variation credit component*** is a credit arising under section 45-215 because the amount of your instalment for an *instalment quarter 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 ***variation GIC component*** is the *general interest charge 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 *instalment quarter 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.

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

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(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 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.)

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

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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 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

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

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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.

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

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

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(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

(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);

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

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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.

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.

*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.

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

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(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.

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.

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

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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;

(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 615-30(2) 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:

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

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(i) this Subdivision applied to the original entity 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 entity 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.

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.

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

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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 615-30(2) of the *Income Tax Assessment Act 1997* where an interposed company mentioned in that subsection chooses under that 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:

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

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(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.

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.

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

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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.

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:

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

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(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 615-30(2) 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:

(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

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

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(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.

(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

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

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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*.

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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;

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

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(c) the entity does not, at the time it ceases to be a subsidiary member of the group, become:

(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.

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

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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;

(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

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

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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:

(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).

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

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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).

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

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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 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

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

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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).

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.

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

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(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:

(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);

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

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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 $^{17}/_{80}$ of the head company's *benchmark tax for that consolidation transitional year.

Note: $^{17}/_{80}$ of the head company's benchmark tax represents an amount that is 85% of one quarter of that benchmark tax.

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).

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

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Method statement

Step 1. Work out the amount that is 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 *consolidation transitional year of the *head company during which it is a subsidiary member of the group.

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

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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*.

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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.

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

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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***):

(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***).

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

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(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 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).

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

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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:

(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

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

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(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.

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.

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

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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.

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

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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;

(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;

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

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(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

(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.

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

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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 quarter (the ***starting quarter***) under this subsection if both of the following conditions are satisfied:

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

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(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.

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

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(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 *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

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

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(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).

(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

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

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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);

(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).

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

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(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

(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.

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

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(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).

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.

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

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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:

(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.

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

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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 *Income Tax Assessment Act 1997* in relation the consolidation of that other MEC group, at and after the starting time, under section 719-50 of the *Income Tax Assessment Act 1997*.
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*.

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Part 2-15—Returns and assessments

Division 70—Tax receipts

Table of Subdivisions

Guide to Division 70
70-A Tax receipts

Guide to Division 70

70-1 What this Division is about

The Commissioner must provide you with a tax receipt for an income year if you are an individual taxpayer and the total tax assessed to you for the income year is $100 or more (or such other amount as determined by the Commissioner from time to time).

The tax receipt must include information about how the total tax assessed to you for the income year is notionally used to finance different categories of Commonwealth government expenditure.

The tax receipt must also include information about the total amount of Commonwealth government debt, for the current and previous financial years, and the expected total amount of interest to be paid on that debt during the current financial year.

Subdivision 70-A—Tax receipts

Table of sections

70-5 Tax receipt to be provided to certain individual taxpayers

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

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70-5 Tax receipt to be provided to certain individual taxpayers

(1) The Commissioner must give you a *tax receipt in respect of an income year if:

(a) the Commissioner is required to give you a notice of assessment in respect of the income year and has not previously given you a notice in respect of the income year; and

(b) you are an individual; and

(c) the amount of income tax you owe (as worked out under step 4 of subsection 4-10(3) of the *Income Tax Assessment Act 1997*) for the *financial year that corresponds to the income year is equal to or greater than:

(i) if subparagraph (ii) does not apply—$100; or

(ii) if the Commissioner has made a determination under subsection (2)—the amount specified in the determination; and

(d) the notice is given to you within the period of 18 months after the end of the income year.

(2) The Commissioner may, by legislative instrument, make a determination that specifies an amount for the purposes of subparagraph (1)(c)(ii).

(3) The *tax receipt must include the following information:

(a) your name;

(b) the amount mentioned in paragraph (1)(c);

(c) how the amount mentioned in paragraph (1)(c) is notionally used to finance different categories of Commonwealth government expenditure (other than expenditure that relates to amounts collected under the *GST law that are paid to the States and Territories);

(d) an estimate of the total face value of Commonwealth stock and securities on issue at the end of the previous *financial year;

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

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(e) an estimate of the expected total face value of Commonwealth stock and securities on issue at the end of the financial year;

(f) the expected total interest to be paid during the financial year in respect of the Commonwealth stock and securities referred to in paragraph (e).

