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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

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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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For more information about any editorial changes made in this compilation, see the endnotes.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Chapter 3—Collection, recovery and administration of other taxes

Part 3-10—Indirect taxes

Division 105—General rules for indirect taxes

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Guide to Division 105
105-D General interest charge and penalties
105-F Indirect tax refund schemes
105-G Other administrative provisions

Guide to Division 105

105-1 What this Division is about

This Division contains rules relating to the administration of the indirect tax laws.

Note 1: Administration rules relevant to particular indirect tax laws are in Divisions 110, 111 and 112.

Note 2: For assessment of assessable amounts under indirect tax laws, see Division 155.

The rules in this Division deal with the following:

(c) limits on credits, refunds and recovering amounts;

(e) the effect of not passing on refunds of overpaid amounts;

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

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(f) charges and penalties;

(h) refunding indirect tax because of Australia's international obligations;

(i) requirements for notifications.

Subdivision 105-D—General interest charge and penalties

Table of sections

105-80 General interest charge
105-85 Amending Acts cannot impose penalties or general interest charge earlier than 28 days after Royal Assent

105-80 General interest charge

(1) If any of an amount (the ***liability***) to which this section applies remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount of the liability for each day in the period that:

(a) started at the beginning of the day by which the liability was due to be paid; and

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

(i) the liability;

(ii) general interest charge on any of the liability.

Note: The general interest charge is worked out under Division 1 of Part IIA.

(2) This section applies to either of the following amounts that you are liable to pay:

(a) an *assessed net fuel amount;

(b) an assessed amount of *indirect tax (including an *assessed net amount).

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

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105-85 Amending Acts cannot impose penalties or general interest charge earlier than 28 days after Royal Assent

(1) An Act that amends an *indirect tax law does not have the effect of making you liable to:

(a) a penalty for an offence against an indirect tax law; or

(b) *general interest charge under section 105-80;

for any act or omission that happens before the 28th day (the ***postponed day***) after the day on which the amending Act receives the Royal Assent.

(2) If the amending Act would (apart from this section) have the effect of making you liable to such a penalty or charge because you contravened a requirement to do something:

(a) within a specified period ending before the postponed day; or

(b) before a specified time happening before the postponed day;

the requirement has effect instead by reference to a period ending at the start of the postponed day, or by reference to the start of the postponed day, as the case requires.

(3) This section does not relieve you from liability to such a penalty or charge to the extent to which the liability would have existed if the amending Act had not been enacted.

Subdivision 105-F—Indirect tax refund schemes

Table of sections

105-120 Refund scheme—defence related international obligations
105-125 Refund scheme—international obligations

105-120 Refund scheme—defence related international obligations

(1) The Commissioner must, on behalf of the Commonwealth, pay you an amount equal to the amount of *indirect tax borne by you in respect of an acquisition (within the meaning of the *GST Act) if:

(a) you are in a class of entities determined by the *Defence Minister; and

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

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(b) the acquisition is covered by a determination of the Defence Minister; and

(c) the acquisition is made:

(i) by or on behalf of a *visiting force that is; or

(ii) by a member (within the meaning of the *Defence (Visiting Forces) Act 1963*) of the visiting force who is; or

(iii) by any other entity that is;

covered by a determination of the Defence Minister; and

(d) at the time of the acquisition, it was intended for:

(i) the official use of the visiting force; or

(ii) the use of a member (within the meaning of the *Defence (Visiting Forces) Act 1963*) of the visiting force; or

(iii) any other use;

and that use is covered by a determination of the Defence Minister; and

(e) you claim the amount in the *approved form.

(2) The amount is payable:

(a) in accordance with the conditions and limitations; and

(b) within the period and manner;

determined by the *Defence Minister.

(3) The *Defence Minister may only determine an entity under subparagraph (1)(c)(iii) or a use under subparagraph (1)(d)(iii) if the Commonwealth is under an international obligation to grant *indirect tax concessions in relation to the kind of entity or the kind of use.

(4) A determination under this section is a legislative instrument.

105-125 Refund scheme—international obligations

(1) The Commissioner must, on behalf of the Commonwealth, pay you, or an entity in a class of entities determined by the Commissioner, an amount equal to the amount of *indirect tax

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

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borne by you in respect of an acquisition (within the meaning of the *GST Act) made by you if:

(a) you are a kind of entity specified in the regulations; and

(b) the acquisition is of a kind specified in the regulations; and

(c) you or the entity claims the amount in the *approved form.

(2) The amount is payable:

(a) in accordance with the conditions and limitations; and

(b) within the period and manner;

set out in the regulations.

(3) The regulations may only specify a kind of entity for the purposes of paragraph (1)(a) or a kind of acquisition for the purposes of paragraph (1)(b) if the Commonwealth is under an international obligation to grant *indirect tax concessions in relation to the kind of entity or the kind of acquisition.

(4) A determination by the Commissioner under subsection (1) is not a legislative instrument.

Subdivision 105-G—Other administrative provisions

Table of sections

105-145 Commissioner must give things in writing

105-145 Commissioner must give things in writing

(1) Any notice, approval, direction, authority or declaration that the Commissioner may give, or must give, to you under an *indirect tax law must be in writing.

(2) However, this does not prevent the Commissioner giving any of those things to you by electronic transmission if a provision of an *indirect tax law allows the Commissioner to do so.

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

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Division 110—Goods and services tax

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110-F Review of GST decisions

Guide to Division 110

110-1 What this Division is about

This Division gives you the right to object against reviewable GST decisions that relate to you. Section 110-50 sets out the reviewable GST decisions.

Subdivision 110-F—Review of GST decisions

Table of sections

110-50 Reviewable GST decisions

110-50 Reviewable GST decisions

(1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is:

(a) a *reviewable GST decision relating to you; or

(b) a *reviewable GST transitional decision relating to you.

(2) Each of the following decisions is a ***reviewable GST decision***:

Reviewable GST decisions under GST Act		
Item	**Decision**	**Provision of GST Act under which decision is made**
1	refusing to register you	subsection 25-5(1)

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

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Reviewable GST decisions under GST Act		
Item	**Decision**	**Provision of GST Act under which decision is made**
2	registering you	subsection 25-5(2)
3	deciding the date of effect of your registration	section 25-10
4	refusing to cancel your registration	subsection 25-55(1)
5	cancelling your registration	subsection 25-55(2)
6	refusing to cancel your registration	section 25-57
7	deciding the date on which the cancellation of your registration takes effect	section 25-60
8	determining that the *tax periods that apply to you are each individual month	subsection 27-15(1)
9	deciding the date of effect of a determination	subsection 27-15(2)
10	refusing to revoke your election under section 27-10	subsection 27-22(1)
11	deciding the date of effect of a revocation	subsection 27-22(3)
12	refusing to revoke a determination under section 27-15	subsection 27-25(1)
13	deciding the date of effect of a revocation	subsection 27-25(2)
14	determining that a specified period is a *tax period that applies to you	section 27-30
15	refusing a request for a determination	section 27-37
16	revoking a determination under section 27-37	subsection 27-38(1)
17	deciding the date of a revocation	subsection 27-38(2)
18	refusing to permit you to account on a cash basis	subsection 29-45(1)
19	deciding the date of effect of your permission to account on a cash basis	subsection 29-45(2)
20	revoking your permission to account on a cash basis	subsection 29-50(3)
21	deciding the date of effect of the revocation of your permission to account on a cash basis	subsection 29-50(4)

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

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Reviewable GST decisions under GST Act		
Item	**Decision**	**Provision of GST Act under which decision is made**
22	refusing an application for a decision that an event is a *fund-raising event	paragraph 40-165(1)(c)
23	approving another day of effect	paragraph 48-71(1)(b)
24	revoking an approval of a day of effect	subsection 48-71(2)
29	refusing an application for approval	section 49-5
30	refusing an application for approval or revocation	subsection 49-70(1)
31	revoking an approval under Division 49	subsection 49-70(2)
32	refusing an application for revocation	subsection 49-75(1)
33	revoking the approval of a *GST religious group	subsection 49-75(2)
34	deciding the date of effect of any approval, or any revocation of an approval, under Division 49	section 49-85
35	approving another day of effect	paragraph 51-75(1)(b)
36	revoking an approval of a day of effect	subsection 51-75(2)
42	refusing an application for registration	section 54-5
43	deciding the date of effect of registration as a *GST branch	section 54-10
44	refusing to cancel the registration of a *GST branch	subsection 54-75(1)
45	cancelling the registration of a *GST branch	subsection 54-75(2)
46	deciding the date of effect of the cancellation of the registration of a *GST branch	section 54-80
47	cancelling the registration of an Australian resident agent	subsection 57-25(1)
48	determining that the *tax periods that apply to a resident agent are each individual month	subsection 57-35(1)
49	deciding the date of effect of a determination	subsection 57-35(2)

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

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Reviewable GST decisions under GST Act		
Item	**Decision**	**Provision of GST Act under which decision is made**
49A	cancelling the registration of a *representative of an *incapacitated entity	subsection 58-25(1)
49B	deciding to direct a *representative of an *incapacitated entity to give to the Commissioner a *GST return	paragraph 58-50(1)(b)
50	cancelling the registration of a *non-profit sub-entity	subsection 63-35(1)
51	refusing to allow, or allowing, a further period within which to make an agreement that the margin scheme is to apply	paragraph 75-5(1A)(b)
52	refusing a request to allow an annual apportionment election to take effect from the start of another *tax period	paragraph 131-10(2)(b)
53	disallowing an annual apportionment election	subsection 131-20(3)
53A	refusing to make requested decision about excess GST	subsection 142-15(1)
55	refusing a request to allow an annual *tax period election to take effect from the start of another tax period	paragraph 151-10(2)(b)
56	refusing a request to be allowed to make an annual *tax period election on a specified day	subsection 151-20(3)
57	disallowing an annual *tax period election	subsection 151-25(3)
58	refusing a request to allow an election to pay *GST by instalments to take effect from the start of another *tax period	paragraph 162-15(2)(b)
59	refusing a request to be allowed to make an election on a specified day	subsection 162-25(3)
60	disallowing an election to pay *GST by instalments	subsection 162-30(3)

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

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Reviewable GST decisions under GST Act		
Item	**Decision**	**Provision of GST Act under which decision is made**
62	making a declaration to negate or reduce a GST disadvantage	subsection 165-45(3)
63	deciding whether to grant a request for a declaration to negate or reduce a GST disadvantage	subsection 165-45(5)

(3) A decision under section 24B of the *A New Tax System (Goods and Services Tax Transition) Act 1999* refusing an application for a determination under that section, or making a determination under that section, is a ***reviewable GST transitional decision***.

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

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Division 111—Wine tax and luxury car tax

Table of Subdivisions

Guide to Division 111
111-C Review of wine tax decisions
111-D Effect on contracts from amendments to laws

Guide to Division 111

111-1 What this Division is about

This Division gives you the right to object against decisions that relate to you disallowing the whole or part of a claim for a wine tax credit.

It also explains how contracts to supply wine or a luxury car are affected if a wine tax law or luxury car tax law changes.

Subdivision 111-C—Review of wine tax decisions

Table of sections

111-50 Reviewable wine tax decisions

111-50 Reviewable wine tax decisions

(1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a *reviewable wine tax decision relating to you.

(2) Each of the following decisions is a ***reviewable wine tax decision***:

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

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Reviewable wine tax decisions		
Item	**Decision**	**Provision of Wine Tax Act under which decision is made**
1	disallowing the whole or a part of your claim for a *wine tax credit	section 17-45
2	deciding the date of effect of your approval as a New Zealand participant	section 19-7
3	refusing to approve you as a New Zealand participant	section 19-7
4	revoking your approval as a New Zealand participant	section 19-8
5	deciding the date of effect of revocation of your approval as a New Zealand participant	section 19-8

Subdivision 111-D—Effect on contracts from amendments to laws

Table of sections

111-60 Alteration of contracts if cost of complying with agreement is affected by later alteration to wine tax or luxury car tax laws

111-60 Alteration of contracts if cost of complying with agreement is affected by later alteration to wine tax or luxury car tax laws

(1) If, after a contract involving a *supply, or a *taxable dealing in relation to *wine, has been made, an alteration to the *wine tax law or the *luxury car tax law happens and the alteration directly causes an increase or decrease in the cost to a party to the agreement of complying with the agreement, then the contract is altered as follows:

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

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(a) if the cost is increased—by allowing the party to add the increase to the contract price;
(b) if the cost is decreased—by allowing the other party to deduct the decrease from the contract price.

(2) The contract is not altered if:
(a) the contract has express written provision to the contrary; or
(b) it is clear from the terms of the contract that the alteration of the *wine tax law or the *luxury car tax law has been taken into account in the agreed contract price.

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

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Division 112—Fuel tax

Table of Subdivisions

Guide to Division 112
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Guide to Division 112

112-1 What this Division is about

This Division gives you the right to object against reviewable fuel tax decisions that relate to you. Section 112-50 sets out the reviewable fuel tax decisions.

Subdivision 112-E—Review of fuel tax decisions

Table of sections

112-50 Reviewable fuel tax decisions

112-50 Reviewable fuel tax decisions

(1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a *reviewable fuel tax decision relating to you.

(2) Each of the following decisions is a ***reviewable fuel tax decision***:

Reviewable fuel tax decisions

Item	Decision	Provision of the *Fuel Tax Act 2006* under which decision is made
2	making a declaration to negate or reduce a *fuel tax disadvantage	subsection 75-45(3)

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

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Reviewable fuel tax decisions		
Item	**Decision**	**Provision of the *Fuel Tax Act 2006* under which decision is made**
3	deciding whether or not to grant a request to negate or reduce a *fuel tax disadvantage	subsection 75-45(5)

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

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Part 3-15—Major bank levy

Division 115—General provisions relating to the major bank levy

115-1 What this Division is about

An ADI that is liable to pay levy under the *Major Bank Levy Act 2017* must give quarterly returns to the Commissioner.

An amount of levy is due and payable when an ADI's last PAYG instalment within an instalment quarter is due.

Table of sections

115-5 Returns
115-10 When major bank levy is due and payable

115-5 Returns

(1) An *ADI that is liable to pay levy for a *quarter under the *Major Bank Levy Act 2017* must give to the Commissioner a return relating to the levy, in the *approved form.

(2) The return must be given on or before the *MBL reporting day for the *quarter.

(3) The ***MBL reporting day*** for the *quarter is the day by which the *ADI is required to give to *APRA a report, in accordance with a standard determined by APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*, that:

(a) relates to the *quarter; and

(b) states the total liabilities amount (within the meaning of the *Major Bank Levy Act 2017*) for the quarter in relation to the ADI.

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

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115-10 When major bank levy is due and payable

(1) An amount of levy under the *Major Bank Levy Act 2017* that an *ADI is liable to pay for a *quarter is due and payable on the first day:

(a) that occurs on or after the *MBL reporting day for the quarter; and

(b) on which the last instalment that the ADI is liable to pay within an *instalment quarter is due under Subdivision 45-B.

(2) If that amount remains unpaid after it is due and payable, the *ADI is liable to pay *general interest charge on the unpaid amount for each day in the period that:

(a) started at the beginning of the day by which the amount was due to be paid; and

(b) finishes at the end of the last day at the end of which either of the following remains unpaid:

(i) the amount;

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

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

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Division 117—Anti-avoidance

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117-A Application of this Division
117-B Commissioner may negate effects of schemes for MBL benefits

Guide to Division 117

117-1 What this Division is about

This Division applies to deter schemes that give entities MBL benefits.

If the sole or dominant purpose of entering into a scheme is to give an entity such a benefit, the Commissioner may negate the MBL benefit an entity gets from the scheme by making a determination.

Subdivision 117-A—Application of this Division

Table of sections

117-5 Object of this Division
117-10 Application of this Division
117-15 Meaning of ***MBL benefit***
117-20 Matters to be considered in determining purpose

117-5 Object of this Division

The object of this Division is to deter *schemes to give entities benefits that reduce or defer liabilities to levy under the *Major Bank Levy Act 2017*.

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

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117-10 Application of this Division

(1) This Division applies if:

(a) an entity gets or got an *MBL benefit from a *scheme; and

(b) taking account of the matters described in section 117-20, it is reasonable to conclude that an entity that (whether alone or with others) entered into or carried out the scheme, or part of the scheme, did so for the sole or dominant purpose of that entity or another entity getting an MBL benefit from the scheme; and

(c) the scheme:

(i) has been or is entered into at or after 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017; or

(ii) has been or is carried out or commenced at or after that time (other than a scheme that was entered into before that time).

(2) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

117-15 Meaning of *MBL benefit*

(1) An entity gets an ***MBL benefit*** from a *scheme, if:

(a) an amount of levy under the *Major Bank Levy Act 2017* that is payable by the entity under this Act apart from this Division is, or could reasonably be expected to be, smaller than it would be apart from the scheme or a part of the scheme; or

(b) all or part of an amount of levy under the *Major Bank Levy Act 2017* that is payable by the entity under this Act apart from this Division is, or could reasonably be expected to be, payable later than it would have been apart from the scheme or a part of the scheme.

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

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(2) To avoid doubt, a smaller liability mentioned in paragraph (1)(a) includes a case where the liability is zero, or there is no such liability for a particular *quarter.

117-20 Matters to be considered in determining purpose

The following matters are to be taken into account under section 117-10 in considering an entity's purpose in entering into or carrying out the *scheme, or part of the scheme:

(a) the manner in which the scheme was entered into or carried out;

(b) the form and substance of the scheme;

(c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;

(d) the effect that the *Major Bank Levy Act 2017*, and any other *taxation law to the extent that it applies in relation to that Act, would have in relation to the scheme apart from this Division;

(e) any change in the financial position of the entity that has resulted, or may reasonably be expected to result, from the scheme;

(f) any change that has resulted, or may reasonably be expected to result, from the scheme in the financial position of an entity (a ***connected entity***) that has or had a connection or dealing with the entity, whether the connection or dealing is or was of a business or other nature;

(g) any other consequence for the entity or a connected entity of the scheme having been entered into or carried out;

(h) the nature of the connection (whether of a business or other nature) between the entity and a connected entity.

Subdivision 117-B—Commissioner may negate effects of schemes for MBL benefits

Table of sections

117-25 Commissioner may negate entity's MBL benefits

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

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117-30 Determination has effect according to its terms
117-35 Commissioner may disregard scheme in making determinations
117-40 One determination may cover several quarters etc.
117-45 Commissioner must give copy of determination to entity affected
117-50 Objections

117-25 Commissioner may negate entity's MBL benefits

(1) For the purpose of negating an *MBL benefit the entity mentioned in paragraph 117-10(1)(a) gets or got from the *scheme, the Commissioner may:

(a) make a determination stating the amount that is (and has been at all times) the entity's liability for levy under the *Major Bank Levy Act 2017*, for a specified *quarter that has ended; or

(b) make a determination stating the amount that is (and has been at all times) a particular amount mentioned in paragraph 5(2)(a) or (b) of that Act, for a specified quarter that has ended.

(2) A determination under this section is not a legislative instrument.

(3) The Commissioner may take such action as the Commissioner considers necessary to give effect to the determination.

117-30 Determination has effect according to its terms

For the purpose of making an *assessment, a statement in a determination under this Subdivision has effect according to its terms, despite the provisions of a *taxation law outside of this Division.

117-35 Commissioner may disregard scheme in making determinations

For the purposes of making a determination under this Subdivision, the Commissioner may:

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

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(a) treat a particular event that actually happened as not having happened; and

(b) treat a particular event that did not actually happen as having happened and, if appropriate, treat the event as:

(i) having happened at a particular time; and

(ii) having involved particular action by a particular entity; and

(c) treat a particular event that actually happened as:

(i) having happened at a time different from the time it actually happened; or

(ii) having involved particular action by a particular entity (whether or not the event actually involved any action by that entity).

117-40 One determination may cover several quarters etc.

To avoid doubt, statements relating to different *quarters and different *MBL benefits may be included in a single determination under this Subdivision.

117-45 Commissioner must give copy of determination to entity affected

(1) The Commissioner must give a copy of a determination under this Subdivision to the entity whose liability for levy under the *Major Bank Levy Act 2017* is stated in the determination.

(2) A failure to comply with subsection (1) does not affect the validity of the determination.

117-50 Objections

If the entity whose liability for levy under the *Major Bank Levy Act 2017* is stated in a determination under this Subdivision is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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

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Part 3-20—Superannuation

Division 131—Releasing money from superannuation

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131-A Releasing money from superannuation

Subdivision 131-A—Releasing money from superannuation

Guide to Subdivision 131-A

131-1 What this Subdivision is about

You may request the Commissioner to require the release of an amount from your superannuation interests if you are given:

(a) an excess concessional contributions determination or excess non-concessional contributions determination; or

(b) a notice of assessment of an amount of Division 293 tax; or

(c) a first home super saver determination.

The Commissioner may also require the release of an amount from your superannuation interests in related circumstances.

Superannuation providers must usually pay the amount required to be released. However, for defined benefit superannuation interests the provider may choose whether or not to pay.

Released amounts are paid to the Commissioner. You get a credit for the released amount. Surplus credits are refunded to you under Division 3A of Part IIB.

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

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131-5 Requesting the release of amounts from superannuation interests
131-10 Restrictions on the total amount you can request to be released

Issuing a release authority to superannuation provider

131-15 Issuing release authorities
131-20 Amount to be stated in a release authority
131-25 Contents of a release authority
131-30 Varying and revoking a release authority

Complying with a release authority

131-35 Obligations of superannuation providers
131-40 Voluntary compliance with a release authority relating to defined benefit interests
131-45 Meaning of maximum available release amount
131-50 Notifying Commissioner
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Consequences of releasing amounts

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Requesting a release authority

131-5 Requesting the release of amounts from superannuation interests

(1) You may make a request under this section for a *financial year if you are given any of the following:

(a) an *excess concessional contributions determination for the financial year;

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

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(b) an *excess non-concessional contributions determination for the financial year;

(c) a notice of assessment of an amount of *Division 293 tax payable for the income year that corresponds to the financial year;

(d) a *first home super saver determination.

(2) You make the request by:

(a) notifying the Commissioner of the total amount to be released; and

(b) identifying your *superannuation interest or interests from which that total amount is to be released; and

(c) if you identify more than one superannuation interest—stating the amount to be released from each such interest.

(3) The request must:

(a) ensure that the total amount to be released for the determination or assessment complies with section 131-10; and

(b) be in the *approved form; and

(c) be given to the Commissioner within:

(i) 60 days after the Commissioner issues the determination or notice referred to in subsection (1); or

(ii) a further period allowed by the Commissioner.

Unsuccessful requests—making a further request

(4) If:

(a) you make a valid request under this section; and

(b) the Commissioner gives you a notice under subsection 131-55(1) stating an amount (the ***unreleased amount***) that a *superannuation provider did not pay in relation to a release authority issued for that request;

you may make a further request to release the unreleased amount from another of your *superannuation interests.

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

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(5) The further request must comply with subsection (2) and paragraphs (3)(a) and (b), and must be given to the Commissioner within:

(a) 60 days after the Commissioner issues the notice mentioned in paragraph (4)(b); or

(b) a further period allowed by the Commissioner.

Request is irrevocable

(6) A request under this section is irrevocable.

131-10 Restrictions on the total amount you can request to be released

(1) The total amount you can request to be released complies with this section if that amount:

(a) if item 1, 3 or 4 of the following table applies—does not exceed the relevant amount referred to in that item; or

(b) if item 2 of the following table applies—is nil or equals the relevant amount referred to in that item.

Amount you can request to be released

Item	If the request relates to this kind of determination or assessment (see subsection 131-5(1)):	The relevant amount is:
1	an *excess concessional contributions determination	85% of the contributions stated in that determination
2	an *excess non-concessional contributions determination	the *total release amount stated in that determination
3	an assessment of an amount of *Division 293 tax	that amount of Division 293 tax
4	a *first home super saver determination	the *FHSS maximum release amount stated in that determination

(2) However, for an amended determination or assessment, reduce the relevant amount referred to in the above table by any amount

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

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released under this Subdivision for an earlier determination or assessment of that kind that you are given for the *financial year or corresponding income year.

(3) An amendment of a determination or assessment does not affect the validity of a request you make under section 131-5 before you are given the amended determination or the notice of the amended assessment.

Issuing a release authority to superannuation provider

131-15 Issuing release authorities

Issuing in response to a valid request

(1) If you make a valid request under section 131-5, the Commissioner must issue a release authority to each *superannuation provider that holds a *superannuation interest identified in the request.

Issuing if you do not make a valid request in response to an excess non-concessional contributions determination etc.

(2) If:

(a) on a particular day, the Commissioner issues you with:

(i) an *excess non-concessional contributions determination for a *financial year; or

(ii) a notice to which paragraph 131-5(4)(b) applies for such a determination; and

(b) within 60 days after that day, you do not make a valid request under section 131-5 for that determination;

the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

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

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Issuing if you are liable to pay excess non-concessional contributions tax

(3) If you are given a notice of an *excess non-concessional contributions tax assessment for a *financial year, the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

Issuing if you have an unpaid amount of assessed Division 293 tax that is not deferred to a debt account

(4) If:

(a) for an income year, you are given a notice of assessment of an amount of *Division 293 tax that is not *deferred to a debt account for a *superannuation interest; and

(b) on the 60th day after the day the Commissioner issues that notice, the sum of the following falls short of that amount of tax:

(i) any payments of that tax for the income year that you have already made;

(ii) any amounts that have already been released under this Subdivision for that assessment;

the Commissioner may issue a release authority to one or more *superannuation providers that hold superannuation interests for you.

131-20 Amount to be stated in a release authority

(1) The amount to be released from one or more *superannuation interests under a release authority issued under section 131-15 must be:

(a) for a release authority issued under subsection 131-15(1)—the amount stated in the request; or

(b) otherwise—worked out so that the total amount stated for all release authorities for the applicable determination or assessment does not exceed:

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

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(i) for a release authority issued under subsection 131-15(2)—the *total release amount stated in the determination referred to in that subsection; or

(ii) for a release authority issued under subsection 131-15(3) or (4)—the amount of tax stated in the assessment referred to in that subsection.

(2) For the purposes of paragraph (1)(b), disregard an amount stated in another release authority to the extent that a notice given under subsection 131-50(2) states that the amount will not be paid.

131-25 Contents of a release authority

Each release authority issued under section 131-15 must:

(a) be issued to a single *superannuation provider; and

(b) state the amount to be released from each *superannuation interest under the release authority; and

(c) be dated; and

(d) contain any other information that the Commissioner considers relevant.

131-30 Varying and revoking a release authority

The Commissioner may vary or revoke a release authority issued under section 131-15 at any time before the Commissioner is given a notice under section 131-50 relating to the release authority.

Complying with a release authority

131-35 Obligations of superannuation providers

(1) A *superannuation provider issued with a release authority under section 131-15 must, within 10 *business days after the release authority is issued (or a further period allowed by the Commissioner), pay to the Commissioner the lesser of:

(a) the amount stated in the release authority; and

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

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(b) the sum of the *maximum available release amounts for each *superannuation interest held by the superannuation provider for you in *superannuation plans.

Note 1: Subsection 288-95(3) provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see section 131-75.

Exception—defined benefit interests not subject to compulsory release

(2) However, the *maximum available release amount for a *superannuation interest is not to be included in the sum worked out under paragraph (1)(b) if the interest is a *defined benefit interest.

131-40 Voluntary compliance with a release authority relating to defined benefit interests

(1) A *superannuation provider issued with a release authority under section 131-15 may, within 10 *business days after the release authority is issued (or a further period allowed by the Commissioner), pay to the Commissioner the lesser of:

(a) the amount stated in the release authority; and

(b) the sum of the *maximum available release amounts for each *defined benefit interest held by the superannuation provider for you in *superannuation plans.

(2) For the purposes of paragraph (1)(a), reduce the amount mentioned in that paragraph by any amount the provider pays under section 131-35 in relation to the release authority.

131-45 Meaning of maximum available release amount

The ***maximum available release amount*** for a *superannuation interest at a particular time is the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

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

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131-50 Notifying Commissioner

(1) A *superannuation provider issued with a release authority under section 131-15 must notify the Commissioner of a payment made in accordance with this Subdivision.

(2) A *superannuation provider that:

(a) has been issued with a release authority under section 131-15; and

(b) is not required to pay an amount under section 131-35, or is required under that section to pay an amount less than the amount stated in the release authority;

must notify the Commissioner that the provider is not required to comply with the release authority.

(3) A notice under this section must be given in the *approved form within the period applying under subsection 131-35(1) or 131-40(1) for the release authority.

Note: Subsection 286-75(1) provides for an administrative penalty for failing to comply with this section.

131-55 Notifying you

(1) The Commissioner must notify you if, in relation to a release authority issued under section 131-15 in relation to you, the Commissioner:

(a) is given a notice from a *superannuation provider under section 131-50; or

(b) does not receive a payment from a superannuation provider of the full amount stated in the release authority within the time mentioned in subsection 131-35(1) or 131-40(1).

(2) A notice under subsection (1) must:

(a) be in writing; and

(b) identify the *superannuation provider; and

(c) state how much of the amount stated in the release authority was not paid within the applicable time.

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

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131-60 Compensation for acquisition of property

(1) If the operation of section 131-35 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.

(2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in:

(a) the Federal Court of Australia; or

(b) the Supreme Court of a State or Territory;

for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Consequences of releasing amounts

131-65 Entitlement to credits

(1) If a *superannuation provider pays an amount in relation to a release authority issued under section 131-15 in relation to you, you are entitled to a credit equal to that amount.

Note: Division 3 of Part IIB provides for the treatment of credits that you are entitled to under a taxation law.

(2) The credit arises on the day the Commissioner receives the amount.

Exception for voluntary payments of Division 293 tax debt account

(3) However, if the amount paid in relation to the release authority relates to an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest:

(a) subsection (1) does not apply in relation to the payment; and

(b) treat the payment as if it were a voluntary payment under section 133-70 in relation to that debt account.

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

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131-70 Interest for late payments of money received by the Commissioner in accordance with release authority

(1) You are entitled to an amount of interest worked out under subsection (2) if:

(a) the Commissioner is required under Division 3A of Part IIB to refund all or part of a credit you are entitled to under section 131-65; and

(b) the Commissioner does not so refund all or part of that credit within 60 days after receiving the payment that gave rise to the credit.

(2) The interest is to be calculated:

(a) on so much of the amount of the credit as the Commissioner fails to refund under that Division; and

(b) for the period:

(i) beginning 60 days after the day the Commissioner receives the amount; and

(ii) ending on the day the Commissioner refunds the amount mentioned in paragraph (1)(a); and

(c) on a daily basis; and

(d) at the *base interest rate for the day the interest is calculated.

131-75 Income tax treatment of amounts released—proportioning rule does not apply

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Subdivision.

Note: The income tax treatment of released amounts is also affected by Subdivision 292-B, and section 303-15, of that Act.

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

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Division 133—Division 293 tax

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133-B Debt account
133-C Compulsory payment

Guide to Division 133

133-1 What this Division is about

Payment of Division 293 tax is deferred to the extent to which the tax is attributable to defined benefit interests from which no superannuation benefit has yet become payable.

This reflects the fact that money generally cannot be released from defined benefit interests until a superannuation benefit is paid, usually upon retirement.

Subdivision 133-A—Deferral determination

Guide to Subdivision 133-A

133-5 What this Subdivision is about

The Commissioner determines the amount of your tax that is deferred to a debt account by working out the extent to which your assessed tax is attributable to defined benefit interests.

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

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Operative provisions

133-10 Determination of tax that is *deferred to a debt account*

(1) The Commissioner must make a determination specifying the amount the Commissioner has ascertained as being the extent to which your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For general provisions, including review, see section 133-30.

(2) The amount of *assessed Division 293 tax specified in the determination is ***deferred to a debt account*** for the *superannuation interest.

(3) However, the Commissioner must not make a determination under this section in relation to a *superannuation interest if, at the time the determination is to be made, the *end benefit for the superannuation interest has become payable.

Note: For the meaning of ***end benefit***, see section 133-130.

(4) Subsection (1) does not apply if the Commissioner ascertains that no part of your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.

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

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133-15 *Defined benefit tax*

(1) Your ***defined benefit tax*** for an income year is the amount worked out using the formula:

$$\text{*Division 293 tax for the income year} \times \frac{\text{Defined benefit contribution component}}{\text{*Taxable contributions for the income year}}$$

where:

defined benefit contribution component means the amount worked out as follows:

(a) work out the lesser of the following for the corresponding *financial year:

(i) your *low tax contributions;

(ii) the total amount of your *defined benefit contributions in respect of all *defined benefit interests you have in the financial year;

(b) subtract from the result of paragraph (a) the difference (if any) between:

(i) your *taxable contributions for the income year; and

(ii) your low tax contributions for the corresponding financial year.

Note: A difference may exist for paragraph (b) because of the $250,000 high income threshold: see subsection 293-20(1) of the *Income Tax Assessment Act 1997*.

Exception—defined benefit contribution component is nil or less

(2) However, if the defined benefit contribution component mentioned in subsection (1) is nil, or a negative amount, no part of the *Division 293 tax for the income year is ***defined benefit tax***.

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

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133-20 How to attribute the defined benefit tax to defined benefit interests

(1) If you have one *defined benefit interest in a *financial year, your *defined benefit tax for the corresponding income year is attributable to that interest.

(2) If you have more than one *defined benefit interest in a *financial year, your *defined benefit tax for the corresponding income year is attributable to each such interest in proportion to the *defined benefit contributions for the interest for the financial year.

133-25 Determination reducing tax deferred to a debt account

(1) If an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest is reduced as a result of an amended assessment, the Commissioner must make a determination under this section in respect of the reduced amount.

(2) The amount so determined is a ***deferral reversal*** for the *superannuation interest.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

133-30 General provisions applying to determinations under this Subdivision

(1) The Commissioner must:

(a) make a determination as soon as practicable after:

(i) for a determination under section 133-10—assessing the amount (whether by way of a first assessment or an amended assessment); or

(ii) for a determination under section 133-25—amending the assessment; and

(b) give you notice in writing of the determination as soon as practicable after making it.

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

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(3) The validity of the determination is not affected because any of the provisions of this Act have not been complied with.

Review

(4) If you are dissatisfied with a determination made under this Subdivision in relation to you, you may object against the determination in the manner set out in Part IVC.

(5) If you are dissatisfied with a decision the Commissioner makes not to make a determination under this Subdivision:

(a) you may object against the decision in the manner set out in Part IVC; and

(b) for the purpose of working out the period within which the objection must be lodged, notice of the decision is taken to have been served on you on the day notice is given to you of:

(i) for a determination under section 133-10—the assessment of the amount; or

(ii) for a determination under section 133-25—the amended assessment.

Note: For the period within which objections must be lodged, see section 14ZW.

Subdivision 133-B—Debt account

Guide to Subdivision 133-B

133-55 What this Subdivision is about

The Commissioner keeps debt accounts for tax that is deferred to a debt account for a superannuation interest.

You can make voluntary payments of the debt account.

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

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Operative provisions

133-60 Debt account to be kept for deferred tax

Accounts to be kept

(1) The Commissioner is to keep a debt account for *Division 293 tax for you for a *superannuation interest, if an amount of your *assessed Division 293 tax is *deferred to a debt account for the superannuation interest.

Account to be debited for Division 293 tax

(2) The Commissioner must debit the debt account for the amount of *assessed Division 293 tax that is *deferred to a debt account for the *superannuation interest.

133-65 Interest on debt account balance

Interest to be debited at end of financial year

(1) If a debt account for a *superannuation interest is in debit at the end of a *financial year, the Commissioner is to debit the account for interest on the amount by which the account is in debit, calculated at the *long term bond rate for that financial year.

Note: Interest would not be debited to a debt account that is no longer being kept by the Commissioner because the assessed Division 293 tax liability being tracked in the account has been finally discharged as mentioned in subsection 133-105(3).

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

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Remission of interest—deferral reversal

(2) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, from a debt account under subsection (1) if:

(a) the debt account is credited:

(i) under section 133-70 because of a *deferral reversal; or

(ii) because a determination under section 133-10 is varied or revoked; and

(b) the Commissioner is satisfied that, because of that credit, it would be fair and reasonable to do so.

Remission of interest—special circumstances

(3) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, to a debt account under subsection (1) if the Commissioner is satisfied that, because special circumstances exist, it would be fair and reasonable to do so.

133-70 Voluntary payments

(1) You may make payments to the Commissioner for the purpose of reducing the amount by which a debt account for a *superannuation interest is in debit.

(2) The Commissioner is to:

(a) acknowledge receipt of the payment to you; and

(b) credit the payment to the debt account; and

(c) notify you of the revised balance of the debt account.

The credit mentioned in paragraph (b) is to be made when the payment is received.

(3) The amount of a *deferral reversal for the *superannuation interest is to be treated as if it were a voluntary payment under this section in relation to the debt account for that interest. However, paragraphs (2)(a) and (c) do not apply in relation to that amount.

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

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133-75 Commissioner must notify superannuation provider of debt account

If the Commissioner starts to keep a debt account for *Division 293 tax for you for a *superannuation interest, the Commissioner must give the *superannuation provider in relation to the superannuation interest a notice saying so.

Subdivision 133-C—Compulsory payment

Guide to Subdivision 133-C

133-100 What this Subdivision is about

The deferred tax liability must be paid when a superannuation benefit becomes payable from the superannuation interest.

In some cases, the amount that must be paid is capped.

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133-110 When debt account discharge liability must be paid
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End benefit

133-130 Meaning of ***end benefit***
133-135 Superannuation provider may request debt account status
133-140 End benefit notice—superannuation provider
133-145 End benefit notice—material changes or omissions

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

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Debt account discharge liability

133-105 Liability to pay debt account discharge liability

(1) You are liable to pay the amount of your *debt account discharge liability for a *superannuation interest if the *end benefit for the interest becomes payable.

(2) The liability arises:
  (a) unless paragraph (b) applies—at the time the *end benefit becomes payable; or
  (b) if the end benefit is a *superannuation death benefit—just before you die.

Note 1: For paragraph (a), a release authority allows money to be released from the superannuation plan to pay this amount: see subsection 135-10(1).

Note 2: For paragraph (b), the debt will be recovered from your estate: see Subdivision 260-E.

(3) Payment of your *debt account discharge liability for a *superannuation interest discharges your liability for so much of your total *assessed Division 293 tax for all income years as is *deferred to a debt account for the superannuation interest.

133-110 When debt account discharge liability must be paid

The amount of your *debt account discharge liability for a *superannuation interest is due and payable at the end of 21 days after the day on which the *end benefit for the superannuation interest is paid.

133-115 General interest charge

If your *debt account discharge liability remains unpaid after the time by which it is due and payable, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

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

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(a) begins on the day on which the debt account discharge liability was due to be paid; and

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

(i) the debt account discharge liability;

(ii) general interest charge on any of the debt account discharge liability.

Note: The general interest charge is worked out under Part IIA.

133-120 Meaning of *debt account discharge liability*

(1) The ***debt account discharge liability*** for a *superannuation interest for which the Commissioner keeps a debt account is the amount by which the debt account is in debit at the time the *end benefit for the superannuation interest becomes payable.

(1A) However, if the end benefit cap for the *superannuation interest stated in a notice given to the Commissioner under subsection (2) of this section or section 133-140 is less than the amount mentioned in subsection (1) of this section, the ***debt account discharge liability*** for the superannuation interest is an amount equal to the end benefit cap.

(2) If requested by the Commissioner, the *superannuation provider in relation to a *superannuation interest must give the Commissioner notice of the amount (the ***end benefit cap***) that is 15% of the employer-financed component of any part of the *value of the superannuation interest that accrued after 1 July 2012.

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

(3) For the purposes of subsection (2), the *value of the *superannuation interest is to be worked out at the end of the *financial year before the financial year in which the *end benefit becomes payable.

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

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(4) A notice under subsection (2) must be given:
  (a) in the *approved form; and
  (b) within 14 days of the Commissioner making the request.

133-125 Notice of debt account discharge liability

(1) The Commissioner must give you a notice under this section if the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account.

(2) The notice must state that you are liable to pay your *debt account discharge liability for the *superannuation interest and specify:
  (a) the amount of that debt; and
  (b) the day on which that debt is due and payable; and
  (c) whether the amount of that debt is:
    (i) the amount by which the debt account is in debit as mentioned in subsection 133-120(1); or
    (ii) the end benefit cap mentioned in subsection 133-120(1A).

(3) If you are dissatisfied with a notice given under this section in relation to you, you may object against it in the manner set out in Part IVC of this Act.

(4) However, you cannot object against a notice stating that the amount you are liable to pay is the amount by which the debt account is in debit, unless you are seeking to be liable to pay the end benefit cap specified in a notice given to the Commissioner by the *superannuation provider under subsection (2) or section 133-140 (as the case requires).

End benefit

133-130 Meaning of *end benefit*

(1) A *superannuation benefit is the ***end benefit*** for a *superannuation interest if it is the first superannuation benefit to become payable

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

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from the interest, disregarding a benefit that is any of the following:

(a) a *roll-over superannuation benefit paid to a *complying superannuation plan that is a *successor fund;

(b) a benefit that becomes payable under the condition of release specified in item 105 of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (about severe financial hardship);

(c) a benefit that becomes payable under the condition of release specified in item 107 of that table (about compassionate ground);

(d) a benefit specified in an instrument under subsection (2).

(2) The Minister may, by legislative instrument, specify a *superannuation benefit for the purposes of paragraph (1)(d).

(3) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to an instrument made under subsection (2).

(4) Despite subsection 12(1A) (retrospective commencement of legislative instruments) of the *Legislation Act 2003*, an instrument made under subsection (2) of this section must not commence before 1 July 2012.

133-135 Superannuation provider may request debt account status

(1) If:

(a) a *superannuation provider has been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for a *superannuation interest; and

(b) the superannuation provider receives a request to pay the *end benefit from the superannuation interest or the end benefit becomes payable from the superannuation interest;

the superannuation provider may, in the *approved form, request the Commissioner to advise as to the status of the debt account.

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

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(2) If the Commissioner receives a request, the Commissioner must advise the *superannuation provider as soon as practicable whether or not the debt account is in debit.

133-140 End benefit notice—superannuation provider

(1) If the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account, the *superannuation provider in relation to the interest must give the Commissioner a notice stating:

(a) unless subsection (1A) applies—the amount of the end benefit cap mentioned in subsection 133-120(2) for the superannuation interest; and

(b) the expected date of payment of the benefit.

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

(1A) The notice does not need to state the amount of the end benefit cap if:

(a) the *superannuation provider has already given the Commissioner notice of the end benefit cap under subsection 133-120(2); or

(b) before the end of the period mentioned in subsection (2), the Commissioner has advised the superannuation provider under subsection 133-135(2) that the debt account is not in debit.

(2) The notice must be given within 14 days after the earlier of:

(a) the *superannuation provider receiving a request (if any) to pay the *superannuation benefit; and

(b) the superannuation benefit becoming payable.

(3) However, this section does not apply if the *superannuation provider has not been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for the *superannuation interest.

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

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(4) A notice under this section must be given in the *approved form.

133-145 End benefit notice—material changes or omissions

(1) If an entity that gives the Commissioner a notice under section 133-140 becomes aware of a material change or material omission in any information given to the Commissioner in the notice, the entity must:

(a) tell the Commissioner of the change in the *approved form; or

(b) give the omitted information to the Commissioner in the approved form.

(2) Information required by this section must be given no later than 7 days after the entity becomes aware of the change or omission.

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

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Division 135—Releasing money from superannuation

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135-B When a release authority can be given to a superannuation provider
135-C Release of superannuation money under a release authority

Guide to Division 135

135-1 What this Division is about

This Division contains rules about release authorities, which allow money to be released from a superannuation plan to pay your debt account discharge liability.

Subdivision 135-A—When the Commissioner must issue a release authority

Guide to Subdivision 135-A

135-5 What this Subdivision is about

The Commissioner must issue you with a release authority to allow money to be released from a superannuation plan to pay your debt account discharge liability.

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

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Operative provisions

135-10 Release authorities

(1) If the condition mentioned in column 1 of an item in the following table is satisfied:

(a) the Commissioner must issue you with a release authority under that item; and

(b) you have a ***release entitlement***:

(i) equal to the amount mentioned in column 2 of that item; and

(ii) arising at the time mentioned in column 3 of that item.

Release entitlement			
Item	**Column 1** **Condition:**	**Column 2** **Amount of the release entitlement:**	**Column 3** **Time at which the release entitlement arises:**
3	You become liable to pay your *debt account discharge liability for a *superannuation interest	The amount of your debt account discharge liability	On the giving of the notice under section 133-125

Note: A release authority issued under item 3 of the table can only be given to the superannuation provider that holds the superannuation interest to which the debt account relates: see subsection 135-40(3).

Requirements for release authority

(2) A release authority must:

(a) state the amount of the *release entitlement in respect of which it is given; and

(b) be dated; and

(c) contain any other information that the Commissioner considers relevant.

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

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Commissioner may issue a further release authority

(3) The Commissioner may at any time issue you with a further release authority in respect of a *release entitlement if:

(a) the Commissioner is satisfied that it is reasonable in the circumstances to do so; and

(b) the Commissioner has issued you with an earlier release authority in respect of that release entitlement.

Despite paragraph (2)(a), the further release authority must state the amount the Commissioner considers reasonable in the circumstances, but not exceeding the amount of the release entitlement.

Note: For variation and revocation of release authorities, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Release authority not to be issued to trustee of deceased estate

(4) To avoid doubt, this section does not require or permit the Commissioner to issue a release authority to the trustee of a deceased estate.

Subdivision 135-B—When a release authority can be given to a superannuation provider

Guide to Subdivision 135-B

135-35 What this Subdivision is about

You may give a release authority to a superannuation provider within 120 days of being issued with it.

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

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Operative provisions

135-40 When you may give release authority to superannuation provider

(1) You may give the release authority to a *superannuation provider that holds a *superannuation interest for you within 120 days after the date of the release authority.

(2) You may request the *superannuation provider, in writing, to pay a specified amount in relation to the release authority.

Note 1: For the amount that the provider pays under a release authority, see section 135-85.

Note 2: If excess amounts are paid in relation to a release authority:
(a) the excess is assessable income (see section 304-20 of the *Income Tax Assessment Act 1997*); and
(b) you are liable to an administrative penalty (see section 288-100 in this Schedule).

(3) However, a release authority issued under item 3 of the table in subsection 135-10(1) (for debt account discharge liability) may only be given to the *superannuation provider that holds the *superannuation interest to which the debt account relates.

Subdivision 135-C—Release of superannuation money under a release authority

Guide to Subdivision 135-C

135-70 What this Subdivision is about

This Subdivision sets out a general requirement for a superannuation provider to comply with a release authority.

The Subdivision also includes provisions about how much must be paid, who it must be paid to, which interest it is to be paid from, and how the payments are treated by the Commissioner.

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

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135-90 How the Commissioner applies amounts received under a release authority
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135-100 Income tax treatment of amounts released—proportioning rule does not apply

Operative provisions

135-75 Requirement for superannuation provider to release money

(1) If:

(a) a *superannuation provider has been given a release authority in accordance with Subdivision 135-B; and

(b) the amount mentioned in section 135-85 (the ***release amount***) is greater than nil;

the superannuation provider must pay the release amount within 30 days after receiving the release authority.

Who superannuation provider pays the amount to

(2) The release amount must be paid to the Commissioner.

Note 1: Section 288-95 provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see sections 303-20 and 304-20 of the *Income Tax Assessment Act 1997*.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in this Schedule.

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

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Which superannuation interest the amount is to be paid from

(4) The payment must be made out of one or more *superannuation interests (other than a *defined benefit interest) held by the *superannuation provider for the individual.

135-80 Compensation for acquisition of property

(1) If the operation of section 135-75 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.

(2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

135-85 Release amount

The amount is the least of the following amounts:

(a) the amount stated in the release authority, as issued by the Commissioner;

(b) if the individual or Commissioner requests the *superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;

(c) the sum of the *maximum available release amounts for each *superannuation interest (other than a *defined benefit interest) held by the superannuation provider for the individual in *superannuation plans.

Note: For the ***maximum available release amount***, see section 131-45.

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

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135-90 How the Commissioner applies amounts received under a release authority

If the Commissioner receives a payment under a release authority, it is taken for the purposes of Part IIB to have been received in respect of a current or anticipated tax debt of the individual.

Note: Part IIB is about running balance accounts and the application of payments and credits.

135-95 Defined benefit interests—releasing amounts to pay debt account discharge liability

The exclusion of *defined benefit interests from subsection 135-75(4) and paragraph 135-85(c) is to be disregarded for a release authority issued under item 3 of the table in subsection 135-10(1) (about debt account discharge liability).

135-100 Income tax treatment of amounts released—proportioning rule does not apply

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Division.

Note: Further provisions about the income tax treatment of amounts released are in sections 303-20 and 304-20 of that Act.

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

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Division 136—Transfer balance cap

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Guide to Division 136

136-1 What this Division is about

If you have excess transfer balance in your transfer balance account, the Commissioner may require you and your superannuation income stream provider to reduce the total amount of your superannuation income streams that are in the retirement phase.

Subdivision 136-A—Excess transfer balance determinations

Guide to Subdivision 136-A

136-5 What this Subdivision is about

If your transfer balance account exceeds the transfer balance cap, the excess must be reduced by commuting in full or in part your superannuation income streams that are in the retirement phase.

If you have more than one superannuation income stream, you may choose which one to commute.

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

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136-20 Electing to commute a different superannuation income stream
136-25 Notifying Commissioner of transfer balance debits

Operative provisions

136-10 Excess transfer balance determination

(1) If you have *excess transfer balance in your *transfer balance account at the end of a day, the Commissioner may make a written determination stating the amount of that excess transfer balance.

Note: It is not necessary for the Commissioner to issue a determination under this subsection if the Commissioner becomes aware that you no longer have an excess transfer balance. You are still liable to pay excess transfer balance tax if no determination is issued: see Subdivision 294-F of the *Income Tax Assessment Act 1997*.

(2) A determination under this section is an ***excess transfer balance determination***.

(3) The amount of *excess transfer balance stated in an *excess transfer balance determination is a ***crystallised reduction amount***.

(4) The Commissioner may amend or revoke an *excess transfer balance determination at any time before a commutation authority relating to the determination is issued under section 136-55.

(5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Determination to include default commutation notice

(6) A determination made under subsection (1) must include a notice:
(a) stating that, if you do not make an election under section 136-20 within the period specified in that section, the

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

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Commissioner will issue one or more commutation authorities; and

(b) specifying:

(i) the *superannuation income stream provider or providers to whom a commutation authority will be issued; and

(ii) the *superannuation income stream or streams that the providers will be obliged to commute in full or in part; and

(iii) if more than one commutation authority will be issued—the amount to be stated in each commutation authority, or the method the Commissioner will use to work out the amount to be stated in each commutation authority.

(7) A notice included with an *excess transfer balance determination in accordance with subsection (6) is a ***default commutation notice***.

136-15 Review

(1) If you are dissatisfied with an *excess transfer balance determination made in relation to you, you may object against the determination in the manner set out in Part IVC.

(2) However, for the purposes of Part IVC, the *default commutation notice does not form part of the taxation decision.

136-20 Electing to commute a different superannuation income stream

(1) This section applies to you if:

(a) you receive an *excess transfer balance determination under section 136-10; and

(b) you are the *retirement phase recipient of 2 or more *superannuation income streams.

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

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(2) You may elect which of those *superannuation income streams is to be fully or partially commuted for the purpose of reducing the *transfer balance in your *transfer balance account by the *crystallised reduction amount.

Requirements for election

(3) You make an election under subsection (2) by:
   (a) identifying the *superannuation income stream or streams to be commuted in full or in part and the *superannuation income stream provider for each such stream; and
   (b) if you identify more than one superannuation income stream—stating the amount to be commuted from each such income stream.

(4) The election must:
   (a) be in the *approved form; and
   (b) be given to the Commissioner within:
      (i) 60 days after the *excess transfer balance determination or amended excess transfer balance determination is issued; or
      (ii) a further period allowed by the Commissioner.

Election is irrevocable

(5) An election under this section is irrevocable.

136-25 Notifying Commissioner of transfer balance debits

(1) This section applies to you if you have received an *excess transfer balance determination.

(2) You may notify the Commissioner in the *approved form of the amount of a *transfer balance debit that arises in your *transfer balance account if the debit arises in the period:
   (a) beginning when the determination is made; and
   (b) ending at the earlier of:

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

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(i) the time you made an election under section 136-20; and
(ii) the end of the period within which an election under section 136-20 may be made.

Subdivision 136-B—Commutation authorities

Guide to Subdivision 136-B

136-50 What this Subdivision is about

The Commissioner must issue a commutation authority to a superannuation income stream provider, unless you have notified the Commissioner that you have already reduced your excess transfer balance by the crystallised reduction amount.

A superannuation income stream provider will usually be required to commute the superannuation income stream stated in the authority.

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

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Obligations of Commissioner

136-55 Issuing of commutation authorities

Commutation authority must be issued if there is a commutable amount

(1) The Commissioner must issue a commutation authority under this section to one or more *superannuation income stream providers if:

(a) an *excess transfer balance determination has been issued to you; and

(b) the excess transfer balance determination has not been revoked; and

(c) the period mentioned in subsection 136-20(4) has ended; and

(d) an amount (the ***commutable amount***) greater than nil remains after reducing the *crystallised reduction amount by the sum of any *transfer balance debits notified to the Commissioner under section 136-25.

Issuing in response to a valid election

(2) If you have made a valid election under section 136-20, the Commissioner must issue a commutation authority under this section to each *superannuation income stream provider identified in your election.

(3) If the total of the amounts stated in your election under section 136-20 falls short of the commutable amount, the Commissioner must also issue a commutation authority to one or more *superannuation income stream providers specified in the *default commutation notice.

Issuing if you do not make a valid election

(4) If you have not made a valid election under section 136-20, the Commissioner must issue a commutation authority to each *superannuation income stream provider specified in the *default commutation notice.

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

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Requirements for commutation authority

(5) Each commutation authority must:
  (a) specify the *superannuation income stream that the *superannuation income stream provider is to commute, in full or in part; and
  (b) state the amount (the ***reduction amount***) by which the superannuation income stream is to be reduced; and
  (c) be dated; and
  (d) contain any other information that the Commissioner considers relevant.

(6) The total of all reduction amounts stated in commutation authorities issued under this section relating to an *excess transfer balance determination must not exceed the commutable amount.

136-60 Varying and revoking a commutation authority

The Commissioner may vary or revoke a commutation authority at any time before the Commissioner receives a notice under section 136-85 relating to the commutation authority.

136-65 Issuing further commutation authorities

(1) The Commissioner may issue a commutation authority under this section to one or more *superannuation income stream providers under this section if:
  (a) a commutation authority (the ***original commutation authority***) was issued under section 136-55; and
  (b) the *superannuation income stream provider to which the original commutation authority was issued:
    (i) paid a *superannuation lump sum that fell short of the reduction amount stated in the original commutation authority; or
    (ii) did not comply with the original commutation authority.

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

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(2) A commutation authority issued under this section must include the matters set out in subsection 136-55(5).

(3) The Commissioner may issue a commutation authority under this section to any *superannuation income stream provider of a *superannuation income stream of which you are the *retirement phase recipient.

(4) The total of all reduction amounts stated in commutation authorities issued under this section relating to an *excess transfer balance determination must not exceed the difference between:
  (a) the commutable amount mentioned in subsection 136-55(1); and
  (b) the sum of:
    (i) any *superannuation lump sums notified to the Commissioner under section 136-85 in respect of the determination; and
    (ii) any *transfer balance debits arising in your *transfer balance account under item 5 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997* because of any original commutation authority.

136-70 Notifying of non-commutable excess transfer balance

(1) The Commissioner must notify you in writing if, at the end of a day after the Commissioner has issued an *excess transfer balance determination to you:
  (a) the sum of all *transfer balance debits arising in your *transfer balance account since the determination was issued falls short of the *crystallised reduction amount; and
  (b) you have *excess transfer balance in your transfer balance account; and
  (c) either:
    (i) the only *superannuation income streams of which you are a *retirement phase recipient are *capped defined benefit income streams; or

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

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(ii) you are no longer a retirement phase recipient of any superannuation income stream.

Note: A debit arises in your transfer balance account when the Commissioner issues a notice under this section: see item 7 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997*.

(2) A notice under subsection (1) must state the amount of the *excess transfer balance mentioned in paragraph (1)(b).

Obligations of superannuation income stream providers

136-80 Obligations on superannuation income stream providers

(1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must, within 60 days after the commutation authority is issued, pay by way of commutation of the specified *superannuation income stream, a *superannuation lump sum equal to the lesser of:

(a) the reduction amount stated in the commutation authority; and

(b) the *maximum available release amount for the *superannuation interest that supports the specified superannuation income stream.

Exception for capped defined benefit income streams

(2) Despite subsection (1), if the specified *superannuation income stream is a *capped defined benefit income stream, the *superannuation income stream provider may choose not to comply with the commutation authority.

Exception for deceased member

(3) Despite subsection (1), if the *retirement phase recipient has died, the *superannuation income stream provider may choose not to comply with the commutation authority.

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

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136-85 Notifying the Commissioner

(1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must notify the Commissioner of the amount of a *superannuation lump sum paid in accordance with the commutation authority.

(2) If a *superannuation income stream provider chooses under subsection 136-80(2) or (3) not to comply with the commutation authority, the provider must notify the Commissioner of that choice.

(3) A notice under this section must be in the *approved form and must be given within 60 days after the commutation authority is issued.

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

136-90 Notifying you

(1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must notify you if the superannuation income stream provider:

(a) pays a *superannuation lump sum in accordance with the commutation authority; or

(b) chooses under subsection 136-80(2) not to comply with the commutation authority.

(2) A notice under this section must be in the *approved form and must be given within 60 days after the commutation authority is issued.

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

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

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Division 138—First home super saver scheme

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138-A First home super saver determination
138-B FHSS maximum release amount

Guide to Division 138

138-1 What this Division is about

If you have had voluntary contributions into superannuation, you may be eligible to have those contributions and their associated earnings released for the purposes of purchasing or constructing your first home.

Subdivision 138-A—First home super saver determination

Guide to Subdivision 138-A

138-5 What this Subdivision is about

If you satisfy particular criteria, you may request that the Commissioner make a determination stating your FHSS maximum release amount and the components that make up that amount.

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

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Operative provisions

138-10 First home super saver determination

(1) A ***first home super saver determination*** is a written determination stating:

(a) your *FHSS maximum release amount; and

(b) the amount of each of the following components that make up your FHSS maximum release amount:

(i) your *concessional contributions;

(ii) your *non-concessional contributions;

(iii) your associated earnings.

(2) You may request the Commissioner, in the *approved form, to make a *first home super saver determination if:

(a) you have never held:

(i) a freehold interest in real property in Australia; or

(ii) a lease of land in Australia (including a renewal or extension of such a lease) as described in paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997*; or

(iii) a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land in Australia; and

(b) you are 18 years or older; and

(c) you have not previously requested a release authority under Division 131 in relation to a first home super saver determination that has been made in relation to you.

(2A) If the Commissioner determines that you have suffered a financial hardship, you are taken to have satisfied paragraph (2)(a).

(2B) The regulations may specify the circumstances in which the Commissioner is to determine that a person has suffered a financial hardship for the purposes of subsection (2A).

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

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(3) If you make a valid request under subsection (2), the Commissioner must make a *first home super saver determination in relation to you.

(4) The Commissioner may amend or revoke a *first home super saver determination at any time before a release authority relating to the determination is issued under Division 131.

(5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

138-15 Review

If you are dissatisfied with:

(a) a *first home super saver determination in relation to you; or

(b) a decision the Commissioner makes not to make a determination under subsection 138-10(2A);

you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC.

Subdivision 138-B—FHSS maximum release amount

Guide to Subdivision 138-B

138-20 What this Subdivision is about

Your FHSS maximum release amount comprises your eligible non-concessional contributions, 85% of your eligible concessional contributions, and your associated earnings.

There are limits on the amount of contributions that may be eligible for release.

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

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138-40 Associated earnings

Operative provisions

138-25 FHSS maximum release amount

Your ***FHSS maximum release amount*** is the sum of:

(a) your *FHSS releasable contributions amount worked out under section 138-30; and

(b) your associated earnings worked out under section 138-40.

138-30 FHSS releasable contributions amount

(1) Your ***FHSS releasable contributions amount*** is the sum of the following amounts for each *financial year that starts on 1 July 2017 or a later 1 July:

(a) your *FHSS eligible non-concessional contributions for the financial year;

(b) 85% of your *FHSS eligible concessional contributions for the financial year.

Order of counting contributions

(2) In determining which contributions are to be counted towards your *FHSS releasable contributions amount, contributions are to be counted in the order in which they were made (from earliest to latest).

(3) For subsection (2):

(a) if an *FHSS eligible concessional contribution, and an *FHSS eligible non-concessional contribution, is made in respect of

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

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you at the same time, the FHSS eligible non-concessional contribution is taken to have been made first; and

(b) if, for a particular *financial year, you personally made both *FHSS eligible concessional contributions and *FHSS eligible non-concessional contributions, the FHSS eligible non-concessional contributions are taken to have been made first.

Example: For paragraph (b), in the 2018-2019 financial year, you made voluntary contributions of $1,000 each fortnight, up to a total of $25,000. At the end of the financial year, you claim a deduction for $15,000 (leaving $10,000 of the contributions as non-concessional contributions).

If all of the non-concessional contributions are eligible to be released under section 138-35, the first 10 contributions made for the financial year are taken to have been the non-concessional contributions, and the later contributions are taken to be the concessional contributions.

138-35 Eligible contributions

Limits on amount of eligible contributions

(1) For the purposes of this Subdivision:

(a) the maximum amount of contributions that may be eligible to be released is $30,000; and

(b) the maximum amount of contributions made in a particular *financial year that may be eligible to be released is $15,000.

Eligible contributions

(2) A *concessional contribution, or *non-concessional contribution, for a *financial year is not eligible to be released unless it:

(a) is made in respect of you in the financial year; and

(b) is:

(i) an employer contribution that is not a mandated employer contribution (within the meaning of Part 5 of the *Superannuation Industry (Supervision) Regulations 1994*); or

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

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(ii) a member contribution (within the meaning of that Part) that is made by you;

other than a contribution to the extent it is required to be made because of a law of the Commonwealth or of a State or Territory, or the rules of the relevant *superannuation fund; and

(c) is not a contribution made in respect of a *defined benefit interest; and

(d) is not a contribution to a *constitutionally protected fund.

(3) If:

(a) you have *excess concessional contributions for a *financial year (***your excess amount***); and

(b) your excess amount is greater than your *concessional contributions for the financial year that are not eligible to be released under subsection (2) (***your non-eligible contributions***);

concessional contributions that are equal to the difference between your excess amount and your non-eligible contributions are not eligible to be released.

(4) If:

(a) you have *non-concessional contributions for the *financial year that exceed your non-concessional contributions cap for the financial year (***your excess amount***); and

(b) your excess amount is greater than your non-concessional contributions for the financial year that are not eligible to be released under subsection (2) (***your non-eligible contributions***);

non-concessional contributions that are equal to the difference between your excess amount and your non-eligible contributions are not eligible to be released.

(5) For the purposes of this section, disregard paragraph 292-90(1)(b) of the *Income Tax Assessment Act 1997*.

Note: Under paragraph 292-90(1)(b) of the *Income Tax Assessment Act 1997*, your non-concessional contributions for a financial year would

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

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include the amount of your excess concessional contributions (if any) for the financial year.

138-40 Associated earnings

(1) You are taken to have associated earnings equal to the sum of the amounts worked out under subsection (2) for each contribution counted in your *FHSS releasable contributions amount.

(2) The amount for a contribution is 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 mentioned in subsection (3).

$$\text{Shortfall interest charge rate} \times \left(\begin{array}{c} \text{Amount of} \\ \text{contribution} \end{array} + \begin{array}{c} \text{Sum of earlier} \\ \text{daily proxy amounts} \end{array} \right)$$

where:

amount of contribution means the amount of the contribution that is counted in your *FHSS releasable contributions amount.

shortfall interest charge rate means the rate, worked out under subsection 280-105(2), for the day.

sum of earlier daily proxy amounts means the sum of the amounts worked out for the contribution under the formula for each of the earlier days (if any) during the period for the contribution.

(3) The period starts:

(a) if the contribution is made in the *financial year starting on 1 July 2017—on 1 July 2017; and

(b) if the contribution is made in the financial year starting on 1 July 2018, or a later financial year—on the first day of the month in which the contribution is made or taken to have been made (see subsection 138-30(2));

and ends on the day the Commissioner makes the *first home super saver determination for which the associated earnings are being worked out.

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

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Part 3-30—Diverted profits tax

Division 145—Assessments of diverted profits tax

Guide to Division 145

145-1 What this Division is about

The Commissioner can make an assessment of diverted profits tax. The entity that is the subject of the assessment can appeal to the Federal Court against the Commissioner's decision to make the assessment. Such an appeal can be made generally no earlier than 12 months after the day on which the Commissioner first gives notice of the assessment to the entity.

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145-5 DPT assessments—modified application of Division 155
145-10 When DPT assessments can be made
145-15 Period of review of DPT assessments
145-20 Review of assessments
145-25 Restricted DPT evidence

145-5 DPT assessments—modified application of Division 155

In applying Division 155 in relation to an amount of *diverted profits tax:

(a) apply the provisions of that Division with the modifications set out in sections 145-10 to 145-25; and

(b) disregard sections 155-15, 155-20, 155-25, 155-30, 155-40, 155-45, 155-50, 155-55 and 155-70.

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

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145-10 When DPT assessments can be made

Despite subsection 155-5(1), the Commissioner can make an assessment (the ***DPT assessment***) of the amount of *diverted profits tax only at a time in the period:

(a) starting on the day on which the Commissioner first gives the entity that is the subject of the assessment a notice of assessment under Part IV of the *Income Tax Assessment Act 1936* for the income year mentioned in paragraph 177J(1)(a) of the *Income Tax Assessment Act 1936* (as that paragraph applies in relation to the amount of diverted profits tax); and

(b) ending on the last day of the period of 7 years starting the day after that day.

145-15 Period of review of DPT assessments

(1) Despite subsection 155-35(2), the ***period of review***, for the *DPT assessment, is:

(a) the period:

(i) starting on the day on which the Commissioner first gives notice of the assessment to the entity that is the subject of the assessment under section 155-10; and

(ii) ending on the last day of the period of 12 months starting the day after that day; or

(b) if:

(i) the entity, by written notice given to the Commissioner, specifies a shorter period in accordance with subsection (2); and

(ii) the Federal Court of Australia has not made an order under subsection (3) in respect of the written notice;

that shorter period; or

(c) if the period of review is extended under subsection 155-35(3) or (4)—the period as so extended.

(2) For the purposes of subparagraph (1)(b)(i), the shorter period must:

(a) start on the day mentioned in subparagraph (1)(a)(i); and

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

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(b) end on a day that is at least 30 days after the day on which the entity gives the written notice to the Commissioner.

(3) For the purposes of subparagraph (1)(b)(ii), the Federal Court of Australia may make an order under this subsection in respect of the written notice if:

(a) the Commissioner has started to examine the entity's affairs in relation to the assessment; and

(b) the Commissioner has not completed the examination within the shorter period specified in the written notice; and

(c) the Commissioner, within 30 days after the day on which the entity gives the written notice to the Commissioner, applies to the Court for the order; and

(d) the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the shorter period specified in the written notice, because of:

(i) any action taken by the entity; or

(ii) any failure by the entity to take action that it would have been reasonable for the entity to take.

(4) Despite subsection 155-35(5), in relation to the *DPT assessment:

(a) an order may be made under subsection 155-35(3) only once; and

(b) consent may be given under subsection 155-35(4) only once.

145-20 Review of assessments

(1) Section 155-90 does not apply during the *period of review mentioned in section 145-15.

(2) In applying Part IVC of this Act as a result of section 155-90 after the end of that *period of review:

(a) have regard only to the provisions of that Part mentioned in subsection (3); and

(b) apply those provisions with the modifications set out in subsection (4); and

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

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(c) disregard the other provisions of that Part; and
(d) apply section 145-25 (restricted DPT evidence).

(3) For the purposes of paragraph (2)(a), the provisions of that Part are as follows:
(a) sections 14ZL and 14ZP;
(b) subsection 14ZR(1);
(c) subsection 14ZZ(1);
(d) Division 5 (apart from section 14ZZS).

(4) For the purposes of paragraph (2)(b), the modifications are as follows:
(a) treat the Commissioner's decision to make the *DPT assessment as an objection decision;
(b) treat subsection 14ZZ(1) as reading "The entity that is the subject of the DPT assessment may appeal to the Federal Court of Australia against the objection decision.";
(c) treat the reference in section 14ZZN to "within 60 days after the person appealing is served with notice of the decision" as being a reference to "within 60 days after the end of the period of review mentioned in section 145-15 in Schedule 1";
(d) disregard paragraph 14ZZO(a);
(e) treat paragraph 14ZZO(b) as reading "the appellant has the burden of proving that the DPT assessment is excessive or otherwise incorrect and what the DPT assessment should have been";
(f) treat the reference in section 14ZZR to a taxation decision as being a reference to the Commissioner's decision to make the DPT assessment.

145-25 Restricted DPT evidence

(1) *Restricted DPT evidence is not admissible in evidence in proceedings under Part IVC on an appeal to the Federal Court of Australia related to the *DPT assessment.

(2) ***Restricted DPT evidence*** means information or documents that:

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

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(a) the entity that is the subject of the *DPT assessment (or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of that entity), had in its custody or under its control at a time before, during or after the *period of review; and

(b) the Commissioner did not have in his or her custody or under his or her control at any time in the period of review.

(3) Subsection (1) does not prevent *restricted DPT evidence from being admissible in evidence in the proceedings if:

(a) the Commissioner consents to the admission of the restricted DPT evidence in accordance with subsection (4); or

(b) the court in which the proceedings take place considers that the admission of the restricted DPT evidence is necessary in the interests of justice; or

(c) the restricted DPT evidence is expert evidence that:

(i) comes into existence after the *period of review; and

(ii) is based on evidence that the Commissioner had in his or her custody or under his or her control at any time in the period of review.

(4) For the purposes of paragraph (3)(a), the Commissioner may give the consent if the Commissioner considers that it is reasonable to do so.

(5) In making a decision under paragraph (3)(a) or (b), the Commissioner or the court must have regard to:

(a) whether, if the *restricted DPT evidence were not admissible in evidence in the proceedings, the remaining information or documents that are relevant to the proceedings are, or are likely to be, misleading; and

(b) whether it would have been reasonable for the entity that is the subject of the *DPT assessment (or the associate of that entity mentioned in paragraph (2)(a)) to have given the Commissioner the restricted DPT evidence within the *period of review.

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

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(6) The Commissioner must give a consent for the purposes of paragraph (3)(a) if failure to do so would have the effect, for the purposes of the Constitution, of making any tax or penalty incontestable.

(7) A consent for the purposes of paragraph (3)(a) is to be in writing.

(8) If the Commissioner gives a consent for the purposes of paragraph (3)(a), the Commissioner must give the entity that is the subject of the *DPT assessment a copy of the consent as soon as practicable afterwards.

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

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Chapter 4—Generic assessment, collection and recovery rules

Part 4-1—Returns and assessments

Division 155—Assessments

Table of Subdivisions

Guide to Division 155
155-A Making assessments
155-B Amending assessments
155-C Validity and review of assessments
155-D Miscellaneous

Guide to Division 155

155-1 What this Division is about

This Division contains rules relating to assessments.

The rules in this Division deal with the following:

(a) how assessments are made or amended and their effect;

(b) review of assessments.

Subdivision 155-A—Making assessments

Table of sections

155-5 Commissioner may make assessment
155-10 Commissioner must give notice of assessment

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

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155-15 Self-assessment
155-20 Assessment of indirect tax on importations and customs dealing
155-25 Special assessment
155-30 Delays in making assessments

155-5 Commissioner may make assessment

(1) The Commissioner may at any time make an assessment of an *assessable amount (including an assessment that the amount is nil).

Note 1: For amendment of assessments, see Subdivision 155-B.

Note 2: An assessment can be reviewed: see Subdivision 155-C.

(2) Each of the following is an ***assessable amount***:

(a) a *net amount;

(b) a *net fuel amount;

(c) an amount of *indirect tax not included in an amount covered by another paragraph of this subsection;

(d) a credit under an *indirect tax law not included in an amount covered by another paragraph of this subsection;

(f) an amount of *Division 293 tax payable for an income year in relation to an individual's *taxable contributions for the income year;

(g) an amount of *excess exploration credit tax for an income year;

(h) an amount of *excess transfer balance tax payable for an *excess transfer balance period;

(i) an amount of levy under the *Major Bank Levy Act 2017* for a *quarter;

(j) an amount of *diverted profits tax;

Note: This Division has a modified operation in relation to diverted profits tax (see Division 145).

(k) an amount of *first home super saver tax for an income year.

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

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155-10 Commissioner must give notice of assessment

(1) The Commissioner must give you notice of an assessment of an *assessable amount of yours as soon as practicable after the assessment is made.

Note: This section also applies to an amended assessment: see section 155-80.

(2) The Commissioner may give you the notice electronically if you are required to lodge, or have lodged, the return (if any) that relates to the *assessable amount electronically.

155-15 Self-assessment

(1) The Commissioner is treated as having made an assessment under section 155-5 of an *assessable amount mentioned in an item of the following table, if the document mentioned in the item is given to the recipient mentioned in the item:

Self-assessed amounts

Item	Column 1 Assessable amount	Column 2 Recipient	Column 3 Document
1	your *net amount for a *tax period	the Commissioner	your *GST return for the tax period
2	your *net fuel amount for a *tax period	the Commissioner	your *fuel tax return for the tax period

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

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Self-assessed amounts			
Item	**Column 1** **Assessable amount**	**Column 2** **Recipient**	**Column 3** **Document**
3	the *GST payable by you on a *taxable importation	the Collector (within the meaning of the *Customs Act 1901*) or the Department administered by the Minister administering Part XII of that Act	return, given as described in one of the following provisions, in relation to the importation: (a) paragraph 69(8)(a), (b) or (c), or 70(7)(a), of the *Customs Act 1901*; (b) regulations prescribed for the purposes of paragraph 69(8)(d) of that Act
4	an amount of *excess exploration credit tax for an income year	the Commissioner	return given under section 418-160 for the income year
5	an amount of levy under the *Major Bank Levy Act 2017* for a *quarter	the Commissioner	return given under section 115-5 for the quarter

Note: There is no self-assessment of Division 293 tax, excess transfer balance tax or first home super saver tax.

(2) The assessment is treated as having been made on the day the document is given to the recipient mentioned in column 2.

(3) The amount assessed is:

(a) if the document is required to state the *assessable amount—the amount (including a nil amount) stated; or

(b) otherwise—the amount (including a nil amount) worked out in accordance with the information stated in the document.

(4) The document is treated as being a notice of the assessment:

(a) signed by the Commissioner; and

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

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(b) given to you under section 155-10 on the day the document is given to the recipient.

(5) This section does not apply to an *assessable amount if the Commissioner has already assessed the assessable amount on or before the day mentioned in paragraph (4)(b).

155-20 Assessment of indirect tax on importations and customs dealing

(1) The Commissioner is treated as having made an assessment under section 155-5 of the *GST, *luxury car tax or *wine tax (whichever is applicable) payable by you on a *taxable importation, *taxable importation of a luxury car or *customs dealing, if:

(a) the document mentioned in column 1 of an item of the following table is communicated to the Department administered by the Minister administering Part XII of the *Customs Act 1901*, in respect of the importation or dealing; and

(b) a Collector (within the meaning of the *Customs Act 1901*) gives the document mentioned in column 2 of the item to an entity in respect of the importation or dealing.

Customs documents

Item	Column 1 Document communicated	Column 2 Document given to an entity
1	an *import declaration	an *import declaration advice
2	a self-assessed clearance declaration (within the meaning of the *Customs Act 1901*)	a *self-assessed clearance declaration advice

(2) The assessment is treated as having been made on the day a Collector (within the meaning of the *Customs Act 1901*) gives the document mentioned in paragraph (1)(b) to the entity.

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

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(3) The amount assessed is the amount (including a nil amount) worked out in accordance with the information stated in the 2 documents.

(4) The 2 documents are treated as together being a notice of the assessment:
   (a) signed by the Commissioner; and
   (b) given to you under section 155-10 on the day a Collector (within the meaning of the *Customs Act 1901*) gives the document mentioned in paragraph (1)(b) of this section to the entity.

(5) This section does not apply if the Commissioner has already assessed the *GST, *luxury car tax or *wine tax on or before the day mentioned in paragraph (4)(b).

155-25 Special assessment

For the purposes of making, under section 155-5, an assessment of an *assessable amount that relates to a period (e.g. a tax period), the Commissioner may treat part of the period as being the whole period.

155-30 Delays in making assessments

(1) You may give the Commissioner a written notice requiring the Commissioner to make an assessment of an *assessable amount of yours, if, 6 months after the day on which the relevant return (if any) for the assessable amount is given to the Commissioner, the Commissioner has not given to you notice of an assessment of the assessable amount under section 155-10.

(2) You may object, in the manner set out in Part IVC of this Act, against the Commissioner's failure to make the assessment if the Commissioner does not make the assessment within 30 days after the day the notice is given under subsection (1).

(3) This section does not apply to the following *assessable amounts:

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

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(a) the *Division 293 tax payable by you in relation to an income year in relation to your *taxable contributions for the income year;
(b) the *excess transfer balance tax payable by you for an *excess transfer balance period;
(c) the *first home super saver tax payable by you for an income year.

Subdivision 155-B—Amending assessments

Table of sections

When Commissioner may amend assessments

155-35 Amendment during period of review
155-40 Amendment during period of review—certain applications taken to be notices
155-45 Amendment on application
155-50 Amendment to give effect to private ruling
155-55 Amendment to give effect to certain anti-avoidance declarations
155-60 Amendment because of review, objection or fraud

Special rules about amending amended assessments

155-65 Amending amended assessments
155-70 Refreshed period of review

General rules

155-75 Refunds of amounts overpaid
155-80 Amended assessments are assessments

When Commissioner may amend assessments

155-35 Amendment during period of review

Amendment

(1) The Commissioner may amend an assessment of an *assessable amount within the *period of review for the assessment.

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

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Note 1: An amendment of an assessment can be reviewed: see Subdivision 155-C.

Note 2: This section also applies to amended assessments: see section 155-80. However, there are limits on how amended assessments can be amended: see sections 155-65 and 155-70.

*Meaning of **period of review***

(2) The ***period of review***, for an assessment of an *assessable amount of yours, is:

(a) the period:

(i) starting on the day on which the Commissioner first gives notice of the assessment to you under section 155-10; and

(ii) ending on the last day of the period of 4 years starting the day after that day; or

(b) if the period of review is extended under subsection (3) or (4) of this section—the period as so extended.

Extensions

(3) The Federal Court of Australia may order an extension of the *period of review for an assessment of an *assessable amount of yours for a specified period, if:

(a) the Commissioner has started to examine your affairs in relation to the assessment; and

(b) the Commissioner has not completed the examination within the period of review for the assessment; and

(c) the Commissioner, during the period of review, applies to the Federal Court of Australia for an order extending the period; and

(d) the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the period of review, because of:

(i) any action taken by you; or

(ii) any failure by you to take action that it would have been reasonable for you to take.

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

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(4) You may, by written notice given to the Commissioner, consent to the extension of the *period of review for an assessment of an *assessable amount of yours for a specified period, if:

(a) the Commissioner has started to examine your affairs in relation to the assessment; and

(b) the Commissioner has not completed the examination within the period of review for the assessment; and

(c) the Commissioner, during the period of review, requests you to consent to extending the period of review.

(5) An order may be made under subsection (3), or consent given under subsection (4), in relation to an assessment of an *assessable amount more than once.

155-40 Amendment during period of review—certain applications taken to be notices

(1) An application made by you for an amendment of an assessment of an *assessable amount of yours is treated as being a notice of the amended assessment given to you by the Commissioner under section 155-10, if:

(a) the application is in the *approved form; and

(b) the Commissioner makes the amendment:

(i) to give effect to the decision on the application; and

(ii) during the *period of review for the assessment; and

(c) the amendment the Commissioner makes is the entire amendment for which you applied, and nothing else.

(2) The notice is treated as having been given to you on whichever of the following is applicable:

(a) the first day the Commissioner adjusts the balance of an *RBA of yours as a result of the amendment;

(b) the day a Collector (within the meaning of the *Customs Act 1901*) gives an *import declaration advice, or a *self-assessed clearance declaration advice, to an entity in respect of the

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

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relevant *taxable importation, *taxable importation of a luxury car or *customs dealing as a result of the amendment.

155-45 Amendment on application

The Commissioner may amend an assessment of an *assessable amount of yours at any time, if you apply for an amendment in the *approved form during the *period of review for the assessment. The Commissioner may amend the assessment to give effect to his or her decision on the application.

Note: The Commissioner must give you notice of the amended assessment under section 155-10: see section 155-80.

155-50 Amendment to give effect to private ruling

The Commissioner may amend an assessment of an *assessable amount of yours at any time, if:

(a) you apply for a *private ruling during the *period of review for the assessment; and

(b) the Commissioner makes a private ruling because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

155-55 Amendment to give effect to certain anti-avoidance declarations

The Commissioner may amend an assessment of an *assessable amount at any time, if:

(a) the Commissioner makes a declaration under subsection 165-45(3) of the *GST Act (about compensating adjustments for anti-avoidance declarations); or

(b) the Commissioner makes a declaration under subsection 75-45(3) of the *Fuel Tax Act 2006* (about compensating adjustments for anti-avoidance declarations).

The Commissioner may amend the assessment to give effect to the declaration.

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

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155-60 Amendment because of review, objection or fraud

Despite anything in this Subdivision, the Commissioner may amend an assessment of an *assessable amount of yours at any time:

(a) to give effect to a decision on a review or appeal; or

(b) as a result of an objection made by you, or pending a review or appeal; or

(c) if he or she is of the opinion there has been fraud or evasion.

Special rules about amending amended assessments

155-65 Amending amended assessments

The Commissioner cannot amend an amended assessment of an *assessable amount under section 155-35 if the *period of review for the assessment has ended.

Note: The Commissioner can amend amended assessments at any time under sections 155-45 to 155-60.

155-70 Refreshed period of review

(1) This section applies if the Commissioner has made one or more amendments of an assessment of an *assessable amount of yours under section 155-35 about a particular.

(2) Despite section 155-65, the Commissioner may amend (the ***later amendment***) the amended assessment after the end of the *period of review for the assessment, if:

(a) the Commissioner makes the later amendment before the end of the period of 4 years starting on the day after the day on which the Commissioner gave notice of the last of the amendments mentioned in subsection (1) to you under section 155-10; and

(b) the later amendment is about the particular mentioned in subsection (1) of this section; and

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

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(c) the Commissioner has not previously amended the assessment under this section about that particular.

General rules

155-75 Refunds of amounts overpaid

(1) This section applies if:

(a) an assessment of an *assessable amount of yours is amended; and

(b) as a result of the amendment, a *tax-related liability (the ***earlier liability***) of yours is reduced.

(2) For the purposes of any *taxation law that applies the *general interest charge, the amount by which the *tax-related liability is reduced is taken never to have been payable.

Note 1: The general interest charge is worked out under Part IIA of this Act.

Note 2: Subsection 8AAB(4) of this Act lists the provisions that apply the charge.

(3) The Commissioner must apply the amount of any *tax-related liability overpaid in accordance with Divisions 3 and 3A of Part IIB of this Act (about running balance accounts and the application of payments and credits).

(4) However, if:

(a) a later amendment of an assessment of an *assessable amount is made; and

(b) all or some of your earlier liability in relation to a particular is reinstated;

this section is taken not to have applied to the extent that the earlier liability is reinstated.

155-80 Amended assessments are assessments

An amended assessment of an *assessable amount is an assessment for all purposes of any *taxation law.

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

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Note: The Commissioner must give notice of the amended assessment under section 155-10. Under section 155-40, an application for an amendment is treated as being a notice of the amendment in certain circumstances.

Subdivision 155-C—Validity and review of assessments

Table of sections

155-85 Validity of assessment
155-90 Review of assessments

155-85 Validity of assessment

The validity of any assessment of an *assessable amount is not affected by non-compliance with the provisions of this Act or of any other *taxation law.

155-90 Review of assessments

You may object, in the manner set out in Part IVC of this Act, against an assessment of an *assessable amount of yours if you are dissatisfied with the assessment.

Note: If an individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule, the individual may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

Subdivision 155-D—Miscellaneous

Table of sections

155-95 Entities

155-95 Entities

This Division applies, in relation to an *assessable amount under a *taxation law, to an entity under that taxation law in the same way

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

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as the Division applies to an entity under the *Income Tax Assessment Act 1997*.

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

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Part 4-15—Collection and recovery of tax-related liabilities and other amounts

Division 250—Introduction

Table of Subdivisions

250-A Guide to Part 4-15
250-B Object of this Part

Subdivision 250-A—Guide to Part 4-15

250-1 What this Part is about

This Part deals with the methods by which the Commissioner may collect and recover amounts of taxes and other liabilities.

These rules may affect you if you are liable to pay an amount of a tax-related liability (see, for example, Division 255). Some of the rules may also affect you because of your relationship with someone else who is liable for such an amount (see Division 260).

Table of sections

250-5 Some important concepts about tax-related liabilities
250-10 Summary of tax-related liabilities

250-5 Some important concepts about tax-related liabilities

(1) A tax-related liability may arise for an entity before it becomes due and payable by that entity.

Example: Under Part 2-5, an entity's liability to pay a withheld amount may arise before the amount is due and payable.

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

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(2) For some tax-related liabilities, an assessment needs to be made before the amount of the relevant liability becomes due and payable.

Example: Under Division 5 of the *Income Tax Assessment Act 1997*, an amount of income tax needs to be assessed before it becomes due and payable.

(3) An amount of a tax-related liability may become payable by an entity (for example, when the amount has been assessed) before it is due and payable by that entity.

250-10 Summary of tax-related liabilities

(1) The following table is an index of each tax-related liability under the *Income Tax Assessment Act 1936*. The key provision for the liability, as set out in the table, specifies when the liability becomes due and payable.

Note 1: The Commissioner may vary the time at which the amount becomes due and payable. See Subdivision 255-B.

Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).

Tax-related liabilities under the *Income Tax Assessment Act 1936*

Item	Topic	Provision
5	trustee beneficiary non-disclosure tax	102UO
10	withholding tax on dividend, interest or royalty	128C(1)
15	special tax payable on dealings by offshore banking units	128NB(3)
20	mining withholding tax	128W(1)
50	late lodgment penalty	former subsection 163A(3)
70	excessive tax offset refunds	172A(2)
80	diverted profits tax	subsection 177P(3)

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

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Tax-related liabilities under the *Income Tax Assessment Act 1936*		
Item	**Topic**	**Provision**
85	shortfall interest charge for diverted profits tax	section 177R
90	family trust distribution tax	271-75 in Schedule 2F
100	interest payable under section 102AAM (about distributions from non-resident trust estates)	5-5 of the *Income Tax Assessment Act 1997*

(2) The following table is an index of each tax-related liability under other Acts. The key provision for the liability, as set out in the table, specifies when the liability becomes due and payable.

Note 1: The Commissioner may vary the time at which the amount becomes due and payable. See Subdivision 255-B.

Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).

Note 3: Companies that are or were members of the same wholly-owned group as an NZ franking company may be jointly and severally liable to pay certain tax-related liabilities of the NZ franking company (see Division 220 of the *Income Tax Assessment Act 1997*).

Note 4: Penalties under Division 175 of the *Australian Charities and Not-for-profits Commission Act 2012*, and related general interest charge, are treated in the same way as tax-related liabilities: see subsection 175-70(2) of that Act.

Note 5: A liability for a fee that is due and payable under subsection 113(5) of the *Foreign Acquisitions and Takeovers Act 1975* is a tax-related liability if the power of the Treasurer to recover the fee under that subsection is delegated to the Commissioner of Taxation under section 137 of that Act (see subsections 138(1) and (2) of that Act).

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
5	assessed net amount, including amounts in respect of luxury car tax and wine equalisation tax	33-3, 33-5, 35-5(2)	*A New Tax System (Goods and Services Tax) Act 1999*
10	amount of assessed GST on importations	33-15	*A New Tax System (Goods and Services Tax) Act 1999*
12A	assessed GST on supplies made in settlement of claims under insurance policies	78-90	*A New Tax System (Goods and Services Tax) Act 1999*
12B	assessed GST on supplies made in satisfaction of debts	105-20	*A New Tax System (Goods and Services Tax) Act 1999*
13	repayments of amounts paid under tourist refund scheme	168-10	*A New Tax System (Goods and Services Tax) Act 1999*
15	amount of assessed luxury car tax on importation	13-20	*A New Tax System (Luxury Car Tax) Act 1999*
16	excess luxury car tax credits	17-15	*A New Tax System (Luxury Car Tax) Act 1999*
18	excess wine tax credits	17-25	*A New Tax System (Wine Equalisation Tax) Act 1999*
20	amount of assessed wine tax on customs dealings	23-5	*A New Tax System (Wine Equalisation Tax) Act 1999*
21	repayments of amounts paid under tourist refund scheme	25-10	*A New Tax System (Wine Equalisation Tax) Act 1999*
22A	amount of advance to be repaid	14A	*Diesel and Alternative Fuels Grants Scheme Act 1999*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
22B	amount payable as a result of an amended assessment	15E	*Diesel and Alternative Fuels Grants Scheme Act 1999*
24	excise duty	54	*Excise Act 1901*
24A	accounting for excisable goods	60(1), (1A), (1B) and (1C)	*Excise Act 1901*
24B	tobacco leaf stock deficiency	77AA	*Excise Act 1901*
24C	accounting for spirit	77FH	*Excise Act 1901*
24CA	penalty for using LPG for excisable LPG use	77M	*Excise Act 1901*
24D	fee for an action that does not relate to an application or a notice	113(5)	*Foreign Acquisitions and Takeovers Act 1975* (but see note 5 to this subsection)
24E	vacancy fee	115F	*Foreign Acquisitions and Takeovers Act 1975*
25	fringe benefits tax	90	*Fringe Benefits Tax Assessment Act 1986*
35	fringe benefits tax instalments	103	*Fringe Benefits Tax Assessment Act 1986*
36	assessed net fuel amount	61-5(2), 61-10	*Fuel Tax Act 2006*
36A	compulsory repayment amount under the *Higher Education Support Act 2003*	5-5	*Income Tax Assessment Act 1997*
36AA	compulsory VETSL repayment amount under the *VET Student Loans Act 2016*	5-5	*Income Tax Assessment Act 1997*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
36B	compulsory SSL repayment amount under the *Social Security Act 1991*	5-5	*Income Tax Assessment Act 1997*
36C	compulsory ABSTUDY SSL repayment amount under the *Student Assistance Act 1973*	5-5	*Income Tax Assessment Act 1997*
36D	compulsory TSL repayment amount under the *Trade Support Loans Act 2014*	5-5	*Income Tax Assessment Act 1997*
37	income tax	5-5	*Income Tax Assessment Act 1997*
37AA	shortfall interest charge on income tax	5-10	*Income Tax Assessment Act 1997*
37AB	shortfall interest charge on excess non-concessional contributions tax	5-10	*Income Tax Assessment Act 1997*
37AC	shortfall interest charge on Division 293 tax	5-10	*Income Tax Assessment Act 1997*
37AD	shortfall interest charge on excess concessional contributions charge	5-10	*Income Tax Assessment Act 1997*
37A	untainting tax	197-70	*Income Tax Assessment Act 1997*
38	franking tax	214-150(1), (2), (3) and (4)	*Income Tax Assessment Act 1997*
38B	excess non-concessional contributions tax	292-385	*Income Tax Assessment Act 1997*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
38BB	Division 293 tax	293-65 and 293-70	*Income Tax Assessment Act 1997*
38BC	excess transfer balance tax	294-240 and 294-245	*Income Tax Assessment Act 1997*
38BD	first home super saver tax	313-65 and 313-70	*Income Tax Assessment Act 1997*
38D	excess exploration credit tax	418-155	*Income Tax Assessment Act 1997*
39	TSA liability	721-30	*Income Tax Assessment Act 1997*
39A	managed investment trust withholding tax	840-810(1)	*Income Tax Assessment Act 1997*
39AA	Seasonal Labour Mobility Program withholding tax	840-910	*Income Tax Assessment Act 1997*
39B	managed investment trust withholding tax	840-810(1)	*Income Tax (Transitional Provisions) Act 1997*
40	petroleum resource rent tax	82	*Petroleum Resource Rent Tax Assessment Act 1987*
41	shortfall interest charge on petroleum resource rent tax	82	*Petroleum Resource Rent Tax Assessment Act 1987*
45	petroleum resource rent tax instalments	95	*Petroleum Resource Rent Tax Assessment Act 1987*
45A	instalment transfer interest charge	98C(4)	*Petroleum Resource Rent Tax Assessment Act 1987*
45B	liability for excess private health insurance premium reduction or refund	282-18	*Private Health Insurance Act 2007*
46	amount of advance to be repaid	13	*Product Grants and Benefits Administration Act 2000*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
47	amount payable as a result of an amended assessment	20	*Product Grants and Benefits Administration Act 2000*
48	penalty under section 35	36	*Product Grants and Benefits Administration Act 2000*
50	superannuation contributions surcharge	15(3)	*Superannuation Contributions Tax (Assessment and Collection) Act 1997*
55	superannuation contributions surcharge	15(8)	*Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*
60	superannuation guarantee charge	46	*Superannuation Guarantee (Administration) Act 1992*
65	additional superannuation guarantee charge	47	*Superannuation Guarantee (Administration) Act 1992*
67	Superannuation (Self Managed Funds) Levy	15DB	*Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*
67A	payment of unclaimed money to the Commissioner	17	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
67B	payment from Commissioner that cannot be credited	18C	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
68	payment in respect of a superannuation interest to the Commissioner	20F	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69	repayment of Commissioner's payment	20M	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
69AA	payment of value of inactive low-balance accounts to the Commissioner	20QD	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69AB	payment from Commissioner that cannot be credited	20QL	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69A	payment of value of lost member accounts to the Commissioner	24E	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69B	payment from Commissioner that cannot be credited	24L	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69BA	payment from Commissioner that cannot be credited	24NB	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
70	general interest charge	8AAE	*Taxation Administration Act 1953*
85	RBA deficit debt	8AAZH(1)	*Taxation Administration Act 1953*
90	administrative overpayment made by Commissioner	8AAZN	*Taxation Administration Act 1953*
95	TFN withholding tax	14-55 in Schedule 1	*Taxation Administration Act 1953*
100	TFN withholding tax (ESS)	14-155 in Schedule 1	*Taxation Administration Act 1953*
101	payment of amount to Commissioner	14-200 or 14-205 in Schedule 1	*Taxation Administration Act 1953*
105	payment of withheld amount to Commissioner	16-75 in Schedule 1	*Taxation Administration Act 1953*
110	PAYG withholding non-compliance tax	18-145 in Schedule 1	*Taxation Administration Act 1953*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
115	quarterly PAYG instalment	45-61 in Schedule 1	*Taxation Administration Act 1953*
115A	monthly PAYG instalment	45-67 in Schedule 1	*Taxation Administration Act 1953*
120	annual PAYG instalment	45-70 in Schedule 1	*Taxation Administration Act 1953*
125	general interest charge on shortfall in quarterly instalment worked out on basis of varied rate	45-230(4) in Schedule 1	*Taxation Administration Act 1953*
130	general interest charge on shortfall in quarterly instalment worked out on basis of estimated benchmark tax	45-232 in Schedule 1	*Taxation Administration Act 1953*
135	general interest charge on shortfall in annual instalment	45-235(5) in Schedule 1	*Taxation Administration Act 1953*
135Q	excess concessional contributions charge	95-20 in Schedule 1	*Taxation Administration Act 1953*
135R	amount in accordance with excess superannuation contributions release authority	131-35 in Schedule 1	*Taxation Administration Act 1953*
136	amount of major bank levy	115-10 in Schedule 1	*Taxation Administration Act 1953*
136A	debt account discharge liability	133-105 in Schedule 1	*Taxation Administration Act 1953*
137	amount to be recovered from a debtor under a registered foreign revenue claim	263-30 in Schedule 1	*Taxation Administration Act 1953*

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

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Tax-related liabilities under other legislation			
Item	**Topic**	**Provision**	**Act**
138	estimate of payable amounts	268-20 in Schedule 1	*Taxation Administration Act 1953*
139	penalty under Subdivision 269-B	269-20 in Schedule 1	*Taxation Administration Act 1953*
140	administrative penalties	298-15 in Schedule 1	*Taxation Administration Act 1953*

Subdivision 250-B—Object of this Part

250-25 Object

The object of this Part is to ensure that unpaid amounts of *tax-related liabilities and other related amounts are collected or recovered in a timely manner.

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

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Division 255—General rules about collection and recovery

Table of Subdivisions

255-A Tax-related liabilities
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Subdivision 255-A—Tax-related liabilities

Table of sections

255-1 Meaning of *tax-related liability*
255-5 Recovering a tax-related liability that is due and payable

255-1 Meaning of *tax-related liability*

(1) A ***tax-related liability*** is a pecuniary liability to the Commonwealth arising directly under a *taxation law (including a liability the amount of which is not yet due and payable).

Note 1: See section 250-10 for an index of tax-related liabilities.

Note 2: A taxation law, or a provision of it, may be excluded from being applied to this Part. See section 265-65.