Note: The allocation of how the total tax assessed to you is spent is a notional calculation and may not represent how the tax assessed to you is actually spent.

(4) For the purposes of determining the amounts in paragraphs (2)(d) to (f), the Commissioner must use the information in the budget economic and fiscal outlook report prepared for the purpose of section 10 of the *Charter of Budget Honesty Act 1998* in respect of the *financial year referred to in paragraph (1)(c).

(5) For the purposes of determining the form of the information to be included in the *tax receipt, the Commissioner must seek the advice of the Minister and take that advice into account.

(6) The Commissioner must give you the *tax receipt as soon as practicable.

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

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Part 2-30—Collecting Medicare levy with income tax

Division 90—Medicare levy and Medicare levy surcharge

Table of Subdivisions

90-A Treatment like income tax

Subdivision 90-A—Treatment like income tax

Table of sections

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*.

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Part 2-35—Excess superannuation contributions

Division 95—Excess concessional contributions charge

Table of Subdivisions

Guide to Division 95
95-A Object of Division
95-B Excess concessional contributions charge

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

Table of sections

95-5 Object of Division

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:

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

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(a) the later time at which *tax is collected, as compared to tax that is collected through the Pay as you go system; and
(b) the earnings on the contributions, which receive a concessional tax rate and remain in superannuation even if the contributions are released under Division 131.

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.

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

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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
  (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.

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

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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.

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*.

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Division 97—Excess contributions determinations

Table of Subdivisions

97-A Excess concessional contributions determinations
97-B Excess non-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.

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

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(2) A determination under this section is an ***excess concessional contributions determination***.

(3) The Commissioner may amend a determination at any time.

(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.

Subdivision 97-B—Excess non-concessional contributions determinations

Guide to Subdivision 97-B

97-20 What this Subdivision is about

The Commissioner must give you a determination stating:

(a) the amount by which your non-concessional contributions exceed your non-concessional contributions cap; and

(b) a proxy amount for your associated earnings on this excess; and

(c) the total amount that can be released from your superannuation interests in relation to this excess and those earnings.

Table of sections

Operative provisions

97-25 Excess non-concessional contributions determinations
97-30 Associated earnings

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

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97-35 Review

Operative provisions

97-25 Excess non-concessional contributions determinations

(1) If your *non-concessional contributions for a *financial year (the ***contributions year***) exceed your *non-concessional contributions cap for the contributions year, the Commissioner must make a written determination stating:

(a) the amount of the excess; and

(b) the amount of your associated earnings worked out under section 97-30; and

(c) the following amount (the ***total release amount***):

$$\text{Amount of the excess} + \left(0.85 \times \text{Amount of your associated earnings}\right)$$

(2) A determination under this section is an ***excess non-concessional contributions determination***.

(3) The Commissioner may amend a determination at any time.

(5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

97-30 Associated earnings

(1) You are taken to have associated earnings equal to the sum (rounded down to the nearest dollar) of the amounts worked out under the following formula for each of the days during the period:

(a) starting on the first day of the contributions year; and

(b) ending on the day the Commissioner makes the first *excess non-concessional contributions determination you receive for the contributions year.

$$\text{Proxy rate} \times \left(\text{Excess} + \text{Sum of earlier daily proxy amounts}\right)$$

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

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where:

excess means the amount of the excess referred to in paragraph 97-25(1)(a).

proxy rate means the lower of:

(a) the rate worked out under subsection 8AAD(1) for the first day of that period as if the base interest rate (within the meaning of subsection 8AAD(2)) for that day were the average of the base interest rates for each of the days of the contributions year; and

(b) a rate determined under subsection (2) for the contributions year.

sum of earlier daily proxy amounts means the sum of the amounts worked out under the formula for each of the earlier days (if any) during that period.

Note: Any excess non-concessional contributions determination you receive after the first one for the contributions year is an amended determination.

(2) The Minister may, by legislative instrument, determine a rate for a specified *financial year.

97-35 Review

If you are dissatisfied with an *excess non-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*.

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