(2) A civil penalty under Division 290 of this Schedule or Part 5 of the *Tax Agent Services Act 2009* is not a ***tax-related liability***.

255-5 Recovering a tax-related liability that is due and payable

(1) An amount of a *tax-related liability that is due and payable:
(a) is a debt due to the Commonwealth; and
(b) is payable to the Commissioner.

(2) The Commissioner, a *Second Commissioner or a *Deputy Commissioner may sue in his or her official name in a court of

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

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competent jurisdiction to recover an amount of a *tax-related liability that remains unpaid after it has become due and payable.

Note: The tables in section 250-10 set out each provision that specifies when an amount of a tax-related liability becomes due and payable. The Commissioner may vary that time under Subdivision 255-B.

Subdivision 255-B—Commissioner's power to vary payment time

Table of sections

255-10 To defer the payment time
255-15 To permit payments by instalments
255-20 To bring forward the payment time in certain cases

255-10 To defer the payment time

Deferrals for particular taxpayers

(1) The Commissioner may, having regard to the circumstances of your particular case, defer the time at which an amount of a *tax-related liability is, or would become, due and payable by you (whether or not the liability has already arisen). If the Commissioner does so, that time is varied accordingly.

Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

(2) The Commissioner must do so by written notice given to you.

Deferrals for classes of taxpayers

(2A) The Commissioner, having regard to the circumstances of the case, may, by notice published on the Australian Taxation Office website, defer the time at which amounts of *tax-related liabilities are, or would become, due and payable by a class of taxpayers (whether or not the liabilities have already arisen).

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

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(2B) If the Commissioner does so, that time is varied accordingly.

Note: General interest charge and any other relevant penalties, if applicable for any unpaid amounts of the liabilities, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

(2C) A notice published under subsection (2A) is not a legislative instrument.

Deferral does not affect time for giving form

(3) A deferral under this section does not defer the time for giving an *approved form to the Commissioner.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

255-15 To permit payments by instalments

(1) The Commissioner may, having regard to the circumstances of your particular case, permit you to pay an amount of a *tax-related liability by instalments under an *arrangement between you and the Commissioner (whether or not the liability has already arisen).

(2) The *arrangement does not vary the time at which the amount is due and payable.

Note: Despite an arrangement under this section, any general interest charge or other relevant penalty, if applicable for any unpaid amount of the liability, begins to accrue when the liability is due and payable under the relevant taxation law, or at that time as varied under section 255-10 or 255-20.

255-20 To bring forward the payment time in certain cases

(1) If the Commissioner reasonably believes that you may leave Australia before the time at which an amount of a *tax-related liability becomes due and payable by you, the Commissioner may bring that time forward. If the Commissioner does so, that time is varied accordingly.

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

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Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

(2) The Commissioner must do so by written notice given to you.

Subdivision 255-C—Recovery proceedings

Guide to Subdivision 255-C

255-35 What this Subdivision is about

This Subdivision deals with procedural and evidentiary matters relating to proceedings to recover an amount of a tax-related liability.

Table of sections

Operative provisions

255-40 Service of documents if person absent from Australia or cannot be found
255-45 Evidentiary certificate
255-50 Certain statements or averments
255-55 Evidence by affidavit

Operative provisions

255-40 Service of documents if person absent from Australia or cannot be found

(1) This section applies if a document needs to be served on a person in respect of a proceeding to recover an amount of a *tax-related liability, and the Commissioner, after making reasonable inquiries, is satisfied that:

(a) the person is absent from Australia and does not have any agent in Australia on whom the document can be served; or

(b) the person cannot be found.

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

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(2) The Commissioner may, without the court's leave, serve the document by posting it, or a sealed copy of it, in a letter addressed to the person at any Australian address of the person (including the person's Australian place of business or residence) that is last known to the Commissioner.

(3) For the purposes of giving effect to a provision of an international agreement of a kind referred to in Subdivision 263-A (about foreign revenue claims), if a document needs to be served on a person and the Commissioner, after making reasonable inquiries, is satisfied that:

(a) the person is absent from Australia and does not have an agent in Australia on whom the document can be served; and

(b) the person has an address in a foreign country, a constituent part of a foreign country or a foreign territory;

the Commissioner may serve the document on the person at the address mentioned in paragraph (b).

255-45 Evidentiary certificate

(1) A certificate:

(a) stating one or more of the matters covered by subsection (2) or (3); and

(b) signed by the Commissioner, a *Second Commissioner or a *Deputy Commissioner;

is prima facie evidence of the matter or matters in a proceeding to recover an amount of a *tax-related liability.

(2) A certificate may state:

(a) that a person named in the certificate has a *tax-related liability; or

(b) that an *assessment relating to a tax-related liability has been made, or is taken to have been made, under a *taxation law; or

(c) that notice of an assessment, or any other notice required to be served on a person in respect of an amount of a tax-related

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

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liability, was, or is taken to have been, served on the person under a *taxation law; or

(d) that the particulars of a notice covered by paragraph (c) are as stated in the certificate; or

(e) that a sum specified in the certificate is, as at the date specified in the certificate, a debt due and payable by a person to the Commonwealth.

(3) A certificate may state:

(a) that a *foreign revenue claim for an amount specified in the certificate has been made by the competent authority under the relevant international agreement; or

(b) that the relevant requirements of the relevant international agreement have been complied with in relation to the foreign revenue claim; or

(c) that the claim was registered under Division 263 on the date specified in the certificate; or

(d) that, as at the date of the certificate, the Commissioner has or has not received advice from the competent authority under the relevant international agreement about the reduction or discharge of an amount to be recovered under the claim; or

(e) that the particulars of any reduction or discharge of an amount to be recovered under the claim are as specified in the certificate.

255-50 Certain statements or averments

(1) In a proceeding to recover an amount of a *tax-related liability, a statement or averment about a matter in the plaintiff's complaint, claim or declaration is prima facie evidence of the matter.

(2) This section applies even if the matter is a mixed question of law and fact. However, the statement or averment is prima facie evidence of the fact only.

(3) This section applies even if evidence is given in support or rebuttal of the matter or of any other matter.

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

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(4) Any evidence given in support or rebuttal of the matter stated or averred must be considered on its merits. This section does not increase or diminish the credibility or probative value of the evidence.

(5) This section does not lessen or affect any onus of proof otherwise falling on a defendant.

255-55 Evidence by affidavit

In a proceeding to recover an amount of a *tax-related liability:

(a) a person may give evidence by affidavit; and

(b) the court may require the person to attend before it:

(i) to be cross-examined on that evidence; or

(ii) to give other evidence relating to the proceedings.

Subdivision 255-D—Security deposits

Table of sections

255-100 Commissioner may require security deposit
255-105 Notice of requirement to give security
255-110 Offence
255-115 Order to comply with requirement
255-120 Offence

255-100 Commissioner may require security deposit

(1) The Commissioner may require you to give security for the due payment of an existing or future *tax-related liability of yours if:

(a) the Commissioner has reason to believe that:

(i) you are establishing or *carrying on an *enterprise in Australia; and

(ii) you intend to carry on that enterprise for a limited time only; or

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

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(b) the Commissioner reasonably believes that the requirement is otherwise appropriate, having regard to all relevant circumstances.

Note: A requirement to give security under this section is *not* a tax-related liability. As such, the collection and recovery provisions in this Part do not apply to it.

(2) The Commissioner may require you to give the security:
(a) by way of a bond or deposit (including by way of payments in instalments); or
(b) by any other means that the Commissioner reasonably believes is appropriate.

(3) The Commissioner may require you to give security under this section:
(a) at any time the Commissioner reasonably believes is appropriate; and
(b) as often as the Commissioner reasonably believes is appropriate.

Example: The Commissioner may require additional security if he or she reasonably believes that the original security requirement underestimated the amount of the likely tax-related liability.

255-105 Notice of requirement to give security

Commissioner must give notice of requirement to give security

(1) If the Commissioner requires you to give security under section 255-100, he or she must give you written notice of the requirement.

Content of notice

(2) The notice must:
(a) state that you are required to give the security to the Commissioner; and
(b) explain why the Commissioner requires the security; and
(c) set out the amount of the security; and

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

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(d) describe the means by which you are required to give the security under subsection 255-100(2); and

(e) specify the time by which you are required to give the security; and

(f) explain how you may have the Commissioner's decision to require you to give the security reviewed.

(3) To avoid doubt, a single notice may relate to security for the payment of 2 or more existing or future *tax-related liabilities, but must comply with subsection (2) in relation to each of them.

When notice is given

(4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Miscellaneous

(5) A failure to comply with this section does not affect the validity of the requirement to give the security under section 255-100.

255-110 Offence

You commit an offence if:

(a) the Commissioner requires you to give security under section 255-100; and

(b) you fail to give that security as required.

Penalty: 100 penalty units.

255-115 Order to comply with requirement

(1) The Federal Court of Australia may, on the application of the Commissioner, order you to comply with a requirement to give

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

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security under section 255-100, if the Commissioner has given you notice of the requirement under subsection 255-105(1).

(2) If the Court makes an order under subsection (1), the Court may also order you to comply with such other requirements made, or that could be made, in relation to you under the taxation law as the Court considers necessary to ensure the effectiveness of the requirement referred to in that subsection.

(3) An order under subsection (1) or (2) may require you to comply with the requirement on or before a day specified in the order.

(4) If an order under subsection (1) or (2) is not given to you orally by the court, the proper officer of the court must cause a copy of the order to be served on you in the prescribed manner, or otherwise as may be ordered by the court.

255-120 Offence

(1) You commit an offence if:
  (a) you are subject to an order under subsection 255-115(1) or (2); and
  (b) you fail to comply with the order.

  Penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) An offence against 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 you are not capable of complying with the order.

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

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Division 260—Special rules about collection and recovery

Table of Subdivisions

Guide to Division 260
260-A From third party
260-B From liquidator
260-C From receiver
260-D From agent winding up business for foreign resident principal
260-E From deceased person's estate

Guide to Division 260

260-1 What this Division is about

This Division deals with the collection and recovery of an amount from a person who is not personally liable to pay that amount. Apart from Subdivision 260-A, which covers a wider range of amounts, this Division primarily deals with amounts of tax-related liabilities.

Subdivision 260-A—From third party

Table of sections

260-5 Commissioner may collect amounts from third party
260-10 Notice to Commonwealth, State or Territory
260-15 Indemnity
260-20 Offence

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

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260-5 Commissioner may collect amounts from third party

Amount recoverable under this Subdivision

(1) This Subdivision applies if any of the following amounts (the ***debt***) is payable to the Commonwealth by an entity (the ***debtor***) (whether or not the debt has become due and payable):

(a) an amount of a *tax-related liability;

(b) a judgment debt for a *tax-related liability;

(c) costs for such a judgment debt;

(d) an amount that a court has ordered the debtor to pay to the Commissioner following the debtor's conviction for an offence against a *taxation law.

Commissioner may give notice to an entity

(2) The Commissioner may give a written notice to an entity (the ***third party***) under this section if the third party owes or may later owe money to the debtor.

Third party regarded as owing money in these circumstances

(3) The third party is taken to owe money (the ***available money***) to the debtor if the third party:

(a) is an entity by whom the money is due or accruing to the debtor; or

(b) holds the money for or on account of the debtor; or

(c) holds the money on account of some other entity for payment to the debtor; or

(d) has authority from some other entity to pay the money to the debtor.

The third party is so taken to owe the money to the debtor even if:

(e) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and

(f) the condition has not been fulfilled.

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

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How much is payable under the notice

(4) A notice under this section must:
  (a) require the third party to pay to the Commissioner the lesser of, or a specified amount not exceeding the lesser of:
    (i) the debt; or
    (ii) the available money; or
  (b) if there will be amounts of the available money from time to time—require the third party to pay to the Commissioner a specified amount, or a specified percentage, of each amount of the available money, until the debt is satisfied.

When amount must be paid

(5) The notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b):
  (a) immediately after; or
  (b) at or within a specified time after;

the amount of the available money concerned becomes an amount owing to the debtor.

Debtor must be notified

(6) The Commissioner must send a copy of the notice to the debtor.

Setting-off amounts

(7) If an entity other than the third party has paid an amount to the Commissioner that satisfies all or part of the debt:
  (a) the Commissioner must notify the third party of that fact; and
  (b) any amount that the third party is required to pay under the notice is reduced by the amount so paid.

260-10 Notice to Commonwealth, State or Territory

If the third party is the Commonwealth, a State or a Territory, the Commissioner may give the notice to a person who:

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

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(a) is employed by the Commonwealth, or by the State or Territory (as appropriate); and
(b) has the duty of disbursing public money under a law of the Commonwealth, or of the State or Territory (as appropriate).

260-15 Indemnity

An amount that the third party pays to the Commissioner under this Subdivision is taken to have been authorised by:

(a) the debtor; and
(b) any other person who is entitled to all or a part of the amount;

and the third party is indemnified for the payment.

260-20 Offence

(1) The third party must not fail to comply with the Commissioner's notice.

Penalty: 20 penalty units

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commissioner an amount not exceeding that amount.

Subdivision 260-B—From liquidator

Table of sections

260-40 Subdivision does not apply to superannuation guarantee charge
260-45 Liquidator's obligation
260-50 Offence
260-55 Joint liability of 2 or more liquidators

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

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260-60 Liquidator's other obligation or liability

260-40 Subdivision does not apply to superannuation guarantee charge

This Subdivision does not apply to a *tax-related liability that is superannuation guarantee charge imposed by the *Superannuation Guarantee Charge Act 1992*.

260-45 Liquidator's obligation

(1) This Subdivision applies to a person who becomes a liquidator of a company.

(2) Within 14 days after becoming liquidator, the liquidator must give written notice of that fact to the Commissioner.

(3) The Commissioner must, as soon as practicable, notify the liquidator of the amount (the ***notified amount***) that the Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the company has when the notice is given.

(4) The liquidator must not, without the Commissioner's permission, part with any of the company's assets before receiving the Commissioner's notice.

(5) However, subsection (4) does not prevent the liquidator from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
  (a) the *outstanding tax-related liabilities;
  (b) any debts of the company which:
    (i) are unsecured; and
    (ii) are not required, by an *Australian law, to be paid in priority to some or all of the other debts of the company.

(6) After receiving the Commissioner's notice, the liquidator must set aside, out of the assets available for paying amounts covered by

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

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paragraph (5)(a) or (b) (the ***ordinary debts***), assets with a value calculated using the following formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left(\frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right)$$

where:

amount of remaining ordinary debts means the sum of the company's ordinary debts other than the *outstanding tax-related liabilities.

(7) The liquidator must, in his or her capacity as liquidator, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the liquidator is required to set aside.

(8) The liquidator is personally liable to discharge the liabilities, to the extent of that value, if the liquidator contravenes this section.

260-50 Offence

The liquidator must not fail to comply with subsection 260-45(2), (4), (5), (6) or (7).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

260-55 Joint liability of 2 or more liquidators

If there are 2 or more persons who become liquidators of the company, the obligations and liabilities under this Subdivision:

(a) apply to all the liquidators; but

(b) may be discharged by any of them.

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

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260-60 Liquidator's other obligation or liability

This Subdivision does not reduce any obligation or liability of a liquidator arising elsewhere.

Subdivision 260-C—From receiver

Table of sections

260-75 Receiver's obligation
260-80 Offence
260-85 Joint liability of 2 or more receivers
260-90 Receiver's other obligation or liability

260-75 Receiver's obligation

(1) This Subdivision applies to a person (the ***receiver***) who, in the capacity of receiver, or of receiver and manager, takes possession of a company's assets for the company's debenture holders.

(2) Within 14 days after taking possession of the assets, the receiver must give written notice of that fact to the Commissioner.

(3) The Commissioner must, as soon as practicable, notify the receiver of the amount (the ***notified amount***) that the Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the company has when the notice is given.

(4) The receiver must not, without the Commissioner's permission, part with any of the company's assets before receiving the Commissioner's notice.

(5) However, subsection (4) does not prevent the receiver from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:

(a) the *outstanding tax-related liabilities;

(b) any debts of the company which:

(i) are unsecured; and

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

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(ii) are not required, by an *Australian law, to be paid in priority to some or all of the other debts of the company.

(6) After receiving the Commissioner's notice, the receiver must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the ***ordinary debts***), assets with a value calculated using the following formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left(\frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right)$$

where:

amount of remaining ordinary debts means the sum of the company's ordinary debts other than the *outstanding tax-related liabilities.

(7) The receiver must, in his or her capacity as receiver, or as receiver and manager, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the receiver is required to set aside.

(8) The receiver is personally liable to discharge the liabilities, to the extent of that value, if the receiver contravenes this section.

260-80 Offence

The receiver must not fail to comply with subsection 260-75(2), (4), (5), (6) or (7).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

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

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260-85 Joint liability of 2 or more receivers

If 2 or more persons (the ***receivers***) take possession of a company's assets, for the company's debenture holders, in the capacity of receiver, or of receiver and manager, the obligations and liabilities under this Subdivision apply to:

(a) all the receivers; but

(b) may be discharged by any of them.

260-90 Receiver's other obligation or liability

This Subdivision does not reduce any obligation or liability of the receiver or receivers arising elsewhere.

Subdivision 260-D—From agent winding up business for foreign resident principal

Table of sections

260-105 Obligation of agent winding up business for foreign resident principal
260-110 Offence
260-115 Joint liability of 2 or more agents
260-120 Agent's other obligation or liability

260-105 Obligation of agent winding up business for foreign resident principal

(1) This Subdivision applies to an agent whose principal:

(a) is a foreign resident; and

(b) has instructed the agent to wind up so much of the principal's business as is carried on in Australia.

(2) Within 14 days after receiving the instructions, the agent must give written notice of that fact to the Commissioner.

(3) The Commissioner must, as soon as practicable after receiving the notice, notify the agent of the amount (the ***notified amount***) that the Commissioner considers is enough to discharge any

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

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*outstanding tax-related liabilities that the principal has when the notice is given.

(4) Before receiving the Commissioner's notice, the agent must not, without the Commissioner's permission, part with any of the principal's assets that are available for discharging the *outstanding tax-related liabilities.

(5) After receiving the notice, the agent must set aside:
  (a) out of the assets available for discharging the *outstanding tax-related liabilities, assets to the value of the notified amount; or
  (b) all of the assets so available, if their value is less than the notified amount.

(6) The agent must, in that capacity, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the agent is required to set aside.

(7) The agent is personally liable to discharge the liabilities, to the extent of that value, if the agent contravenes this section.

260-110 Offence

A person must not fail to comply with subsection 260-105(2), (4), (5) or (6).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of penalty units.

260-115 Joint liability of 2 or more agents

If 2 or more agents are jointly instructed by the principal to wind up the business, the obligations and liabilities under this Subdivision:

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

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(a) apply to all the agents; but
(b) may be discharged by any of them.

260-120 Agent's other obligation or liability

This Subdivision does not reduce any obligation or liability of the agent or agents arising elsewhere.

Subdivision 260-E—From deceased person's estate

Table of sections

260-140 Administered estate
260-145 Unadministered estate
260-150 Commissioner may authorise amount to be recovered

260-140 Administered estate

(1) This section applies if:
(a) a person has an *outstanding tax-related liability when the person dies; and
(b) either of the following is granted after the death:
(i) probate of the person's will;
(ii) letters of administration of the person's estate.

(2) The Commissioner may, in respect of the liability, deal with the trustee of the deceased person's estate as if:
(a) the deceased person were still alive; and
(b) the trustee were the deceased person.

(3) Without limiting subsection (2), the trustee must:
(a) provide any returns and other information that the deceased person was liable to provide, or would have been liable to provide if he or she were still alive; and
(b) provide any additional returns or other information relating to the liability that the Commissioner requires; and

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

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(c) in the trustee's representative capacity, discharge the liability and any penalty imposed in respect of the liability under a *taxation law (including any *general interest charge) for which the deceased person would be liable if he or she were still alive.

(4) If:

(a) the amount of the liability requires an *assessment under a *taxation law but the assessment has not been made; and

(b) the trustee fails to provide a return or other information in relation to assessing that amount as required by the Commissioner;

the Commissioner may assess that amount. If the Commissioner does so, the assessment has the same effect as if it were made under that taxation law.

(5) A trustee who is dissatisfied with an *assessment under subsection (4) may object in the manner set out in Part IVC.

(6) Part IVC applies in relation to the objection as if the trustee were the deceased person.

260-145 Unadministered estate

(1) This section applies if neither of the following is granted within 6 months after a person's death:

(a) probate of the person's will;

(b) letters of administration of the person's estate.

(2) The Commissioner may determine the total amount of *outstanding tax-related liabilities that the person had at the time of death.

(3) The Commissioner must publish notice of the determination twice in a daily newspaper circulating in the State or Territory in which the person resided at the time of death.

(4) A notice of the determination is conclusive evidence of the *outstanding tax-related liabilities, unless the determination is amended.

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

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(5) A person who is dissatisfied with the determination may object in the manner set out in Part IVC if the person:
  (a) claims an interest in the estate; or
  (b) is granted probate of the deceased person's will or letters of administration of the estate.

(6) Part IVC applies in relation to the objection as if the person making it were the deceased person.

260-150 Commissioner may authorise amount to be recovered

(1) The Commissioner may, in writing, authorise a person (the ***authorised person***) who is:
  (a) a member or a special member of the Australian Federal Police; or
  (b) a member of the police force of a State or Territory; or
  (c) any other person;

to recover:
  (d) the total amount of the *outstanding tax-related liabilities of a deceased person as determined under section 260-145 (about unadministered estates); and
  (e) any reasonable costs incurred by the authorised person in recovering that amount;

by seizing and disposing of any property of the deceased person.

(2) The authorised person may seize and dispose of the property as prescribed by the regulations.

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

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Division 263—Mutual assistance in collection of foreign tax debts

Table of Subdivisions

263-A Foreign revenue claims

Subdivision 263-A—Foreign revenue claims

Guide to Subdivision 263-A

263-5 What this Subdivision is about

This Subdivision can be activated if there is in force an agreement between Australia and a foreign country or territory that contains an article relating to assistance in collection of foreign tax debts.

The Commissioner can collect from an entity an amount in respect of a tax debt that the person owes to such a country or territory or take action to conserve assets of the entity.

The Commissioner is required to remit amounts collected to the foreign country or territory concerned.

Table of sections

Operative provisions

263-10 Meaning of *foreign revenue claim*
263-15 Requirements for foreign revenue claims
263-20 Foreign Revenue Claims Register
263-25 Registering claims
263-30 When amount is due and payable
263-35 Amending the Register etc.
263-40 Payment to competent authority

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

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Operative provisions

263-10 Meaning of foreign revenue claim

A ***foreign revenue claim*** is a claim made to the Commissioner:

(a) in accordance with an agreement (the ***international agreement***) between Australia and:

(i) a foreign country or a constituent part of a foreign country; or

(ii) an overseas territory;

(the ***overseas entity***); and

(b) for one or both of these purposes:

(i) the recovery by the Commissioner of an amount from an entity (the ***debtor***) in respect of taxes imposed otherwise than by an *Australian law (including any associated amounts);

(ii) the conserving of assets for the purposes of a recovery of that kind.

263-15 Requirements for foreign revenue claims

A *foreign revenue claim must:

(a) be made by or on behalf of an entity that is, under the relevant international agreement, the competent authority; and

(b) be consistent with the provisions of that agreement; and

(c) be made in the *approved form; and

(d) specify the amount owed by the debtor in Australian currency (calculated as at the day the claim is made); and

(e) be accompanied by a declaration by the competent authority stating that the claim fulfils the requirements of that agreement.

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

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263-20 Foreign Revenue Claims Register

(1) The Commissioner must keep a register called the Foreign Revenue Claims Register (the ***Register***).

(2) The regulations may make provision in relation to the form in which the Register may be kept.

(3) The register is not a legislative instrument.

263-25 Registering claims

If the Commissioner is satisfied that a *foreign revenue claim has been made in accordance with section 263-15, the Commissioner must register the claim by entering particulars of it in the Register within 90 days after receiving the claim.

263-30 When amount is due and payable

(1) When particulars of a *foreign revenue claim are entered in the Register, the amount owed by the debtor becomes a pecuniary liability to the Commonwealth by the debtor.

Note 1: The amount to be recovered from the debtor will be a primary tax debt for the purposes of Part IIB and the Commissioner may allocate the debt to a running balance account under that Part.

Note 2: For provisions about collection and recovery of the debt, see Part 4-15.

(1A) To avoid doubt, the amount owed by the debtor may not be the same as the amount (if any) entered in the Register.

(2) The amount owed by the debtor becomes due and payable 30 days after notice of the particulars of the *foreign revenue claim is given to the debtor or on a later day specified in the notice.

(3) If that amount remains unpaid after it is due and payable, the debtor is liable to pay *general interest charge on the unpaid amount for each day in the period that:

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

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

263-35 Amending the Register etc.

(1) The Commissioner may, with the agreement of the relevant competent authority, amend the Register to correct an error.

(2) The Commissioner may, with the agreement of the relevant competent authority:
(a) remove from the Register the particulars of a *foreign revenue claim; or
(b) reduce an amount to be recovered from a debtor under the claim.

(2A) To avoid doubt, the Commissioner may reduce an amount to be recovered from a debtor under paragraph (2)(b) without amending the Register.

(3) A debtor may, after receiving a copy of the particulars of a *foreign revenue claim entered in the Register, apply to the Commissioner in the *approved form to have those particulars removed from the Register.

(4) The Commissioner may, after considering the application, remove those particulars from the Register.

(5) If the Commissioner removes particulars of a *foreign revenue claim relating to the recovery of an amount from the Register under paragraph (2)(a) or subsection (4), the debtor is entitled to a credit for the purposes of Part IIB equal to the sum of:
(a) the amount (as reduced by any previous application of subsection (6)); and

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

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(b) any *general interest charge for which the debtor is liable as a result of the foreign revenue claim.

Note: How the credit is applied is set out in Part IIB.

(6) If the Commissioner reduces the amount to be recovered from a debtor under a *foreign revenue claim under paragraph (2)(b), the debtor is entitled to a credit for the purposes of Part IIB equal to the amount of the reduction.

Note: How the credit is applied is set out in Part IIB.

263-40 Payment to competent authority

(1) The Commissioner must, if the Commissioner recovers all or part of an amount to be recovered from a debtor under a registered *foreign revenue claim, pay that amount to the competent authority concerned or to another entity on behalf of that competent authority.

(2) The Commissioner may also pay to the competent authority all or part of an amount that the Commissioner has received and that is attributable to *general interest charge in relation to the claim.

(3) The Commissioner may also pay to the competent authority all or part of an amount that the Commissioner has received and that is attributable to any of the following in relation to the claim:
(a) judgment interest;
(b) costs that:
(i) have been recovered in the course of legal proceedings; and
(ii) represent an amount that has previously been paid by the competent authority to the Commonwealth in relation to the recovery of the claim.

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

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Division 265—Other matters

Table of Subdivisions

265-A Right of person to seek recovery or contribution
265-B Application of laws

Subdivision 265-A—Right of person to seek recovery or contribution

Guide to Subdivision 265-A

265-35 What this Subdivision is about

This Division deals with a person's right to recover from another person an amount paid in discharge of a tax-related liability if:

- the person has paid the amount for or on behalf of the other person;
- the persons are jointly liable to pay the amount.

Table of sections

Operative provisions

265-40 Right of recovery if another person is liable
265-45 Right of contribution if persons are jointly liable

Operative provisions

265-40 Right of recovery if another person is liable

A person who has paid an amount of a *tax-related liability for or on behalf of another person may:

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

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(a) recover that amount from the other person as a debt (together with the costs of recovery) in a court of competent jurisdiction; or

(b) retain or deduct the amount out of money held by the person that belongs to, or is payable to, the other person.

265-45 Right of contribution if persons are jointly liable

(1) If 2 or more persons are jointly liable to pay an amount of a *tax-related liability, they are each liable for the whole of the amount.

(2) If one of the persons has paid an amount of the liability, the person may recover in a court of competent jurisdiction, as a debt, from another of those persons:

(a) an amount equal to so much of the amount paid; and

(b) an amount equal to so much of the costs of recovery under this section;

as the court considers just and equitable.

Note: Item 15 of Schedule 6 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* has the effect that, in addition to its normal application in relation to tax-related liabilities arising on or after 1 July 2000, subsection (2) also applies to such liabilities arising before that date, where amounts of the liabilities are paid after the commencement of that item.

Subdivision 265-B—Application of laws

Table of sections

265-65 Non-application of certain taxation laws

265-65 Non-application of certain taxation laws

This Part does not apply in relation to a *taxation law, or a provision of a taxation law, that is prescribed by the regulations.

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

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Subdivision 265-C—Direction to pay superannuation guarantee charge

Guide to Subdivision 265-C

265-85 What this Subdivision is about

If you are liable to pay an amount of superannuation guarantee charge or certain related liabilities, the Commissioner may direct you to pay the amount.

If the amount is not paid, you may commit an offence.

Table of sections

265-90 Direction to pay superannuation guarantee charge
265-95 Offence
265-100 Variation or revocation
265-105 Effect of liability being reduced or ceasing to exist
265-110 Taxation objection
265-115 Extension of period to comply if taxation objection made

265-90 Direction to pay superannuation guarantee charge

(1) The Commissioner may, by written notice, give you a direction requiring you to pay to the Commissioner:

(a) an amount of superannuation guarantee charge that is payable by you under the *Superannuation Guarantee (Administration) Act 1992*; or

(b) if an estimate under Division 268 in this Schedule of an amount of a liability of yours to pay superannuation guarantee charge for a quarter under section 16 of the *Superannuation Guarantee (Administration) Act 1992* is in force as referred to in subsection 268-10(5)—the amount of the estimate.

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

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Note: The direction does not create a separate liability to pay the amount. However, it may result in you committing an offence against subsection 265-95(1) if the amount is not paid.

(2) In deciding whether to give a direction under subsection (1), the Commissioner must have regard to the following matters:

(a) your history of compliance with obligations to pay superannuation guarantee charge, and obligations to pay estimates under Division 268 of superannuation guarantee charge;

(b) your history of compliance with other obligations under *taxation laws;

(c) whether the amount mentioned in paragraph (1)(a) or (b) is substantial, having regard to the size and nature of your business;

(d) any steps that you have taken to discharge the liability to pay the amount or dispute that the liability exists;

(e) any other matter that the Commissioner considers relevant.

(3) The direction must:

(a) set out the amount that you are required to pay to the Commissioner; and

(b) if the amount referred to in paragraph (1)(a) or (b) relates to a *quarter—set out the quarter; and

(c) specify the period before the end of which you must comply with the direction (which must end at least 21 days after the day the direction is given); and

(d) explain the consequences of failing to comply with the direction; and

(e) explain how you may have the Commissioner's decision to give the direction reviewed.

(4) To avoid doubt, a single notice may relate to 2 or more directions, but must comply with subsection (3) in relation to each of them.

(5) A notice given under subsection (1) is not a legislative instrument.

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

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265-95 Offence

(1) You commit an offence if:

(a) you are given a direction under subsection 265-90(1); and

(b) the liability to pay the amount set out in the direction is not discharged (whether by you or by another entity) before the end of the period specified in the direction under paragraph 265-90(3)(c).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) An offence against 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 if both of the following apply:

(a) you took all reasonable steps to comply with the direction before the end of the period specified in the direction under paragraph 265-90(3)(c);

(b) you took all reasonable steps to ensure that the liability was discharged before the direction was given.

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

265-100 Variation or revocation

(1) If the Commissioner has given you a direction under subsection 265-90(1), the Commissioner may, at any time before the end of the period specified in the direction under paragraph 265-90(3)(c), by written notice given to you:

(a) vary the direction to reduce the amount that you are required to pay to the Commissioner in order to comply with the direction; or

(b) vary the direction to extend the period specified in the notice of the direction under paragraph 265-90(3)(c); or

(c) revoke the direction.

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

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(2) To avoid doubt, the variation or revocation of a direction under subsection (1) does not affect any liability that you may have to pay an amount referred to in the direction.

265-105 Effect of liability being reduced or ceasing to exist

(1) If:

(a) you have been given a direction under subsection 265-90(1) requiring you to pay an amount of a liability referred to in that subsection to the Commissioner; and

(b) the period specified in the direction under paragraph 265-90(3)(c) has not expired; and

(c) the liability is reduced (but not to nil);

the amount set out in the direction is taken to be reduced by the amount of the reduction referred to in paragraph (c).

(2) If:

(a) you have been given a direction under subsection 265-90(1) requiring you to pay an amount of a liability referred to in that subsection to the Commissioner; and

(b) the period specified in the direction under paragraph 265-90(3)(c) has not expired; and

(c) either:

(i) the liability is reduced to nil; or

(ii) the liability ceases to exist;

the direction is taken to be revoked.

(3) You may be convicted of an offence against subsection 265-95(1) in relation to a direction under subsection 265-90(1) requiring you to pay an amount of a liability referred to in subsection 265-90(1) to the Commissioner even if:

(a) the liability is reduced, or ceases to exist, after the end of the period specified in the direction under paragraph 265-90(3)(c); or

(b) the liability is discharged after the end of that period; or

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

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(c) the liability is, after the end of that period, taken never to have existed, or taken not to have existed at a time on or before the end of that period.

265-110 Taxation objection

If you are dissatisfied with a decision of the Commissioner to give you a direction under subsection 265-90(1), you may, at any time before the end of the period specified in the direction under paragraph 265-90(3)(c), object against the decision in the manner set out in Part IVC.

265-115 Extension of period to comply if taxation objection made

(1) This section applies if:
   (a) the Commissioner gives you a direction under subsection 265-90(1); and
   (b) the period specified in the direction under paragraph 265-90(3)(c) has not expired; and
   (c) you:
      (i) make an objection in accordance with section 265-110 in relation to the Commissioner's decision to give you the direction; or
      (ii) make an objection in the manner set out in Part IVC against a taxation decision that relates to your liability to pay an amount referred to in the direction.

(2) The period specified in the direction under paragraph 265-90(3)(c) is extended by one day for each day in the period that begins on the day the objection is made and ends at the end of the later of the following days:
   (a) the day 21 days after the day the Commissioner notifies you of the Commissioner's decision under section 14ZY in relation to the objection;
   (b) if, before the end of the day referred to in paragraph (a), you:
      (i) apply to the *AAT in accordance with Division 4 of Part IVC for review of the Commissioner's decision; or

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

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(ii) lodge an appeal against the Commissioner's decision with the Federal Court of Australia under Division 5 of that Part;

the day the review or the appeal is finally determined.

(3) To avoid doubt, the extension of the period under subsection (2) does not affect any liability that you may have to pay an amount referred to in the direction.

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

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Division 268—Estimates and recovery of PAYG withholding liabilities and superannuation guarantee charge

Table of Subdivisions

Guide to Division 268
268-A Object
268-B Making estimates
268-C Liability to pay estimates
268-D Reducing and revoking estimates
268-E Late payment of estimates
268-F Miscellaneous

Guide to Division 268

268-1 What this Division is about

This Division enables the Commissioner to make an estimate of:

(a) amounts not paid as required by Part 2-5 of this Act (Pay as you go (PAYG) withholding); or

(b) unpaid superannuation guarantee charge;

and to recover the amount of the estimate.

If you are given an estimate, you are liable to pay the amount of the estimate. That liability is distinct from your liability to pay the amounts required by Part 2-5 or the *Superannuation Guarantee (Administration) Act 1992*. However, you can ensure that the Commissioner does not require you to pay more than the amounts not paid under that Part or Act.

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

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Other Divisions of this Part provide for the recovery of amounts payable under this Division.

Subdivision 268-A—Object

Table of sections

268-5 Object of Division

268-5 Object of Division

The object of this Division is to enable the Commissioner to take prompt and effective action to recover:

(a) amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding); or

(b) unpaid superannuation guarantee charge that has not been assessed.

Subdivision 268-B—Making estimates

Table of sections

268-10 Commissioner may make estimate
268-15 Notice of estimate

268-10 Commissioner may make estimate

Estimate

(1) The Commissioner may estimate the unpaid and overdue amount of a liability (the ***underlying liability***) of yours:

(a) under section 16-70 in this Schedule (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules); or

(b) to pay superannuation guarantee charge for a *quarter under section 16 of the *Superannuation Guarantee (Administration) Act 1992*, to the extent the superannuation guarantee charge

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

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has not been assessed before the Commissioner makes the estimate.

(1A) For the purposes of this Division, your superannuation guarantee charge for a *quarter is treated as being payable on the day by which you must lodge a superannuation guarantee statement for the quarter under section 33 of the *Superannuation Guarantee (Administration) Act 1992*, even if, on that day, the charge has not been assessed under that Act.

Amount of estimate

(2) The amount of the estimate must be what the Commissioner thinks is reasonable.

(3) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant.

Example 1: In the case of an underlying liability under section 16-70 (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the Commissioner may have regard to information about amounts you withheld under the Pay as you go rules before the period in relation to which the underlying liability arose.

Example 2: In the case of an underlying liability to pay superannuation guarantee charge for a quarter, the Commissioner may have regard to information about your contributions to RSAs and complying superannuation funds for earlier quarters.

Only one estimate for each liability

(4) While the estimate is in force, the Commissioner cannot make another estimate relating to the underlying liability.

(5) For the purposes of subsection (4), the estimate is in force if:
(a) the Commissioner has given you notice of the estimate; and
(b) the estimate has not been revoked; and
(c) your liability to pay the estimate has not been discharged.

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

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268-15 Notice of estimate

Commissioner must give notice of estimate

(1) The Commissioner must give you written notice of the estimate.

Content of notice

(2) The notice must:
  (a) identify the underlying liability; and
  (b) specify the date of the estimate; and
  (c) set out the amount of the estimate; and
  (d) state that the amount of the estimate is due and payable; and
  (e) explain how you may have the amount of the estimate reduced or the estimate revoked.

(3) To avoid doubt, a single notice may relate to 2 or more estimates, but must comply with subsection (2) in relation to each of them.

When notice is given

(4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Subdivision 268-C—Liability to pay estimates

Table of sections

268-20 Nature of liability to pay estimate
268-25 Accuracy of estimate irrelevant to liability to pay
268-30 Estimate provable in bankruptcy or winding up

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

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268-20 Nature of liability to pay estimate

Liability to pay amount of estimate

(1) You must pay to the Commissioner the amount of the estimate if the Commissioner gives you notice of the estimate in accordance with section 268-15. The amount is due and payable when the Commissioner gives you the notice.

Note: The amount of the estimate may be reduced, or the estimate revoked, under Subdivision 268-D.

Liability to pay amount of estimate is distinct from underlying liability

(2) Your liability to pay the amount of the estimate is separate and distinct from the underlying liability. It is separate and distinct for all purposes.

Example: The Commissioner may take:
(a) proceedings to recover the unpaid amount of the estimate; or
(b) proceedings to recover the unpaid amount of the underlying liability; or
(c) proceedings of both kinds.

Discharging one liability discharges other liabilities

(3) Despite subsection (2), if, at a particular time, one of the liabilities to which this subsection applies is discharged, to the extent of an amount, for either of the following reasons, each of the other liabilities to which this subsection applies is discharged to the extent of the same amount:
(a) an amount is paid or applied towards discharging the liability;
(b) the liability is discharged because of section 269-40 (Effect of director paying penalty or company discharging liability).

(4) Subsection (3) applies to whichever of the following liabilities are in existence at the particular time:
(a) your liability to pay the amount of the estimate;

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

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(b) the underlying liability;
(c) a liability of yours under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).

(5) Subsection (3) does not discharge a liability to a greater extent than the amount of the liability.

268-25 Accuracy of estimate irrelevant to liability to pay

You are liable to pay the unpaid amount of the estimate even if:
(a) the underlying liability never existed or has been discharged in full; or
(b) the unpaid amount of the underlying liability is less than the unpaid amount of the estimate.

Note 1: Section 268-40 revokes the estimate if you give the Commissioner a statutory declaration, or file an affidavit, to the effect that the underlying liability never existed.

Note 2: Subdivision 268-D provides ways in which you can challenge the estimate or its amount.

268-30 Estimate provable in bankruptcy or winding up

(1) Your liability (the ***estimate liability***) to pay the unpaid amount of the estimate is provable in a bankruptcy or winding up, even if the estimate was made after:
(a) the date of the bankruptcy; or
(b) the relevant date (within the meaning of the *Corporations Act 2001*).

(2) However, the estimate liability is provable only to the extent that the underlying liability would be provable if the unpaid amount of the underlying liability were the same as the unpaid amount of the estimate.

Example: Subsection (2) prevents proof of the estimate liability if the underlying liability could not be proved because, for example, of when it arose.

(3) Subsections (1) and (2) do not apply if:

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

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(a) the underlying liability has already been admitted to proof; and

(b) the proof has not been set aside.

(4) If the estimate liability has been admitted to proof at a particular amount, the underlying liability is provable only to the extent the unpaid amount of the underlying liability exceeds that particular amount.

(5) To the extent that a liability is provable because of this section, it is taken, for the purposes of the *Bankruptcy Act 1966*, to be provable in bankruptcy under that Act.

Subdivision 268-D—Reducing and revoking estimates

Table of sections

268-35 How estimate may be reduced or revoked—Commissioner's powers
268-40 How estimate may be reduced or revoked—statutory declaration or affidavit
268-45 How estimate may be reduced or revoked—rejection of proof of debt
268-50 How estimate may be reduced—amount paid or applied
268-55 When reduction or revocation takes effect
268-60 Consequences of reduction or revocation—refund
268-65 Consequences of reduction or revocation—statutory demand changed or set aside
268-70 Consequences of reduction or revocation—underlying liability

268-35 How estimate may be reduced or revoked—Commissioner's powers

Reduction

(1) The Commissioner may at any time reduce the amount of the estimate, but is not obliged to consider whether or not to do so.

(2) If the Commissioner reduces the amount of the estimate under subsection (1), he or she must give you a written notice that:

(a) identifies the underlying liability; and

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

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(b) sets out the reduced amount of the estimate.

Note: The estimate is taken always to have had effect as reduced: see section 268-55.

Revocation

(3) The Commissioner may at any time revoke the estimate, but is not obliged to consider whether or not to do so.

(4) If the Commissioner revokes the estimate under subsection (3), he or she must give you a written notice that:
(a) identifies the underlying liability; and
(b) states that the estimate has been revoked.

Note: The estimate is taken never to have been made: see section 268-55.

Matters for Commissioner to consider

(5) In exercising his or her power under this section to reduce the amount of the estimate, or to revoke the estimate, the Commissioner must have regard to:
(a) the following principles:
(i) the estimate is of the unpaid amount of the underlying liability as at a particular time;
(ii) the purpose of reducing the amount of the estimate is to bring it closer to the unpaid amount of the underlying liability as at the time the estimate was made;
(iii) reductions of the unpaid amount of the underlying liability that happen after the time the estimate was made are dealt with by section 268-20 (Nature of liability to pay estimate) and so should not be taken into account in exercising such a power; and
(b) the effects of sections 268-55 and 268-70 (effect of reduction or revocation on liabilities).

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

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268-40 How estimate may be reduced or revoked—statutory declaration or affidavit

Scope

(1) This section applies as set out in the following table:

Statutory declaration or affidavit			
Item	**This section applies if ...**	**and ...**	**within ...**
1	the Commissioner gives you notice of the estimate	you give the Commissioner a statutory declaration for the purposes of this section	(a) 7 days after the Commissioner gives you the notice; or (b) a longer period allowed by the Commissioner.
2	you are a party to proceedings before a court that relate to the recovery of the unpaid amount of the estimate	you: (a) file an affidavit for the purposes of this section; and (b) serve a copy on the Commissioner	(a) 14 days after you first take a procedural step as a party to the proceedings; or (b) a longer period allowed by the court.

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

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Statutory declaration or affidavit			
Item	**This section applies if ...**	**and ...**	**within ...**
3	(a) the estimate is of the unpaid amount of a liability of a company; and (b) the Commissioner serves on the company a *statutory demand relating to the company's liability to pay the unpaid amount of the estimate; and (c) an application is made to a court under section 234, 459P, 462 or 464 of the *Corporations Act 2001* for the company to be wound up	the company: (a) files an affidavit for the purposes of this section; and (b) serves a copy on the applicant	(a) 14 days after notice of the application was served on the company; or (b) a longer period allowed by the court.

Example: For the purposes of item 2 of the table, taking a procedural step as a party to proceedings includes entering an appearance, filing a notice of intention to defend, or applying to set aside judgment entered in default of appearance.

Note 1: Section 459C of the *Corporations Act 2001* creates a presumption that a company is insolvent, and may be wound up, if the company fails to comply with a statutory demand.

Note 2: See section 268-90 for what the statutory declaration or affidavit must contain and who must make, swear or affirm it.

Reduction

(2) The amount of the estimate is reduced if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that a specified lesser amount is the unpaid amount of the underlying liability.

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

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Example: Subsection (2) will apply if the statutory declaration etc. is to the effect that the underlying liability has been discharged in full (and therefore the unpaid amount of the liability is nil).

(3) The amount of the reduction is the amount by which the unpaid amount of the estimate (just before the reduction) exceeds the amount specified.

Note: The effect of subsection (3) is to reduce the unpaid amount of the estimate to the amount specified.

Revocation

(4) The estimate is revoked if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that the underlying liability never existed.

268-45 How estimate may be reduced or revoked—rejection of proof of debt

Scope

(1) This section applies if:
(a) the Commissioner lodges a proof of debt relating to the unpaid amount of the estimate; and
(b) section 268-95 applies to an entity (your ***supervising entity***) in relation to you.

Rejection of proof of debt

(2) Your supervising entity may give the Commissioner a statutory declaration to the effect that:
(a) the underlying liability has been discharged in full; or
(b) the unpaid amount of the underlying liability is a specified, lesser amount; or
(c) the underlying liability never existed.

Note: See section 268-90 for what the statutory declaration must contain and who must make it.

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

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(3) If your supervising entity does so, he or she may reject the proof of debt (in whole or in part) on the ground made out in the statutory declaration.

(4) If the Commissioner appeals, or applies for review of, your supervising entity's decision to reject the proof of debt, nothing in subsection (2) or (3) prevents evidence being adduced to contradict statements in the declaration.

Note: Such evidence might also be relevant to a prosecution for an offence, such as an offence against section 11 of the *Statutory Declarations Act 1959* (False declarations).

Revocation or reduction of estimate

(5) The following table applies in relation to the outcome following all (if any) appeals from, and applications for review of, your supervising entity's decision to reject the proof of debt. (If there are no appeals or applications for review, the outcome is your supervising entity's decision as originally made.)

Rejecting proof of debt

Item	If the outcome is that ...	then ...
1	the proof is rejected in whole on the ground that the estimate has been discharged in full	the amount of the estimate is reduced by the unpaid amount of the estimate (just before the reduction).
2	the proof is rejected in part	the amount of the estimate is reduced by so much of the unpaid amount of the estimate (just before the reduction) as is rejected.
3	the proof is rejected in whole on the ground that the underlying liability never existed	the estimate is revoked.

Note 1: The effect of item 1 of the table is to reduce the unpaid amount of the estimate to nil.

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

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Note 2: The effect of item 2 of the table is to reduce the unpaid amount of the estimate to the amount admitted to proof.

268-50 How estimate may be reduced—amount paid or applied

(1) This section applies if:
  (a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and
  (b) the amount paid or applied exceeds the unpaid amount of the underlying liability as at the time just before the payment or application.

(2) The amount of the estimate is reduced so that it does not exceed the unpaid amount, at the time mentioned in paragraph (1)(b), of the underlying liability.

268-55 When reduction or revocation takes effect

Scope

(1) This section applies for the purposes of the following:
  (a) Subdivision 268-C (Liability to pay estimates);
  (b) section 268-60 (refund of overpayments);
  (c) Subdivision 268-E (Late payment of estimates);
  (d) Division 269 (Penalties for directors of non-complying companies).

When reduction or revocation takes effect

(2) If the amount of the estimate is reduced, the estimate has effect, and is taken always to have had effect, as if the original amount of the estimate had been the reduced amount.

(3) If the estimate is revoked, the estimate is taken never to have been made.

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

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268-60 Consequences of reduction or revocation—refund

(1) This section applies if:

(a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and

(b) the amount paid or applied exceeds the unpaid amount of the estimate as at the time just before the payment or application.

Example: You pay an amount towards discharging the estimate and the estimate is later reduced to a lesser amount.

Note: Section 268-50 provides for the reduction of the amount of the estimate in the case of overpayment.

(2) The Commissioner must pay you the excess.

Note: See Division 3A of Part IIB of this Act for the rules about how the Commissioner must pay you. Division 3 of that Part allows the Commissioner to apply the amount owing as a credit against tax debts that you owe the Commonwealth.

268-65 Consequences of reduction or revocation—statutory demand changed or set aside

Scope

(1) This section applies if:

(a) the estimate is of the unpaid amount of a liability of a company; and

(b) the Commissioner has served a *statutory demand on the company relating to the company's liability to pay the unpaid amount of the estimate; and

(c) the amount of the estimate is later reduced, or the estimate is revoked.

Statutory demand changed

(2) The *statutory demand is changed accordingly.

(3) The *statutory demand is taken to have had effect (as so changed) from the time the Commissioner served it on the company.

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

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Statutory demand set aside

(4) The *statutory demand is set aside if subsection (2) reduces the amount of the debt (or the total of the amounts of the debts) below the statutory minimum (within the meaning of the *Corporations Act 2001*).

268-70 Consequences of reduction or revocation—underlying liability

Reduction of the amount of the estimate, or revocation of the estimate, does not affect the Commissioner's rights or remedies in relation to the underlying liability (except to the extent that this Division expressly provides otherwise).

Subdivision 268-E—Late payment of estimates

Table of sections

268-75 Liability to pay the general interest charge
268-80 Effect of paying the general interest charge

268-75 Liability to pay the general interest charge

(1) This section applies if:
  (a) your liability to pay the amount of the estimate remains undischarged at the end of 7 days after the Commissioner gives you notice of the estimate; and
  (b) the underlying liability is not a liability to pay superannuation guarantee charge.

(2) You are liable to pay the *general interest charge on the unpaid amount of the estimate for each day in the period that:
  (a) started at the beginning of the day by which the underlying liability was due to be paid; and
  (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    (i) the amount of the estimate;

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

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

Note: The general interest charge is worked out under Part IIA of this Act.

268-80 Effect of paying the general interest charge

Scope

(1) If you are liable to pay the *general interest charge under section 268-75 in relation to the estimate, this section applies to the following liabilities:

(a) your liability to pay the general interest charge;

(b) a liability of yours to pay a general interest charge, under a corresponding provision of Subdivision 16-B, because the underlying liability remains undischarged;

(c) liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b);

(d) a liability of yours to pay interest carried by a judgment debt, to the extent that the judgment debt is based on:

(i) the liability to pay the estimate; or

(ii) the liability to pay the general interest charge under section 268-75 on an unpaid amount of the estimate.

Discharging one liability discharges other liabilities

(2) If, at a particular time, an amount is paid or applied towards discharging one of the liabilities, each of the other liabilities that is in existence at that time is discharged to the extent of the same amount.

(3) However, this section does not discharge a liability to a greater extent than the amount of the liability.

(4) If, because a judgment debt carries interest, section 8AAH of this Act reduces the amount of a *general interest charge payable as mentioned in paragraph (1)(b) of this section, the amount of the reduction is taken, for the purposes of subsection (2) of this

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

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section, to have been applied towards discharging your liability to the charge.

Subdivision 268-F—Miscellaneous

Table of sections

268-85 Effect of judgment on liability on which it is based
268-90 Requirements for statutory declaration or affidavit
268-95 Liquidators, receivers and trustees in bankruptcy
268-100 Division not to limit or exclude Corporations or Bankruptcy Act

268-85 Effect of judgment on liability on which it is based

Estimate payable despite judgment

(1) The unpaid amount of the estimate, or of the underlying liability, does not stop being payable merely because a judgment has been given by, or entered in, a court.

Division applies to liability under judgment

(2) This Division applies in relation to liability under a judgment, to the extent that it is based on your liability to pay the amount of the estimate, in the same way as this Division applies to that estimate liability.

(3) This Division applies in relation to liability under a judgment, to the extent that it is based on the underlying liability, in the same way as this Division applies to the underlying liability.

(4) Subsections (2) and (3) do not apply for the purposes of the following:
  (a) section 268-20 (Nature of liability to pay estimate);
  (b) section 268-30 (Estimate provable in bankruptcy or winding up);
  (c) section 268-45 (rejection of proof of debt).

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

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Judgment conclusive as to amount of liability

(5) Nothing in this Division affects the conclusiveness of a judgment as to the amount of a liability on which it is based.

268-90 Requirements for statutory declaration or affidavit

Scope

(1) This section applies to a statutory declaration given, or an affidavit filed, for the purposes of section 268-40 or 268-45 in relation to the estimate.

Content

(2) In a case covered by paragraph 268-10(1)(a) (estimate of liability under requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the statutory declaration or affidavit must verify the following facts:

(a) whichever of the following are applicable:

(i) the sum of all amounts you withheld under Division 12 during the relevant period, or the fact that you did not withhold any such amounts during the period;

(ii) the sum of all amounts you were required to pay under Division 13 (Alienated personal services payments) during the relevant period, or the fact that you were not required to pay any such amounts during the period;

(iii) the sum of all amounts you were required to pay under Division 14 (non-cash benefits and accruing gains) during the relevant period, or the fact that you were not required to pay any such amounts during the period;

(b) what has been done to comply with Division 16 (Payer's obligations and rights) in relation to the amounts referred to in paragraph (a).

(2A) In a case covered by paragraph 268-10(1)(b) (estimate of liability to pay superannuation guarantee charge), the statutory declaration or affidavit must verify the following facts:

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

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(a) your name and address;

(b) for each employee for whom you have an *individual superannuation guarantee shortfall for the relevant *quarter:

(i) the employee's name and postal address and, if the employee has *quoted the employee's *tax file number to you, the employee's tax file number; and

(ii) the amount of the shortfall;

(c) what has been done to comply with your obligation to pay the relevant superannuation guarantee charge to the Commissioner.

Note: The amount of the individual superannuation guarantee shortfall mentioned in paragraph (b) is a factor in determining the amount of the superannuation guarantee charge mentioned in paragraph 268-10(1)(b). The lesser amount mentioned in subsection 268-40(2) may therefore differ from the amount of that shortfall.

Maker or deponent

(3) The statutory declaration or affidavit must be made, sworn or affirmed by:

(a) an individual specified in the following table; or

(b) your liquidator, receiver or trustee in bankruptcy (if and as applicable).

Who must make the statutory declaration or swear or affirm the affidavit

Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
1	an individual	that individual.

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

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Who must make the statutory declaration or swear or affirm the affidavit		
Item	**A statutory declaration or affidavit in relation to an estimate of a liability of ...**	**must be made, sworn or affirmed by ...**
2	a body corporate	(a) in the case of a company that has a director or a company secretary (within the meaning of the *Corporations Act 2001*)—a director of the company or the company secretary; or (b) in the case of an *Australian government agency—an individual prescribed by the regulations; or (c) in any case—the public officer of the body corporate (for the purposes of the *Income Tax Assessment Act 1936*).
3	a body politic	an individual prescribed by the regulations.
4	a partnership	a partner of the partnership.
5	any other unincorporated association or body of persons	(a) a member of the association's or body's committee of management; or (b) the public officer of the association or body (for the purposes of the *Income Tax Assessment Act 1936*).
6	a trust	(a) the trustee of the trust; or (b) the public officer of the trust (for the purposes of the *Income Tax Assessment Act 1936*).
7	a *superannuation fund or an *approved deposit fund	(a) the trustee of the fund; or (b) if the fund does not have a trustee—the entity managing the fund.

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

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(4) If the entity specified in the table in subsection (3) is not an individual, the table is taken to specify the individual who, under that subsection, would be eligible to make a statutory declaration in relation to an estimate of a liability of that entity.

268-95 Liquidators, receivers and trustees in bankruptcy

Scope

(1) This section applies to an entity (your ***supervising entity***), in relation to you, if:

(a) the entity is your liquidator, receiver, trustee in bankruptcy or administrator, or the administrator of a deed of company arrangement executed by you; or

(b) your property is vested in the entity, or the entity has control of your property.

(2) For the purposes of this Division, this section applies to an entity in relation to a partnership if it applies to the entity in relation to a partner of the partnership.

Notices from the Commissioner

(3) For the purposes of this Division, a notice given by the Commissioner to your supervising entity is taken to have been given to you.

(4) You must give your supervising entity a copy of any notice given to you by the Commissioner under this Division. You must do so as soon as practicable, and in any event within 7 days, after:

(a) if the Commissioner gave you the notice before the day when your property vested in, or control of your property passed to, the supervising entity—that day; or

(b) if subsection (2) applies and the Commissioner gave you the notice before the day when the relevant partner's property vested in, or control of the relevant partner's property passed to, the supervising entity—that day; or

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

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(c) otherwise—the day when the Commissioner gave you the notice.

(5) If the Commissioner gives you and your supervising entity a notice at different times, each notice is taken to have been given at the later of those times.

Action taken by your supervising entity

(6) For the purposes of this Division, a statutory declaration given to the Commissioner by your supervising entity is taken to have been given by you.

(7) For the purposes of this Division, an affidavit filed by your supervising entity is taken to have been filed by you.

(8) For the purposes of item 2 in the table in subsection 268-40(1) (recovery proceedings), a procedural step taken by your supervising entity is taken to have been taken by you.

Multiple supervising entities

(9) If you have 2 or more supervising entities, anything this Division provides for to be done by or in relation to your supervising entity may be done by or in relation to any of them.

268-100 Division not to limit or exclude Corporations or Bankruptcy Act

This Division is not intended to limit or exclude the operation of Chapter 5 (External administration) or Schedule 2 to the *Corporations Act 2001*, or the *Bankruptcy Act 1966*, to the extent those provisions or that Act can operate concurrently with this Division.

Note: Section 268-30 and Subdivision 268-D affect the operation of Chapter 5 of the *Corporations Act 2001* and the *Bankruptcy Act 1966*.

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

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Division 269—Penalties for directors of non-complying companies

Table of Subdivisions

Guide to Division 269
269-A Object and scope
269-B Obligations and penalties
269-C Discharging liabilities
269-D Miscellaneous

Guide to Division 269

269-1 What this Division is about

The directors of a company have a duty to ensure that the company either:

(a) meets its obligations under Subdivision 16-B (obligation to pay withheld amounts to the Commissioner) and Division 268 in this Schedule and Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); or

(b) goes promptly into voluntary administration under the *Corporations Act 2001* or into liquidation.

The directors' duties are enforced by penalties.

Note: The duties this Division imposes on the directors of the company are in addition to the similar duties imposed on the public officer of the company. See subsection 252(1) of the *Income Tax Assessment Act 1936*.

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

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Subdivision 269-A—Object and scope

Table of sections

269-5 Object of Division
269-10 Scope of Division

269-5 Object of Division

The object of this Division is to ensure that a company either:

(a) meets its obligations under:

(i) Subdivision 16-B (obligation to pay withheld amounts to the Commissioner); and

(ii) Division 268 (estimates of PAYG withholding liabilities and superannuation guarantee charge); and

(iii) Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); or

(b) goes promptly into voluntary administration under the *Corporations Act 2001* or into liquidation.

Note: The directors' duties are enforced by penalties on the directors. A penalty recovered under this Division is applied towards meeting the company's obligation.

269-10 Scope of Division

(1) This Division applies as set out in the following table:

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

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Obligations that directors must cause company to comply with		
Item	**Column 1** **This Division applies if, on a particular day (the *initial day*), a company is a company registered under the *Corporations Act 2001*, and on the initial day …**	**Column 2** **and the company is obliged to pay to the Commissioner on or before a particular day (the *due day*) …**
1	the company withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.
2	the company receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	the company provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
5	a *quarter ends	superannuation guarantee charge for the quarter in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

(2) This Division applies in relation to an amount that the company purports to withhold under Division 12, but is not required to withhold, as if the company were required to withhold the amount.

Superannuation guarantee charge

(3) For the purposes of this Division, the company's superannuation guarantee charge for a *quarter under the *Superannuation Guarantee (Administration) Act 1992* is treated as being payable on the day by which the company must lodge a superannuation guarantee statement for the quarter under section 33 of that Act, even if the charge is not assessed under that Act on or before that day.

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

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Estimates

(4) This Division also applies if:

(a) a company is a company registered under the *Corporations Act 2001*; and

(b) the company is given notice of an estimate under Division 268; and

(c) the company is obliged to pay the amount of the estimate to the Commissioner on or before a particular day (the ***due day***).

(5) If this Division applies because of subsection (4), then for the purposes of this Division:

(a) in the case of an estimate of an underlying liability referred to in paragraph 268-10(1)(a) (PAYG withholding liabilities)—the ***initial day*** is:

(i) for a company that is a *medium withholder or a *small withholder on the last day of the period identified in the notice of the estimate under section 268-15 as the period to which the underlying liability relates—the last day of that period; or

(ii) for any other company—the day by which the company is obliged to pay the amount of the underlying liability to the Commissioner; and

(b) in the case of an estimate of an underlying liability referred to in paragraph 268-10(1)(b) (superannuation guarantee charge)—the ***initial day*** is the last day of the *quarter to which the estimate relates; and

(c) the company's obligation to pay the amount of the estimate is taken to have begun on the day after the initial day identified in paragraph (a) or (b) of this subsection.

(6) For the purposes of subsection (5), assume that the underlying liability exists as identified in the notice of the estimate under section 268-15.

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

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Subdivision 269-B—Obligations and penalties

Table of sections

269-15 Directors' obligations
269-20 Penalty
269-25 Notice
269-30 Effect on penalty of directors' obligation ending before end of notice period
269-35 Defences

269-15 Directors' obligations

Directors' obligations

(1) The directors (within the meaning of the *Corporations Act 2001*) of the company (from time to time) on or after the initial day must cause the company to comply with its obligation.

(2) The directors of the company (from time to time) continue to be under their obligation until:
  (a) the company complies with its obligation; or
  (b) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
  (c) the company begins to be wound up (within the meaning of that Act).

(2A) To avoid doubt, if the obligation of the company is an obligation to pay the amount of an estimate of an underlying liability under Division 268, a director is subject to his or her obligation under subsection (1):
  (a) even if the underlying liability never existed or has been discharged in full; and
  (b) even if the unpaid amount of the underlying liability is less than the unpaid amount of the estimate; and
  (c) at all times on and after the day referred to in paragraph 269-10(5)(b) until the director's obligation ceases under subsection (2) of this section, including at any such

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

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times before the Commissioner has made the estimate or given notice of the estimate.

Instalment arrangements

(3) The Commissioner must not commence, or take a procedural step as a party to, proceedings to enforce an obligation, or to recover a penalty, of a director under this Division if an *arrangement that covers the company's obligation is in force under section 255-15 (Commissioner's power to permit payments by instalments).

Note 1: The arrangement may also cover other obligations of the company.

Note 2: Subsection (3) does not prevent the Commissioner from giving a director a notice about a penalty under section 269-25.

269-20 Penalty

Penalty for director on or before due day

(1) You are liable to pay to the Commissioner a penalty if:
(a) at the end of the due day, the directors of the company are still under an obligation under section 269-15; and
(b) you were under that obligation at or before that time (because you were a director).

Note: Paragraph (1)(b) applies even if you stopped being a director before the end of the due day: see subsection 269-15(2).

(2) The penalty is due and payable at the end of the due day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Penalty for new director

(3) You are also liable to pay to the Commissioner a penalty if:
(a) after the due day, you became a director of the company and began to be under an obligation under section 269-15; and
(b) 30 days later, you are still under that obligation.

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

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(4) The penalty is due and payable at the end of that 30th day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Amount of penalty

(5) The amount of a penalty under this section is equal to the unpaid amount of the company's liability under its obligation.

Note 1: See section 269-40 for the effect on your penalty of the company discharging its obligation, or of another director paying his or her penalty.

Note 2: See section 269-45 for your rights of indemnity and contribution.

269-25 Notice

Commissioner must give notice of penalty

(1) The Commissioner must not commence proceedings to recover from you a penalty payable under this Subdivision until the end of 21 days after the Commissioner gives you a written notice under this section.

Content of notice

(2) The notice must:
(a) set out what the Commissioner thinks is the unpaid amount of the company's liability under its obligation; and
(b) state that you are liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount because of an obligation you have or had under this Division; and
(c) explain the main circumstances in which the penalty will be remitted.

(3) To avoid doubt, a single notice may relate to 2 or more penalties, but must comply with subsection (2) in relation to each of them.

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

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When notice is given

(4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note 1: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Note 2: Section 269-50 of this Act is also relevant to giving a notice under subsection (1).

269-30 Effect on penalty of directors' obligation ending before end of notice period

(1) Subject to subsection (2), a penalty of yours under this Division is remitted if the directors of the company stop being under the relevant obligation under section 269-15:

(a) before the Commissioner gives you notice of the penalty under section 269-25; or

(b) within 21 days after the Commissioner gives you notice of the penalty under that section.

(2) The following table has effect:

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

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When appointing administrator or winding up company does not affect penalty			
Item	**Column 1** **If the company's obligation is to pay to the Commissioner, on or before the due day …**	**Column 2** **and, because of paragraph 269-15(2)(b) or (c) (an administrator is appointed or the company begins to be wound up), the directors stop being under the relevant obligation after …**	**Column 3** **subsection (1) does not apply …**
1	an amount in accordance with Subdivision 16-B (obligation to pay withheld amounts to the Commissioner),	the last day of the 3 months after the due day,	to the extent the company does not, on or before the last day mentioned in column 2, notify the Commissioner: (a) under section 16-150 of the amount the company is obliged to pay; or (b) under section 389-5 of the amount the company is obliged to withhold.
2	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(a) (PAYG withholding liabilities),	the last day of the 3 months after the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.

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

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When appointing administrator or winding up company does not affect penalty			
Item	**Column 1** **If the company's obligation is to pay to the Commissioner, on or before the due day …**	**Column 2** **and, because of paragraph 269-15(2)(b) or (c) (an administrator is appointed or the company begins to be wound up), the directors stop being under the relevant obligation after …**	**Column 3** **subsection (1) does not apply …**
3	superannuation guarantee charge for a *quarter,	the due day,	(a) if the company, on or before the last day mentioned in column 2, lodges under section 33 of the *Superannuation Guarantee (Administration) Act 1992* a superannuation guarantee statement for the quarter—the extent (if any) to which the sum mentioned in paragraph 35(1)(e) of that Act is less than the amount of the superannuation guarantee charge the company is obliged to pay for the quarter; or (b) otherwise—to any extent.

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

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When appointing administrator or winding up company does not affect penalty			
Item	**Column 1** **If the company's obligation is to pay to the Commissioner, on or before the due day …**	**Column 2** **and, because of paragraph 269-15(2)(b) or (c) (an administrator is appointed or the company begins to be wound up), the directors stop being under the relevant obligation after …**	**Column 3** **subsection (1) does not apply …**
4	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(b) (superannuation guarantee charge),	the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.

Note 1: An administrator of the company being appointed, or the company beginning to be wound up, after the last day mentioned in column 2 will, to the extent mentioned in column 3, have no effect on the penalty.

Note 2: The sum mentioned in paragraph 35(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* is the sum of:

(a) the total of the company's individual superannuation guarantee shortfalls; and

(b) the company's nominal interest component; and

(c) the company's administration component;

specified in the superannuation guarantee statement.

(3) If you become a director of the company during or after the 3 months mentioned in item 1 or 2, treat the reference in the item to the 3 months as being a reference to the 3 months after the day you become a director of the company.

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

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269-35 Defences

Illness

(1) You are not liable to a penalty under this Division if, because of illness or for some other good reason, it would have been unreasonable to expect you to take part, and you did not take part, in the management of the company at any time when:
  (a) you were a director of the company; and
  (b) the directors were under the relevant obligations under subsection 269-15(1).

All reasonable steps

(2) You are not liable to a penalty under this Division if:
  (a) you took all reasonable steps to ensure that one of the following happened:
    (i) the directors caused the company to comply with its obligation;
    (ii) the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
    (iii) the directors caused the company to begin to be wound up (within the meaning of that Act); or
  (b) there were no reasonable steps you could have taken to ensure that any of those things happened.

(3) In determining what are reasonable steps for the purposes of subsection (2), have regard to:
  (a) when, and for how long, you were a director and took part in the management of the company; and
  (b) all other relevant circumstances.

(3AA) If the obligation referred to in subparagraph (2)(a)(i) is an obligation to pay an amount of an estimate of an underlying liability under Division 268, that reference to an obligation

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

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includes a reference to the obligation to pay the underlying liability.

(3AB) For the purposes of subsection (3AA), assume that the underlying liability exists as identified in the notice of the estimate under section 268-15.

Superannuation guarantee charge—reasonably arguable position

(3A) You are not liable to a penalty under this Division to the extent that the penalty resulted from the company treating the *Superannuation Guarantee (Administration) Act 1992* as applying to a matter or identical matters in a particular way that was *reasonably arguable, if the company took reasonable care in connection with applying that Act to the matter or matters.

When you can rely on this section

(4) For the purposes of:

(a) proceedings in a court to recover from you a penalty payable under this Division; or

(b) proceedings in a court against you in relation to a right referred to in paragraph 269-45(2)(b) (directors jointly and severally liable as guarantors);

subsection (1) or (2) of this section does not apply unless you prove the matters mentioned in that subsection.

(4A) For the purpose of the Commissioner recovering from you a penalty payable under this Division (other than as mentioned in subsection (4)), subsection (1) or (2) does not apply unless:

(a) you provide information to the Commissioner during the period of 60 days starting on the day the Commissioner:

(i) in the case of the Commissioner recovering the penalty under section 260-5 (Commissioner may collect amounts from third party)—gives you a notice under subsection 260-5(6) in relation to the penalty; or

(ii) otherwise—notifies you in writing that he or she has recovered any of the penalty; and

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

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(b) the Commissioner is satisfied of the matters mentioned in subsection (1) or (2) of this section on the basis of that information.

Power of courts to grant relief

(5) Section 1318 of the *Corporations Act 2001* does not apply to an obligation or liability of a director under this Division.

Subdivision 269-C—Discharging liabilities

Table of sections

269-40 Effect of director paying penalty or company discharging liability
269-45 Directors' rights of indemnity and contribution

269-40 Effect of director paying penalty or company discharging liability

Liabilities

(1) This section applies to the following liabilities:
(a) the liability of the company under its obligation referred to in section 269-10;
(b) the liability of each director (or former director) to pay a penalty under this Division in relation to the liability of the company referred to in paragraph (a);
(c) a liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).

Discharging one liability discharges other liabilities

(2) If an amount is paid or applied at a particular time towards discharging one of the liabilities, each of the other liabilities in existence at that time is discharged to the extent of the same amount.

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

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(3) If, because of section 268-20 (Nature of liability to pay estimate), one of the liabilities is discharged at a particular time to the extent of a particular amount, each of the other liabilities in existence at that time is discharged to the extent of the same amount.

(4) This section does not discharge a liability to a greater extent than the amount of the liability.

269-45 Directors' rights of indemnity and contribution

(1) This section applies if you pay a penalty under this Division in relation to a liability of the company under an obligation referred to in section 269-10.

(2) You have the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against the company or anyone else as if:

(a) you made the payment under a guarantee of the liability of the company; and

(b) under the guarantee you and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Division in relation to the company's obligation were jointly and severally liable as guarantors.

Subdivision 269-D—Miscellaneous

Table of sections

269-50 How notice may be given
269-52 Copies of notices
269-55 Division not to limit or exclude Corporations Act

269-50 How notice may be given

The Commissioner may give you a notice under section 269-25 by leaving it at, or posting it to, an address that appears, from information held by *ASIC, to be, or to have been within the last 7 days, your place of residence or *business.

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

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269-52 Copies of notices

(1) If:

(a) the Commissioner gives you a notice under section 269-25 in accordance with section 269-50; and

(b) you have given the address of a *registered tax agent to the Commissioner as your address for service for the purposes of any *taxation law;

the Commissioner may also give you a copy of the notice.

(2) The Commissioner may do so by leaving the copy at, or posting the copy to, the address of the *registered tax agent.

(3) To avoid doubt, this section does not affect:

(a) whether the Commissioner has given you the actual notice; or

(b) how the Commissioner may give you the actual notice.

269-55 Division not to limit or exclude Corporations Act

To avoid doubt, this Division is not intended to limit or exclude the operation of Chapter 5 (External administration) or Schedule 2 to the *Corporations Act 2001*, to the extent those provisions can operate concurrently with this Division.

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

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Part 4-25—Charges and penalties

Division 280—Shortfall interest charge

Table of Subdivisions

Guide to Division 280
280-A Object of Division
280-B Shortfall interest charge
280-C Remitting shortfall interest charge

Guide to Division 280

280-1 Guide to Division 280

The shortfall interest charge applies to shortfalls of income tax, petroleum resource rent tax, excess non-concessional contributions tax, Division 293 tax or diverted profits tax that are revealed when the Commissioner amends your assessment.

The charge is applied at a uniform rate that is lower than the general interest charge rate.

The Commissioner has a discretion to remit shortfall interest charge.

Subdivision 280-A—Object of Division

Table of sections

280-50 Object of Division

280-50 Object of Division

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from shortfalls of income tax, *petroleum

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

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resource rent tax, *excess non-concessional contributions tax, *Division 293 tax or *diverted profits tax, so that they do not receive an advantage in the form of a free loan over those who assess correctly.

Subdivision 280-B—Shortfall interest charge

Table of sections

280-100 Liability to shortfall interest charge—income tax
280-101 Liability to shortfall interest charge—excess exploration credit tax
280-102 Liability to shortfall interest charge—petroleum resource rent tax
280-102A Liability to shortfall interest charge—excess non-concessional contributions tax
280-102B Liability to shortfall interest charge—Division 293 tax
280-102C Liability to shortfall interest charge—diverted profits tax
280-103 Liability to shortfall interest charge—general
280-105 Amount of shortfall interest charge
280-110 Notification by Commissioner

280-100 Liability to shortfall interest charge—income tax

(1) You are liable to pay *shortfall interest charge on an additional amount of income tax that you are liable to pay because the Commissioner amends your assessment for an income year.

(2) The liability is for each day in the period:
   (a) beginning at the start of the day on which income tax under your first assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and
   (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.

(3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which income tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

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

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Note: See Division 5 of the *Income Tax Assessment Act 1997* for when the amount of income tax and shortfall interest charge becomes due and payable. That Division also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Liability to shortfall interest charge—excess concessional contributions charge

(4) Despite subsection (1), if:

(a) you are liable under that subsection to pay *shortfall interest charge on an additional amount of income tax; and

(b) that additional amount includes an amount of income tax on which you are liable to pay an amount of *excess concessional contributions charge;

the additional amount of income tax on which you are liable to pay shortfall interest charge is taken to be increased by the amount of excess concessional contributions charge mentioned in paragraph (b).

Liability arising because of a financial benefit under a look-through earnout right

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

(a) you provide or receive a *financial benefit under a *look-through earnout right; and

(b) you request the Commissioner to amend your assessment for an income year (the ***taxing year***) to take account of the financial benefit; and

(c) you make that request at or before the time:

(i) you are required to lodge your *income tax return for the income year in which the financial benefit is provided or received; or

(ii) you would be so required if you were required to lodge an income tax return for that income year; and

(d) as a result of paragraph (a), you are liable to pay an additional amount of income tax for the taxing year.

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

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280-101 Liability to shortfall interest charge—excess exploration credit tax

(1) You are liable to pay *shortfall interest charge on an additional amount of *excess exploration credit tax that you are liable to pay because the Commissioner amends your assessment for an income year.

(2) The liability is for each day in the period:

(a) beginning at the start of the day on which *excess exploration credit tax under your first assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and

(b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.

(3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *excess exploration credit tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See Subdivision 418-F of the *Income Tax Assessment Act 1997* for when the amount of excess exploration credit tax and shortfall interest charge becomes due and payable. That Subdivision also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102 Liability to shortfall interest charge—petroleum resource rent tax

(1) You are liable to pay *shortfall interest charge on an additional amount of *petroleum resource rent tax that you are liable to pay because the Commissioner amends your assessment under the *Petroleum Resource Rent Tax Assessment Act 1987* for a year of tax (within the meaning of that Act).

(2) The liability is for each day in the period:

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

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(a) beginning at the start of the day on which *petroleum resource rent tax under your first assessment for that year of tax was due to be paid, or would have been due to be paid if there had been any; and

(b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.

(3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *petroleum resource rent tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 82 of the *Petroleum Resource Rent Tax Assessment Act 1987* for when the amount of petroleum resource rent tax and shortfall interest charge becomes due and payable. Section 85 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102A Liability to shortfall interest charge—excess non-concessional contributions tax

(1) You are liable to pay *shortfall interest charge on an additional amount of *excess non-concessional contributions tax that you are liable to pay because the Commissioner amends your *excess non-concessional contributions tax assessment for a financial year.

(2) The liability is for each day in the period:

(a) beginning at the start of the day on which *excess non-concessional contributions tax under your first *excess non-concessional contributions tax assessment for that year was due to be paid; and

(b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.

(3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an

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

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earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *excess non-concessional contributions tax under the earlier amended assessment was due to be paid.

Note: See section 292-385 of the *Income Tax Assessment Act 1997* for when the amount of excess non-concessional contributions tax becomes due and payable. See section 5-10 of that Act for when the amount of shortfall interest charge becomes due and payable. Section 292-390 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Liability arising because of a financial benefit under a look-through earnout right

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

(a) you provide or receive a *financial benefit under a *look-through earnout right; and

(b) you request the Commissioner to amend your *excess non-concessional contributions tax assessment for a *financial year to take account of the financial benefit; and

(c) you make that request at or before the time:

(i) you are required to lodge your *income tax return for the income year in which the financial benefit is provided or received; or

(ii) you would be so required if you were required to lodge an income tax return for that income year; and

(d) as a result of paragraph (a), you are liable to pay an additional amount of *excess non-concessional contributions tax for the financial year.

280-102B Liability to shortfall interest charge—Division 293 tax

(1) You are liable to pay *shortfall interest charge on an additional amount of *Division 293 tax that you are liable to pay because the Commissioner amends your assessment of an amount of Division 293 tax payable in relation to an income year.

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

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(2) However, subsection (1) does not apply to the extent the additional amount of *Division 293 tax is *deferred to a debt account for a *superannuation interest.

(3) The liability is for each day in the period:

(a) beginning on the day on which *Division 293 tax under your first assessment of Division 293 tax for that income year was due to be paid; and

(b) ending on the day before the day on which the Commissioner gave you notice of the amended assessment.

(4) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *Division 293 tax under the earlier amended assessment was due to be paid.

Note 1: See section 5-10 of the *Income Tax Assessment Act 1997* for when the amount of shortfall interest charge becomes due and payable.

Note 2: See Subdivision 293-C of that Act for when the amount of assessed Division 293 tax becomes due and payable. That Subdivision also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Liability arising because of a financial benefit under a look-through earnout right

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

(a) you provide or receive a *financial benefit under a *look-through earnout right; and

(b) you request the Commissioner to amend your assessment of *Division 293 tax payable in relation to an income year (the ***taxing year***) to take account of the financial benefit; and

(c) you make that request at or before the time:

(i) you are required to lodge your *income tax return for the income year in which the financial benefit is provided or received; or

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

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(ii) you would be so required if you were required to lodge an income tax return for that income year; and

(d) as a result of paragraph (a), you are liable to pay an additional amount of Division 293 tax for the taxing year.

280-102C Liability to shortfall interest charge—diverted profits tax

(1) Subsection (2) applies if:

(a) the Commissioner has given an entity an assessment of income tax for an income year; and

(b) the Commissioner subsequently gives the entity a *DPT assessment for that income year.

(2) The entity is liable to pay *shortfall interest charge equal to the amount of shortfall interest charge that the entity would be liable to pay under section 280-100 if:

(a) the Commissioner amended the assessment of income tax mentioned in paragraph (1)(a) on the day that the Commissioner gave the entity the *DPT assessment mentioned in paragraph (1)(b); and

(b) the entity were liable to pay an additional amount of income tax because of that amendment; and

(c) the Commissioner made that amendment on the basis that the *tax benefit or tax benefits to which the DPT assessment related were cancelled.

(3) An entity is also liable to pay *shortfall interest charge on an additional amount of *diverted profits tax that the entity is liable to pay because the Commissioner amends the entity's *DPT assessment in respect of an income year.

(4) The liability is for each day in the period:

(a) beginning at the start of the day on which *diverted profits tax under the entity's first *DPT assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and

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

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(b) ending at the end of the day before the day on which the Commissioner gave the entity notice of the amended *DPT assessment.

(5) However, if an amended *DPT assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended DPT assessment, the period for the reinstated liability begins at the start of the day on which *diverted profits tax under the earlier amended DPT assessment was due to be paid.

Note 1: See subsection 177P(3) of the *Income Tax Assessment Act 1936* for when the amount of diverted profits tax becomes due and payable.

Note 2: Section 177Q of the *Income Tax Assessment Act 1936* provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Note 3: See section 177R of the *Income Tax Assessment Act 1936* for when the amount of shortfall interest charge becomes due and payable.

280-103 Liability to shortfall interest charge—general

(1) Your liability to pay *shortfall interest charge exists whether or not you are liable to any penalty under this Act.

(2) Neither the Commonwealth nor an authority of the Commonwealth is liable to pay *shortfall interest charge.

280-105 Amount of shortfall interest charge

(1) The *shortfall interest charge for a day is worked out by multiplying the rate worked out under subsection (2) for that day by the sum of these amounts:

(a) the additional amount of income tax, *excess exploration credit tax, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax,; and

(b) the shortfall interest charge on that amount from previous days.

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

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(2) The rate is:

$$\frac{\text{*Base interest rate for the day} + \text{3 percentage points}}{\text{Number of days in the calendar year}}$$

280-110 Notification by Commissioner

(1) The Commissioner must give you a notice stating the amount of the *shortfall interest charge you are liable to pay for the period applicable under section 280-100, 280-101, 280-102, 280-102A or 280-102B.

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

Subdivision 280-C—Remitting shortfall interest charge

Table of sections

280-160 Remitting shortfall interest charge
280-165 Commissioner must give reasons for not remitting in certain cases
280-170 Objecting against remission decision

280-160 Remitting shortfall interest charge

(1) The Commissioner may remit all or a part of an amount of *shortfall interest charge you are liable to pay if the Commissioner considers it fair and reasonable to do so.

(2) Without limiting subsection (1), in deciding whether to remit, the Commissioner must have regard to:

(a) the principle that remission should not occur just because the benefit you received from the temporary use of the shortfall amount is less than the *shortfall interest charge; and

(b) the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all

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

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of the cost of delayed payments.

280-165 Commissioner must give reasons for not remitting in certain cases

The Commissioner must give you a written statement of the reasons for a decision not to remit an amount of *shortfall interest charge you are liable to pay if you requested the Commissioner, in the *approved form, to remit the amount.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

280-170 Objecting against remission decision

You may object, in the manner set out in Part IVC, against a decision of the Commissioner not to remit an amount of *shortfall interest charge you are liable to pay on an additional amount of income tax, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax, if the amount of the charge that was not remitted is more than 20% of the additional amount.

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

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Division 284—Administrative penalties for statements, unarguable positions and schemes

Table of Subdivisions

Guide to Division 284
284-A General provisions
284-B Penalties relating to statements
284-C Penalties relating to schemes
284-D Provisions common to Subdivisions 284-B and 284-C

Guide to Division 284

284-5 What this Division is about

This Division sets out the circumstances in which administrative penalties apply for:

(a) making false or misleading statements; and

(b) taking a position that is not reasonably arguable; and

(c) entering into schemes.

It also sets out the amounts of those penalties.

Subdivision 284-A—General provisions

Table of sections

284-10 Object of Division
284-15 When a matter is *reasonably arguable*
284-20 Which statements this Division applies to
284-25 Statements by agents

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

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284-30 Application of Division to trusts
284-35 Application of Division to partnerships

284-10 Object of Division

The object of this Division is to provide a uniform administrative penalty regime for all *taxation laws to enable administrative penalties to apply to entities that fail to meet their obligations under those laws in relation to:

(a) making false or misleading statements; and
(b) taking a position that is not reasonably arguable; and
(c) entering into *schemes; and
(d) refusing to provide documents to the Commissioner.

284-15 When a matter is *reasonably arguable*

(1) A matter is ***reasonably arguable*** if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.

Note: For the effect of transfer pricing documentation on when a matter is reasonably arguable, see Subdivision 284-E.

(2) To the extent that a matter involves an assumption about the way in which the Commissioner will exercise a discretion, the matter is only ***reasonably arguable*** if, had the Commissioner exercised the discretion in the way assumed, a court would be about as likely as not to decide that the exercise of the discretion was in accordance with law.

(3) Without limiting subsection (1), these authorities are relevant:
(a) a *taxation law;
(b) material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*;
(c) a decision of a court (whether or not an Australian court), the *AAT or a Board of Review;
(d) a *public ruling.

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

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284-20 Which statements this Division applies to

This Division applies to a statement made orally, in a document or in any other way (including electronically) for a purpose connected with a *taxation law.

284-25 Statements by agents

This Division applies to a statement made by your agent as if it had been made by you.

284-30 Application of Division to trusts

If you are a trustee of a trust and:

(a) you make a statement to the Commissioner or to an officer who is exercising powers or performing functions under a *taxation law about the trust; and

(b) the statement:

(i) is false or misleading in a material particular, whether because of things in it or omitted from it; or

(ii) treated an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; or

(iii) treated a taxation law as applying in a particular way to a *scheme;

this Division applies to you as if any *shortfall amount or *scheme shortfall amount of a beneficiary of the trust as a result of the statement were your shortfall amount or scheme shortfall amount.

284-35 Application of Division to partnerships

(1) If you are a partner in a partnership and:

(a) a statement about the partnership net income or partnership loss is made by a partner or the partnership's agent to the Commissioner or to an entity who is exercising powers or performing functions under a *taxation law about the partnership; and

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

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(b) the statement:

(i) is false or misleading in a material particular, whether because of things in it or omitted from it; or

(ii) treated an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable;

this Division applies to you as if you had made the statement.

(2) If you are a partner in a partnership and:

(a) the partnership participated in a *scheme; and

(b) the partnership net income would have been greater, or the partnership loss would have been smaller, apart from the scheme;

this Division applies to you as if the proportion of the *scheme benefit that is the same as your share of the partnership net income or partnership loss were your scheme benefit.

Subdivision 284-B—Penalties relating to statements

Guide to Subdivision 284-B

284-70 What this Subdivision is about

You are liable to an administrative penalty if:

(a) you make a false or misleading statement about a tax-related matter; or

(b) you take a position that is not reasonably arguable about a tax-related matter; or

(c) the Commissioner determines a tax-related liability of yours without documents you were required to provide.

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

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This Subdivision sets out when the penalties apply and how the amounts of the penalties are calculated.

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Operative provisions

284-75 Liability to penalty

(1) You are liable to an administrative penalty if:

(a) you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under a *taxation law (other than the *Excise Acts); and

(b) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

Note: This section applies to a statement made by your agent as if it had been made by you: see section 284-25.

(2) You are liable to an administrative penalty if:

(a) you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under an *income tax law or the *petroleum resource rent tax law; and

(b) in the statement, you treated an income tax law, or the petroleum resource rent tax law, as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and

(d) item 4, 5 or 6 of the table in subsection 284-90(1) applies to you.

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

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(3) You are liable to an administrative penalty if:

(a) you fail to give a return, notice or other document to the Commissioner by the day it is required to be given; and

(b) that document is necessary for the Commissioner to determine a *tax-related liability (other than one arising under the *Excise Acts) of yours accurately; and

(c) the Commissioner determines the tax-related liability without the assistance of that document.

Note: You are also liable to an administrative penalty for failing to give the document on time: see Subdivision 286-C.

(4) You are liable to an administrative penalty if:

(a) you make a statement to an entity other than:

(i) the Commissioner; and

(ii) an entity exercising powers or performing functions under a *taxation law (other than the *Excise Acts); and

(b) the statement is, or purports to be one that:

(i) is required or permitted by a taxation law (other than the Excise Acts); or

(ii) might reasonably be expected to be used, by an entity in determining, for the purposes of the *GST law, whether you are an Australian consumer (within the meaning of the *GST Act); or

(iii) might reasonably be expected to be used, by an entity in determining, for the purposes of the GST law, whether a supply made by you is connected with the indirect tax zone (within the meaning of that Act) because of Subdivision 84-C of that Act; and

(c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

Exceptions to subsections (1) and (4)

(5) You are not liable to an administrative penalty under subsection (1) or (4) for a statement that is false or misleading in a material

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

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particular if you, and your *agent (if relevant), took reasonable care in connection with the making of the statement.

(6) You are not liable to an administrative penalty under subsection (1) or (4) if:

(a) you engage a *registered tax agent or BAS agent; and

(b) you give the registered tax agent or BAS agent all relevant taxation information; and

(c) the registered tax agent or BAS agent makes the statement; and

(d) the false or misleading nature of the statement did not result from:

(i) intentional disregard by the registered tax agent or BAS agent of a *taxation law (other than the *Excise Acts); or

(ii) recklessness by the agent as to the operation of a taxation law (other than the Excise Acts).

(7) If you wish to rely on subsection (6), you bear an evidential burden in relation to paragraph (6)(b).

Further exceptions to subsection (1)

(8) You are not liable to an administrative penalty under subsection (1) if:

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

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

(c) you make 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

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

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(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.

(9) You are not liable to an administrative penalty under subsection (1) if:

(a) you made the statement (the ***original statement***) under section 390-5; and

(b) you make 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) 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.

284-80 *Shortfall amounts*

(1) You have a ***shortfall amount*** if an item in this table applies to you. That amount is the amount by which the relevant liability, or the payment or credit, is less than or more than it would otherwise have been.

Shortfall amounts

Item	You have a *shortfall amount* in this situation:
1	A *tax-related liability of yours for an accounting period, or for a *taxable importation, or under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, worked out on the basis of the statement is less than it would be if the statement were not false or misleading

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

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Shortfall amounts	
Item	**You have a *shortfall amount* in this situation:**
2	An amount that the Commissioner must pay or credit to you under a *taxation law (other than the *Excise Acts) for an accounting period, or under a tourist refund scheme under Division 168 of the *GST Act or Division 25 of the *A New Tax System (Wine Equalisation Tax) Act 1999*, worked out on the basis of the statement is more than it would be if the statement were not false or misleading
3	A *tax-related liability of yours for an accounting period worked out on the basis of the statement is less than it would be if the statement did not treat an *income tax law or the *petroleum resource rent tax law as applying in a way that was not *reasonably arguable
4	An amount that the Commissioner must pay or credit to you under an *income tax law or the *petroleum resource rent tax law for an accounting period worked out on the basis of the statement is more than it would be if the statement did not treat an income tax law or the petroleum resource rent tax law as applying in a way that was not *reasonably arguable
5	You are liable to pay to the Commissioner an amount of *excess exploration credit tax

(2) However, if:

(a) your shortfall amount arises in the situation covered by both item 1 in the table and item 1, 2 or 3 in the table in subsection 284-90(1); and

(b) the statement is false or misleading because of errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in it and it was made before the Commissioner became aware of the errors, your ***shortfall amount*** is instead the amount worked out using the formula:

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}}\right]$$

where:

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

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adjusted reset cost base asset setting amount means:

(a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

(b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the time it joined the group, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

(a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and

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

284-85 Amount of penalty

(1) Work out the *base penalty amount under section 284-90. If the base penalty amount is not increased under section 284-220 or reduced under section 284-225, this is the amount of the penalty.

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

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(2) Otherwise, use this formula:

$$\text{BPA} + \left[\text{BPA} \times \left(\text{Increase \%} - \text{Reduction \%}\right)\right]$$

where:

BPA is the *base penalty amount.

increase % is the percentage increase (if any) under section 284-220.

reduction % is the percentage reduction (if any) under section 284-225.

284-90 *Base penalty amount*

(1) The ***base penalty amount*** under this Subdivision is worked out using this table and subsections (1A) to (2), and section 284-224 if relevant:

Base penalty amount

Item	In this situation:	The *base penalty amount* is:
1	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from intentional disregard of a *taxation law (other than the *Excise Acts) by you or your agent	75% of your *shortfall amount or part
2	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from recklessness by you or your agent as to the operation of a *taxation law (other than the *Excise Acts)	50% of your *shortfall amount or part
3	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from a failure by you or your agent to take reasonable care to comply with a *taxation law (other than the *Excise Acts)	25% of your *shortfall amount or part

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

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Base penalty amount

Item	In this situation:	The *base penalty amount* is:
3A	A statement described in subsection 284-75(1) or (4) was false or misleading because of intentional disregard of a *taxation law (other than the *Excise Acts) by you or your *agent but did not result in you having a *shortfall amount	60 penalty units
3B	A statement described in subsection 284-75(1) or (4) was false or misleading because of recklessness by you or your *agent as to the operation of a *taxation law (other than the *Excise Acts) but did not result in you having a *shortfall amount	40 penalty units
3C	A statement described in subsection 284-75(1) or (4) was false or misleading because of a failure by you or your *agent to take reasonable care to comply with a *taxation law (other than the *Excise Acts) but did not result in you having a *shortfall amount	20 penalty units
4	You have a *shortfall amount, all or part of which resulted from you or your agent treating an *income tax law or the *petroleum resource rent tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable, and that amount is more than your *reasonably arguable threshold.	25% of your *shortfall amount or part
5	You have a *shortfall amount because of section 284-30 (about trusts) and: (a) your shortfall amount or part of it resulted from you or your agent treating an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and (b) because of that treatment, the trust's net income would have been reduced, or the trust's *tax loss would have been increased, for the income year by more than the trust's *reasonably arguable threshold	25% of your *shortfall amount or part

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

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Base penalty amount		
Item	**In this situation:**	**The *base penalty amount* is:**
6	You have a *shortfall amount because of section 284-35 (about partnerships) and: (a) your shortfall amount or part of it resulted from you or your agent treating an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and (b) because of that treatment, the partnership net income would have been reduced, or the partnership loss would have been increased, for the income year by more than the partnership's *reasonably arguable threshold	25% of your *shortfall amount or part
7	You are liable to an administrative penalty under subsection 284-75(3)	75% of the tax-related liability concerned

(1A) The *base penalty amount in an item of the table in subsection (1) that applies to you is taken to be doubled if:

(a) on or before the day (your ***trigger day***) applying to you under subsection (4) for that table item:

(i) the Commissioner has made an assessment of your income tax for one or more income years; or

(ii) the Commissioner has made a determination under subsection 960-555(3) of the *Income Tax Assessment Act 1997* in relation to you, or in relation to the *global parent entity for the group of which you are a member, for a period; or

(iii) you have given the Commissioner statements in accordance with Subdivision 815-E of that Act for an income year or another 12 month period; and

(b) you were a *significant global entity for:

(i) whichever of those income years or periods that ends on the most recent day; or

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

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(ii) if more than one of them ends on that most recent day—any of those income years or periods that ends on that most recent day.

Note: For subparagraph (a)(iii), you may be allowed to give statements for a 12 month period other than an income year (see section 815-360 of the *Income Tax Assessment Act 1997*).

(1B) However, subsection (1A) is taken never to have applied to you in relation to your trigger day if:

(a) the Commissioner makes an assessment of your income tax for the income year that includes your trigger day; and

(b) you are not a *significant global entity for that income year.

(2) If 2 or more items in that table apply and one of them produces a greater *base penalty amount than any of the others, use that item.

(3) An entity's ***reasonably arguable threshold*** for an income year is:

(a) unless paragraph (b) applies—the greater of $10,000 or 1% of whichever of the following applies:

(i) the income tax payable by the entity for the income year, worked out on the basis of the entity's *income tax return;

(ii) the *petroleum resource rent tax payable by the entity for the year of tax (within the meaning of the *Petroleum Resource Rent Tax Assessment Act 1987*) most closely corresponding to the income year, worked out on the basis of the entity's return under Division 1 of Part VI of that Act; or

(b) if the entity is a trust or partnership—the greater of the following amounts:

(i) $20,000;

(ii) 2% of the entity's *net income (if any) for the income year worked out on the basis of the entity's *income tax return.

(4) For the purposes of paragraph (1A)(a), the following day applies to you for the relevant item of the table in subsection (1):

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

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(a) for any of table items 1 to 3C—the day you made the statement referred to in that item;
(b) for any of table items 4 to 6—the day you made the statement to which that item relates and that is referred to in subsection 284-75(2);
(c) for table item 7—the day the return, notice or other document to which that item relates, and that is referred to in subsection 284-75(3), was required to be given.

284-95 Joint and several liability of directors of corporate trustee that makes a false or misleading statement

(1) This section applies if a trustee of a *self managed superannuation fund, or of a fund that is treated as a self managed superannuation fund under subsection 10(4) of the *Superannuation Industry (Supervision) Act 1993*:
(a) is liable to an administrative penalty under subsection 284-75(1) or (4); and
(b) is a body corporate.

(2) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the *tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

Subdivision 284-C—Penalties relating to schemes

Guide to Subdivision 284-C

284-140 What this Subdivision is about

You are liable to an administrative penalty if you attempt to reduce your tax-related liabilities or increase your credits through a scheme.

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

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This Subdivision sets out when the penalties apply and how the amounts of the penalties are calculated.

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Operative provisions

284-145 Liability to penalty

(1) You are liable to an administrative penalty if:

(a) you would, apart from a provision of a *taxation law or action taken under such a provision (the ***adjustment provision***), get a *scheme benefit from a *scheme; and

(b) having regard to any relevant matters, it is reasonable to conclude that:

(i) an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; or

(ia) for a scheme to which Part IVA of the *Income Tax Assessment Act 1936* applies because of section 177DA of that Act—an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a scheme benefit from the scheme; or

(ii) for a scheme referred to in Division 165 of the *GST Act or Division 75 of the *Fuel Tax Act 2006*—the principal effect of the scheme, or of part of the scheme, is that you would, apart from the adjustment provision,

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

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get the scheme benefit from the scheme directly or indirectly.

(2A) You are also liable to an administrative penalty if:

(a) you would, apart from a determination under section 815-30 of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***), get a *scheme benefit from a *scheme; and

(b) neither subparagraph (1)(b)(i) nor subparagraph (1)(b)(ia) is satisfied for the scheme.

(2B) You are also liable to an administrative penalty if:

(a) to give effect to Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***) in relation to a *scheme, the Commissioner:

(i) amends your assessment for an income year; or

(ii) serves you with one or more notices under subsection 128C(7) of the *Income Tax Assessment Act 1936* in respect of income that is taken because of the application of the adjustment provision to have been derived in the income year; and

(b) as a result, you are liable to pay an additional amount of income tax or *withholding tax (as the case requires).

Note: Subdivisions 815-B and 815-C of the *Income Tax Assessment Act 1997* apply the arm's length principle (about transfer pricing) to entities and permanent establishments respectively.

(2C) You are also liable to an administrative penalty if:

(a) you are the trustee of a *managed investment trust in relation to an income year; and

(b) to give effect to Subdivision 275-L of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***) in relation to a *scheme, the Commissioner amends your assessment for the income year; and

(c) as a result, you are liable to pay an additional amount of income tax (as the case requires).

Note: Subdivision 275-L of the *Income Tax Assessment Act 1997* applies to non-arm's length income of managed investment trusts.

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

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(3) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

284-150 *Scheme benefits* and *scheme shortfall amounts*

(1) An entity gets a ***scheme benefit*** from a *scheme if:

(a) a *tax-related liability of the entity for an accounting period is, or could reasonably be expected to be, less than it would be apart from the scheme or a part of the scheme; or

(b) an amount that the Commissioner must pay or credit to the entity under a *taxation law for an accounting period is, or could reasonably be expected to be, more than it would be apart from the scheme or a part of the scheme.

(2) The amount of the *scheme benefit that you would, apart from the adjustment provision, have got from the *scheme is called your ***scheme shortfall amount***.

(3) However, to the extent that your scheme shortfall amount is due to errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in a statement that was made before the Commissioner became aware of the errors, your ***scheme shortfall amount*** is instead the amount worked out using the formula:

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}}\right]$$

where:

adjusted reset cost base asset setting amount means:

(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

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

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which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

(b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the joining time, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

(a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and

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

Scheme shortfall amount for cross-border transfer pricing

(4) Despite subsection (2), your ***scheme shortfall amount*** for a *scheme to which subsection 284-145(2B) applies is the total amount of additional income tax and *withholding tax you are liable to pay as mentioned in that subsection.

(5) Disregard your *scheme shortfall amount for a *scheme to which subsection 284-145(1) applies to the extent that scheme shortfall amount is attributable to additional tax that is, or is part of, your scheme shortfall amount for a scheme to which subsection 284-145(2B) applies.

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

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Scheme shortfall amount for managed investment trust non-arm's length income

(6) Despite subsection (2), your scheme shortfall amount for a *scheme to which subsection 284-145(2C) applies is the total amount of additional income tax you are liable to pay as mentioned in that subsection.

(7) Disregard your *scheme shortfall amount for a *scheme to which subsection 284-145(1) applies to the extent that scheme shortfall amount is attributable to additional tax that is, or is part of, your scheme shortfall amount for a scheme to which subsection 284-145(2C) applies.

284-155 Amount of penalty

(1) Work out the *base penalty amount under section 284-160. If the base penalty amount is not increased under section 284-220 or reduced under section 284-225, this is the amount of the penalty.

(2) Otherwise, use this formula:

$$\text{BPA} + \left[\text{BPA} \times \left(\text{Increase \%} - \text{Reduction \%}\right)\right]$$

where:

BPA is the *base penalty amount.

increase % is the percentage increase (if any) under section 284-220.

reduction % is the percentage reduction (if any) under section 284-225.

(3) However, the amount of the penalty is twice the amount worked out under subsection (1) or (2) of this section if:

(a) you are a *significant global entity during an income year that consists of, or includes all or part of, the accounting period to which your *scheme shortfall amount relates; and

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

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(b) it is not *reasonably arguable that the adjustment provision does not apply.

284-160 *Base penalty amount*: schemes

(1) The ***base penalty amount*** for a *scheme to which subsection 284-145(1) or (2C) applies is, subject to section 284-224:

(a) 50% of your *scheme shortfall amount; or

(b) 25% of your scheme shortfall amount if it is *reasonably arguable that the adjustment provision does not apply.

(2) The ***base penalty amount*** for a *scheme to which subsection 284-145(2A) applies is, subject to section 284-224:

(a) 25% of your *scheme shortfall amount; or

(b) 10% of your scheme shortfall amount if it is *reasonably arguable that the adjustment provision does not apply.

(3) The ***base penalty amount*** for a *scheme to which subsection 284-145(2B) applies is worked out using this table and section 284-224 if relevant:

Base penalty amount

Item	Column 1 **In this situation:**	Column 2 **The *base penalty amount* is:**
1	having regard to any relevant matters, it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the *scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a *transfer pricing benefit from the scheme	the sum of: (a) 50% of your *scheme shortfall amount, to the extent that it is not attributable as mentioned in paragraph (b); and (b) 25% of your scheme shortfall amount, to the extent (if any) that it is attributable to the entity, or the entity's agent, treating the adjustment provision as applying (including not applying) to a matter (or identical matters) in a particular way that is *reasonably arguable

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

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Base penalty amount		
Item	**Column 1** **In this situation:**	**Column 2** **The *base penalty amount* is:**
2	item 1 does not apply	the sum of: (a) 25% of your *scheme shortfall amount, to the extent that it is not attributable as mentioned in paragraph (b); and (b) 10% of your scheme shortfall amount, to the extent (if any) that it is attributable to the entity, or the entity's agent, treating the adjustment provision as applying (including not applying) to a matter (or identical matters) in a particular way that is *reasonably arguable

Note: For special rules about when transfer pricing treatment is not reasonably arguable, see Subdivision 284-E.

284-165 Exception—threshold for penalty arising from cross-border transfer pricing

(1) You are not liable to an administrative penalty under subsection 284-145(2B) if your *scheme shortfall amount is equal to or less than your *reasonably arguable threshold.

(2) You are also not liable to an administrative penalty under that subsection if:

(a) you have the *scheme shortfall amount because of section 284-30 (about trusts); and

(b) the amount by which the trust would, apart from the application of Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997*, have had a greater *net income, or a lesser *tax loss, is equal to or less than the trust's *reasonably arguable threshold.

(3) You are also not liable to an administrative penalty under that subsection if:

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

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(a) you have the *scheme shortfall amount because you are a partner in a partnership that participated in the *scheme; and

(b) the amount by which the partnership would, apart from the application of Subdivision 815-B or 815-C of that Act, have had a greater *net income, or a lesser *partnership loss, is equal to or less than the partnership's *reasonably arguable threshold.

Nil amounts

(4) For the purposes of this section:

(a) treat a trust or a partnership that has no *net income for an income year as having a net income for the year of a nil amount; and

(b) treat a trust that has no *tax loss for an income year as having a tax loss for the year of a nil amount; and

(c) treat a partnership that has no *partnership loss for an income year as having a partnership loss for the year of a nil amount.

Subdivision 284-D—Provisions common to Subdivisions 284-B and 284-C

Table of sections

284-220 Increase in base penalty amount
284-224 Reduction of base penalty amount if law was applied in an accepted way
284-225 Reduction of base penalty amount if you voluntarily tell the Commissioner

284-220 Increase in base penalty amount

(1) The *base penalty amount is increased by 20% if:

(a) you took steps to prevent or obstruct the Commissioner from finding out about a *shortfall amount, or the false or misleading nature of a statement, in relation to which the base penalty amount was calculated; or

(b) you:

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

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(i) became aware of such a shortfall amount after a statement had been made to the Commissioner about the relevant *tax-related liability; or

(ii) became aware of the false or misleading nature of a statement made to the Commissioner or another entity after the statement had been made;

and you did not tell the Commissioner or other entity about it within a reasonable time; or

(c) the base penalty amount was worked out using item 1, 2 or 3 of the table in subsection 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or

(ca) the base penalty amount was worked out using item 3A, 3B or 3C of the table in subsection 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or

(d) the base penalty amount was worked out using item 4, 5 or 6 of that table and a base penalty amount for you was worked out under that item previously; or

(e) your liability to a penalty arises under subsection 284-75(3) and you were previously liable to a penalty under that subsection.

(2) The *base penalty amount for your *scheme shortfall amount, or for part of it, for an accounting period is increased by 20% if:

(a) you took steps to prevent or obstruct the Commissioner from finding out about the scheme shortfall amount or the part; or

(b) a base penalty amount for you was worked out under section 284-160 for a previous accounting period.

284-224 Reduction of base penalty amount if law was applied in an accepted way

(1) If, apart from this section, you would have a *base penalty amount because you or your *agent treated a *taxation law as applying in a particular way, and that way agreed with:

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

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(a) advice given to you or your agent by or on behalf of the Commissioner; or
(b) general administrative practice under that law; or
(c) a statement in a publication approved in writing by the Commissioner;

your base penalty amount is reduced to the extent that it was caused by that treatment.

(2) For the purposes of subsection (1) it does not matter whether the *base penalty amount also relates to:
(a) a statement; or
(b) a failure to give the Commissioner a return, notice or other document when required; or
(c) a *scheme.

284-225 Reduction of base penalty amount if you voluntarily tell the Commissioner

(1) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced by 20% if:
(a) the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; and
(b) *after* that time, you voluntarily tell the Commissioner, in the *approved form, about the shortfall, the part of it or the false or misleading nature of the statement; and
(c) telling the Commissioner can reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the examination.

(2) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced under subsection (3), (4) or (4A) if you voluntarily tell the Commissioner, in the *approved form, about the shortfall amount, the part of it or the false or misleading nature of the statement *before*:

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

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(a) the day the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; or

(b) if the Commissioner makes a public statement requesting entities to make a voluntary disclosure by a particular earlier day about a *scheme or transaction that applies to your affairs—that earlier day.

(3) The *base penalty amount for your *shortfall amount, or for part of it, is:

(a) reduced by 80% if the shortfall amount, or the part of it, is $1,000 or more; or

(b) reduced to nil if the shortfall amount, or the part of it, is less than $1,000.

(4) The *base penalty amount for your *scheme shortfall amount, or for part of it, is reduced by 80%.

(4A) The *base penalty amount for your false or misleading statement that does not result in you having a *shortfall amount is reduced to nil.

(5) If you voluntarily tell the Commissioner, in the *approved form, about your *shortfall amount or *scheme shortfall amount, part of it or the false or misleading nature of the statement *after* the Commissioner tells you that an examination is to be conducted of your affairs relating to a *taxation law for a relevant period, the Commissioner may treat you as having done so *before* being told about the examination if the Commissioner considers it appropriate to do so in the circumstances.

Subdivision 284-E—Special rules about unarguable positions for cross-border transfer pricing

Table of sections

284-250 Undocumented transfer pricing treatment not reasonably arguable
284-255 Documentation requirements

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

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284-250 Undocumented transfer pricing treatment not reasonably arguable

This Division has effect in relation to an entity as if a matter was not *reasonably arguable if:

(a) the matter is a particular way of applying (including not applying) Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* to a matter (or identical matters); and

(b) the entity does not have records that meet the requirements in this Subdivision for the application of the Subdivision mentioned in paragraph (a) to that matter (or those matters) in that way.

Note: For the Commissioner's power to remit an administrative penalty imposed by this Part, see section 298-20.

284-255 Documentation requirements

(1) Records kept by an entity meet the requirements in this Subdivision for the application (or non-application) of Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* to a matter (or identical matters) in a particular way if the records:

(a) are prepared before the time by which the entity lodges its *income tax return for the income year relevant to the matter (or matters); and

(b) are in English, or readily accessible and convertible into English; and

(c) explain the particular way in which the Subdivision applies (or does not apply) to the matter (or matters); and

(d) explain why the application of the Subdivision to the matter (or matters) in that way best achieves the consistency mentioned in section 815-135 or 815-235 of that Act (as the case requires) (about guidance material).

(2) Without limiting subsection (1), the records must allow each of the following to be readily ascertained:

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

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(a) the *arm's length conditions relevant to the matter (or matters);
(b) the particulars of the method used and comparable circumstances relevant to identifying those arm's length conditions;
(c) unless the records are for the non-application of the Subdivision to a matter (or matters)—the result that the application of the Subdivision in that particular way, as compared to the non-application of the Subdivision, has for the operation of this Act in relation to the entity;
(d) for Subdivision 815-B—the actual conditions relevant to the matter (or matters);
(e) for Subdivision 815-C:
    (i) the actual profits mentioned in paragraph 815-220(1)(a) of that Act and the *arm's length profits, to the extent that they are relevant to the matter (or matters); and
    (ii) the particulars of the activities and circumstances mentioned in subsection 815-225(1) of that Act, to the extent they are relevant to the matter (or matters).

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

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Division 286—Penalties for failing to lodge documents on time

Table of Subdivisions

286-A Guide to Division 286
286-B Object of Division
286-C Penalties for failing to lodge documents on time

Subdivision 286-A—Guide to Division 286

286-1 What this Division is about

You are liable to an administrative penalty if you are required to give a return, statement, notice or other document by a particular time and you do not do so.

This Division sets out when the penalty applies and how the amounts of the penalty are calculated.

Subdivision 286-B—Object of Division

Table of sections

286-25 Object of Division

286-25 Object of Division

The object of this Division is to provide a uniform administrative penalty regime for all *taxation laws to enable administrative penalties to apply for failure to give returns, notices, statements or other documents on time.

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

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Subdivision 286-C—Penalties for failing to lodge documents on time

Table of sections

286-75 Liability to penalty
286-80 Amount of penalty

286-75 Liability to penalty

(1) You are liable to an administrative penalty if:

(a) you are required under a *taxation law to give a return, notice, statement or other document to the Commissioner in the *approved form by a particular day; and

(b) you do not give the return, notice, statement or document to the Commissioner in the approved form by that day.

Note: You may not be liable to a penalty in relation to a failure to notify an amount referred to in item 1 or 2 of the table in section 389-5 during the period provided for by subitem 22(2) of Schedule 23 to the *Budget Savings (Omnibus) Act 2016*.

(1A) However, you are not liable to an administrative penalty under subsection (1) if:

(a) you engage a *registered tax agent or BAS agent; and

(b) you give the registered tax agent or BAS agent all relevant taxation information to enable the agent to give a return, notice, statement or other document to the Commissioner in the *approved form by a particular day; and

(c) the registered tax agent or BAS agent does not give the return, notice, statement or other document to the Commissioner in the approved form by that day; and

(d) the failure to give the return, notice, statement or other document to the Commissioner did not result from:

(i) intentional disregard by the registered tax agent or BAS agent of a *taxation law; or

(ii) recklessness by the agent as to the operation of a taxation law.

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

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(1B) If you wish to rely on subsection (1A), you bear an evidential burden in relation to paragraph (1A)(b).

(2) Subsection (1) does not apply to a return, notice, statement or other document under any of these Acts:

(a) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;

(b) the *Superannuation Guarantee (Administration) Act 1992*; or

(c) the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*.

(2AA) You are also liable to an administrative penalty if:

(a) you are required under section 136-90 (about commutation authorities) to give a notice to an entity (other than the Commissioner) in the *approved form by a particular day; and

(b) you do not give the notice in the approved form to the entity by that day.

(2AB) You are also liable to an administrative penalty if:

(a) you are required under section 276-455 of the *Income Tax Assessment Act 1997* (AMMA statements) to give information to an entity (other than the Commissioner) by a particular day; and

(b) you do not give the information to the entity by that day.

(2A) You are also liable to an administrative penalty if:

(a) you are required under Division 390 to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and

(b) you do not give the statement in the approved form to the other entity by that day.

(2BA) You are also liable to an administrative penalty if:

(a) you are required under Division 392 (Employee share scheme reporting) to give a statement to an entity (other than

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

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the Commissioner) in the *approved form by a particular day; and

(b) you do not give the statement in the approved form to the entity by that day.

(4) You are also liable to an administrative penalty if:

(a) you are required under section 713-540 of the *Income Tax (Transitional Provisions) Act 1997* to notify another entity of the happening of an event by a particular day; and

(b) you do not notify the other entity of the happening of that event by that day.

(5) Subsection (6) applies if:

(a) an entity is liable to an administrative penalty under subsection (1) or (2A) as the *superannuation provider in relation to a *self managed superannuation fund; and

(b) the entity is a body corporate.

(6) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the *tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

(7) You are also liable to an administrative penalty if:

(a) you are required under subsections 57-7(2) and (3) of the *A New Tax System (Goods and Services Tax) Act 1999* to notify another entity by a particular day; and

(b) you do not give the notice in the *approved form to the entity by that day.

286-80 Amount of penalty

(1) The amount of the penalty is worked out in this way:

(a) work out the *base penalty amount under subsection (2); and

(b) work out whether the base penalty amount is increased under subsection (3), (4) or (4A).

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

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(2) The ***base penalty amount*** is:

(a) for failing to give a return, notice or other document on time or in the *approved form, as mentioned in subsection 286-75(1), (2AA), (2AB), (2A), (2B), (2BA) or (2C)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the document is due and ending when you give it (up to a maximum of 5 penalty units); or

(c) for failing to notify the happening of an event as mentioned in subsection 286-75(4)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the notification is due and ending when you notify the happening of the event (up to a maximum of 5 penalty units).

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

Example: An entity lodges a return 31 days late. The base penalty amount under subsection (2) is 2 penalty units.

(3) The *base penalty amount is multiplied by 2 if:

(a) the entity concerned is a *medium withholder for the month in which the return, notice or other document was required to be given; or

(b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is more than $1 million but less than $20 million; or

(c) the entity's *current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is more than $1 million but less than $20 million.

(4) The *base penalty amount is multiplied by 5 if:

(a) the entity concerned is a *large withholder for the month when the return, notice or other document was required to be given; or

(b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is $20 million or more; or

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

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(c) the entity's *current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is $20 million or more.

(4A) Neither subsection (3) nor (4) applies to the entity, and the *base penalty amount is multiplied by 500, if:

(a) the failure referred to in subsection (2) is a failure to give a return, notice or other document on time or in the *approved form, as mentioned in subsection 286-75(1); and

(b) on or before the day the return, notice or other document is required to be given:

(i) the Commissioner has made an assessment of the entity's income tax for one or more income years; or

(ii) the Commissioner has made a determination under subsection 960-555(3) of the *Income Tax Assessment Act 1997* in relation to the entity, or in relation to the *global parent entity for the group of which the entity is a member, for a period; or

(iii) the entity has given the Commissioner statements in accordance with Subdivision 815-E of that Act for an income year or another 12 month period; and

(c) the entity was a *significant global entity for:

(i) whichever of those income years or periods that ends on the most recent day; or

(ii) if more than one of them ends on that most recent day—any of those income years or periods that ends on that most recent day.

Note: For subparagraph (b)(iii), an entity may be allowed to give statements for a 12 month period other than an income year (see section 815-360 of the *Income Tax Assessment Act 1997*).

(4B) However, subsection (4A) is taken never to have applied to the entity in relation to the day the return, notice or other document is required to be given if:

(a) the Commissioner makes an assessment of the entity's income tax for the income year that includes that day; and

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

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(b) the entity is not a *significant global entity for that income year.

(5) In working out the *base penalty amount, the amount of a penalty unit is the amount applying at the start of the relevant 28 day period.

(6) The fact that you have not yet given the relevant return, notice or other document does not prevent the Commissioner notifying you that you are liable to an administrative penalty under this Subdivision. That penalty may be later increased under this section.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

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

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Division 288—Miscellaneous administrative penalties

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288-10 Penalty for non-electronic notification
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288-120 Prohibited offsets of liabilities using interest etc. accrued on farm management deposits
288-125 Producing or supplying electronic sales suppression tools
288-130 Possessing electronic sales suppression tools
288-135 Incorrectly keeping records using electronic sales suppression tools

288-10 Penalty for non-electronic notification

An entity that:

(a) under subsection 31-25(2) of the *GST Act, is required to *lodge a *GST return electronically; or

(aa) under subsection 45-20(2A) in this Schedule, is required to give a notification electronically; or

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

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(b) under section 388-80 in this Schedule, is required to notify another *BAS amount electronically;

but lodges, gives or notifies it in another way, is liable to an administrative penalty of 5 penalty units.

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

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

288-20 Penalty for non-electronic payment

An entity that:

(a) under subsection 33-10(2) of the *GST Act, is required to pay an *assessed net amount for a tax period electronically; or

(b) under section 8AAZMA, or section 45-72 in this Schedule, is required to pay an amount electronically;

but pays it another way, is liable to an administrative penalty of 5 penalty units for each payment of one or more such amounts.

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

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

288-25 Penalty for failure to keep or retain records

(1) You are liable to an administrative penalty of 20 penalty units if:

(a) a provision of a *taxation law requires you to keep or retain a record; and

(b) you do not keep or retain that record in the manner required by that law.

(2) Subsection (1) does not apply to:

(a) documents required to be retained under Part X of the *Fringe Benefits Tax Assessment Act 1986* (about statutory evidentiary documents); or

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

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(b) documents required to be kept or retained under Division 900 of the *Income Tax Assessment Act 1997* (about substantiation of expenses).

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

288-30 Penalty for failure to retain or produce declarations

You are liable to an administrative penalty of 20 penalty units if:

(a) a provision of a *taxation law requires you to retain or produce a declaration you made about an agent giving an *approved form to the Commissioner on your behalf; and

(b) you do not retain or produce that declaration in the manner required by that law.

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

288-35 Penalty for preventing access etc.

You are liable to an administrative penalty of 20 penalty units if:

(a) a provision of a *taxation law confers a power on an officer authorised under that law:

(i) to enter or remain on land, premises or a place that you occupy; or

(ii) to have access to documents, goods or other property in your possession; or

(iii) to inspect, copy or take extracts from documents in your possession; or

(iv) to inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property in your possession and, to that end, take samples; and

(b) you refuse to provide the officer with all reasonable facilities for the officer effectively to exercise that power in accordance with that law.

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

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

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288-40 Penalty for failing to register or cancel registration

You are liable to an administrative penalty of 20 penalty units if you fail to apply for registration, or to apply for cancellation of registration, as required by the *GST Act.

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

288-45 Penalty for failing to issue tax invoice etc.

(1) You are liable to an administrative penalty of 20 penalty units if you fail to issue a tax invoice as required by section 29-70 of the *GST Act.

(2) You are liable to an administrative penalty of 20 penalty units if you fail to issue an adjustment note as required by section 29-75 of the *GST Act.

(2A) You are liable to an administrative penalty of 20 penalty units if you fail to give a notice as required by subsection 84-89(3) of the *GST Act.

(3) You are liable to an administrative penalty of 20 penalty units if you fail to issue a third party adjustment note as required by section 134-20 of the *GST Act.

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

288-46 Penalty for failing to ensure tax information about supplies of low value goods is included in customs documents

You are liable to an administrative penalty of 20 penalty units if:

(a) you are required by section 84-93 of the *GST Act to ensure that the information set out in subsection 84-93(2) of that Act is included in one or more of the documents referred to in subsection 84-93(3) of that Act; but

(b) you fail to take reasonable steps to do so.

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

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288-50 Penalty for both principal and agent issuing certain documents

An entity is liable to an administrative penalty of 20 penalty units if both the entity and its agent issue:

(a) separate tax invoices relating to the same taxable supply, contrary to subsection 153-15(2) of the *GST Act; or

(b) separate adjustment notes, or third party adjustment notes, for the same decreasing adjustment, contrary to subsection 153-20(2) of that Act.

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

288-70 Administrative penalties for life insurance companies

Complying superannuation asset pool—calculation of an amount

(1) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to calculate a particular amount under section 320-175 of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 60 days that is required by that section.

Complying superannuation asset pool—transfer following valuation

(2) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to transfer assets having a particular *transfer value from its *complying superannuation assets under subsection 320-180(1) of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 30 days that is required by subsection 320-180(2) of that Act.

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

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Segregated exempt assets—calculation of an amount

(3) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to calculate a particular amount under section 320-230 of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 60 days that is required by that section.

Segregated exempt assets—transfer following valuation

(4) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to transfer assets having a particular *transfer value from its *segregated exempt assets under subsection 320-235(1) of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 30 days that is required by subsection 320-235(2) of that Act.

How to work out the administrative penalty

(5) The administrative penalty under subsection (1), (2), (3) or (4) for a failure to make a calculation or transfer is equal to 5 penalty units for each period of 28 days or part of a period of 28 days:

(a) starting immediately after the end of the period mentioned in paragraph (b) of that subsection; and

(b) ending at the end of the day on which the calculation or transfer is made.

However, the maximum penalty for that failure must not exceed 25 penalty units.

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

Note 2: Division 298 contains machinery provisions for the penalties provided by this section.

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

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288-75 Administrative penalty for a copyright or resale royalty collecting society

(1) A *copyright collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-5 of the *Income Tax Assessment Act 1997*.

(2) The *resale royalty collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-50 of the *Income Tax Assessment Act 1997*.

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

288-80 Administrative penalty for over declaring conduit foreign income

(1) An *Australian corporate tax entity is liable to an administrative penalty if:

(a) the entity makes a *frankable distribution that has an *unfranked part; and

(b) the entity declares an amount of the unfranked part to be *conduit foreign income; and

(c) the sum of the amounts declared exceeds the amount of the entity's conduit foreign income at:

(i) if the entity declares the distribution before making the distribution—the time of the declaration; or

(ii) otherwise—the time the distribution is made.

(2) The amount of the penalty is the sum of the amounts worked out under subsections (3) and (4).

(3) The amount is:

$$\text{*Corporate tax rate} \times \text{Excess mentioned in paragraph (1)(c)} \times \frac{\text{Australian membership interests}}{\text{Total membership interests}}$$

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

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where:

Australian membership interests means the number of *membership interests or *non-share equity interests in the entity that are not covered by the definition of ***foreign membership interests*** in subsection (4).

total membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution.

(4) The amount is:

$$\text{Applicable withholding tax rate} \times \text{Excess referred to in paragraph (1)(c)} \times \frac{\text{Foreign membership interests}}{\text{Total membership interests}}$$

where:

applicable withholding tax rate means 50% of the rate of tax set out in paragraph 7(a) of the *Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974*.

foreign membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution and in relation to whom the entity is required to withhold amounts under section 12-210 disregarding the operation of section 12-300 (about limits on the amount withheld).

total membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution.

288-85 Failure by Reporting Financial Institution to obtain self-certification

An entity that:

(a) is:

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

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(i) a Reporting Financial Institution (within the meaning of the *CRS); or

(ii) an institution that a notice under subsection 396-130(5) requires to act as a Reporting Financial Institution; and

(b) is required to obtain a self-certification, in relation to an account maintained by the institution, when applying the due diligence procedures described in the CRS; and

(c) fails to obtain the self-certification:

(i) if the account is a Reportable Account (within the meaning of the CRS) or an account that a notice under subsection 396-130(2) requires the entity to treat as a Reportable Account—by the time by which a statement under subsection 396-105(2) relating to the account must be given to the Commissioner; or

(ii) otherwise—by the time by which such a statement would be required to be given to the Commissioner if the account were such a Reportable Account;

is liable to an administrative penalty of 1 penalty unit.

288-95 Failing to comply etc. with release authority

(2) A *superannuation provider that has been given a transitional release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997* and that fails to comply with subsection 292-80C(1) of that Act is liable to an administrative penalty of 20 penalty units.

(3) A *superannuation provider that fails to comply with section 131-35 (about release authorities for superannuation) is liable to an administrative penalty of 20 penalty units.

(4) A *superannuation provider that fails to comply with section 135-75 (about release authorities for debt account discharge liabilities) is liable to an administrative penalty of 20 penalty units.

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

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288-100 Excess money paid under release authority

(1) A person is liable for an administrative penalty of 20 penalty units if:

(a) the person gives one or more *superannuation providers a release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; and

(b) the total of the amounts paid by the superannuation provider or providers to the person and the Commissioner as a result of being given the release authority exceeds the amount required to be paid in respect of the release authority under section 292-80C of that Act.

(2) An individual is liable to an administrative penalty of 20 penalty units if one or more *superannuation benefits that the individual receives (or is taken to receive), paid in relation to a release authority issued in accordance with Subdivision 135-A in this Schedule, is assessable income to any extent.

288-105 Superannuation provider to calculate crystallised pre-July 83 amount of superannuation interest by 30 June 2008

(1) An entity is liable to an administrative penalty of 5 penalty units if:

(a) the entity is the *superannuation provider in relation to a *superannuation plan (other than a *constitutionally protected fund) on 30 June 2008; and

(b) the entity has not ensured that the crystallised pre-July 83 amount in relation to each superannuation interest in the plan has been calculated on or before that day.

(2) For the purpose of paragraph (1)(b), disregard a *superannuation interest unless the *element taxed in the fund of the *taxable component of the interest exceeds nil just before 1 July 2007.

(3) For the purpose of paragraph (1)(b), disregard a *superannuation interest that supported a *superannuation income stream just before 1 July 2007.

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

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288-110 Contravention of superannuation data and payment regulation or standard

Liability to penalty—RSA providers and trustees of eligible superannuation entities

(1) An entity is liable to an administrative penalty if the entity contravenes:
   (a) subsection 34M(1) of the *Superannuation Industry (Supervision) Act 1993*; or
   (b) subsection 45D(1) of the *Retirement Savings Accounts Act 1997*.

(2) An entity is liable to an administrative penalty if the entity contravenes:
   (a) subsection 34P(6) of the *Superannuation Industry (Supervision) Act 1993*; or
   (b) subsection 45F(6) of the *Retirement Savings Accounts Act 1997*.

Liability to penalty—employers

(3) An entity is liable to an administrative penalty if the entity contravenes:
   (a) subsection 34N(1) of the *Superannuation Industry (Supervision) Act 1993*; or
   (b) subsection 45E(1) of the *Retirement Savings Accounts Act 1997*.

(4) An entity is liable to an administrative penalty if the entity contravenes:
   (a) subsection 34Q(6) of the *Superannuation Industry (Supervision) Act 1993*; or
   (b) subsection 45G(6) of the *Retirement Savings Accounts Act 1997*.

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

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Amount of the penalty

(5) The amount of the penalty is:
  (a) for an administrative penalty under subsection (1) or (3)—4 penalty units; or
  (b) for an administrative penalty under subsection (2) or (4)—10 penalty units.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

288-115 AMIT under or over resulting from intentional disregard of or recklessness as to taxation law

(1) An entity is liable to an administrative penalty if:
  (a) the entity is a trustee of an *AMIT for an income year (the ***base year***); and
  (b) the AMIT has an *under or *over for the base year; and
  (c) at least one of the items in the table in subsection (3) applies in respect of the under or over.

(2) To avoid doubt, subsection (1) has a separate operation in respect of each *under or *over mentioned in paragraph (1)(b).

(3) The amount of the penalty is 47% of the amount worked out using this table:

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

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Amount of penalty			
Item	**Column 1** **In this situation …**	**Column 2** **in the case of an *under or *over covered by subsection (5), the amount is:**	**Column 3** **in the case of an *under or *over covered by subsection (6), the amount is:**
1	if the *under or *over resulted from intentional disregard of a *taxation law (other than the *Excise Acts) by the trustee of the *AMIT or the trustee's agent	75% of the under or over	30% of the under or over
2	if the *under or *over resulted from recklessness by the trustee of the *AMIT or the trustee's agent as to the operation of a *taxation law (other than the *Excise Acts)	50% of the under or over	20% of the under or over

(4) Despite subsection (3):

(a) if the penalty specified under column 3 of item 1 of the table in that subsection is less than 60 penalty units—the amount of the penalty is 60 penalty units; and

(b) if the penalty specified under column 3 of item 2 of the table in that subsection is less than 40 penalty units—the amount of the penalty is 40 penalty units.

(5) This subsection covers the following:

(a) an *under of:

(i) a character relating to assessable income; or

(ii) a character relating to *exempt income; or

(iii) a character relating to *non-assessable non-exempt income;

(b) an *over of a character relating to a *tax offset.

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

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(6) This subsection covers the following:

(a) an *over of:

(i) a character relating to assessable income; or

(ii) a character relating to *exempt income; or

(iii) a character relating to *non-assessable non-exempt income;

(b) an *under of a character relating to a *tax offset.

(7) If both items in the table in subsection (3) apply, use item 1 and not item 2.

(8) If the income year corresponds to a financial year that is a temporary budget repair levy year (within the meaning of section 4-11 of the *Income Tax (Transitional Provisions) Act 1997*), treat the reference in subsection (3) to 47% as instead being a reference to 49%.

288-120 Prohibited offsets of liabilities using interest etc. accrued on farm management deposits

(1) The person who made or is making a *farm management deposit is liable to an administrative penalty if:

(a) the fact that the person made or is making the deposit is the reason why, or one of the reasons why, an amount of interest payable to the *FMD provider in respect of loans or other debts falls short of what it would otherwise be; and

(b) the shortfall:

(i) contravenes a requirement, contained in the agreement mentioned in paragraph 393-20(1)(b) of the *Income Tax Assessment Act 1997* in relation to the deposit, as set out in item 8 of the table in section 393-35 of that Act; or

(ii) would contravene such a requirement if it were contained in that agreement.

(2) The amount of the penalty is 200% of so much of the shortfall as contravenes that requirement, or would contravene such a requirement.

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

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288-125 Producing or supplying electronic sales suppression tools

(1) You are liable to an administrative penalty of 60 penalty units if you:

(a) manufacture, develop or publish an *electronic sales suppression tool; or

(b) *supply or make available for use:

(i) an electronic sales suppression tool; or

(ii) a *right to use an electronic sales suppression tool; or

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

(2) You are liable to an administrative penalty of 60 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative penalties.

(3) You are not liable to an administrative penalty under this section for conduct undertaken for the purpose of preventing or deterring tax evasion or enforcing a *taxation law.

288-130 Possessing electronic sales suppression tools

(1) You are liable to an administrative penalty of 30 penalty units if:

(a) you are required under, or pursuant to, a *taxation law (other than an *Excise Act) to keep or make a record; and

(b) you acquire, or have possession or control of:

(i) an *electronic sales suppression tool; or

(ii) a *right to use an electronic sales suppression tool.

(2) You are liable to an administrative penalty of 30 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 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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(3) You are not liable to an administrative penalty under this section for conduct undertaken for the purpose of preventing or deterring tax evasion or enforcing a *taxation law.

288-135 Incorrectly keeping records using electronic sales suppression tools

(1) You are liable to an administrative penalty of 60 units if:

(a) you are required under, or pursuant to, a *taxation law (other than an *Excise Act) 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) you do not keep or make the record in accordance with the taxation law.

(2) You are liable to an administrative penalty of 60 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

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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Division 290—Promotion and implementation of schemes

Table of Subdivisions

290-A Preliminary
290-B Civil penalties
290-C Injunctions
290-D Voluntary undertakings

Subdivision 290-A—Preliminary

Table of sections

290-5 Objects of this Division
290-10 Extra-territorial application

290-5 Objects of this Division

The objects of this Division are:

(a) to deter the promotion of tax avoidance *schemes and tax evasion schemes; and

(b) to deter the implementation of schemes that have been promoted on the basis of conformity with a *product ruling in a way that is materially different from that described in the product ruling.

290-10 Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

Subdivision 290-B—Civil penalties

Table of sections

290-50 Civil penalties
290-55 Exceptions

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

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290-60 Meaning of ***promoter***
290-65 Meaning of ***tax exploitation scheme***

290-50 Civil penalties

Promoter of tax exploitation scheme

(1) An entity must not engage in conduct that results in that or another entity being a *promoter of a *tax exploitation scheme.

Implementing scheme otherwise than in accordance with ruling

(2) An entity must not engage in conduct that results in a *scheme that has been promoted on the basis of conformity with a *product ruling being implemented in a way that is materially different from that described in the product ruling.

Note: A scheme will not have been implemented in a way that is materially different from that described in a product ruling if the tax outcome for participants in the scheme is the same as that described in the ruling.

(2A) For the purposes of subsection (2), disregard:

(a) subsection 82KZMGA(1A) of the *Income Tax Assessment Act 1936*; and

(b) subsection 394-10(5A) of the *Income Tax Assessment Act 1997*.

Note 1: Those 2 subsections relate to forestry managed investment schemes.

Note 2: The effect of this subsection is that a scheme will have been implemented in a way that is materially different from that described in a product ruling if the tax outcome for participants in the scheme is the same as that described in the ruling only because of the operation of the subsections mentioned in paragraphs (a) and (b).

Civil penalty

(3) If the Federal Court of Australia is satisfied, on application by the Commissioner, that an entity has contravened subsection (1) or (2), the Court may order the entity to pay a civil penalty to the Commonwealth.

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

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Amount of penalty

(4) The maximum amount of the penalty is the greater of:
  (a) 5,000 penalty units (for an individual) or 25,000 penalty units (for a body corporate); and
  (b) twice the consideration received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme.

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

Principles relating to penalties

(5) In deciding what penalty is appropriate for a contravention of subsection (1) or (2) by an entity, the Federal Court of Australia may have regard to all matters it considers relevant, including:
  (a) the amount of the consideration received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme; and
  (b) the deterrent effect that any penalty may have; and
  (c) the amount of loss or damage incurred by scheme participants; and
  (d) the nature and extent of the contravention; and
  (e) the circumstances in which the contravention took place, including the deliberateness of the entity's conduct and whether there was an honest and reasonable mistake of law; and
  (f) the period over which the conduct extended; and
  (g) whether the entity took any steps to avoid the contravention; and
  (h) whether the entity has previously been found by the Court to have engaged in the same or similar conduct; and
  (i) the degree of the entity's cooperation with the Commissioner.

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

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Recovery of penalty

(6) The penalty is a civil debt payable to the Commonwealth, and the Commissioner may, on behalf of the Commonwealth, enforce an order for an entity to pay the penalty as if it were an order made in civil proceedings against the entity to recover a debt due by the entity. The debt arising from the order is taken to be a judgment debt.

290-55 Exceptions

Reasonable mistake or reasonable precautions

(1) The Federal Court of Australia must not order the entity to pay a civil penalty if the entity satisfies the Court:
  (a) that the conduct in respect of which the proceedings were instituted was due to a reasonable mistake of fact; or
  (b) that:
    (i) the conduct in respect of which the proceedings were instituted was due to the act or default of another entity, to an accident or to some other cause beyond the entity's control; and
    (ii) the entity took reasonable precautions and exercised due diligence to avoid the conduct.

(2) The other entity referred to in paragraph (1)(b) does not include someone who was an employee or agent of the entity when the alleged conduct occurred.

Reliance on advice from the Commissioner

(3) The Commissioner must not make an application under section 290-50 for conduct referred to in subsection 290-50(1) in relation to an entity's involvement in a *scheme if:
  (a) the scheme is based on treating a *taxation law as applying in a particular way; and
  (b) that way agrees with:

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

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(i) advice given to the entity or the entity's agent by or on behalf of the Commissioner; or

(ii) a statement in a publication approved in writing by the Commissioner.

Time limitation

(4) The Commissioner must not make an application under section 290-50 in relation to an entity's involvement in a *tax exploitation scheme more than 4 years after the entity last engaged in conduct that resulted in the entity or another entity being a *promoter of the tax exploitation scheme.

(5) The Commissioner must not make an application under section 290-50 in relation to an entity's involvement in a *scheme that has been promoted on the basis of conformity with a *product ruling more than 4 years after the entity last engaged in conduct in relation to implementation of the scheme.

(6) However, the limitation in subsection (4) or (5) does not apply to a *scheme involving tax evasion.

Exception where entity does not know result of conduct

(7) The Federal Court of Australia must not order an entity to pay a civil penalty in relation to the entity's engaging in conduct:

(a) that results in another entity being a *promoter of a *tax exploitation scheme; or

(b) that results in a *scheme that has been promoted on the basis of conformity with a *product ruling being implemented in a way that is materially different from that described in the product ruling;

if the entity satisfies the Court that the entity did not know, and could not reasonably be expected to have known, that the entity's conduct would produce that result.

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

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Employees

(8) The Commissioner must not make an application under section 290-50 in relation to an individual's involvement in a *scheme as an employee if the Federal Court of Australia has ordered the individual's employer to pay a civil penalty under this Division in relation to the same scheme.

290-60 Meaning of *promoter*

(1) An entity is a ***promoter*** of a *tax exploitation scheme if:
   (a) the entity markets the scheme or otherwise encourages the growth of the scheme or interest in it; and
   (b) the entity or an *associate of the entity receives (directly or indirectly) consideration in respect of that marketing or encouragement; and
   (c) having regard to all relevant matters, it is reasonable to conclude that the entity has had a substantial role in respect of that marketing or encouragement.

(2) However, an entity is not a ***promoter*** of a *tax exploitation scheme merely because the entity provides advice about the *scheme.

(3) An employee is not to be taken to have had a substantial role in respect of that marketing or encouragement merely because the employee distributes information or material prepared by another entity.

290-65 Meaning of *tax exploitation scheme*

(1) A *scheme is a ***tax exploitation scheme*** if, at the time of the conduct mentioned in subsection 290-50(1):
   (a) one of these conditions is satisfied:
      (i) if the scheme has been implemented—it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the scheme did so with the sole or dominant purpose of that entity or another entity getting a *scheme benefit from the scheme;

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

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(ii) if the scheme has not been implemented—it is reasonable to conclude that, if an entity (alone or with others) had entered into or carried out the scheme, it would have done so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; and

(b) one of these conditions is satisfied:

(i) if the scheme has been implemented—it is not *reasonably arguable that the scheme benefit is available at law;

(ii) if the scheme has not been implemented—it is not reasonably arguable that the scheme benefit would be available at law if the scheme were implemented.

Note: The condition in paragraph (b) would not be satisfied if the implementation of the scheme for all participants were in accordance with binding advice given by or on behalf of the Commissioner of Taxation (for example, if that implementation were in accordance with a public ruling under this Act, or all participants had private rulings under this Act and that implementation were in accordance with those rulings).

(2) In deciding whether it is *reasonably arguable that a *scheme benefit would be available at law, take into account any thing that the Commissioner can do under a *taxation law.

Example: The Commissioner may cancel a tax benefit obtained by a taxpayer in connection with a scheme under section 177F of the *Income Tax Assessment Act 1936*.

Subdivision 290-C—Injunctions

Table of sections

290-120 Conduct to which this Subdivision applies
290-125 Injunctions
290-130 Interim injunctions
290-135 Delay in making ruling
290-140 Discharge etc. of injunctions
290-145 Certain limits on granting injunctions not to apply
290-150 Other powers of the Federal Court unaffected

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

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290-120 Conduct to which this Subdivision applies

This Subdivision applies to conduct of the kind referred to in subsection 290-50(1) or (2).

290-125 Injunctions

If an entity has engaged, is engaging or is proposing to engage in conduct to which this Subdivision applies or would apply, the Federal Court of Australia may, on the application of the Commissioner, grant an injunction:

(a) restraining the entity from engaging in the conduct; and

(b) if, in the Court's opinion, it is desirable to do so—requiring the entity to do something.

290-130 Interim injunctions

The Federal Court of Australia may, before considering an application for an injunction under section 290-125, grant an interim injunction restraining an entity from engaging in conduct to which this Subdivision applies.

290-135 Delay in making ruling

If:

(a) an entity applied in writing to the Commissioner for a *product ruling in relation to a *scheme; and

(b) the Commissioner has neither made the ruling nor told the entity in writing that the Commissioner has declined to make the ruling;

the Commissioner must not make an application under section 290-125 in relation to conduct or proposed conduct by an entity in relation to the scheme until the Commissioner makes the ruling or tells the entity in writing that the Commissioner has declined to make the ruling.

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

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290-140 Discharge etc. of injunctions

The Federal Court of Australia may discharge or vary an injunction granted under this Subdivision.

290-145 Certain limits on granting injunctions not to apply

Restraining injunctions

(1) The power of the Federal Court of Australia under this Subdivision to grant an injunction restraining an entity from engaging in conduct of a particular kind may be exercised:

(a) if the Court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the Court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to anyone if the entity engages in conduct of that kind.

Performance injunctions

(2) The power of the Federal Court of Australia under this Subdivision to grant an injunction requiring an entity to do something may be exercised:

(a) if the Court is satisfied that the entity has refused or failed to do that thing—whether or not it appears to the Court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the entity will refuse or fail to do that thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to anyone if the entity refuses or fails to do that act or thing.

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

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290-150 Other powers of the Federal Court unaffected

The powers conferred on the Federal Court of Australia under this Subdivision are in addition to, and not instead of, any other powers of the Court, however conferred.

Subdivision 290-D—Voluntary undertakings

Table of sections

290-200 Voluntary undertakings

290-200 Voluntary undertakings

(1) The Commissioner may accept a written undertaking given by an entity for the purposes of this section in connection with furthering the objects of this Division.

(2) The entity may withdraw or vary the undertaking at any time, but only with the consent of the Commissioner.

(3) If the Commissioner considers that the entity that gave the undertaking has breached any of its terms, the Commissioner may apply to the Federal Court of Australia for an order under subsection (4).

(4) If the Court is satisfied that the entity has breached a term of the undertaking, the Court may make one or both of the following orders:
   (a) an order directing the entity to comply with that term of the undertaking;
   (b) any other order that the Court considers appropriate.

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

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Division 295—Miscellaneous civil penalties

Table of Subdivisions

295-B Civil penalty for possession of tobacco without relevant documentation

Subdivision 295-B—Civil penalty for possession of tobacco without relevant documentation

Guide to Subdivision 295-B

295-70 What this Subdivision is about

A person is liable to a civil penalty if the person possesses 2 kilograms or more of tobacco and the person:

(a) does not provide certain documents (such as a tax invoice) indicating how the person obtained the tobacco; or

(b) has stated that the possession was engaged in on behalf of or at the request of another person, but does not provide information enabling the other person to be identified and located.

However, the person will not be liable to the civil penalty in certain circumstances, such as where:

(a) the person is an individual, and possesses the tobacco for his or her personal use; or

(b) the person has reasonable grounds to suspect that excise duty or customs duty has been paid on the tobacco, or excise duty and customs duty is not payable on the tobacco.

Table of sections

295-75 Possession of tobacco without relevant documentation etc.

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

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295-80 Things treated as tobacco

295-75 Possession of tobacco without relevant documentation etc.

(1) A person contravenes this subsection if:
  (a) the person possesses a thing; and
  (b) the thing is tobacco; and
  (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  (d) the condition in subsection (2) is satisfied; and
  (e) the weight of the tobacco equals or exceeds 2 kilograms.

(2) For the purposes of paragraph (1)(d), the condition in this subsection is satisfied if:
  (a) the person has not provided any of the following:
    (i) a *tax invoice indicating how the person obtained the tobacco;
    (ii) a bill of lading indicating how the person obtained the tobacco;
    (iii) a customs declaration indicating how the person obtained the tobacco; or
  (b) the person:
    (i) has stated that the possession was engaged in on behalf of or at the request of another person; and
    (ii) has not provided information enabling the other person to be identified and located.

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

  Penalty: 100 penalty units.

(4) Section 308-510 applies to this section in the same way that it applies to Division 308.

(5) Subsection (1) does not apply if:
  (a) the person is an individual; and

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

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(b) the person possesses the tobacco for his or her personal use.

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

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

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(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

(10) If person wishes to rely on subsection (5), (6), (7), (8) or (9) in civil penalty proceedings, the person bears an *evidential burden in relation to that matter.

295-80 Things treated as tobacco

(1) For the purposes of this Division, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.

(2) To avoid doubt, for the purposes of this Division:

(a) treat tobacco seed, tobacco plant (whether or not in the ground) and tobacco leaf as tobacco; and

(b) treat cigars, cigarettes and snuff as tobacco.

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

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Division 298—Machinery provisions for penalties

Subdivision 298-A—Administrative penalties

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298-15 Due date for penalty
298-20 Remission of penalty
298-25 General interest charge on unpaid penalty
298-30 Assessment of penalties under Division 284 or section 288-115

298-5 Scope of Subdivision

This Subdivision applies if:

(a) an administrative penalty is imposed on an entity by another Division in this Part; or

(b) a penalty is imposed on an entity by Subdivision 162-D of the *GST Act; or

(c) an administrative penalty is imposed on an entity by a provision of Subdivision 12-H, 14-D or 14-E, Division 16 or section 384-15, 420-5 or 426-120 in this Schedule; or

(d) an administrative penalty is imposed on an entity by section 166 of the *Superannuation Industry (Supervision) Act 1993*.

298-10 Notification of liability

The Commissioner must give written notice to the entity of the entity's liability to pay the penalty and of the reasons why the entity is liable to pay the penalty. The Commissioner is not required to give reasons if he or she decides to remit all of the penalty.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

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

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298-15 Due date for penalty

The penalty becomes due for payment on the day specified in the notice, which must be at least 14 days after the notice is given to the entity.

Note: For provisions about collection and recovery of the penalty, see Part 4-15.

298-20 Remission of penalty

(1) The Commissioner may remit all or a part of the penalty.

(2) If the Commissioner decides:

(a) not to remit the penalty; or

(b) to remit only part of the penalty;

the Commissioner must give written notice of the decision and the reasons for the decision to the entity.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

(3) If:

(a) the Commissioner refuses to any extent to remit an amount of penalty; and

(b) the amount of penalty payable after the refusal is more than 2 penalty units; and

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

(c) the entity is dissatisfied with the decision;

the entity may object against the decision in the manner set out in Part IVC.

298-25 General interest charge on unpaid penalty

If any of the penalty remains unpaid after it is due, the entity is liable to pay the *general interest charge on the unpaid amount of the penalty for each day in the period that:

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

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

Note: The general interest charge is worked out under Part IIA.

298-30 Assessment of penalties under Division 284 or section 288-115

(1) The Commissioner must make an assessment of the amount of an administrative penalty under Division 284 or section 288-115.

(2) An entity that is dissatisfied with such an assessment made about the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Subdivision 298-B—Civil penalties

Table of sections

298-80 Application of Subdivision
298-85 Civil evidence and procedure rules for civil penalty orders
298-90 Civil proceedings after criminal proceedings
298-95 Criminal proceedings during civil proceedings
298-100 Criminal proceedings after civil proceedings
298-105 Evidence given in proceedings for penalty not admissible in criminal proceedings
298-110 Civil double jeopardy

298-80 Application of Subdivision

This Subdivision applies for the purposes of the following provisions (the ***civil penalty provisions***):

(a) Division 290 of this Schedule (civil penalties for the promotion and implementation of schemes);

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

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(aa) subsection 295-75(1) in this Schedule (possession of tobacco without relevant documentation);

(b) Part 5 of the *Tax Agent Services Act 2009* (civil penalties for providing tax agent services while unregistered and for certain conduct when providing tax agent services).

298-85 Civil evidence and procedure rules for civil penalty orders

The Federal Court of Australia must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order under the civil penalty provisions.

298-90 Civil proceedings after criminal proceedings

The Court must not make a civil penalty order under the civil penalty provisions against an entity if the entity has been convicted of an offence constituted by conduct that is substantially the same as the conduct in relation to which the civil penalty order would be made.

298-95 Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order under the civil penalty provisions against an entity are stayed if:

(a) criminal proceedings are started or have already been started against the entity for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct in relation to which the civil penalty order would be made.

(2) The proceedings for the order may be resumed if the entity is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

298-100 Criminal proceedings after civil proceedings

Criminal proceedings may be started against an entity for conduct that is substantially the same as conduct in relation to which a civil

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

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penalty order under the civil penalty provisions could be made regardless of whether a civil penalty order has been made against the entity.

298-105 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an entity is not admissible in criminal proceedings against the entity if:

(a) the entity previously gave the evidence or produced the documents in proceedings for a civil penalty order under the civil penalty provisions against the entity (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct in relation to which the civil penalty order was sought.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the entity in the proceedings for the civil penalty order.

298-110 Civil double jeopardy

If an entity is ordered to pay a civil penalty under the civil penalty provisions in respect of particular conduct, the entity is not liable to a civil penalty under some other provision of a *Commonwealth law in respect of that conduct.

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

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Part 4-30—Offences and prosecutions

Division 308—Offences relating to tobacco

Table of Subdivisions

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308-A Reasonable suspicion offences relating to tobacco
308-B Fault-based offences of possession, production and manufacture
308-C Offences relating to equipment relating to the manufacture or production of tobacco
308-E Other provisions

Guide to Division 308

308-1 What this Division is about

This Division sets out offences and related provisions relating to tobacco.

Subdivision 308-A—Reasonable suspicion offences relating to tobacco

Guide to Subdivision 308-A

308-5 What this Subdivision is about

This Subdivision sets out offences for the possession, sale or buying of tobacco of various quantities where it is reasonable to suspect that none of the following circumstances exist:

(a) excise duty has been paid on the tobacco;
(b) customs duty has been paid on the tobacco;

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

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(c) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
(d) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth.

This Subdivision sets out defences to those offences, such as where an accused person has a relevant permission or licence under excise or customs legislation.

Table of sections

308-10 Possession of tobacco (500 kilograms or above)—reasonable suspicion offence
308-15 Possession of tobacco (100 kilograms or above)—reasonable suspicion offence
308-20 Possession of tobacco (5 kg or above)—reasonable suspicion offence
308-25 Sale of tobacco (500 kilograms or above)—reasonable suspicion offence
308-30 Sale of tobacco (100 kilograms or above)—reasonable suspicion offence
308-35 Sale of tobacco (5 kg or above)—reasonable suspicion offence
308-40 Buying of tobacco (500 kilograms or above)—reasonable suspicion offence
308-45 Buying of tobacco (100 kilograms or above)—reasonable suspicion offence
308-50 Buying of tobacco (5 kg or above)—reasonable suspicion offence
308-55 Matters taken to satisfy "reasonable to suspect" requirement

308-10 Possession of tobacco (500 kilograms or above)—reasonable suspicion offence

(1) A person commits an offence if:
(a) the person possesses a thing; and
(b) the thing is tobacco (other than tobacco seed or tobacco plant); and
(c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
(d) it is reasonable to suspect that none of the following circumstances exist:
(i) *excise duty has been paid on the tobacco;
(ii) *customs duty has been paid on the tobacco;

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

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(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 500 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

(a) 1,000 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

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

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(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

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

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(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-15 Possession of tobacco (100 kilograms or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person possesses a thing; and

(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 100 kilograms or above.

Penalty: 2 years imprisonment or the greater of the following, or both 2 years imprisonment and the greater of the following:

(a) 500 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

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

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(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

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

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(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

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

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308-20 Possession of tobacco (5 kg or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person possesses a thing; and

(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

(a) 200 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

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

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(3) For the purposes of subsection (2), the day is:
  (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  (b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
  (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

(8) Subsection (1) does not apply if:
  (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

(9) Subsection (1) does not apply if:
  (a) the person has permission (within the meaning of the *Excise Act 1901*):
    (i) to possess the tobacco; or
    (ii) to move the tobacco; or

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

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(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-25 Sale of tobacco (500 kilograms or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person sells a thing; and

(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

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

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(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 500 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

(a) 1,000 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

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

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(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

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

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(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-30 Sale of tobacco (100 kilograms or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person sells a thing; and

(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 100 kilograms or above.

Penalty: 2 years imprisonment or the greater of the following, or both 2 years imprisonment and the greater of the following:

(a) 500 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

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

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(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

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

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(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-35 Sale of tobacco (5 kg or above)—reasonable suspicion offence

(1) A person commits an offence if:

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

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(a) the person sells a thing; and
(b) the thing is tobacco (other than tobacco seed or tobacco plant); and
(c) the tobacco is in Australia but not in an external Territory; and
(d) it is reasonable to suspect that none of the following circumstances exist:
(i) *excise duty has been paid on the tobacco;
(ii) *customs duty has been paid on the tobacco;
(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
(e) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:
(a) 200 penalty units;
(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:
(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or
(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:
(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

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

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(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

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

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(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-40 Buying of tobacco (500 kilograms or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person buys a thing; and

(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

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

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(e) the weight of the tobacco is 500 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

(a) 1,000 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

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

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(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

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

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(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-45 Buying of tobacco (100 kilograms or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person buys a thing; and

(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 100 kilograms or above.

Penalty: 2 years imprisonment or the greater of the following, or both 2 years imprisonment and the greater of the following:

(a) 500 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were

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

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*excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

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

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(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-50 Buying of tobacco (5 kg or above)—reasonable suspicion offence

(1) A person commits an offence if:

(a) the person buys a thing; and

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

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(b) the thing is tobacco (other than tobacco seed or tobacco plant); and

(c) the tobacco is in Australia but not in an external Territory; and

(d) it is reasonable to suspect that none of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and

(e) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

(a) 200 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

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

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(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(d).

(6) Absolute liability applies to paragraph (1)(e).

(7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

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

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(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) any of the following circumstances exist:

(i) *excise duty has been paid on the tobacco;

(ii) *customs duty has been paid on the tobacco;

(iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

(iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or

(b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

308-55 Matters taken to satisfy "reasonable to suspect" requirement

(1) Without limiting paragraphs 308-10(1)(d), 308-15(1)(d), 308-20(1)(d), 308-25(1)(d), 308-30(1)(d), 308-35(1)(d), 308-40(1)(d), 308-45(1)(d) and 308-50(1)(d), those paragraphs are taken to be satisfied if any of the following circumstances exist:

(a) the tobacco is not in retail packaging that complies with the requirements in Chapter 2 of the *Tobacco Plain Packaging Act 2011*;

(b) the tobacco does not comply with the requirements mentioned in sections 26 and 27 of the *Tobacco Plain Packaging Act 2011*;

(c) in the case of buying or selling:

(i) an information standard has been made under subsection 134(1) or 135(1) of Schedule 2 to the *Competition and Consumer Act 2010* for tobacco (or for a particular kind of tobacco); and

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

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(ii) the supplier does not comply with the standard in supplying the tobacco;

(d) if a safety standard has been made or declared under subsection 104(1) or 105(1) of Schedule 2 to the *Competition and Consumer Act 2010* for tobacco (or for a particular kind of tobacco)—the tobacco does not comply with the standard;

(e) a permanent ban or an interim ban on consumer goods in force under Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010* applies to the tobacco;

(f) in the case of buying or selling—the price of the tobacco, or the advertised or offered price for the tobacco, is less than the sum of the following amounts:

(i) the lower of the amount of *excise duty or *customs duty that would apply to the tobacco, assuming that such duty were applicable to the tobacco and that no exemption or reduction of such duty were applicable;

(ii) the amount of *GST that would apply to the sale of the tobacco, assuming that GST were applicable to the sale;

(g) in the case of buying or selling:

(i) a law of a State or Territory that applies to the buying or selling of the tobacco makes it unlawful to buy or sell tobacco in certain circumstances; and

(ii) the buying or selling happens in such circumstances;

(h) the person has not provided any of the following:

(i) a *tax invoice indicating how the person obtained the tobacco;

(ii) a bill of lading indicating how the person obtained the tobacco;

(iii) a customs declaration indicating how the person obtained the tobacco;

(i) the person:

(i) has stated that the possession, selling or buying was engaged in on behalf of or at the request of another person; and

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

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(ii) has not provided information enabling the other person to be identified and located;

(j) in the case of selling:

(i) the *GST law requires the person to give the buyer of the tobacco a tax invoice in respect of the sale; and

(ii) the person fails to meet that requirement;

(k) the tobacco is tobacco leaf that:

(i) has not been subjected to any process; or

(ii) has been subjected only to the process of curing the leaf as stripped from the plant.

(2) To avoid doubt, subsection (1) does not apply for the purposes of subsections 308-10(10), 308-15(10), 308-20(10), 308-25(10), 308-30(10), 308-35(10), 308-40(10), 308-45(10) and 308-50(10).

Subdivision 308-B—Fault-based offences of possession, production and manufacture

Guide to Subdivision 308-B

308-105 What this Subdivision is about

This Subdivision sets out offences for the possession, manufacturing or production of tobacco of various quantities where:

(a) the tobacco is excisable goods, tobacco seed or tobacco plant, or tobacco leaf that has not been subjected to any relevant process; and

(b) if excise duty is payable on the tobacco, the full amount of that excise duty has not been paid.

This Subdivision sets out defences to those offences, such as where an accused person has a relevant permission or licence under excise or customs legislation.

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

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308-125 Manufacture or production of tobacco (500 kg or above)—fault-based offence
308-130 Manufacture or production of tobacco (100 kg or above)—fault-based offence
308-135 Manufacture or production of tobacco (5 kg or above)—fault-based offence

308-110 Possession of tobacco (500 kg or above)—fault-based offence

(1) A person commits an offence if:

(a) the person possesses a thing; and

(b) the thing is tobacco; and

(c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and

(d) the tobacco is:

(i) *excisable goods; or

(ii) tobacco seed or tobacco plant; or

(iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and

(e) in a case where the tobacco is excisable goods:

(i) *excise duty is payable on the tobacco; and

(ii) the full amount of excise duty has not been paid on the tobacco; and

(f) the weight of the tobacco is 500 kilograms or above.

Penalty: 10 years imprisonment or the greater of the following, or both 10 years imprisonment and the greater of the following:

(a) 1,500 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

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

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(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:

(i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

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

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(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person has permission (within the meaning of the *Excise Act 1901*):

(i) to possess the tobacco; or

(ii) to move the tobacco; or

(b) the tobacco is covered by an authority under section 55 of that Act; or

(c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

308-115 Possession of tobacco (100 kg or above)—fault-based offence

(1) A person commits an offence if:

(a) the person possesses a thing; and

(b) the thing is tobacco; and

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

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(c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and

(d) the tobacco is:

(i) *excisable goods; or

(ii) tobacco seed or tobacco plant; or

(iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and

(e) in a case where the tobacco is excisable goods:

(i) *excise duty is payable on the tobacco; and

(ii) the full amount of excise duty has not been paid on the tobacco; and

(f) the weight of the tobacco is 100 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

(a) 1,000 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:

(i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

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

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(ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

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(8) Subsection (1) does not apply if the person has permission (within the meaning of the *Excise Act 1901*):
  (a) to possess the tobacco; or
  (b) to move the tobacco; or
  (c) to deliver the tobacco for home consumption without entering it for that purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

308-120 Possession of tobacco (5 kg or above)—fault-based offence

(1) A person commits an offence if:
  (a) the person possesses a thing; and
  (b) the thing is tobacco; and
  (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  (d) the tobacco is:
    (i) *excisable goods; or
    (ii) tobacco seed or tobacco plant; or
    (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  (e) in a case where the tobacco is excisable goods:
    (i) *excise duty is payable on the tobacco; and
    (ii) the full amount of excise duty has not been paid on the tobacco; and
  (f) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:
  (a) 500 penalty units;
  (b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:
  (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that

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

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the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:

(i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

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

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

(8) Subsection (1) does not apply if the person has permission (within the meaning of the *Excise Act 1901*):

(a) to possess the tobacco; or

(b) to move the tobacco; or

(c) to deliver the tobacco for home consumption without entering it for that purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

308-125 Manufacture or production of tobacco (500 kg or above)—fault-based offence

(1) A person commits an offence if:

(a) the person manufactures or produces a thing; and

(b) the thing is tobacco; and

(c) the place in which the person manufactures or produces the tobacco is in Australia but not in an external Territory; and

(d) the tobacco is:

(i) *excisable goods; or

(ii) tobacco seed or tobacco plant; or

(iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and

(e) in a case where the tobacco is excisable goods:

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

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(i) *excise duty is payable on the tobacco; and

(ii) the full amount of excise duty has not been paid on the tobacco; and

(f) the weight of the tobacco is 500 kilograms or above.

Penalty: 10 years imprisonment or the greater of the following, or both 10 years imprisonment and the greater of the following:

(a) 1,500 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:

(i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

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

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(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

308-130 Manufacture or production of tobacco (100 kg or above)—fault-based offence

(1) A person commits an offence if:

(a) the person manufactures or produces a thing; and

(b) the thing is tobacco; and

(c) the place in which the person manufactures or produces the tobacco is in Australia but not in an external Territory; and

(d) the tobacco is:

(i) *excisable goods; or

(ii) tobacco seed or tobacco plant; or

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

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(iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and

(e) in a case where the tobacco is excisable goods:

(i) *excise duty is payable on the tobacco; and

(ii) the full amount of excise duty has not been paid on the tobacco; and

(f) the weight of the tobacco is 100 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

(a) 1,000 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:

(i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

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

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(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

308-135 Manufacture or production of tobacco (5 kg or above)—fault-based offence

(1) A person commits an offence if:

(a) the person manufactures or produces a thing; and

(b) the thing is tobacco; and

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

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(c) the place in which the person manufactures or produces the tobacco is in Australia but not in an external Territory; and

(d) the tobacco is:

(i) *excisable goods; or

(ii) tobacco seed or tobacco plant; or

(iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and

(e) in a case where the tobacco is excisable goods:

(i) *excise duty is payable on the tobacco; and

(ii) the full amount of excise duty has not been paid on the tobacco; and

(f) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

(a) 500 penalty units;

(b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

(a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were *excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:

(i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

(ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

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

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(c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

(a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or

(b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

(a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

(b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

(b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or

(c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

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

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Subdivision 308-C—Offences relating to equipment relating to the manufacture or production of tobacco

Guide to Subdivision 308-C

308-200 What this Subdivision is about

This Subdivision sets out offences for the possession of equipment for use in illegal manufacture or production of tobacco, or of equipment designed or adapted to manufacture or produce tobacco.

Table of sections

308-205 Possession of equipment for use in illegal manufacture or production of tobacco
308-210 Possession of equipment designed or adapted to manufacture or produce tobacco

308-205 Possession of equipment for use in illegal manufacture or production of tobacco

(1) A person (the ***first person***) commits an offence if:

(a) the first person possesses equipment at a time; and

(b) the place in which the first person possesses the equipment is in Australia but not in an external Territory; and

(c) the first person is reckless as to whether a particular person (whether or not the first person) will, at a later time, use the equipment to manufacture or produce tobacco; and

(d) the first person intends to possess the equipment at that later time; and

(e) that manufacture or production by that particular person at that later time would constitute an offence against any of the following provisions:

(i) section 308-125, 308-130 or 308-135;

(ii) section 25 or 28 of the *Excise Act 1901*.

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

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Penalty: Imprisonment for 12 months or 120 penalty units, or both.

(2) Absolute liability applies to paragraph (1)(b).

(3) Absolute liability applies to paragraph (1)(e).

(4) Subsection (1) does not apply if the first person has no reasonable ground to consider that the manufacture or production by the particular person at the later time would constitute an offence against any of the provisions mentioned in paragraph (1)(e).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

308-210 Possession of equipment designed or adapted to manufacture or produce tobacco

(1) A person commits an offence if:

(a) the person possesses equipment at a time; and

(b) the place in which the person possesses the equipment is in Australia but not in an external Territory; and

(c) a reasonable person, with a full knowledge and understanding of the functioning of the equipment, would conclude that the equipment is designed or adapted specifically to manufacture or produce tobacco; and

(d) on the assumption that, at the time mentioned in paragraph (a), the person used the equipment to manufacture or produce tobacco, the person would commit an offence against any of the following provisions:

(i) section 308-125, 308-130 or 308-135;

(ii) section 25 or 28 of the *Excise Act 1901*.

Penalty: Imprisonment for 12 months or 120 penalty units, or both.

(2) Absolute liability applies to paragraph (1)(b).

(3) Absolute liability applies to paragraph (1)(d).

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

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(4) Subsection (1) does not apply if the person possesses the equipment:

(a) for the sole purpose of the disposal or destruction of the equipment; or

(b) for the sole purpose of the export of the equipment.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) the person possesses the equipment on behalf of another person; and

(b) assuming that, at the time mentioned in paragraph (a), the other person used the equipment in Australia (but not in an external Territory) to manufacture or produce tobacco, the other person would *not* commit an offence under any of the following provisions:

(i) section 308-125,308-130 or 308-135;

(ii) section 25 or 28 of the *Excise Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Subdivision 308-E—Other provisions

Guide to Subdivision 308-E

308-500 What this Subdivision is about

This Subdivision sets out various miscellaneous rules that relate to the offences in other provisions of this Division, including rules that treat certain things as tobacco and certain matters as possession.

Table of sections

308-505 Things treated as tobacco
308-510 Matters treated as possession

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

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308-515 Where excise duty or customs duty is treated as not payable for the purpose of the reasonable suspicion offences
308-520 Section 8ZD does not apply to this Division

308-505 Things treated as tobacco

(1) For the purposes of this Division, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.

(2) To avoid doubt, for the purposes of this Division:
  (a) treat tobacco seed, tobacco plant (whether or not in the ground) and tobacco leaf as tobacco; and
  (b) treat cigars, cigarettes and snuff as tobacco.

308-510 Matters treated as possession

(1) For the purposes of this Division, treat a person as possessing a thing if the person:
  (a) receives or obtains possession of the thing; or
  (b) has control over the disposition of the thing (whether or not the thing is in the custody of the person); or
  (c) has joint possession of the thing with one or more other persons.

(2) To avoid doubt, subsection (1) does not limit, for the purposes of this Division, when a person possesses a thing.

(3) For the purposes of this Division, a person may possess tobacco plant even if the plant is in the ground.

308-515 Where excise duty or customs duty is treated as not payable for the purpose of the reasonable suspicion offences

(1) For the purposes of Subdivision 308-A, treat *excise duty as not payable on tobacco because of an exemption under a law of the Commonwealth if:
  (a) a "free" rate of *excise duty applies on the tobacco; or

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

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(b) there is a remission of all of the excise duty payable on the tobacco.

(2) For the purposes of Subdivision 308-A, treat *customs duty as not payable on tobacco because of an exemption under a law of the Commonwealth if:

(a) a "free" rate of *customs duty applies on the tobacco; or

(b) there is a remission of all of the customs duty payable on the tobacco.

(3) To avoid doubt, subsections (1) and (2) do not limit, for the purposes of Subdivision 308-A, when *excise duty or *customs duty is not payable on tobacco because of an exemption under a law of the Commonwealth.

308-520 Section 8ZD does not apply to this Division

Section 8ZD does not apply for the purposes of this Division.

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

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Part 4-50—Release from particular liabilities

Division 340—Commissioner's power in cases of hardship

Guide to Division 340

340-1 What this Division is about

The Commissioner may release you from a particular liability that you have incurred if you are an individual, or a trustee of the estate of a deceased person, and satisfying the liability would cause serious hardship.

Table of sections

Operative provisions

340-5 Release from particular liabilities in cases of serious hardship
340-10 Liabilities to which this section applies
340-15 Commissioner may take action to give effect to a release decision
340-20 Extinguishing your liability to pay a fringe benefits tax instalment if you are released
340-25 Extinguishing your liability to pay a PAYG instalment if you are released

Operative provisions

340-5 Release from particular liabilities in cases of serious hardship

Applying for release

(1) You may apply to the Commissioner to release you, in whole or in part, from a liability of yours if section 340-10 applies to the liability.

(2) The application must be in the *approved form.

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

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(3) The Commissioner may release you, in whole or in part, from the liability if you are an entity specified in the column headed "Entity" of the following table and the condition specified in the column headed "Condition" of the table is satisfied.

Entity and condition

Item	Entity	Condition
1	an individual	you would suffer serious hardship if you were required to satisfy the liability
2	a trustee of the estate of a deceased individual	the dependants of the deceased individual would suffer serious hardship if you were required to satisfy the liability

Effect of the Commissioner's decision

(4) If the Commissioner:
(a) refuses to release you in whole from the liability; or
(b) releases you in part from the liability;
nothing in this section prevents you from making a further application or applications under subsection (1) in relation to the liability.

Notification of the Commissioner's decision

(5) The Commissioner must notify you in writing of the Commissioner's decision within 28 days after making the decision.

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

Objections against the Commissioner's decision

(7) If you are dissatisfied with the Commissioner's decision, you may object against the decision in the manner set out in Part IVC.

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

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340-10 Liabilities to which this section applies

(1) This section applies to a liability if it is a liability of the following kind:

(a) fringe benefits tax;

(b) an instalment of fringe benefits tax;

(c) *Medicare levy;

(d) *Medicare levy (fringe benefits) surcharge;

(e) a *PAYG instalment.

(2) This section also applies to a liability if it is a liability that is specified in the column headed "Liabilities" of the following table and the liability is a liability under a provision or provisions of an Act specified in the column headed "Provision(s)" of the table:

Liabilities and provision(s)

Item	Liabilities	Provision(s)
1	additional tax	(a) section 93 or 112B of the *Fringe Benefits Tax Assessment Act 1986*; or (b) former section 163B or subsection 221YDB(1), (1AAA), (1AA) or (1ABA) or Part VII of the *Income Tax Assessment Act 1936*
2	administrative penalty in relation to fringe benefits tax or *tax	Part 4-25 in this Schedule
3	general interest charge	(a) former section 163AA, former section 170AA, former subsection 204(3) or former subsection 221AZMAA(1), 221AZP(1), 221YD(3) or 221YDB(3) of the *Income Tax Assessment Act 1936*; or (aa) section 5-15 in the *Income Tax Assessment Act 1997*; or

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

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Liabilities and provision(s)		
Item	**Liabilities**	**Provision(s)**
		(b) section 45-80 or 45-620 or subsection 45-230(2), 45-232(2), 45-235(2) or 45-235(3) in this Schedule
3A	shortfall interest charge	Division 280 in this Schedule
4	interest	section 102AAM of the *Income Tax Assessment Act 1936*
5	penalty	former section 163A of the *Income Tax Assessment Act 1936*
6	*tax	(a) section 128B of the *Income Tax Assessment Act 1936*; or (b) section 128V of the *Income Tax Assessment Act 1936*; or (c) section 4-1 of the *Income Tax Assessment Act 1997*; or (d) section 840-805 of the *Income Tax Assessment Act 1997*; or (da) section 840-905 of the *Income Tax Assessment Act 1997*; or (e) section 840-805 of the *Income Tax (Transitional Provisions) Act 1997*

340-15 Commissioner may take action to give effect to a release decision

(1) If the Commissioner decides to release you from a liability to which section 340-10 applies, the Commissioner may take such action as is necessary to give effect to the decision.

(2) Without limiting subsection (1), the Commissioner may amend an assessment within the meaning of the following provisions:

(a) subsection 6(1) of the *Income Tax Assessment Act 1936*;

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

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(b) subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*;

by making such alterations or additions to the assessment as the Commissioner thinks necessary.

(3) Subsection (2) does not limit the power of the Commissioner to amend the assessment in accordance with any other provision of the *Income Tax Assessment Act 1936* or the *Fringe Benefits Tax Assessment Act 1986*.

340-20 Extinguishing your liability to pay a fringe benefits tax instalment if you are released

(1) This section applies if the Commissioner releases you from a liability to pay an instalment of fringe benefits tax.

(2) If your liability to pay the instalment is released in whole, you are taken, for the purposes of Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act 1986*, not to be liable to pay the instalment.

Note: This means that for the purposes of section 105 of that Act you are not entitled to a credit for the instalment.

(3) If your liability to pay the instalment is released in part, you are taken, for the purposes of Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act 1986*, to be liable to pay the instalment to the extent to which your liability has not been released.

Note: This means that for the purposes of section 105 of that Act you are entitled to a credit for the instalment to the extent to which your liability to pay the instalment has not been released.

340-25 Extinguishing your liability to pay a PAYG instalment if you are released

(1) This section applies if the Commissioner releases you from a liability to pay a *PAYG instalment.

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

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(2) If your liability to pay the instalment is released in whole, you are taken, for the purposes of Division 45 of Part 2-10, not to be liable to pay the instalment.

Note: This means that for the purposes of section 45-30 you are not entitled to a credit for the instalment.

(3) If your liability to pay the instalment is released in part, you are taken, for the purposes of Division 45 of Part 2-10, to be liable to pay the instalment to the extent to which your liability has not been released.

Note: This means that for the purposes of section 45-30 you are entitled to a credit for the instalment to the extent to which your liability to pay the instalment has not been released.

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

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Division 342—Commissioner's power relating to proceeds of crime proceedings

Table of Subdivisions

Guide to Division 342
342-A Power to waive right to payment of tax-related liabilities

Guide to Division 342

342-1 What this Division is about

To facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*, the Commissioner may waive the right to payment of certain tax-related liabilities.

Subdivision 342-A—Power to waive right to payment of tax-related liabilities

Table of sections

342-5 Object of this Subdivision
342-10 Power to waive right to payment of tax-related liability

342-5 Object of this Subdivision

The object of this Subdivision is to facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002* by allowing the Commissioner to waive the right to payment of certain liabilities to the Commonwealth arising under *taxation laws.

Note: The Commissioner may also exercise other powers so as to facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*. Examples of those other powers include:

(a) the power under section 255-10 to defer the time a tax-related liability is due and payable; and

(b) the power under section 8AAG to remit general interest charge.

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

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342-10 Power to waive right to payment of tax-related liability

(1) The Commissioner may waive the Commonwealth's right to payment of all or part of a *tax-related liability if the Commissioner is satisfied that:

(a) the waiver will facilitate the starting, conduct or ending (by settlement or otherwise) of proceedings under the *Proceeds of Crime Act 2002*; and

(b) the liability is connected with circumstances associated with the proceedings.

Note: The Commissioner may waive the right to payment only after the liability has arisen, but may do so whether or not the liability is due and payable.

Example: A liability is connected with circumstances associated with the proceedings if the liability arose because of activities constituting an offence to which the proceedings relate.

(2) In deciding whether to waive the right, the Commissioner must consider:

(a) the amount the Commonwealth will forgo as a result of the waiver and the time the Commonwealth could reasonably be expected to receive that amount apart from the waiver; and

(b) the amount the Commonwealth could reasonably be expected to receive as a result of the proceedings and the time the Commonwealth could reasonably be expected to receive that amount.

(3) Subsection (2) does not limit the matters that the Commissioner may consider in making the decision.

Extended operation of this section

(4) This section (except this subsection) applies in relation to a pecuniary liability to the Commonwealth that arises directly under a *taxation law, but is not a *tax-related liability, in the same way as this section applies in relation to a tax-related liability.

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

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Example: This section applies to a civil penalty under Division 290 (which penalises certain conduct involving promotion of schemes) in the same way as this section applies to a tax-related liability.

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

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Part 4-90—Evidence

Division 350—Evidence

Table of Subdivisions

Guide to Division 350
350-A Evidence

Guide to Division 350

350-1 What this Division is about

The rules in this Division deal with the evidentiary effect of official tax documents for the purposes of taxation laws.

Subdivision 350-A—Evidence

Table of sections

350-5 Application of Subdivision
350-10 Evidence
350-15 Judicial notice of signature

350-5 Application of Subdivision

This Subdivision applies in relation to all *taxation laws.

350-10 Evidence

Conclusive evidence

(1) The following table has effect:

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

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Conclusive evidence

Item	Column 1 The production of …	Column 2 is conclusive evidence that …
1	(a) a *Gazette* containing a notice purporting to be issued by the Commissioner for the purposes of a *taxation law; or (b) a document that: (i) is under the hand of the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner; and (ii) purports to be a copy of, or extract from, a document issued by the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner for the purposes of a taxation law;	the notice or document was so issued.
2	a notice of *assessment under a *taxation law;	(a) the assessment was properly made; and (b) except in proceedings under Part IVC of this Act on a review or appeal relating to the assessment—the amounts and particulars of the assessment are correct.
3	a notice under any of the following: (a) section 18-140 in this Schedule; (b) section 102UR, 177EA or 177EB of the *Income Tax Assessment Act 1936*;	(a) the notice was properly given; and (b) except in proceedings under Part IVC of this Act on a review or appeal relating to the notice—the amounts and

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

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Conclusive evidence		
Item	**Column 1** **The production of …**	**Column 2** **is conclusive evidence that …**
	(c) section 271-90 in Schedule 2F to that Act;	particulars of the notice are correct.
4	a declaration under: (a) subsection 165-40(1) or 165-45(3) of the *GST Act; or (b) subsection 75-40(1) or 75-45(3) of the *Fuel Tax Act 2006*;	(a) the declaration was properly made; and (b) except in proceedings under Part IVC of this Act on a review or appeal relating to the declaration—the amounts and particulars of the declaration are correct.

Prima facie evidence

(3) The production of a certificate that:

(a) is signed by the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner; and

(b) states that, from the time specified in the certificate, an amount was payable under a *taxation law (whether to or by the Commissioner);

is prima facie evidence that:

(c) the amount is payable from that time; and

(d) the particulars stated in the certificate are correct.

(3A) A document that is provided to the Commissioner under a *taxation law, and that purports to be made or signed by or on behalf of an entity, is prima facie evidence that the document was made by the entity or with the authority of the entity.

Signed copies are evidence

(4) The production of a document that:

(a) appears to be a copy of, or extract from, any document (the ***original document***) made or given by or to an entity for the

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

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purposes of a *taxation law; and

(b) is signed by the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner;

is evidence of the matters set out in the document to the same extent as the original document would have been evidence of those matters.

350-15 Judicial notice of signature

All courts, and all persons having by law or consent of parties authority to hear, receive and examine evidence, must take judicial notice of the signature of every person who is or has been:

(a) the Commissioner; or

(b) a *Second Commissioner; or

(c) a *Deputy Commissioner; or

(d) a delegate of the Commissioner;

if the signature is attached or appended to an official document for the purposes of a *taxation law.

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

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Chapter 5—Administration

Part 5-1—The Australian Taxation Office

Division 352—Commissioner's reporting obligations

Table of Subdivisions

Guide to Division 352
352-A Accountability of the Commissioner in respect of indirect tax laws
352-C Reporting on working holiday makers

Guide to Division 352

352-1 What this Division is about

This Division requires the Commissioner to prepare annual reports on the working of the indirect tax laws and on working holiday makers.

Subdivision 352-A—Accountability of the Commissioner in respect of indirect tax laws

Table of sections

352-5 Commissioner must prepare annual report on indirect tax laws

352-5 Commissioner must prepare annual report on indirect tax laws

(1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report on the working of the *indirect tax laws during the year ending on that 30 June.

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

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(2) The report must include a report on any breaches or evasions of the *indirect tax laws that the Commissioner knows about.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Subdivision 352-C—Reporting on working holiday makers

Table of sections

352-25 Commissioner must prepare annual report on working holiday makers

352-25 Commissioner must prepare annual report on working holiday makers

(1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report relating to:

(a) the taxation of *working holiday makers; and

(b) the registration process referred to in sections 16-146 to 16-148.

(2) Without limiting subsection (1), the report must include statistics and information derived by the Commissioner from that registration process.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

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

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Division 353—Powers to obtain information and evidence

Table of Subdivisions

Guide to Division 353
353-A Powers to obtain information and evidence
353-B Powers to obtain information and evidence from overseas

Guide to Division 353

353-1 What this Division is about

This Division gives the Commissioner powers to obtain information and evidence.

Subdivision 353-A—Powers to obtain information and evidence

Table of sections

353-10 Commissioner's power
353-15 Access to premises, documents etc.
353-20 Checking status of specifically listed deductible gift recipients

353-10 Commissioner's power

(1) The Commissioner may by notice in writing require you to do all or any of the following:

(a) to give the Commissioner any information that the Commissioner requires for the purpose of the administration or operation of a *taxation law;

(b) to attend and give evidence before the Commissioner, or an individual authorised by the Commissioner, for the purpose of the administration or operation of a taxation law;

(c) to produce to the Commissioner any documents in your custody or under your control for the purpose of the administration or operation of a taxation law.

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

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Note: Failing to comply with a requirement can be an offence under section 8C or 8D.

(2) The Commissioner may require the information or evidence:
   (a) to be given on oath or affirmation; and
   (b) to be given orally or in writing.

   For that purpose, the Commissioner or the officer may administer an oath or affirmation.

(3) The regulations may prescribe scales of expenses to be allowed to entities required to attend before the Commissioner or the officer.

353-15 Access to premises, documents etc.

(1) For the purposes of a *taxation law, the Commissioner, or an individual authorised by the Commissioner for the purposes of this section:
   (a) may at all reasonable times enter and remain on any land, premises or place; and
   (b) is entitled to full and free access at all reasonable times to any documents, goods or other property; and
   (c) may inspect, examine, make copies of, or take extracts from, any documents; and
   (d) may inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property and, to that end, take samples.

(2) An individual authorised by the Commissioner for the purposes of this section is not entitled to enter or remain on any land, premises or place if, after having been requested by the occupier to produce proof of his or her authority, the individual does not produce an authority signed by the Commissioner stating that the individual is authorised to exercise powers under this section.

(3) You commit an offence if:
   (a) you are the occupier of land, premises or a place; and
   (b) an individual enters, or proposes to enter, the land, premises or place under this section; and

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

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(c) the individual is the Commissioner or authorised by the Commissioner for the purposes of this section; and

(d) you do not provide the individual with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(4) Strict liability applies to paragraphs (3)(a) and (c).

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

353-20 Checking status of specifically listed deductible gift recipients

(1) The Commissioner may require a *deductible gift recipient covered by this section to give the Commissioner information or a document that is relevant to the deductible gift recipient's status as a deductible gift recipient. The deductible gift recipient must comply with the requirement.

Note: Failure to comply with this subsection is an offence against section 8C.

(2) If the Commissioner is satisfied of any of the matters set out in subsection (4) in relation to a *deductible gift recipient covered by this section, the Commissioner must, within 28 days, give written notice to the Minister about that fact.

(3) The Minister may only disclose information provided under subsection (2) for a purpose relating to the removal of the name of the *deductible gift recipient from Division 30 of the *Income Tax Assessment Act 1997*.

(4) The matters are as follows:

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

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(a) the *deductible gift recipient fails or ceases to use gifts, contributions or money received solely for the principal purpose of the relevant fund, authority or institution;
(b) there is a change in the principal purpose of the relevant fund, authority or institution;
(c) the deductible gift recipient fails or ceases to comply with any rules or conditions made by the Prime Minister or any other Minister relating to the recipient being or becoming a deductible gift recipient.

(5) The requirement in subsection (1):
(a) is to be made by notice in writing to the *deductible gift recipient; and
(b) may ask the deductible gift recipient to give the information in writing; and
(c) must specify:
(i) the information or document the deductible gift recipient is to give; and
(ii) the period within which the deductible gift recipient is to give the information or document.

The period specified under subparagraph (c)(ii) must end at least 28 days after the notice is given.

(6) This section covers *deductible gift recipients, other than:
(a) an entity or *government entity that is endorsed under Subdivision 30-BA of the *Income Tax Assessment Act 1997* as a deductible gift recipient; and
(b) an entity or government entity that is endorsed under that Subdivision as a deductible gift recipient for the operation of a fund, authority or institution.

(7) In a prosecution of a person for an offence against section 8C of this Act because of this section as it applies because of Division 444, it is a defence if the person proves that the person:
(a) did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and

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

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(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

Subdivision 353-B—Powers to obtain information and evidence from overseas

Table of sections

353-25 Offshore information notices
353-30 Offshore information notices—consequence of not complying

353-25 Offshore information notices

(1) The Commissioner may, by notice in writing (an ***offshore information notice***) given to you, request you to do all or any of the following:

(a) to give the Commissioner any information that the Commissioner reasonably believes is:

(i) relevant to the *assessment of a *tax-related liability of yours; and

(ii) *offshore information;

(b) to produce to the Commissioner any documents that the Commissioner reasonably believes are:

(i) relevant to the assessment of a tax-related liability of yours; and

(ii) *offshore documents;

(c) to make copies of any documents the Commissioner could request you to produce under paragraph (b), and to produce those copies to the Commissioner.

(2) An offshore information notice:

(a) must specify a period, of at least 90 days after it is given to you, within which you are to give the information or produce the documents or copies; and

(b) must set out the effect of section 353-30; and

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

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(c) may set out how the request is to be complied with; and
(d) may be included in the same document as a notice under section 353-10.

A notice is not invalid merely because it does not comply with paragraph (b).

(3) The Commissioner may, by notice in writing, extend the period within which you are to give the information or produce the documents or copies, if, before the end of that period, you apply for the extension in the *approved form.

(4) If the Commissioner does not notify you, in writing, before the end of the period of the Commissioner's decision on an application you make under subsection (3), then the period is extended until the day on which the Commissioner so notifies you.

(5) An offshore information notice may be varied or revoked in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, however a variation:
(a) must not have the effect of shortening the period within which you must give particular *offshore information or produce particular *offshore documents or copies; and
(b) must not have the effect that the period within which you must give particular offshore information, or produce particular offshore documents or copies, is less than 90 days.

(6) Nothing in this section affects the operation of section 353-10 and nothing in that section affects the operation of this section.

(7) ***Offshore information*** is any information that is one or more of the following:
(a) within the knowledge (whether exclusive or otherwise) of an entity outside Australia;
(b) recorded (whether exclusively or otherwise) in a document outside Australia;
(c) stored (whether exclusively or otherwise) by any means whatsoever outside Australia.

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

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(8) An ***offshore document*** is any document that is outside Australia (whether or not copies are in Australia or, if the documents are copies of other documents, whether or not those other documents are in Australia).

353-30 Offshore information notices—consequence of not complying

(1) Section 8C does not apply to a request set out in an offshore information notice under section 353-25.

(2) If you refuse or fail to comply with a request set out in an offshore information notice (including a request you are not able to comply with), the following are not admissible in evidence in proceedings under Part IVC on a review or appeal relating to a *tax-related liability of yours, except with the consent of the Commissioner:
  (a) the *offshore information;
  (b) the contents of the *offshore documents or copies.

(3) In deciding whether to consent, the Commissioner must:
  (a) have regard to whether, because of the absence of that information or those documents or copies, the remaining information or documents that are relevant to the proceedings are, or are likely to be, misleading; and
  (b) not have regard to the consequences (whether direct or indirect) of an obligation arising under a *foreign law relating to the secrecy of the information, documents or copies; and
  (c) consent if refusal would have the effect, for the purposes of the Constitution, of making any tax or penalty incontestable.

(4) If, before the hearing of a proceeding under Part IVC on a review or appeal relating to a *tax-related liability of yours, the Commissioner forms the views that:
  (a) you have refused or failed to comply with a request under section 353-25; and
  (b) the Commissioner is unlikely to give the consent mentioned in subsection (3);

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

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the Commissioner must, by notice in writing, inform you that the Commissioner has formed those views. However, a failure to do so does not affect the validity of the Commissioner's decision under subsection (3).

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

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Division 354—Power to obtain information about rights or interests in property

354-5 Power to obtain information about rights or interests in property

(1) The Commissioner may by notice in writing require you to give the Commissioner information required for the purpose of the administration or operation of a *taxation law if:

(a) both of the following apply:

(i) you have a legal or equitable interest in real or personal property;

(ii) the information is about any other *property right or interest in the property; or

(b) both of the following apply:

(i) the Commissioner is satisfied that you may have information about a property right or interest in property;

(ii) the information is about the property right or interest.

Note: Failing to comply with a requirement may be an offence under section 8C.

(2) A ***property right or interest*** is:

(a) a legal or equitable interest in the property; or

(b) a right, power or privilege in connection with the property;

whether present or future and whether vested or contingent.

Content of notice

(3) The notice must specify the following:

(a) the property to which the notice applies;

(b) the information required;

(c) the period within which the information must be given;

(d) the manner of giving the information.

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

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(4) The information required may include the following:
   (a) details of your interest in the property;
   (b) details (including name and address) of any person who has a *property right or interest in the property;
   (c) details of any class of person who has a property right or interest in the property;
   (d) details of each property right or interest in the property, including:
      (i) the nature and extent of the right or interest; and
      (ii) the circumstances giving rise to the right or interest.

(5) If:
   (a) you are given a notice under paragraph (1)(a); and
   (b) you do not have the information required but another person has the information;

   you must make all reasonable efforts to obtain the information.

(6) To avoid doubt, you may be required as a result of a notice under this section to create a document giving the information required.

(7) The period specified in the notice must be:
   (a) at least 14 days after the notice is given (except if paragraph (b) applies); or
   (b) if the Commissioner is satisfied that a shorter period is necessary—the shorter period.

Relationship with section 353-10

(8) Nothing in this section affects the operation of section 353-10 and nothing in that section affects the operation of this section.

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

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Division 355—Confidentiality of taxpayer information

Table of Subdivisions

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355-A Objects and application of Division
355-B Disclosure of protected information by taxation officers
355-C On-disclosure of protected information by other people
355-D Disclosure of protected information that has been unlawfully acquired
355-E Other matters

Guide to Division 355

355-1 What this Division is about

The disclosure of information about the tax affairs of a particular entity is prohibited, except in certain specified circumstances.

Those exceptions are designed having regard to the principle that disclosure of information should be permitted only if the public benefit derived from the disclosure outweighs the entity's privacy.

Note: This Division contains the main circumstances in which protected tax information can be disclosed. A number of other Commonwealth laws also allow for the disclosure of, or access to, such information in limited circumstances. Some of these other laws are as follows:

- sections 32 and 33 of the *Auditor-General Act 1997*;
- section 9 of the *Ombudsman Act 1976*;
- section 44 of the *Privacy Act 1988*.

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

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Subdivision 355-A—Objects and application of Division

Table of sections

355-10 Objects of Division
355-15 Application of Division

355-10 Objects of Division

The objects of this Division are:

(a) to protect the confidentiality of taxpayers' affairs by imposing strict obligations on *taxation officers (and others who acquire protected tax information), and so encourage taxpayers to provide correct information to the Commissioner; and

(b) to facilitate efficient and effective government administration and law enforcement by allowing disclosures of protected tax information for specific, appropriate purposes.

355-15 Application of Division

This Division applies in relation to the following entities in the same way as it applies in relation to *taxation officers:

(a) an entity engaged to provide services relating to the Australian Taxation Office;

(b) an individual employed by, or otherwise performing services for, an entity referred to in paragraph (a);

(c) an individual:

(i) appointed or employed by, or performing services for, the Commonwealth or an authority of the Commonwealth; and

(ii) performing functions or exercising powers under or for the purposes of a *taxation law.

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

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Subdivision 355-B—Disclosure of protected information by taxation officers

Guide to Subdivision 355-B

355-20 What this Subdivision is about

The main protection for taxpayer confidentiality is in this Subdivision. It is an offence for taxation officers to disclose tax information that identifies an entity, or is reasonably capable of being used to identify an entity, except in certain specified circumstances.

Table of sections

Operative provisions

355-25 Offence—disclosure of protected information by taxation officers
355-30 Meaning of ***protected information*** and ***taxation officer***
355-35 Consent is not a defence
355-40 Generality of Subdivision not limited
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355-50 Exception—disclosure in performing duties
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355-60 Limits on disclosure to Ministers
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355-75 Limits on disclosure to courts and tribunals

Operative provisions

355-25 Offence—disclosure of protected information by taxation officers

(1) An entity commits an offence if:
(a) the entity is or was a *taxation officer; and

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

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(b) the entity:
  (i) makes a record of information; or
  (ii) discloses information to another entity (other than the entity to whom the information relates or an entity covered by subsection (2)) or to a court or tribunal; and
(c) the information is *protected information; and
(d) the information was acquired by the first-mentioned entity as a taxation officer.

Penalty: Imprisonment for 2 years.

(2) An entity (the ***covered entity***) is covered by this subsection in relation to *protected information that relates to another entity (the ***primary entity***) if:
  (a) the covered entity is the primary entity's *registered tax agent or BAS agent; or
  (b) the covered entity is a *legal practitioner representing the primary entity in relation to the primary entity's affairs relating to one or more *taxation laws; or
  (ba) the covered entity is a public officer (within the meaning of section 252 or 252A of the *Income Tax Assessment Act 1936*) of the primary entity; or
  (c) the primary entity is an *incapacitated entity and the covered entity is a *representative of the incapacitated entity; or
  (d) the covered entity is the primary entity's *legal personal representative; or
  (e) the covered entity is the primary entity's guardian where the primary entity is a minor or suffers from mental incapacity; or
  (f) the covered entity and the primary entity are members of the same *consolidated group or *MEC group; or
  (g) the covered entity is a representative of the primary entity who has been nominated by the primary entity in the *approved form to act on that entity's behalf with respect to protected information.

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

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355-30 Meaning of *protected information* and *taxation officer*

(1) ***Protected information*** means information that:

(a) was disclosed or obtained under or for the purposes of a law that was a *taxation law (other than the *Tax Agent Services Act 2009*) when the information was disclosed or obtained; and

(b) relates to the affairs of an entity; and

(c) identifies, or is reasonably capable of being used to identify, the entity.

Note: Tax file numbers do not constitute protected information because they are not, by themselves, reasonably capable of being used to identify an entity. For offences relating to tax file numbers, see Subdivision BA of Division 2 of Part III.

(2) ***Taxation officer*** means:

(a) the Commissioner or a *Second Commissioner; or

(b) an individual appointed or engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office.

Note: This Division applies to certain other entities as if they were taxation officers: see section 355-15.

355-35 Consent is not a defence

It is not a defence to a prosecution for an offence against section 355-25 that the entity to whom the information relates has consented to:

(a) the making of the record; or

(b) the disclosure of the information.

355-40 Generality of Subdivision not limited

Except as provided by section 355-60, nothing in this Subdivision limits the generality of anything else in it.

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

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Note: This means that each provision in this Subdivision (other than section 355-60) has an independent operation and is not to be interpreted by reference to any other provision within the Subdivision.

355-45 Exception—disclosure of publicly available information

Section 355-25 does not apply if the information was already available to the public (otherwise than as a result of a contravention of section 355-25, 355-155 or 355-265).

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

355-47 Exception—disclosure of periodic aggregate tax information

(1) Section 355-25 does not apply if the information is *periodic aggregate tax information.

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

(2) ***Periodic aggregate tax information*** is information that:

(a) specifies the total amount collected or assessed by the Commissioner during a period, or predicted by the Commissioner to be collected or assessed by the Commissioner during a period, in respect of:

(i) tax imposed under a particular Act or particular Acts; or

(ii) if an Act imposes duties of excise—a type of duty of excise imposed under that Act; or

(iii) if an Act imposes duties of customs—a type of duty of customs imposed under that Act; and

(b) does not identify, nor is reasonably capable of being used to identify, an individual.

355-50 Exception—disclosure in performing duties

(1) Section 355-25 does not apply if:

(a) the entity is a *taxation officer; and

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

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(b) the record or disclosure is made in performing the entity's duties as a taxation officer.

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

Note 2: An example of a duty mentioned in paragraph (b) is the duty to make available information under sections 3C and 3E.

(2) Without limiting subsection (1), records or disclosures made in performing duties as a *taxation officer include those mentioned in the following table:

Records or disclosures in performing duties

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any entity, court or tribunal	is for the purpose of administering any *taxation law.
2	any entity, court or tribunal	is for the purpose of the making, or proposed or possible making, of an order under the *Proceeds of Crime Act 2002* that is related to a *taxation law.
3	any entity, court or tribunal	is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to a *taxation law.
4	any entity	is for the purpose of responding to a request for a statement of reasons under the *Administrative Decisions (Judicial Review) Act 1977* in relation to a decision made under a *taxation law.
5	any entity	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment; in connection with administering a *taxation law.

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

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Records or disclosures in performing duties		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
6	any entity	is for the purpose of enabling the entity to understand or comply with its obligations under a *taxation law.
7	the Secretary of the Department	(a) is of information that does not include the name, contact details or *ABN of any entity; and (b) is for the purpose of: (i) the design of a *taxation law; or (ii) the amendment of a taxation law.
8	any board or member of a board performing a function or exercising a power under a *taxation law	is for the purpose of performing that function or exercising that power.
9	a competent authority referred to in an international agreement (within the meaning of section 23 of the *International Tax Agreements Act 1953*)	is for the purpose of exchanging information under such an international agreement.
10	any employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*)	is for the purpose of disclosing to that employer information included in a notice given to the Commissioner under subsection 32F(1) or 32H(1A) of that Act by an employee (within the meaning of that Act) of that employer.

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

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Records or disclosures in performing duties		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
11	a payer (within the meaning of Part VA of the *Income Tax Assessment Act 1936*) in relation to whom an individual has made a *TFN declaration that is in effect	(a) is of a matter that relates to the individual's income tax or other liability referred to in paragraph 11-1(b), (ca), (cb), (cc), (cd), (da) or (db); and (b) is for the purpose of assisting the individual to give a declaration under section 15-50 to the payer; and (c) is made as the result of a request made by the individual to the Commissioner

355-55 Exception—disclosure to Ministers

(1) Section 355-25 does not apply if:

(a) the entity is a *taxation officer; and

(b) an item in the table in this subsection covers the making of the record or the disclosure; and

(c) if the entity is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:

(i) the Commissioner;

(ii) a Second Commissioner;

(iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

Records or disclosures to Ministers		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
1	any Minister	is for the purpose of enabling the Minister to exercise a power or perform

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

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Records or disclosures to Ministers		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
		a function under a *taxation law.
2	the Minister	(a) is about an entity; and (b) is for the purpose of enabling the Minister to respond directly to the entity in relation to a representation made by the entity to: (i) the Minister; or (ii) another member of a House of the Parliament.
3	the Minister	is for the purpose of informing decisions made under the scheme known as the Compensation for Detriment Caused by Defective Administration Scheme.
4	the *Finance Minister	is for the purpose of: (a) the waiver, or possible waiver, of a *tax debt under section 63 of the *Public Governance, Performance and Accountability Act 2013*; or (b) the making, or possible making, of a payment referred to in section 65 of that Act (about act of grace payments) in connection with administering a *taxation law.
5	any Minister	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment.

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

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Records or disclosures to Ministers		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
6	a Minister responsible for: (a) agriculture; or (aa) water; or (b) industry policy; or (c) investment promotion; or (d) taxation policy; or (e) foreign investment in Australia	(a) is of information contained in the Register of Foreign Ownership of Agricultural Land or Register of Foreign Ownership of Water Entitlements; and (b) is for the purpose of enabling that Minister to discharge that responsibility.

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

Note 2: Section 19 of the *Acts Interpretation Act 1901* provides that the expression "the Minister", as used in table items 2 and 3, refers to the Minister or Ministers administering the relevant provision.

(2) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

355-60 Limits on disclosure to Ministers

(1) Sections 355-45 and 355-55 are the only exceptions to the prohibition in section 355-25 on which an entity who has acquired *protected information as a *taxation officer can rely in making a record of the information for, or disclosing the information to, a Minister, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-25 are not affected by this subsection. For example, a taxation officer may disclose information to a Minister if the Minister is the entity to whom the information relates, or is an entity covered by subsection 355-25(2) in relation to the information.

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

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(2) Subsection (1) has effect despite section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of *protected information by a *taxation officer to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable taxation officers to disclose protected information to a committee of one or both Houses of the Parliament.

355-65 Exception—disclosure for other government purposes

(1) Section 355-25 does not apply if:

(a) the entity is a *taxation officer; and

(b) an item in a table in this section covers the making of the record or the disclosure.

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

Table 1—Records or disclosures relating to social welfare, health or safety

(2) Table 1 is as follows:

Table 1: Records or disclosures relating to social welfare, health or safety

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an Agency Head (within the meaning of the *Public Service Act 1999*) of an agency (within the meaning of that Act) dealing with matters relating to the social security law (within the meaning of subsection 23(17) of the S*ocial Security Act 1991*)	is for the purpose of administering that law.
2	the *Health Secretary	is for the purpose of administering any law of the Australian Capital Territory

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

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Table 1: Records or disclosures relating to social welfare, health or safety

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		or of the Northern Territory which is administered by the *Health Minister.
3	the Repatriation Commission	is for the purpose of administering any *Commonwealth law relating to pensions, allowances or benefits.
4	the *Student Assistance Secretary or the *Employment Secretary	is for the purpose of administering any *Commonwealth law relating to pensions, allowances or benefits.
5	(a) the *Student Assistance Secretary; or (b) the Secretary of the Department administered by the Minister administering the *Higher Education Support Act 2003*; or (c) the Secretary of the Department administered by the Minister administering the *VET Student Loans Act 2016*	is for the purpose of administering any *Commonwealth law relating to financial assistance to students.
5AA	the Secretary of the Department administered by the Minister administering the *Trade Support Loans Act 2014*	is for the purpose of administering that Act.
5A	the *Families Secretary or the Chief Executive Centrelink (within the meaning of the *Human Services (Centrelink) Act 1997*)	is for the purpose of administering the *Paid Parental Leave Act 2010*.
6	the *Families Secretary or the Chief Executive Centrelink (within the meaning of the *Human Services (Centrelink) Act 1997*)	is for the purpose of administering the *A New Tax System (Family Assistance) (Administration) Act 1999*.

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

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Table 1: Records or disclosures relating to social welfare, health or safety		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
7	the Child Support Registrar	is for the purpose of administering the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989*.
8	the Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*)	is for the purpose of administering Part 2-2 (about premiums reduction scheme) or 6-4 (about administration of that scheme) of the *Private Health Insurance Act 2007*.
9	an *Australian government agency	is necessary for the purpose of preventing or lessening: (a) a serious threat to an individual's life, health or safety; or (b) a serious threat to public health or public safety.
10	an *Australian government agency	is for the purpose of preventing, detecting, disrupting or investigating conduct that relates to a matter of security as defined by section 4 of the *Australian Security Intelligence Organisation Act 1979*

Table 2—Records or disclosures relating to superannuation or finance

(3) Table 2 is as follows:

Table 2: Records or disclosures relating to superannuation or finance		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
1	a financial sector supervisory agency (within the meaning of section 3 of the *Australian*	(a) is of information that was obtained under or in relation to the *Superannuation (Unclaimed Money*

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

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
	Prudential Regulation Authority Act 1998)	*and Lost Members) Act 1999*; and (b) is for the purpose of the agency performing any of its functions or exercising any of its powers.
2	(a) an agency having the function, in Australia or in a foreign country, of supervising or regulating *financial institutions; or (b) any other agency (including a foreign agency) specified in the regulations	(a) is of information that was obtained under or in relation to the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* or the *Superannuation Industry (Supervision) Act 1993*; and (b) is for the purpose of performing any of its functions or exercising any of its powers; and (c) is made in accordance with the conditions (if any) imposed by the regulations in relation to the disclosure of information under this item.
3	(a) the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*; or (b) the operator of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*)	(a) is of information that was obtained under or in relation to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and (b) is for the purpose of the Tribunal, or the operator, performing any of its functions or exercising any of its powers.
4	the Australian Prudential Regulation Authority (***APRA***)	is for the purpose of administering: (a) the *Financial Institutions Supervisory Levies Collection Act 1998*; or (b) the *Superannuation Industry (Supervision) Act 1993*.
5	APRA	(a) is of information that was obtained

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

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		under or in relation to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and (b) is for the purpose of APRA performing any of its functions or exercising any of its powers.
6	APRA	is for the purpose of administering a reporting standard made under section 13 of the *Financial Sector (Collection of Data) Act 2001*, to the extent that the standard relates to amounts reported to *APRA for the purposes of the *Major Bank Levy Act 2017*.
6A	*ASIC	is for the purpose of administering Part 16 of the *Superannuation Industry (Supervision) Act 1993*.
7	an individual who is or was an employee (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*)	(a) is of information that relates to the Commissioner's response to a complaint by the individual about a failure by the individual's employer or former employer to comply with the employer's obligations under the *Superannuation Guarantee (Administration) Act 1992*, or under a provision of this Act as it relates to that Act, in relation to the employee; and (b) does not relate to the general financial affairs of the employer.
7A	an individual who is or was an employee (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*)	(a) is of information that relates to: (i) a failure by the individual's employer or former employer to comply with the employer's obligations under

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

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		the *Superannuation Guarantee (Administration) Act 1992*, or under a provision of this Act as it relates to that Act, in relation to the employee; or (ii) if the Commissioner reasonably suspects that such a failure has occurred—the suspected failure; or (iii) any actions taken by the Commissioner in relation to such a failure or suspected failure; and (b) does not relate to the general financial affairs of the employer.
8	any entity, court or tribunal	is of information that was obtained under, or for the purposes of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* or the *Superannuation Industry (Supervision) Act 1993* and is for the purpose of all or any of the following: (a) identifying a particular *self managed superannuation fund; (b) enabling members of the public to contact persons who perform functions in relation to a particular self managed superannuation fund; (c) enabling the Commissioner to provide an opinion to members of the public as to whether or not a particular self managed superannuation fund is a complying superannuation fund in relation to a

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

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		particular income year for the purposes of Division 2 of Part 5 of the *Superannuation Industry (Supervision) Act 1993*; (d) describing activity engaged in, or proposed to be engaged in, by the Commissioner in relation to a breach or suspected breach by a person of a provision of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* or the *Superannuation Industry (Supervision) Act 1993*.
9	an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*)	is for the purposes of that body performing its functions in relation to superannuation contributions.
10	(a) a *regulated superannuation fund; or (b) a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or (c) an *approved deposit fund; or (d) an *RSA provider; or (e) an entity that, as an agent of such a fund, scheme or RSA provider, provides administration services for: (i) beneficiaries (within the meaning of that Act) of the fund or scheme; or (ii) holders (within the	is for the purpose of: (a) informing: (i) a beneficiary (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of such a fund or scheme; or (ii) a holder (within the meaning of the *Retirement Savings Accounts Act 1997*) of an *RSA provided by the *RSA provider; or (iii) an applicant to become such a beneficiary or holder; of one or more of his or her *superannuation interests (whether with that fund, scheme or RSA provider or another fund, scheme or

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

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Table 2: Records or disclosures relating to superannuation or finance

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
	meaning of the *Retirement Savings Accounts Act 1997*) of *RSAs provided by the RSA provider	RSA provider); or (b) assisting such a beneficiary, holder or applicant to choose whether to maintain or create such a superannuation interest; or (c) assisting such a beneficiary, holder or applicant to give effect to such a choice; or (d) informing such a beneficiary, holder or applicant of an amount that is or may become payable, or that may be paid, credited or otherwise dealt with, in relation to the beneficiary, holder or applicant under: (i) the *Small Superannuation Accounts Act 1995*; or (ii) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or (iii) the *Superannuation Guarantee (Administration) Act 1992*; or (iv) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or (e) assisting such a beneficiary, holder or applicant to give effect to a choice that he or she may make, or undertake an action that he or she may undertake, in relation to an amount mentioned in paragraph (d).
11	a *superannuation provider or APRA	is for the purpose of complying with subsection 292-102(9) of the *Income Tax Assessment Act 1997*.

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

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Table 2: Records or disclosures relating to superannuation or finance		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
12	An employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) of an individual	is for the purpose of: (a) informing the individual of one or more of his or her *superannuation interests; or (b) assisting the individual to choose whether to maintain or create a superannuation interest; or (c) assisting the individual to give effect to such a choice

Table 3—Records or disclosures relating to corporate regulation, business, research or policy

(4) Table 3 is as follows:

Table 3: Records or disclosures relating to corporate regulation, business, research or policy		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
1	*ASIC	is for the purpose of performing any functions or exercising any powers under any Act or instrument, or part of any Act or instrument, of which the Commission has the general administration.
6	Innovation and Science Australia established under section 6 of the *Industry Research and Development Act 1986*	is for the purpose of administering any *Commonwealth law relating to venture capital.

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

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Table 3: Records or disclosures relating to corporate regulation, business, research or policy

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
6A	the Secretary of the Department administered by the Minister administering the *Shipping Reform (Tax Incentives) Act 2012*	is for the purpose of administering that Act.
7	the Secretary of the Department	is for the purpose of administering the *Foreign Acquisitions and Takeovers Act 1975*.
8	the Secretary of the Department	(a) is of information that does not include the name, contact details or *ABN of any entity; and (b) is for the purpose of the Department estimating or analysing taxation revenue or estimating the cost of policy proposals.
9	the Parliamentary Budget Officer (within the meaning of the *Parliamentary Service Act 1999*)	(a) is of information that does not include the name, contact details or *ABN of any entity; and (b) is for the purpose of the Parliamentary Budget Officer performing any of his or her functions, or exercising any of his or her powers, under Part 7 of the *Parliamentary Service Act 1999*.

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

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Table 4—Records or disclosures relating to other taxation matters

(5) Table 4 is as follows:

Table 4: Records or disclosures relating to other taxation matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	a State taxation officer, or a Territory taxation officer, within the meaning of subsection 13D(1) of this Act	is for the purpose of administering a *State law or *Territory law relating to taxation, if a State taxation officer or a Territory taxation officer is authorised by law to communicate information obtained under the State law or Territory law to the Commissioner.
2	a State taxation officer, or a Territory taxation officer, within the meaning of subsection 13D(1) of this Act	(a) is of rental information, residential address information or spousal information; and (b) is for the purpose of administering the *First Home Owner Grant (New Homes) Act 2000* (NSW), or a similar *State law or *Territory law.
4	an individual who holds an office of a State or Territory, being an office prescribed for the purpose of this table item	(a) is of information that relates to alcoholic beverages; and (b) is for the purpose of the individual administering an *arrangement for the rebate, refund or other payment or credit by a State or Territory in respect of alcoholic beverages.
5	the Inspector-General of Taxation	is for the purpose of investigating or reporting under, or otherwise administering: (a) the *Inspector-General of Taxation Act 2003*; or (b) provisions of the *Ombudsman Act 1976*, to the extent that they are applied by the *Inspector-General of Taxation Act 2003*.

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

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Table 5—Records or disclosures relating to rehabilitation or compensation

(6) Table 5 is as follows:

Table 5: Records or disclosures relating to rehabilitation or compensation

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an authority of the Commonwealth established under a *Commonwealth law relating to rehabilitation or compensation	is for the purpose of performing any of its functions or exercising any of its powers under that law.
2	the *Defence Secretary	is for the purpose of administering any *Commonwealth law relating to payments in respect of dependants of members of the Defence Force.
3	an authority of a State or Territory that administers a *workers' compensation law	(a) is of information that relates to amounts withheld under Part 2-5 in Schedule 1 to this Act (about PAYG withholding); and (b) is for the purpose of ensuring that employers comply with their obligations relating to insurance or the imposition of a levy under that law.

Table 6—Records or disclosures relating to the environment

(7) Table 6 is as follows:

Table 6: Records or disclosures relating to the environment

Item	The record is made for or the disclosure is to...	and the record or disclosure...
2	the *Environment Secretary	is for the purpose of administering product stewardship (oil) benefits.

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

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Table 7—Records or disclosures relating to miscellaneous matters

(8) Table 7 is as follows:

Table 7: Records or disclosures relating to miscellaneous matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	the Australian Statistician	is for the purpose of administering the *Census and Statistics Act 1905*.
2	the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*)	is for the purpose of administering any Act to the extent to which the Comptroller-General of Customs has the general administration of the Act or any instrument under such an Act.
2A	the Electoral Commissioner (within the meaning of the *Commonwealth Electoral Act 1918*)	(a) is of information disclosed to, or obtained by, the Commissioner of Taxation on or after the commencement of this table item; and (b) is for the purpose of administering the *Commonwealth Electoral Act 1918* or the *Referendum (Machinery Provisions) Act 1984*.
3	the *Immigration Secretary or the Australian Border Force Commissioner (within the meaning of the *Australian Border Force Act 2015*)	is for the purpose of performing any functions or exercising any powers under any Act or instrument, or part of any Act or instrument, administered by the Minister administering the *Immigration Department.
5	the Fair Work Ombudsman (within the meaning of the *Fair Work Act 2009*)	(a) is of the fact of an entity's actual or reasonably suspected non-compliance with a *taxation law; and (b) is for the purpose of ensuring the entity's compliance with the *Fair Work Act 2009*.

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

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Table 7: Records or disclosures relating to miscellaneous matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5A	the Commissioner of the Australian Charities and Not-for-profits Commission	is for the purpose of administering the *Australian Charities and Not-for-profits Commission Act 2012*.
6	(a) the Commissioner of the Australian Charities and Not-for-profits Commission; or (b) the Attorney-General of a State or Territory	(a) is of information that relates to non-compliance of a *ancillary fund or charity with an *Australian law; and (b) is for the purpose of the administration of an Australian law governing trusts and charities.
6A	the Secretary of the Department administered by the Minister administering the *Petroleum and Other Fuels Reporting Act 2017*	is for the purpose of administering the *Petroleum and Other Fuels Reporting Act 2017*.
7	the Secretary of a Department administered by a Minister responsible for: (a) agriculture; or (aa) water; or (b) industry policy; or (c) investment promotion; or (d) taxation policy; or (e) foreign investment in Australia	(a) is of information contained in the Register of Foreign Ownership of Agricultural Land or Register of Foreign Ownership of Water Entitlements; and (b) is for the purpose of enabling that Department to assist that Minister to discharge that responsibility.
8	a *foreign government agency of a foreign country or part of a foreign country, or an entity acting on behalf of such an agency	(a) is of information relating to the address, contact information or income of a person who has an obligation to repay a student loan issued by or on behalf of: (i) that agency; or (ii) another *foreign government agency of that country, or that part of that country; and

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

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Table 7: Records or disclosures relating to miscellaneous matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		(b) is for the purposes of contacting the person, and recovering from the person outstanding amounts relating to the loan.
9	an *Australian government agency that administers an *Australian law referred to in paragraph 980-10(1)(a) of the *Income Tax Assessment Act 1997*	is for the purpose of administering that *Australian law in relation to whether an entity should be, or should continue to be, covered by that Australian law in the way described in that paragraph.
10	an *Australian government agency that registers entities as described in paragraph 980-10(1)(b) of the *Income Tax Assessment Act 1997*	is for the purpose of determining whether an entity should be, or should continue to be, registered as described in that paragraph.

(9) To avoid doubt, the exceptions in table items 7 and 7A in table 2 in subsection (3) have effect even if it is, or has been, in dispute or uncertain whether the individual is an employee or former employee of the employer.

355-70 Exception—disclosure for law enforcement and related purposes

(1) Section 355-25 does not apply if:

(a) the entity is the Commissioner or a *taxation officer authorised by the Commissioner to make the record or disclosure; and

(b) an item in the table in this subsection covers the making of the record or the disclosure; and

(c) if the entity is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:

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

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(i) the Commissioner;
(ii) a Second Commissioner;
(iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

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

Note 2: The Commissioner is required to include in an annual report information about disclosures made under this subsection: see section 3B.

Records or disclosures for law enforcement and related purposes

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an *authorised law enforcement agency officer, or a court or tribunal	is for the purpose of: (a) investigating a *serious offence; or (b) enforcing a law, the contravention of which is a serious offence; or (c) the making, or proposed or possible making, of a *proceeds of crime order; or (d) supporting or enforcing a proceeds of crime order.
2	an *authorised ASIO officer	is for the purpose of performing ASIO's functions under subsection 17(1) of the *Australian Security Intelligence Organisation Act 1979*.
3	a *Project Wickenby officer, or a court or tribunal	(a) is for or in connection with a *purpose of the Project Wickenby taskforce; and (b) is made before 1 July 2015, or a later prescribed day.

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

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Records or disclosures for law enforcement and related purposes		
Item	**The record is made for or the disclosure is to ...**	**and the record or disclosure ...**
4	a *taskforce officer of a prescribed taskforce, or a court or tribunal	(a) is for or in connection with a purpose of the prescribed taskforce; and (b) is made within the time limit, if any, prescribed by the regulations.
5	a Royal Commission in respect of which Letters Patent issued by the Governor-General declare that the Royal Commission is a Royal Commission to which this table item applies, or a member of such a Royal Commission	is for the purpose of the Royal Commission conducting its inquiry.
6	one or more of the following bodies: (a) a Royal Commission of a State or a Territory prescribed by the regulations for the purposes of this table item; (b) a commission of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item; (c) a board of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item	is for the purpose of: (a) investigating a *serious offence; or (b) enforcing a law, the contravention of which is a serious offence; or (c) the making, or proposed or possible making, of a *proceeds of crime order; or (d) supporting or enforcing a proceeds of crime order.

(2A) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

Meaning of various terms

(2) ***Authorised ASIO officer*** means:

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

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(a) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*; or

(b) an ASIO employee (within the meaning of that Act) or an ASIO affiliate (within the meaning of that Act) who has been authorised in writing by the Director-General of Security to perform the functions of an authorised ASIO officer under this Act.

(3) ***Authorised law enforcement agency officer*** means:

(a) the head of a *law enforcement agency; or

(b) an officer of a law enforcement agency, or a person engaged by, or otherwise performing services for, a law enforcement agency, authorised in writing by the head of the agency to perform the functions of an authorised law enforcement agency officer under this Act.

(4) ***Law enforcement agency*** means:

(a) the Australian Federal Police; or

(b) the police force of a State or Territory; or

(c) the Office of the Director of Public Prosecutions established by section 5 of the *Director of Public Prosecutions Act 1983*; or

(d) the Australian Commission for Law Enforcement Integrity; or

(e) the Australian Crime Commission; or

(f) the Independent Commission Against Corruption established by the *Independent Commission Against Corruption Act 1988* of New South Wales; or

(g) the New South Wales Crime Commission; or

(h) the Law Enforcement Conduct Commission of New South Wales; or

(i) the Independent Broad-based Anti-corruption Commission of Victoria; or

(j) the Crime and Corruption Commission of Queensland; or

(k) the Corruption and Crime Commission of Western Australia; or

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

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(ka) the Independent Commissioner Against Corruption of South Australia; or

(l) *ASIC.

(5) ***Proceeds of crime order*** means:

(a) an order, relating to an entity's commission of a *serious offence, under:

(i) Chapter 2 (about confiscation of property in relation to certain offences) or Division 1 of Part 3-1 (about examination orders) of the *Proceeds of Crime Act 2002*; or

(ii) Part II (about confiscation) or III (about control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or

(iii) a *State law or *Territory law corresponding to a law referred to in subparagraph (i) or (ii); or

(iv) Division 3 of Part XIII (about recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*; or

(b) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*); or

(c) a court order (including a declaration or direction):

(i) under a State law or Territory law; and

(ii) relating to unexplained wealth.

(6) An entity is a ***Project Wickenby officer*** if the entity:

(a) holds an office in, is employed in, or is performing services for:

(i) a *Project Wickenby taskforce agency; or

(ii) a *Project Wickenby taskforce supporting agency; and

(b) performs duties that relate to a *purpose of the Project Wickenby taskforce.

(7) The following agencies are ***Project Wickenby taskforce agencies***:

(a) the Australian Taxation Office;

(b) the Australian Crime Commission;

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

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(c) the Australian Federal Police;
(d) *ASIC;
(e) the Office of the Director of Public Prosecutions;
(f) a prescribed agency.

(8) The following agencies are ***Project Wickenby taskforce supporting agencies***:
(a) the Department administered by the Minister administering the *Crimes Act 1914*;
(b) the Australian Transaction Reports and Analysis Centre;
(c) the Australian Government Solicitor;
(d) a prescribed agency.

(9) The ***purposes of the Project Wickenby taskforce*** are to:
(a) detect; and
(b) deter; and
(c) investigate; and
(d) enforce the law relating to;
the promotion of or participation in *arrangements of an international character, or purported international character, that relate to one or more of the following:
(e) tax avoidance or evasion;
(f) breaches of laws regulating financial markets and corporations;
(g) criminal activity in the nature of fraud or obtaining benefits by deception (including deceiving investors or creditors);
(h) money laundering;
(i) concealing income or assets.

(10) ***Serious offence*** means an offence against an *Australian law that is punishable by imprisonment for a period exceeding 12 months.

(11) An entity is a ***taskforce officer*** of a prescribed taskforce if:
(a) the entity holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce; and

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

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(b) the entity's duties relate to a purpose of the prescribed taskforce.

(12) The regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection (1). A major purpose of the taskforce must be protecting the public finances of Australia.

(13) Without limiting subsection (12), regulations made for the purposes of item 4 of the table in subsection (1) may deal with the following matters:

(a) the purposes of the taskforce;

(b) the agencies in the taskforce.

355-75 Limits on disclosure to courts and tribunals

An entity who is or was a *taxation officer is not to be required to disclose to a court or tribunal *protected information that was acquired by the entity as a taxation officer except where it is necessary to do so for the purpose of carrying into effect the provisions of:

(a) a *taxation law; or

(b) the *Foreign Acquisitions and Takeovers Act 1975*, if the entity acquired the information because of a request under subsection 138(4) of that Act.

Note: See also section 8ZK of this Act (about protection of witnesses).

Subdivision 355-C—On-disclosure of protected information by other people

Guide to Subdivision 355-C

355-150 What this Subdivision is about

Someone who is not a taxation officer is prohibited from disclosing protected information, except in certain specified circumstances.

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

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Operative provisions

355-155 Offence—on-disclosure of protected information by other people

An entity commits an offence if:

(a) the entity:
  (i) makes a record of information; or
  (ii) discloses information to another entity (other than the entity to whom the information relates or that entity's agent in relation to the information) or to a court or tribunal; and

(b) the information was acquired by the first-mentioned entity under an exception in this Subdivision or in Subdivision 355-B (except subsection 355-65(1) operating in relation to item 7 in the table in subsection 355-65(4)); and

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

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(c) the first-mentioned entity did not acquire the information as a *taxation officer.

Penalty: Imprisonment for 2 years.

Note: This section also covers information acquired by an entity (other than as a taxation officer) before the commencement of this section under certain repealed or amended provisions: see item 124 of Schedule 2 to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010*.

355-160 Consent is not a defence

It is not a defence to a prosecution for an offence against section 355-155 that the entity to whom the information relates has consented to:

(a) the making of the record; or

(b) the disclosure of the information.

355-165 Generality of Subdivision not limited

Except as provided in section 355-210 (about limits on disclosure to Ministers), nothing in this Subdivision limits the generality of anything else in it.

Note: This means that each provision in this Subdivision (other than section 355-210) has an independent operation and is not to be interpreted by reference to any other provision within the Subdivision.

355-170 Exception—on-disclosure of publicly available information

Section 355-155 does not apply if the information was already available to the public (otherwise than as a result of a contravention of section 355-25, 355-155 or 355-265).

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

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

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355-172 Exception—disclosure of periodic aggregate tax information

Section 355-155 does not apply if the information is *periodic aggregate tax information.

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

355-175 Exception—on-disclosure for original purpose

(1) Section 355-155 does not apply if:

(a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the ***original purpose***); and

(b) the information was acquired by the entity under this section or an exception in Subdivision 355-B; and

(c) the record or disclosure is made by the entity for the original purpose, or in connection with the original purpose.

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

Instances of disclosures in connection with the original purpose

(2) Without limiting subsection (1), a record or disclosure is made by the entity in connection with the original purpose if:

(a) the record is made for, or the disclosure is to, any entity, court or tribunal; and

(b) the record or disclosure is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to the original purpose.

Multiple purposes

(3) Subsection (1) has effect as if a record or disclosure made by the entity for a purpose specified in column 3 of the following table were made in connection with the original purpose:

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

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Records or disclosures for purpose connected with the original purpose		
Item	**Original purpose**	**Purpose connected with the original purpose**
1	a *purpose of the Project Wickenby taskforce	another purpose of that taskforce.
2	a purpose of a prescribed taskforce	another purpose of that taskforce.
3	one of the purposes specified in column 3 of item 1 of the table in subsection 355-70(1)	the other of those purposes.
4	one of the purposes specified in column 3 of item 6 of the table in subsection 355-70(1)	one of the other purposes specified in column 3 of item 6 of that table.

355-180 Exception—on-disclosure to Ministers in relation to statutory powers or functions

Section 355-155 does not apply if:

(a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the ***original purpose***); and

(b) the record is made for, or the disclosure is to, a Minister who has a statutory power or function in relation to the original purpose; and

(c) the record or disclosure is for the purpose of enabling the Minister to:

(i) decide whether to exercise the power or perform the function; or

(ii) exercise the power or perform the function.

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

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

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355-182 Exception—on-disclosure of certain information to Commonwealth Ombudsman

(1) Section 355-155 does not apply if:

(a) the entity is an officer of an *Australian government agency; and

(b) the information was acquired by the entity under the exception in subsection 355-65(1) operating in relation to item 10 in the table in subsection 355-65(2); and

(c) the record is made for, or the disclosure is to:

(i) the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman; or

(ii) a member of staff referred to in subsection 31(1) of the *Ombudsman Act 1976*; and

(d) the record or disclosure is for the purpose of the performance of a function or duty of the Commonwealth Ombudsman, the Deputy Commonwealth Ombudsman or the member of staff, under the *Ombudsman Act 1976*.

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

(2) Section 355-155 does not apply if:

(a) the entity is:

(i) the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman; or

(ii) a member of staff referred to in subsection 31(1) of the *Ombudsman Act 1976*; and

(b) the information was acquired by the entity under subsection (1) or this subsection; and

(c) the record or disclosure is for the purpose of the performance of a function or duty of the Commonwealth Ombudsman, the Deputy Commonwealth Ombudsman or the member of staff, under the *Ombudsman Act 1976*.

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

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

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355-185 Exception—on-disclosure in relation to IGIS

(1) Section 355-155 does not apply if:

(a) the entity is an *authorised ASIO officer; and

(b) the record is made for, or the disclosure is to, the Inspector-General of Intelligence and Security holding office under the *Inspector-General of Intelligence and Security Act 1986* or a member of staff appointed to assist the Inspector-General under that Act; and

(c) the record or disclosure is for the purpose of performing the Inspector-General's, or the member of staff's, duties in relation to ASIO or ASIO employees (within the meaning of the *Australian Security Intelligence Organisation Act 1979*) or ASIO affiliates (within the meaning of that Act).

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

(2) Section 355-155 does not apply if:

(a) the entity is the Inspector-General of Intelligence and Security holding office under the *Inspector-General of Intelligence and Security Act 1986* or a member of staff appointed to assist the Inspector-General under that Act; and

(b) the information was acquired by the entity under subsection (1) or this paragraph; and

(c) the record or disclosure is for the purpose of performing the Inspector-General's, or the officer's, duties in relation to ASIO or ASIO employees (within the meaning of the *Australian Security Intelligence Organisation Act 1979*) or ASIO affiliates (within the meaning of that Act).

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

355-190 Exception—on-disclosure in relation to ASIO

(1) Section 355-155 does not apply if:

(a) the entity is an *authorised ASIO officer; and

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

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(b) the record is made for, or the disclosure is to, an officer of a *law enforcement agency; and

(c) the record or disclosure is for the purpose of, or in connection with:

(i) investigating a *serious offence; or

(ii) enforcing a law, the contravention of which is a serious offence; or

(iii) the making, or proposed or possible making, of a *proceeds of crime order.

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

(2) Section 355-155 does not apply if:

(a) the entity is an officer of a *law enforcement agency; and

(b) the information was acquired by the entity under subsection (1) or this paragraph; and

(c) the record or disclosure is for the purpose of, or in connection with:

(i) investigating a *serious offence; or

(ii) enforcing a law, the contravention of which is a serious offence; or

(iii) the making, or proposed or possible making, of a *proceeds of crime order.

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

355-195 Exception—on-disclosure by Royal Commissions

(1) Section 355-155 does not apply if:

(a) the entity is a member of a Royal Commission to which column 2 of item 5 of the table in subsection 355-70(1) relates; and

(b) the information was acquired by the entity under item 5 of the table in subsection 355-70(1); and

(c) the record or disclosure is in accordance with section 6P of the *Royal Commissions Act 1902*.

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

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

Note 2: Section 6P of the *Royal Commissions Act 1902* sets out the circumstances in which a Royal Commission covered by that Act may disclose information it acquires in the course of its inquiry.

(2) Section 355-155 does not apply to particular information if the information was disclosed under subsection (1).

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

355-200 Exception—records made in compliance with Australian laws

Section 355-155 does not apply if the record is made in compliance with a requirement of an *Australian law.

Example: The Australian Taxation Office obtains information about an entity from a credit reporting body by giving a notice under paragraph 353-10(1)(c). The body is not committing an offence under section 355-155 by making a written note of the disclosure as required by subsection 20E(5) of the *Privacy Act 1988*.

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

355-205 Limits on on-disclosure to courts or tribunals

An entity is not to be required to disclose to a court or tribunal *protected information that was acquired by the entity under Subdivision 355-B or this Subdivision, except where it is necessary to do so for the purpose of carrying into effect the provisions of:

(a) a *taxation law; or

(b) if the entity has or had duties, functions or powers under the *Foreign Acquisitions and Takeovers Act 1975*—that Act.

Note: See also section 8ZK of this Act (about protection of witnesses).

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

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355-210 Limits on on-disclosure to Ministers

(1) Sections 355-170, 355-180 and 355-195 are the only exceptions to the prohibition in section 355-155 on which an entity who has acquired *protected information (otherwise than as a *taxation officer) can rely in making a record of the information for, or disclosing the information to, a Minister, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-155 are not affected by this subsection. For example, an entity may disclose information to a Minister if the Minister is the entity to whom the information relates, or is another entity's agent in relation to the information.

(2) Subsection (1) has effect despite section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of *protected information by the entity to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable an entity to disclose protected information to a committee of one or both Houses of the Parliament.

Subdivision 355-D—Disclosure of protected information that has been unlawfully acquired

Guide to Subdivision 355-D

355-260 What this Subdivision is about

The disclosure of protected tax information that has been unlawfully acquired is prohibited.

Table of sections

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

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355-275 Exception—disclosure in relation to a taxation law
355-280 Limits on disclosure to courts and tribunals

Operative provisions

355-265 Offence—disclosure of protected information acquired in breach of a taxation law

An entity commits an offence if:

(a) the entity:
  (i) makes a record of information; or
  (ii) discloses information to another entity (other than the entity to whom the information relates or that entity's agent in relation to the information) or to a court or tribunal; and
(b) the information is *protected information; and
(c) the information was acquired by the entity in breach of a provision of a *taxation law (including this provision); and
(d) the information was not acquired by the entity as a *taxation officer.

Penalty: Imprisonment for 2 years.

355-270 Exception—disclosure of publicly available information

Section 355-265 does not apply if the information was already available to the public (otherwise than as a result of a contravention of that section, or section 355-25 or 355-155).

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

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

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355-275 Exception—disclosure in relation to a taxation law

Section 355-265 does not apply:

(a) to the extent that the entity's actions are required or permitted by a *taxation law or reasonably necessary in order to comply with an obligation imposed by a taxation law; or

(b) if the record was made for or the information was disclosed:

(i) to a *taxation officer; and

(ii) for a purpose connected with administering a *taxation law.

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

355-280 Limits on disclosure to courts and tribunals

An entity is not to be required to disclose to a court or tribunal *protected information that was acquired by the entity under this Subdivision, except where it is necessary to do so for the purpose of carrying into effect the provisions of a *taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

Subdivision 355-E—Other matters

Guide to Subdivision 355-E

355-320 What this Subdivision is about

The Commissioner may require a taxation officer to make an oath of affirmation to protect information.

The Federal Court has power to grant an injunction restraining an entity from engaging in conduct that would constitute an offence against this Division.

The Commissioner must issue instructions relating to the disclosure of protected tax information.

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

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355-335 Procedures for disclosing protected information

Operative provisions

355-325 Oath or affirmation to protect information

(1) A *taxation officer must, if and when required by the Commissioner to do so, make an oath or affirmation to protect information in accordance with this Division.

(2) The Commissioner may determine, in writing:
  (a) the form of the oath or affirmation; and
  (b) the manner in which the oath or affirmation must be made.

355-330 Injunctions to prevent contravention of non-disclosure provisions

Injunctions

(1) If an entity has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence against this Division, the Federal Court of Australia may, on the application of the Commissioner, grant an injunction:
  (a) restraining the entity from engaging in the conduct; and
  (b) if in the court's opinion it is desirable to do so—requiring the entity to do any act or thing.

Interim injunctions

(2) If an application is made to the court for an injunction under subsection (1), the court may, before considering the application, grant an interim injunction restraining an entity from engaging in

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

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conduct of the kind referred to in that subsection pending the determination of the application.

Discharge or variation of injunctions

(3) The court may discharge or vary an injunction granted under this section.

Exercise of power to grant injunctions

(4) If an application is made to the court for the grant of an injunction restraining an entity from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised:
   (a) if the court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or
   (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any other entity if the entity engages in conduct of that kind.

(5) The power of the court to grant an injunction requiring an entity to do a particular act or thing may be exercised:
   (a) if the court is satisfied that the entity has refused or failed to do that act or thing—whether or not it appears to the court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
   (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the entity will refuse or fail to do that act or thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any other entity if the entity refuses or fails to do that act or thing.

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

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No undertakings as to damages

(6) If the Commissioner makes an application to the court for the grant of an injunction under this section, the court must not require the Commissioner or any other entity, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

Other powers of the court unaffected

(7) The powers conferred on the court under this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise.

355-335 Procedures for disclosing protected information

(1) The Commissioner must issue instructions in relation to the procedures to be followed by *taxation officers in disclosing *protected information under the exceptions in sections 355-55 (about disclosures to Ministers), 355-65 (about disclosures for other government purposes) and 355-70 (about disclosures for law enforcement and related purposes).

(2) The instructions must:
  (a) be issued within 6 months after the commencement of this section; and
  (b) be in writing; and
  (c) provide for the matters mentioned in subsection (3); and
  (d) be published on the Australian Taxation Office website.

(3) The matters are:
  (a) the processes to be followed before *protected information can be disclosed by a *taxation officer under the exceptions in sections 355-55, 355-65 and 355-70; and
  (b) the processes involved in obtaining and giving the agreement mentioned in paragraphs 355-55(1)(c) and 355-70(1)(c); and
  (c) other matters the Commissioner considers appropriate.

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

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(4) Without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Commissioner may vary or revoke the instructions.

(5) A failure to comply with the time limit in paragraph (2)(a) does not:

(a) prevent the Commissioner from issuing the instructions after this time; or

(b) affect the validity of the instructions when issued.

(6) A failure to comply with the instructions does not, of itself, mean that a *taxation officer is not entitled to rely on the exceptions in sections 355-55, 355-65 and 355-70.

(7) The instructions are not a legislative instrument.

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

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Division 356—General administration of tax laws

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Guide to Division 356

356-1 What this Division is about

This Division gives the Commissioner the general administration of the indirect tax laws and the *Major Bank Levy Act 2017*.

Subdivision 356-A—Indirect tax laws

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356-5 Commissioner has general administration of indirect tax laws

356-5 Commissioner has general administration of indirect tax laws

The Commissioner has the general administration of each *indirect tax law.

Subdivision 356-B—Major bank levy

Table of sections

356-10 Commissioner has general administration of major bank levy

356-10 Commissioner has general administration of major bank levy

The Commissioner has the general administration of the *Major Bank Levy Act 2017*.

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

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Part 5-5—Rulings

Division 357—Object and common rules

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Guide to Division 357

357-1 What this Division is about

This Division sets out the object of this Part, and common rules that apply to public, private and oral rulings. (For the rules specific to each of those kinds of ruling, see Divisions 358, 359, 360 and 362.)

A ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you.

A ruling binds the Commissioner if it applies to you and you act in accordance with it. If you do act in accordance with it and the law turns out to be less favourable to you than the ruling provides, you are protected by the ruling from any adverse consequences.

The Division also sets out some other general rules for rulings.

Note: In limited circumstances, Innovation and Science Australia can make rulings.

Subdivision 357-A—Object of this Part

Table of sections

357-5 Object of this Part

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

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357-5 Object of this Part

(1) The object of this Part is to provide a way for you to find out the Commissioner's view about how certain laws administered by the Commissioner apply to you so that the risks to you of uncertainty when you are self assessing or working out your tax obligations or entitlements are reduced.

(2) This object is achieved by:

(a) making advice in the form of rulings by the Commissioner available on a wide range of matters and to many taxpayers; and

(b) ensuring that the Commissioner provides rulings in a timely manner; and

(c) enabling the Commissioner to obtain, and make rulings based on, relevant information; and

(d) protecting you from increases in tax and from penalties and interest where you rely on rulings; and

(e) protecting you from decreases in entitlements where you rely on rulings; and

(f) limiting the ways the Commissioner can alter rulings to your detriment; and

(g) giving you protection from interest charges where you rely on other advice from the Commissioner, or on the Commissioner's general administrative practice.

(3) A further object of this Part is to provide a way for you to find out *Innovation and Science Australia's view about whether activities are not ineligible activities for the purposes of applying capital gains tax provisions to venture capital investments.

Note: For rulings by Innovation and Science Australia: see Division 362.

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

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Subdivision 357-B—Common rules for rulings

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Common rules for private and oral rulings

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Rules for all rulings

357-50 Scope of Division

This Division applies to *public rulings, *private rulings and *oral rulings.

Note: Section 362-70 modifies how this Subdivision applies to rulings by Innovation and Science Australia.

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

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357-55 The provisions that are relevant for rulings

Provisions of Acts and regulations of which the Commissioner has the general administration are relevant for rulings if the provisions are about any of the following:

(a) *tax;
(b) *Medicare levy;
(c) fringe benefits tax;
(d) *franking tax;
(e) *withholding tax;
(f) *mining withholding tax;
(fa) *petroleum resource rent tax;
(fb) *indirect tax;
(fc) *excise duty;
(fd) levy under the *Major Bank Levy Act 2017*;
(g) the administration or collection of those taxes, levies and duties;
(h) a grant or benefit mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000*, or the administration or payment of such a grant or benefit;
(i) a *net fuel amount, or the administration of a net fuel amount;
(ia) an *assessed net fuel amount, or the collection or payment of an assessed net fuel amount;
(j) a *net amount, or the administration of a net amount;
(ja) an *assessed net amount, or the collection or payment of an assessed net amount;
(k) a *wine tax credit, or the administration or payment of a wine tax credit.

357-60 When rulings are binding on the Commissioner

(1) Subject to subsection (5), a ruling binds the Commissioner in relation to you (whether or not you are aware of the ruling) if:
(a) the ruling applies to you; and

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

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(b) you rely on the ruling by acting (or omitting to act) in accordance with the ruling.

Example 1: A public ruling is expressed to apply to a class of entities in relation to a particular scheme. Tim is a member of that class of entities and he is one of a number of taxpayers who enter into that scheme. The ruling applies to Tim.

Tim relies on the ruling by lodging an income tax return that is in accordance with the ruling.

Under the ruling, Tim's deductions in relation to the scheme are worked out to be a particular amount. Because Tim has relied on the ruling, the Commissioner must use that amount in making Tim's assessment (unless Tim stops relying on the ruling or the law is more favourable to him: see sections 357-65 and 357-70).

Example 2: Cecelia applies for, and obtains, a private ruling that, when she makes a payment in specified circumstances, she would not have to withhold an amount under a relevant provision. Cecelia makes the payment in the circumstances specified in the ruling, so the ruling applies to her.

Cecelia relies on the ruling by not withholding an amount from the payment. The Commissioner must not apply the provision in relation to Cecelia in a way that is inconsistent with the ruling (unless Cecelia stops relying on the ruling or the law is more favourable to her: see sections 357-65 and 357-70).

Example 3: Cathie obtains a private ruling that a type of supply she makes is GST-free. She relies on the ruling by:

(a) giving her customers invoices that show no GST payable on the supplies; and

(b) lodging her GST return on the basis that the supplies are GST-free.

The Commissioner must administer the GST law in relation to Cathie on the basis that the supplies to which the ruling relates are GST-free. This does not apply if Cathie stops relying on the ruling, such as by issuing tax invoices that show GST payable on the supplies: see paragraph (1)(b).

Note 1: A ruling about the amount of tax payable that binds the Commissioner provides protection in relation to that amount. There is no shortfall interest charge or tax shortfall penalty payable in respect of that amount as there can be no shortfall in tax payable.

Note 2: A ruling about the operation of a provision would stop applying to you if the provision is repealed, or is amended to have a different effect.

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

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However, if the provision is re-enacted and expresses the same ideas as the old provision, the ruling would still apply: see section 357-85.

(2) You may rely on the ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law. It is not necessary to do so at the first opportunity.

GST rulings

(3) The *GST payable on a *supply or importation is the amount worked out in accordance with a ruling (if any) that:

(a) relates to the GST payable on the supply or importation; and

(b) binds the Commissioner in relation to the supplier or importer.

Note: The ruling will stop affecting the GST payable if the supplier or importer stops relying on the ruling: see paragraph (1)(b).

(4) Subsection (3) does not apply for the purposes of an objection to the ruling under section 359-60.

Indirect tax rulings

(5) An *indirect tax or excise ruling (except to the extent that the ruling relates to an *excise law) binds the Commissioner in relation to:

(a) an entity (the ***representative entity***) that is:

(i) the *representative member of a *GST group; or

(ii) the *joint venture operator of a *GST joint venture; or

(iii) the *representative of an *incapacitated entity; and

(b) an entity (the ***member entity***) that is:

(i) a *member of the GST group; or

(ii) a *participant in the GST joint venture; or

(iii) the incapacitated entity;

if, and only if, both the representative entity and the member entity rely on the ruling by acting (or omitting to act) in accordance with the ruling.

(6) Subsection (5) applies if:

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

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(a) the ruling applies to the member entity; and

(b) the ruling relates to what would be:

(i) a liability of the member entity to *indirect tax; or

(ii) an entitlement of the member entity to a credit (other than a *fuel tax credit) under an *indirect tax law; or

(iii) an *increasing adjustment, a *decreasing adjustment, or a luxury car tax adjustment (within the meaning of the *Luxury Car Tax Act), that the member entity has;

if the rules in the indirect tax law relating to *GST groups, *GST joint ventures or *incapacitated entities did not apply; and

(c) because of those rules:

(i) if that indirect tax were payable, it would be payable by the representative entity; or

(ii) if there was an entitlement to that credit, it would be an entitlement of the representative entity; or

(iii) if any entity had that adjustment, it would be an adjustment that the representative entity had.

357-65 Stopping relying on a ruling

(1) You can stop relying on a ruling. You do this by acting (or omitting to act) in a way that is not in accordance with the ruling.

Note: There is no penalty for a shortfall resulting from failing to follow a ruling. However, there are penalties for shortfalls resulting from failing to take reasonable care, and from taking a position about a large income tax item that is not reasonably arguable: see Division 284.

(2) You may stop relying on a ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law.

(3) Having stopped relying on a ruling, you may rely on the ruling again unless prevented from doing so by a time limit imposed by a *taxation law.

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

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357-70 Commissioner may apply the law if more favourable than the ruling

(1) The Commissioner may apply a relevant provision to you in the way it would apply if you had not relied on a ruling if:

(a) doing so would produce a more favourable result for you; and

(b) the Commissioner is not prevented from doing so by a time limit imposed by a *taxation law.

(2) The Commissioner does not have a duty to consider whether to apply subsection (1) to you, whether he or she is requested to do so by you or by any other entity.

357-75 Inconsistent rulings

(1) The rules in this table have effect if:

(a) a ruling and a later ruling both apply to you; and

(b) the 2 rulings are inconsistent.

However, the rules in the table only apply to the extent of the inconsistency, and do not apply to *indirect tax or excise rulings.

Inconsistent rulings (other than indirect tax or excise rulings)

Item	If the earlier ruling is:	And the later inconsistent ruling is:	The result is:
1	A *public ruling	Any ruling	You may rely on either ruling.
2	A *private ruling or an *oral ruling	A private ruling or an oral ruling	If you informed the Commissioner about the existence of the earlier ruling when you applied for the later ruling, the earlier ruling is taken not to have been made. Otherwise, the later ruling is taken not to have been made.

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

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Inconsistent rulings (other than indirect tax or excise rulings)			
Item	**If the earlier ruling is:**	**And the later inconsistent ruling is:**	**The result is:**
3	A *private ruling or an *oral ruling	A *public ruling	The earlier ruling is taken not to have been made if, when the later ruling is made: (a) the income year or other period to which the rulings relate has not begun; and (b) the *scheme to which the rulings relate has not begun to be carried out. Otherwise, you may rely on either ruling.

(1A) If:

(a) 2 inconsistent *indirect tax or excise rulings apply to you; and

(b) the rulings are both *public rulings;

then, to the extent of the inconsistency, you may rely on either of the rulings.

(1B) If:

(a) 2 inconsistent *indirect tax or excise rulings apply to you; and

(b) at least one of the rulings is not a *public ruling;

then, to the extent of the inconsistency:

(c) the later ruling is taken to apply from the later of:

(i) the time it is made; and

(ii) the time (if any) specified in the ruling as being the time from which it begins to apply; and

(d) the earlier ruling is taken to cease to apply at that later time.

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

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(2) If 3 or more rulings apply to you and the rulings are inconsistent, apply the rules in this section to each combination of 2 rulings in the order in which they were made.

357-80 Contracts for schemes

For the purposes of this Part, if a contract requiring a *scheme has been entered into, the scheme is taken to have begun to be carried out.

357-85 Effect on ruling if relevant provision re-enacted

If:

(a) the Commissioner makes a ruling about a relevant provision (the ***old provision***); and

(b) that provision is re-enacted or remade (with or without modifications, and whether or not the old provision is repealed);

the ruling is taken also to be a ruling about that provision as re-enacted or remade (the ***new provision***), but only so far as the new provision expresses the same ideas as the old provision.

Note 1: Section 357-55 specifies the relevant provisions.

Note 2: Ideas in taxation provisions are not necessarily different just because different forms of words are used: see section 15AC of the *Acts Interpretation Act 1901* and section 1-3 of the *Income Tax Assessment Act 1997*.

357-90 Validity of ruling not affected by formal defect

The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with.

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

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Common rules for public and private rulings

357-95 Electronic communications

A communication between the Commissioner and another entity made for the purposes of a *public ruling or *private ruling may be made electronically.

357-100 Evidence

The production of:

(a) a *public ruling or *private ruling; or

(b) a document signed by the Commissioner, a *Second Commissioner or a *Deputy Commissioner, purporting to be a copy of the ruling or of a notice of withdrawal of a public ruling;

is conclusive evidence of the proper making of the ruling, or of the withdrawal of the public ruling.

Common rules for private and oral rulings

357-105 Further information must be sought

(1) If the Commissioner considers that further information is required to make a *private ruling or an *oral ruling, the Commissioner must request the applicant to give that information to him or her.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner requests further information under this section, that period is extended: see subsection 359-50(2).

(2) The Commissioner may decline to make the ruling if the applicant does not give the information to the Commissioner within a reasonable time.

Note: The Commissioner must give the applicant written reasons for declining to make a private ruling: see section 359-35.

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

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357-110 Assumptions in making private or oral ruling

(1) If the Commissioner considers that the correctness of a *private ruling or an *oral ruling would depend on which assumptions were made about a future event or other matter, the Commissioner may:

(a) decline to make the ruling; or

(b) make such of the assumptions as the Commissioner considers to be most appropriate.

(2) Before making the ruling, the Commissioner must:

(a) tell the applicant which assumptions (if any) the Commissioner proposes to make; and

(b) give the applicant a reasonable opportunity to respond.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner tells the applicant about assumptions the Commissioner proposes to make under this section, that period is extended: see subsection 359-50(2).

357-115 Additional information provided by applicant

In considering an application for a *private ruling or an *oral ruling, the Commissioner may take into account additional information provided by the applicant after the application was made (whether in response to a request under section 357-105 or otherwise).

357-120 Commissioner may take into account information from third parties

In making a *private ruling or an *oral ruling, the Commissioner may take into account any relevant information provided by an entity other than the applicant (whenever it was provided) if the Commissioner:

(a) tells the applicant what that information is and that the Commissioner intends to take the information into account; and

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

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(b) gives the applicant a reasonable opportunity to respond before making the ruling.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner tells the applicant about third party information under this section, that period is extended: see subsection 359-50(2).

357-125 Applications and objections not to affect obligations and powers

The fact that you have applied for a *private ruling or an *oral ruling, or have made an objection against a private ruling, does not affect:

(a) your obligation to lodge a return or do anything else; or

(b) the Commissioner's power to make or amend an assessment or do anything else.

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

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Division 358—Public rulings

Guide to Division 358

358-1 What this Division is about

A public ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to entities generally or a class of entities.

The Commissioner must publish the ruling.

A public ruling may be withdrawn.

Note: Division 357 has some rules that relate to rulings generally.

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Withdrawing public rulings

358-20 Withdrawing public rulings

Making public rulings

358-5 What is a public ruling?

(1) The Commissioner may make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to:

(a) entities generally or a class of entities; or

(b) entities generally, or a class of entities, in relation to a class of *schemes; or

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

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(c) entities generally, or a class of entities, in relation to a particular scheme.

Note: Section 357-55 specifies the relevant provisions.

(2) Such a ruling may cover any matter involved in the application of the provision.

(3) Such a ruling is a ***public ruling*** if it:
(a) is published; and
(b) states that it is a public ruling.

(4) The Commissioner must publish notice of the making of a *public ruling in the *Gazette*.

Note: The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with: see section 357-90.

358-10 Application of public rulings

(1) A *public ruling applies from the time it is published or from such earlier or later time as is specified in the ruling.

(2) A *public ruling, other than an *indirect tax or excise ruling, that relates to a *scheme does not apply to you if the scheme has begun to be carried out when the ruling is published and:
(a) the ruling changes the Commissioner's general administrative practice; and
(b) the ruling is less favourable to you than the practice.

358-15 When a public ruling ceases to apply

(1) A *public ruling may specify the time at which it ceases to apply.

(2) If a *public ruling does not do this, it applies until it is withdrawn.

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

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Withdrawing public rulings

358-20 Withdrawing public rulings

(1) The Commissioner may withdraw a *public ruling, either wholly or to an extent, by publishing notice of the withdrawal.

(2) The withdrawal takes effect from the time specified in the notice. That time must not be before the time the notice is published.

(3) To the extent that a *public ruling, other than an *indirect tax or excise ruling, is withdrawn, it continues to apply to *schemes to which it applied that had begun to be carried out before the withdrawal but does not apply to schemes that begin to be carried out after the withdrawal.

Note: A scheme is taken to have begun to be carried out if a contract requiring the scheme has been entered into: see section 357-80.

(4) The Commissioner must publish notice of the withdrawal of a *public ruling in the *Gazette*.

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

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Division 359—Private rulings

Guide to Division 359

359-1 What this Division is about

A private ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you in relation to a specified scheme. Private rulings are usually made on application by you, your agent or your legal personal representative.

The Commissioner must make the ruling applied for, except in certain cases. If you are entitled to receive a ruling, you can object if the Commissioner takes too long to make it.

The Commissioner must record the ruling in writing and give a copy of it to you. The ruling must include certain details.

If you are dissatisfied with the ruling, you may object to it.

Note: Division 357 has some common rules that affect private rulings.

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Private rulings

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

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Private rulings

359-5 Private rulings

(1) The Commissioner may, on application, make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to you in relation to a specified *scheme. Such a ruling is called a ***private ruling***.

Note: Section 357-55 specifies the relevant provisions.

(2) A *private ruling may cover any matter involved in the application of the provision.

359-10 Applying for a private ruling

(1) You, your *agent or your *legal personal representative may apply to the Commissioner for a *private ruling.

(2) An application for a *private ruling must be made in the *approved form.

(3) You, your *agent or your *legal personal representative may withdraw the application at any time before the ruling is made. The Commissioner must confirm the withdrawal in writing.

359-15 Private rulings to be given to applicants

The Commissioner makes a *private ruling by recording the ruling in writing and giving a copy of it to the applicant. The copy may be given electronically.

359-20 Private rulings must contain certain details

(1) A *private ruling must state that it is a private ruling.

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

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(2) A *private ruling must identify the entity to whom it applies and specify the relevant *scheme and the relevant provision to which it relates.

Note 1: The Commissioner must tell the applicant which assumptions the Commissioner made in making the ruling: see section 357-110.

Note 2: Section 357-55 specifies the relevant provisions.

359-25 Time of application of private rulings

(1) A *private ruling may specify the time from which it begins to apply and the time at which it ceases to apply.

(2) The specified start time, or end time, may be before, when, or after the *private ruling is made and may be determined by reference to a specified event.

(3) A *private ruling that does not specify a start time applies from the time when it is made.

(4) A *private ruling, other than an *indirect tax or excise ruling, that does not specify an end time ceases to apply at the end of the income year or other accounting period in which it started to apply.

Note: A private ruling that:
(a) is an indirect tax or excise ruling; and
(b) does not specify an end time;
continues to apply until it is overridden by a later indirect tax or excise ruling: see subsection 357-75(1B).

359-30 Ruling for trustee of a trust

A *private ruling given to or for the trustee of a trust and relating to the affairs of the trust also applies to:

(a) if the ruling is not an *indirect tax or excise ruling—the beneficiaries of the trust; and

(b) in any case—another trustee who is appointed to replace a trustee.

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

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359-35 Dealing with applications

(1) The Commissioner must comply with an application for a *private ruling and make the ruling. However, this obligation is subject to subsections (2) and (3).

(2) The Commissioner may decline to make a *private ruling if:

(a) the Commissioner considers that making the ruling would prejudice or unduly restrict the administration of a *taxation law; or

(b) the matter sought to be ruled on is already being, or has been, considered by the Commissioner for you.

(3) The Commissioner may also decline to make a *private ruling if the matter sought to be ruled on is how the Commissioner would exercise a power under a relevant provision and the Commissioner has decided or decides whether or not to exercise the power.

Example: Michael applies for a private ruling on the way in which the Commissioner might exercise the Commissioner's discretion under section 255-10 (deferring the payment time). Rather than make the ruling, the Commissioner decides to defer the time at which an amount would otherwise be payable by Michael.

Note: The Commissioner may also decline to make a private ruling if:

(a) the Commissioner has requested the applicant to give further information under section 357-105 and the applicant has not given it to the Commissioner within a reasonable time; or

(b) the Commissioner considers that the correctness of a private ruling would depend on which assumptions were made about a future event or other matter (see section 357-110).

(4) The Commissioner must give the applicant written reasons for declining to make a *private ruling.

359-40 Valuations

(1) If making a *private ruling would require determining the value of any thing, the Commissioner may:

(a) refer the valuation to a valuer; or

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

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(b) refer a valuation provided by the applicant to a valuer for review.

Note: The Commissioner may request further information: see section 357-105.

(2) If the Commissioner refers the valuation to a valuer, the Commissioner must tell the applicant that he or she has done so.

(3) When the valuer has completed its work in relation to the valuation, the Commissioner must tell the applicant that it has done so.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner refers a valuation to a valuer under this section, that period is extended: see subsection 359-50(2).

(4) The Commissioner may charge the applicant an amount in accordance with the regulations for the valuer making or reviewing the valuation.

(5) This section does not apply to a valuation of a gift or contribution for the purposes of Division 30 of the *Income Tax Assessment Act 1997*.

359-45 Related rulings

If the Commissioner is making a *private ruling (the ***first ruling***) you sought on the way in which, in the Commissioner's opinion, a relevant provision applies or would apply to you, the Commissioner may:

(a) make the first ruling a ruling on the way in which another relevant provision applies or would apply to you; or

(b) make an additional private ruling on the way in which:

(i) another relevant provision applies or would apply; or

(ii) a relevant provision applies or would apply to you in relation to a *scheme related to the scheme to which the first ruling applies.

Note: Section 357-55 specifies the relevant provisions.

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

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359-50 Delays in making private rulings

(1) The applicant for a *private ruling may give the Commissioner a written notice requiring him or her to make the ruling if, at the end of 60 days after the application was made, the Commissioner has neither:

(a) made the ruling; nor

(b) told the applicant that the Commissioner has declined to make the ruling.

(2) The 60 day period mentioned in subsection (1) is extended in a circumstance applicable under the table by the extension period applicable to that circumstance. If 2 or more circumstances are applicable, ignore any overlap between the periods of extension.

Extending the 60 day period

Item	If the Commissioner, during the 60 day period:	The 60 day period is extended by the number of days in this period:
1	requests further information under section 357-105	the period starting on the day the information was requested and ending on the day it is received by the Commissioner
2	tells the applicant about assumptions the Commissioner proposes to make under section 357-110	the period starting on the day the Commissioner tells the applicant and ending on the day on which the Commissioner receives the applicant's response about the assumptions
3	tells the applicant about information provided by a third party that the Commissioner proposes to take into account under section 357-120	the period starting on the day the Commissioner tells the applicant and ending on the day on which the Commissioner receives the applicant's response about the information

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

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Extending the 60 day period		
Item	**If the Commissioner, during the 60 day period:**	**The 60 day period is extended by the number of days in this period:**
4	refers a valuation to a valuer under section 359-40	the period starting on the day the Commissioner tells the applicant about the referral and ending on the day on which the Commissioner tells the applicant that the valuer has completed its work in relation to the valuation

(3) The applicant may object, in the manner set out in Part IVC, against the Commissioner's failure to make the ruling if the Commissioner:

(a) does not make the ruling within 30 days of the notice under subsection (1) being given; and

(b) has not otherwise declined to make the ruling by the end of that period.

(4) The applicant must lodge with the objection a draft *private ruling.

359-55 Revised private rulings

(1) The Commissioner may make a revised *private ruling that applies to you if:

(a) the Commissioner had previously made a private ruling that applies to you; and

(b) if the ruling is not an *indirect tax or excise ruling—when the Commissioner makes the revised private ruling:

(i) the *scheme to which the earlier ruling relates has not begun to be carried out; and

(ii) if the earlier ruling relates to an income year or other accounting period—that year or period has not begun.

Note: Your private ruling may be affected by a later inconsistent ruling: see section 357-75.

(2) The Commissioner must give you a copy of the revised *private ruling. The copy may be given electronically.

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

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(3) The Commissioner may make the revised *private ruling whether or not there is an application for the revised ruling.

(4) When the revised *private ruling is made, the ruling in its initial form stops applying to you.

(5) However, if:

(a) the *private ruling is an *indirect tax or excise ruling; and

(b) the revised private ruling specifies the time from which the revision begins to apply (being a time after the time the revision is made);

the ruling in its initial form stops applying to you at the time so specified.

359-60 Objections, reviews and appeals relating to private rulings

(1) You may object against a *private ruling that applies to you in the manner set out in Part IVC if you are dissatisfied with it.

(2) The ruling is taken to be a taxation decision (within the meaning of that Part).

(3) However, you cannot object against a *private ruling if:

(a) there is an assessment for you for the income year or other accounting period to which the ruling relates; or

(b) the ruling relates to *withholding tax or *mining withholding tax that has become due and payable; or

(c) all of the following subparagraphs apply:

(i) the ruling relates to *excise duty, or another amount, payable in relation to the goods under an *excise law;

(ii) the Commissioner has made a decision about the excise duty, or other amount, payable in relation to those goods;

(iii) the decision is reviewable under an excise law.

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

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359-65 Commissioner may consider new information on objection

(1) In deciding whether to allow (wholly or in part), or to disallow, an objection under Part IVC against a *private ruling, the Commissioner may consider any additional information that the Commissioner did not consider when making the ruling.

(2) For information you do not have, the Commissioner must tell you what the information is and give you a reasonable opportunity to respond before allowing or disallowing the objection.

(3) However, if the Commissioner considers that the additional information is such that the *scheme to which the application related is materially different from the scheme to which the ruling relates:

(a) the Commissioner must request the applicant to make an application for another *private ruling; and

(b) the objection is taken not to have been made.

359-70 Successful objection decision alters ruling

A *private ruling has effect as altered by an objection decision (within the meaning of Part IVC) made by the Commissioner if:

(a) the Commissioner made the decision allowing, wholly or in part, a taxation objection (within the meaning of that Part) against the ruling; and

(b) the period in which an appeal against, or an application for the review of, the decision may be made has ended without such an appeal or application being made.

Note: See sections 14ZZC and 14ZZN for the time limits.

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

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Division 360—Oral rulings

Guide to Division 360

360-1 What this Division is about

An oral ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you. Oral rulings are given on oral application by you or your legal personal representative.

Oral rulings can only be given for individuals.

The Commissioner must give the ruling unless he or she considers that the advice you are seeking relates to a business matter or a complex matter.

The Commissioner must give the ruling orally and must give you a registration identifier for the ruling.

Note: Division 357 has some common rules that affect oral rulings.

Table of sections

Oral rulings

360-5 Applying for and making of oral rulings
360-10 Withdrawing an application for an oral ruling
360-15 Commissioner determinations

Oral rulings

360-5 Applying for and making of oral rulings

Applying for oral rulings

(1) If you are an individual, you or your *legal personal representative may apply to the Commissioner for advice on the way in which the

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

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Commissioner considers a relevant provision applies or would apply to you in relation to a specified *scheme.

Note: Section 357-55 specifies the relevant provisions.

(2) An application under this section must be made orally and in the manner determined under section 360-15.

(2A) You or your *legal personal representative must not apply for advice under this section in relation to:

(a) an *indirect tax law (other than the *fuel tax law); or

(b) an *excise law.

Making of oral rulings

(3) The Commissioner must give you or your *legal personal representative that advice unless:

(a) the Commissioner considers that the advice sought relates to a *business matter or a complex matter; or

(b) the matter sought to be ruled on is already being, or has been, considered by the Commissioner for you.

That advice is an ***oral ruling***.

Note: The Commissioner may also decline to make an oral ruling if:

(a) the Commissioner has requested you to give further information under section 357-105 and you have not given it to the Commissioner; or

(b) the Commissioner considers that the correctness of an oral ruling would depend on which assumptions were made about a future event or other matter (see section 357-110).

(4) The Commissioner must give that advice orally and in the manner determined under section 360-15. That advice must include a registration identifier for the ruling.

Note: The Commissioner must tell you which assumptions the Commissioner made in making the ruling: see section 357-110.

(5) You are not entitled to receive a written record of that advice.

Note: However, you may be able to apply for a private ruling on the matter under Division 359.

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

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360-10 Withdrawing an application for an oral ruling

(1) You or your *legal personal representative may withdraw an application under section 360-5 before the Commissioner makes the *oral ruling.

(2) The withdrawal must be done orally and in the manner determined under section 360-15.

360-15 Commissioner determinations

The Commissioner must, by writing, determine:

(a) the manner in which oral applications are to be made under section 360-5 or are to be withdrawn; and

(b) the manner in which the Commissioner is to give oral advice under that section.

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

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Division 361—Non-ruling advice and general administrative practice

Table of sections

361-5 Non-ruling advice and general administrative practice

361-5 Non-ruling advice and general administrative practice

(1) You are not liable to pay the *general interest charge or the *shortfall interest charge under a relevant provision to the extent that the charge would relate to a *shortfall amount or a *scheme shortfall amount that was caused by:

(a) you reasonably relying in good faith on:

(i) advice (other than a ruling) given to you or your *agent by the Commissioner; or

(ii) a statement in a publication approved in writing by the Commissioner;

unless the advice, or the statement or publication, is labelled as non-binding; or

(b) you reasonably relying in good faith on the Commissioner's general administrative practice.

Note: Section 357-55 specifies the relevant provisions.

(2) However, subsection (1) does not apply to any *general interest charge accruing more than 21 days after the Commissioner notifies you of the correct position.

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

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Division 362—Rulings by Innovation and Science Australia that activities are not ineligible activities

Guide to Division 362

362-1 What this Division is about

Innovation and Science Australia may make public rulings and private rulings expressing its view on whether activities are not ineligible activities for the purposes of applying capital gains tax provisions to venture capital investments.

Note: An entity's involvement in ineligible activities can affect whether an investment is an eligible venture capital investment for the purpose of accessing a capital gains tax exemption under Subdivision 118-F of the *Income Tax Assessment Act 1997*.

Table of sections

Public rulings by Innovation and Science Australia

362-5 Innovation and Science Australia may make public rulings on a specified class of activities
362-10 Application of public rulings
362-15 When a public ruling ceases to apply
362-20 Withdrawing public rulings

Private rulings by Innovation and Science Australia

362-25 Innovation and Science Australia may make private rulings on a specified activity
362-30 Applying for a private ruling
362-35 Innovation and Science Australia must give notice of its decision
362-40 Private rulings must contain certain details
362-45 Application of private rulings
362-50 Delays in making private rulings
362-55 When a private ruling ceases to apply
362-60 Withdrawing private rulings

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

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General provisions

362-65 When rulings are binding on the Commissioner and Innovation and Science Australia
362-70 Application of common rules under Subdivision 357-B
362-75 Application of Divisions 358 and 359

Public rulings by Innovation and Science Australia

362-5 Innovation and Science Australia may make public rulings on a specified class of activities

(1) *Innovation and Science Australia may make a ruling that Innovation and Science Australia considers that activities included in a specified class of activities:

(a) are not ineligible activities for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997*; or

(b) in specified circumstances, are not such ineligible activities;

if Innovation and Science Australia is satisfied that the activities included in that class are not such ineligible activities, or are not in those circumstances such ineligible activities, as the case requires.

Note: An activity will not be an ineligible activity for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997* if, for example, it is covered by subsections 118-425(13A) and 118-427(14A) of that Act.

(2) Such a ruling is a ***public ruling*** if it:

(a) is published; and

(b) states that it is a public ruling.

(3) *Innovation and Science Australia must publish notice of the making of a *public ruling in the Gazette.

Note: The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with: see section 357-90.

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

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362-10 Application of public rulings

A *public ruling under this Division applies from the time it is published or from such earlier or later time as is specified in the ruling.

362-15 When a public ruling ceases to apply

(1) A *public ruling under this Division may specify the time at which it ceases to apply.

(2) If a *public ruling under this Division does not do this, it applies until it is withdrawn.

362-20 Withdrawing public rulings

(1) *Innovation and Science Australia must withdraw a *public ruling made under this Division, by publishing notice of the withdrawal, if:

(a) it is no longer satisfied of the matter about which it was required to be satisfied under subsection 362-5(1); or

(b) the ruling is inconsistent with a decision of a court.

(2) The withdrawal takes effect from the time specified in the notice. That time must not be before the time the notice is published.

(3) *Innovation and Science Australia must publish notice of the withdrawal of the ruling in the Gazette.

Private rulings by Innovation and Science Australia

362-25 Innovation and Science Australia may make private rulings on a specified activity

(1) *Innovation and Science Australia may, on application, make a ruling that Innovation and Science Australia considers that a specified activity:

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

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(a) is not an ineligible activity for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997*; or

(b) in specified circumstances, is not such an ineligible activity;

if Innovation and Science Australia is satisfied that the activity is not such an ineligible activity, or is not in those circumstances such an ineligible activity, as the case requires.

Note: An activity will not be an ineligible activity for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997* if, for example, it is covered by subsections 118-425(13A) and 118-427(14A) of that Act.

(2) Such a ruling is a ***private ruling***.

Note: Decisions making such a ruling, and decisions refusing to make such a ruling, are reviewable under Part 5 of the *Venture Capital Act 2002*.

(3) In considering whether to make a *private ruling under this Division, *Innovation and Science Australia must apply any principles made under subsection (4).

(4) *Innovation and Science Australia may, by legislative instrument, make principles about making *private rulings under this Division.

(5) A failure to comply with subsection (3) does not affect the validity of the ruling.

362-30 Applying for a private ruling

A *general partner of a *limited partnership registered as a *VCLP, an *ESVCLP or an *AFOF may, in the *form approved by *Innovation and Science Australia, apply to Innovation and Science Australia for a *private ruling under this Division.

362-35 Innovation and Science Australia must give notice of its decision

(1) If *Innovation and Science Australia makes a *private ruling under this Division, Innovation and Science Australia must notify the

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

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*general partner, and the Commissioner, as soon as practicable after the ruling is made.

(2) If *Innovation and Science Australia refuses to make a *private ruling under this Division, Innovation and Science Australia must:
(a) notify the *general partner as soon as practicable after the refusal; and
(b) provide reasons for the refusal.

362-40 Private rulings must contain certain details

(1) A *private ruling under this Division must state that it is a private ruling.

(2) A *private ruling under this Division must identify the entity to whom it applies and specify the activity to which it relates.

Note: Innovation and Science Australia must tell the applicant which assumptions Innovation and Science Australia made in making the ruling: see section 357-110.

362-45 Application of private rulings

A *private ruling under this Division applies from the time it is published or from such earlier or later time as is specified in the ruling.

362-50 Delays in making private rulings

(1) The applicant for a *private ruling under this Division may give *Innovation and Science Australia a written notice requiring Innovation and Science Australia to make the ruling if, at the end of 60 days after the application was made, Innovation and Science Australia has neither:
(a) made the ruling; nor
(b) told the applicant that Innovation and Science Australia has refused to make the ruling.

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

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(2) The 60 day period mentioned in subsection (1) is extended in a circumstance applicable under the table by the extension period applicable to that circumstance. If 2 or more circumstances are applicable, ignore any overlap between the periods of extension.

Extending the 60 day period

Item	If *Innovation and Science Australia, during the 60 day period:	The 60 day period is extended by the number of days in this period:
1	requests further information under section 357-105 (as that section applies because of section 362-70)	the period starting on the day the information was requested and ending on the day it is received by *Innovation and Science Australia
2	tells the applicant about assumptions *Innovation and Science Australia proposes to make under section 357-110 (as that section applies because of section 362-70)	the period starting on the day *Innovation and Science Australia tells the applicant and ending on the day on which Innovation and Science Australia receives the applicant's response about the assumptions
3	tells the applicant about information provided by a third party that *Innovation and Science Australia proposes to take into account under section 357-120 (as that section applies because of section 362-70)	the period starting on the day *Innovation and Science Australia tells the applicant and ending on the day on which Innovation and Science Australia receives the applicant's response about the information

(3) If *Innovation and Science Australia:

(a) does not make the ruling within 30 days of the notice under subsection (1) being given; and

(b) has not otherwise declined to make the ruling by the end of that period;

Innovation and Science Australia is taken to have refused to make the ruling at the end of that period.

Note: Decisions refusing to make such a ruling are reviewable under Part 5 of the *Venture Capital Act 2002*.

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

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362-55 When a private ruling ceases to apply

(1) A *private ruling under this Division may specify the time at which it ceases to apply.

(2) If a *private ruling under this Division does not do this, it applies until it is withdrawn.

362-60 Withdrawing private rulings

(1) *Innovation and Science Australia must withdraw a *private ruling made under this Division if:

(a) it is no longer satisfied of the matter about which it was required to be satisfied under subsection 362-25(1); or

(b) the ruling is inconsistent with a decision of a court.

(2) *Innovation and Science Australia must give notice of the withdrawal to a *general partner of the *limited partnership to which the ruling related.

General provisions

362-65 When rulings are binding on the Commissioner and Innovation and Science Australia

(1) A ruling under this Division binds the Commissioner and *Innovation and Science Australia in relation to an entity (whether or not the entity is aware of the ruling) if:

(a) the ruling applies to the entity; and

(b) the entity relies on the ruling by acting (or omitting to act) in accordance with the ruling.

(2) If the ruling is withdrawn under this Division, it continues to bind the Commissioner and *Innovation and Science Australia in relation to the entity until the end of the income year following the income year in which it is withdrawn, but only to the extent that the ruling affected investments made before the withdrawal took effect.

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

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362-70 Application of common rules under Subdivision 357-B

Despite section 357-50:

(a) section 357-60 does not apply in relation to a ruling under this Division; and

(b) sections 357-70, 357-85 and 357-95 apply, in relation to a ruling under this Division, to *Innovation and Science Australia in the same way they apply to the Commissioner; and

(c) section 357-100 applies:

(i) in relation to a ruling under this Division as if a document referred to in paragraph 357-100(b) were required to be signed by a member of Innovation and Science Australia, and not by a person referred to in that paragraph; and

(ii) in relation to a *private ruling under this Division in the same way it applies to a *public ruling; and

(d) sections 357-105 to 357-125 apply in relation to a ruling under this Division as if references in those sections to the Commissioner were references to Innovation and Science Australia.

362-75 Application of Divisions 358 and 359

(1) Division 358 does not apply in relation to a *public ruling under this Division, or in relation to the making of such a ruling.

(2) Division 359 does not apply in relation to a *private ruling under this Division, or in relation to the making of such a ruling.

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

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Part 5-10—Commissioner's remedial power

Division 370—Commissioner's remedial power

Table of Subdivisions

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370-A Commissioner's remedial power

Guide to Division 370

370-1 What this Division is about

The Commissioner may determine a modification of the operation of a provision of a taxation law. The modification must not be inconsistent with the intended purpose or object of the provision. Furthermore:

(a) the Commissioner must consider the modification to be reasonable; and

(b) the Department, or the Finance Department, must advise that any impact of the modification on the Commonwealth budget would be negligible.

Example: After a provision of a taxation law is enacted, it is found that, because of developments in the practices of businesses or the Commissioner, the provision imposes disproportionate compliance costs on taxpayers. The Commissioner might, under this Division, be able to modify the operation of the provision to give timely relief.

An entity must not apply a modification if it would produce a less favourable result for the entity.

Note: The Commissioner must include in the Commissioner's annual report under section 3B of this Act information about the exercise of his or her powers under this Division.

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

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Subdivision 370-A—Commissioner's remedial power

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370-5 Commissioner's remedial power
370-10 Intended purpose or object
370-15 Repeal of determinations
370-20 Commencement of determinations

370-5 Commissioner's remedial power

(1) The Commissioner may, by legislative instrument, determine a modification of the operation of a provision of a *taxation law if:

(a) the modification is not inconsistent with the intended purpose or object of the provision; and

(b) the Commissioner considers the modification to be reasonable, having regard to:

(i) the intended purpose or object of the provision; and

(ii) whether the cost of complying with the provision is disproportionate to that intended purpose or object; and

(c) any of the following persons advises the Commissioner that any impact of the modification on the Commonwealth budget would be negligible:

(i) the Secretary of the Department, or an APS employee in the Department who is authorised by the Secretary for the purposes of this paragraph;

(ii) the *Finance Secretary, or an APS employee in the *Finance Department who is authorised by the Finance Secretary for the purposes of this paragraph.

(2) If the Commissioner determines a modification of the operation of a provision of a *taxation law under subsection (1), the provision operates with the modification.

Scope of determination

(3) A modification applies generally, unless the determination states that the modification only applies:

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

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(a) to a specified class of entities; or
(b) in specified circumstances.

(4) An entity (the ***first entity***) must treat a modification as:
(a) not applying to the first entity; and
(b) not applying to any other entity;
if the modification would produce a less favourable result for the first entity.

(5) If the Commissioner determines a modification of the operation of a provision of a *taxation law, the modification (as applied by subsection (2)) does not affect a right or liability under an order (including any judgment, conviction or sentence) made by a court before the commencement of the determination.

370-10 Intended purpose or object

In ascertaining the intended purpose or object of a provision of a *taxation law for the purposes of paragraph 370-5(1)(a) or subparagraph 370-5(1)(b)(i):

(a) consideration must be given to any documents that may be considered under subsection 15AB(2) of the *Acts Interpretation Act 1901* (or that subsection as applied by section 13 of the *Legislation Act 2003*) in relation to the provision; and

Example: An explanatory memorandum, second reading speech or report of a parliamentary committee.

(b) consideration may be given to any other material (including material not forming part of the provision) that would assist in ascertaining the intended purpose or object of the provision; and

(c) primacy is not required to be given to the text of the provision.

Note: Ascertaining an intended purpose or object for the purposes of paragraph 370-5(1)(a) or subparagraph 370-5(1)(b)(i) is not necessarily the same as ascertaining a purpose or object for the purposes of interpreting a provision of an Act.

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

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370-15 Repeal of determinations

(1) The Commissioner may, by legislative instrument, repeal a determination made under section 370-5.

(2) A legislative instrument made under subsection (1) of this section may make an application, saving or transitional provision relating to the repeal.

(3) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to the repeal, rescission or revocation of a determination made under section 370-5 in this Schedule (but does apply in relation to the amendment or variation of such a determination).

370-20 Commencement of determinations

A determination made under section 370-5, or a repeal made under section 370-15, must not commence before the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

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

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Part 5-25—Record-keeping and other obligations relating to taxpayers

Division 382—Record-keeping

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382-A Keeping records of indirect tax transactions
382-B Record keeping obligations of deductible gift recipients

Guide to Division 382

382-1 What this Division is about

You are required to keep records of indirect tax transactions in accordance with this Division.

Deductible gift recipients are required to keep records in accordance with this Division.

Subdivision 382-A—Keeping records of indirect tax transactions

Table of sections

382-5 Keeping records of indirect tax transactions

382-5 Keeping records of indirect tax transactions

Records of transactions

(1) You must:

(a) keep records that record and explain all transactions and other acts you engage in that are relevant to a *supply,

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

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importation, acquisition, dealing, manufacture or entitlement to which this subsection applies; and

(b) retain those records for the longest of:

(i) 5 years after the completion of the transactions or acts to which they relate; and

(ii) the *period of review for any assessment of an *assessable amount to which those records, transactions or acts relate; and

(iii) if such an assessment has been amended under Subdivision 155-B—the period of 4 years mentioned in paragraph 155-70(2)(a) (which provides for a refreshed period of review) that applies to the latest such amendment.

(2) Subsection (1) applies to:

(a) a *taxable supply, *taxable importation, *creditable acquisition or *creditable importation made by you; or

(b) a *supply made by you that is *GST-free or *input taxed; or

(c) a *taxable dealing, in relation to *wine, on which you are liable for *wine tax; or

(d) any other assessable dealing within the meaning of the *Wine Tax Act made by you; or

(e) your entitlement to a *wine tax credit; or

(f) a *taxable supply of a luxury car, or a *taxable importation of a luxury car, made by you; or

(g) your entitlement to a special credit under the *A New Tax System (Goods and Services Tax Transition) Act 1999* or the *A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999*; or

(h) if you are entitled to a *fuel tax credit for fuel that you acquire, manufacture or import—the acquisition, manufacture or importation; or

(i) if you are liable, as a recipient of a taxable supply, to pay the *GST on a taxable supply because of section 15C of the *A New Tax System (Goods and Services Tax Transition) Act 1999*—the taxable supply.

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

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(3) If you give the Commissioner a return that takes into account:

(a) an *input tax credit that is attributable to a *tax period under subsection 29-10(4) of the *GST Act; or

(b) a *fuel tax credit that is attributable to a tax period or *fuel tax return period under subsection 65-5(4) of the *Fuel Tax Act 2006*;

you must:

(c) keep records that record and explain all transactions and other acts you engage in that are relevant to the acquisition or importation in question; and

(d) retain those records for at least 5 years after the return was given to the Commissioner.

Records of elections, choices, estimates, determinations and calculations

(4) If you make any election, choice, estimate, determination or calculation under an *indirect tax law, you must:

(a) keep records containing particulars of:

(i) the election, choice, estimate, determination or calculation; and

(ii) in the case of an estimate, determination or calculation—the basis on which, and the method by which, the estimate, determination or calculation was made; and

(b) retain those records:

(i) if the indirect tax law specifies circumstances in which the election, choice, estimate, determination or calculation ceases to have effect—for at least 5 years after the election, choice, estimate, determination or calculation ceased to have effect; or

(ii) in any other case—for at least 5 years after the election, choice, estimate, determination or calculation was made.

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

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(5) This section requires a record of an *arrangement entered into under section 153-50 of the *GST Act to be kept and retained by the party entering into the arrangement as principal. It does not require such a record to be kept or retained by the party entering into the arrangement as intermediary (within the meaning of that section).

(6) This section requires records of a notice given under subsection 153-65(2) of the *GST Act to be kept and retained by both the entity giving the notice and the entity receiving it.

(7) Without limiting subsection (4), if you choose to apply Division 63 (non-profit sub-entities) of the *GST Act, you must:
  (a) keep records that record:
    (i) your choice to apply that Division; and
    (ii) each branch that is treated as a separate entity for the purposes of the *GST law; and
    (iii) each branch that has ceased to be treated as a separate entity for the purposes of the GST law; and
  (b) retain those records for at least 5 years after you revoke the choice.

Requirements of records

(8) The records must be:
  (a) in English, or readily accessible and easily convertible into English; and
  (b) such as to enable your liabilities and entitlements under an *indirect tax law to be readily ascertained.

Offence

(9) An entity commits an offence if:
  (a) the entity is required to keep or retain a record under this section; and
  (b) the entity does not keep or retain the record in accordance with this section.

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

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Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 3: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

(10) Subsection (9) is an offence of strict liability.

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

Defence

(11) Subsection (9) does not apply if:

(a) the Commissioner notifies the entity that the entity does not need to retain the record; or

(b) the entity is a company that has been finally dissolved.

Note: A defendant bears an evidential burden in relation to the matters in subsection (10): see subsection 13.3(3) of the *Criminal Code*.

(12) For the purposes of section 288-25, this section does not require an entity to retain a record if:

(a) the Commissioner notifies the entity that the entity does not need to retain the record; or

(b) the entity is a company that has been finally dissolved.

Note: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

Subdivision 382-B—Record keeping obligations of deductible gift recipients

Table of sections

382-15 Deductible gift recipients to keep records

382-15 Deductible gift recipients to keep records

(1) A *deductible gift recipient must:

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

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(a) keep records that record and explain all transactions and other acts the deductible gift recipient engages in that are relevant to the deductible gift recipient's status as a deductible gift recipient; and

(b) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.

Note 1: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

Note 2: The Commissioner may request information from certain deductible gift recipients: see sections 353-20 and 426-40.

Requirements of records

(2) The records must be:

(a) in English, or readily accessible and easily convertible into English; and

(b) such as to show that the *deductible gift recipient uses each of the following only for the principal purpose of the fund, authority or institution:

(i) gifts of money or property for that purpose;

(ii) contributions described in item 7 or 8 of the table in section 30-15 of the *Income Tax Assessment Act 1997* in relation to a *fund-raising event held for that purpose;

(iii) money received by the deductible gift recipient because of such gifts or contributions.

Exception

(3) For the purposes of section 288-25, this section does not require a *deductible gift recipient to retain a record if:

(a) the Commissioner notifies the deductible gift recipient that the deductible gift recipient does not need to retain the record; or

(b) the deductible gift recipient is a company that has been finally dissolved.

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

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Division 384—Education directions

Guide to Division 384

384-5 What this Division is about

If the Commissioner reasonably believes that you have failed to comply with certain obligations arising under taxation laws, the Commissioner may give you a direction requiring a specified course of education to be undertaken.

Table of sections

384-10 When an education direction may be given
384-15 Education direction
384-20 Approval of courses of education
384-25 Costs of course of education
384-30 Variation or revocation on Commissioner's own initiative
384-35 Variation on request
384-40 Taxation objection

384-10 When an education direction may be given

(1) This section applies to you, and the Commissioner may give you an education direction under section 384-15, if the Commissioner reasonably believes that an item of the following table applies to you.

Education directions

Item	The item applies to you if…
1	You fail to pay an amount of a tax-related liability set out in subsection (2).
2	You fail to comply with an obligation to give a statement or information to the Commissioner under a taxation law set out in subsection (3).
3	You fail to comply with an obligation to keep records under a taxation law set out in subsection (3).

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

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Education directions	
Item	**The item applies to you if…**
4	You fail to comply with an obligation under this Act that relates to a taxation law set out in subsection (3).

(2) The following table sets out tax-related liabilities for the purposes of subsection (1).

Item	Tax-related liability
1	Superannuation guarantee charge payable by you under the *Superannuation Guarantee (Administration) Act 1992*
2	An amount that is due and payable by you of an estimate under Division 268 of an amount of a liability referred to in paragraph 268-10(1)(b) (superannuation guarantee charge)

(3) The following table sets out taxation laws for the purposes of subsection (1).

Item	Taxation law
1	*Superannuation Guarantee (Administration) Act 1992*

384-15 Education direction

(1) If section 384-10 applies to you, the Commissioner may give you a written direction (an ***education direction***) requiring you to:

(a) ensure that any of the following individuals undertakes a specified approved course of education (see section 384-20):

(i) if you are an individual—you;

(ii) an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of your business; and

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

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(b) provide the Commissioner with evidence that the individual has completed the course.

(2) The education direction must specify the period within which you must comply with the direction (which must be a period that is reasonable in the circumstances).

Note: The period may be affected by the operation of subsection 384-35(7).

(3) You must comply with the direction within the specified period.

Note: Failure to comply with this subsection is an offence against section 8C.

(4) You are taken to comply with the direction if, and only if:
(a) an individual referred to in paragraph (1)(a) undertakes the specified approved course of education during the specified period; and
(b) before the end of the specified period, you provide the Commissioner with evidence that the individual has completed the course.

(5) You are liable to an administrative penalty of 5 penalty units if you contravene subsection (3).

Note: Division 298 contains machinery provisions for administrative penalties.

(6) An education direction is not a legislative instrument.

384-20 Approval of courses of education

(1) The Commissioner may, in writing, approve one or more courses of education for the purposes of giving education directions.

(2) A course approved under subsection (1) may be provided by the Commissioner or by another entity.

(3) An approval under subsection (1) is not a legislative instrument.

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

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384-25 Costs of course of education

(1) The Commissioner or other entity providing an approved course of education may charge fees for the course.

(2) Any fees charged must not be such as to amount to taxation.

384-30 Variation or revocation on Commissioner's own initiative

If the Commissioner has given you an education direction, the Commissioner may, at any time, vary or revoke the education direction by written notice given to you.

384-35 Variation on request

(1) If the Commissioner has given you an education direction, you may ask the Commissioner to vary the direction.

(2) The request must be made by written notice given to the Commissioner before the end of the period specified in the direction for the purposes of subsection 384-15(2).

(3) The request must set out the reasons for making the request.

(4) The Commissioner must decide:
  (a) to vary the direction in accordance with the request; or
  (b) to vary the direction otherwise than in accordance with the request; or
  (c) to refuse to vary the direction.

(5) If the Commissioner does not make a decision on the request before the end of 28 days after the day the Commissioner received the request, the Commissioner is taken, at the end of that period, to have decided to refuse the request.

(6) If the Commissioner makes a decision on the request before the end of the period referred to in subsection (5), the Commissioner must:
  (a) notify you of the Commissioner's decision; and

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

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(b) if the decision is to vary the direction (whether or not in accordance with the request)—give you a copy of the varied direction; and

(c) if the decision is to refuse to vary the direction, or to vary the direction otherwise than in accordance with the request—give you written reasons for the decision.

(7) If you make a request under this section, then, for the purposes of subsection 384-15(3), the period specified in the direction for the purposes of subsection 384-15(2) is taken to be extended by 1 day for each day in the period:

(a) beginning at the start of the day the Commissioner receives the request; and

(b) ending at the end of the day that the Commissioner notifies you that a decision has been made on the request.

384-40 Taxation objection

If you are dissatisfied with:

(a) a decision of the Commissioner to give an education direction, or to vary one otherwise than in accordance with a request under section 384-35; or

(b) a decision of the Commissioner under section 384-35 to refuse to vary an education direction;

you 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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Division 388—Requirements about giving material to the Commissioner

Table of Subdivisions

388-A Object of Division
388-B General provisions

Subdivision 388-A—Object of Division

388-5 Object of Division

The object of this Division is to set out requirements to ensure the integrity and efficiency of giving material to the Commissioner.

Subdivision 388-B—General provisions

Table of sections

388-50 Approved forms
388-52 Saturdays, Sundays and public holidays
388-55 Commissioner may defer time for lodgment
388-60 Declaration by entity
388-65 Declaration by entity where agent gives document
388-70 Declaration by agent
388-75 Signing declarations
388-80 Electronic notification of BAS amounts
388-85 Truncating amounts

388-50 Approved forms

(1) A return, notice, statement, application or other document under a *taxation law is in the ***approved form*** if, and only if:

(a) it is in the form approved in writing by the Commissioner for that kind of return, notice, statement, application or other document; and

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

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(b) it contains a declaration signed by a person or persons as the form requires (see section 388-75); and

(c) it contains the information that the form requires, and any further information, statement or document as the Commissioner requires, whether in the form or otherwise; and

(d) for a return, notice, statement, application or document that is required to be given to the Commissioner—it is given in the manner that the Commissioner requires (which may include electronically).

(1A) Despite subsection (1), a document that satisfies paragraphs (1)(a), (b) and (d) but not paragraph (1)(c) is also in the ***approved form*** if it contains the information required by the Commissioner. The Commissioner must specify the requirement in writing.

(2) The Commissioner may combine in the same *approved form more than one return, notice, statement, application or other document.

(3) The Commissioner may approve a different *approved form for different entities.

Example: The Commissioner may require high wealth individuals to lodge a different income tax return to that required to be lodged by an individual whose only income is a salary.

388-52 Saturdays, Sundays and public holidays

Where an *approved form is required to be given to the Commissioner or to another entity by, or on, a day (the ***lodgment day***) that is not a *business day, the approved form may be given on the first business day after the lodgment day.

388-55 Commissioner may defer time for lodgment

(1) The Commissioner may defer the time within which an *approved form is required to be given to the Commissioner or to another entity.

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

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(2) A deferral under subsection (1) does not defer the time for payment of any amount to the Commissioner.

Note: Section 255-10 allows the Commissioner to defer the time for payment of an amount of a tax-related liability.

388-60 Declaration by entity

If you give a return, notice, statement, application or other document to the Commissioner in the *approved form, you must make a declaration in the approved form that any information in the document is true and correct.

388-65 Declaration by entity where agent gives document

(1) If a return, notice, statement, application or other document of yours is to be given to the Commissioner in the *approved form by an agent on your behalf, you must make a declaration in writing:
(a) stating that you have authorised the agent to give the document to the Commissioner; and
(b) declaring that any information you provided to the agent for the preparation of the document is true and correct.

(2) You must give the declaration to the agent.

(3) You must retain the declaration or a copy of it for:
(a) 5 years after it is made; or
(b) a shorter period determined by the Commissioner in writing for you; or
(c) a shorter period determined by the Commissioner by legislative instrument for a class of entities that includes you.

(3A) A determination under paragraph (3)(c) may specify different periods for different classes of entities.

(4) You must produce the declaration or copy if requested to do so within that period by the Commissioner.

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

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(5) The agent must not give the document to the Commissioner before you make the declaration.

(6) You must sign the declaration.

388-70 Declaration by agent

If an agent gives a return, notice, statement, application or other document to the Commissioner in the *approved form on behalf of another entity, the agent must, if the document so requires, make a declaration in the approved form stating that:

(a) the document has been prepared in accordance with the information supplied by the other entity; and

(b) the agent has received a declaration from the other entity stating that the information provided to the agent is true and correct; and

(c) the agent is authorised by the other entity to give the document to the Commissioner.

388-75 Signing declarations

(1) You must sign a declaration in a return, notice, statement, application or other document you give to the Commissioner in paper form.

(2) If your agent gives a return, notice, statement, application or other document to the Commissioner on your behalf in paper form, the document must contain:

(a) if the document so requires—a declaration made by you with your signature; and

(b) if the document so requires—a declaration made by your agent with the agent's signature.

(3) Any return, notice, statement, application or other document of yours that is *lodged electronically:

(a) if you give it to the Commissioner—must contain your declaration (see section 388-60) with your *electronic signature; or

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

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(b) if your agent gives it to the Commissioner—must contain the agent's declaration (see section 388-70) with the agent's electronic signature.

(4) Any return, notice, statement, application or other document of yours that is given by telephone:

(a) if you give it—must contain your *telephone signature; or

(b) if your agent gives it—must contain your agent's telephone signature.

388-80 Electronic notification of BAS amounts

An entity that, under section 31-25 of the *GST Act, chooses or is required to *lodge a *GST return electronically must also electronically notify the Commissioner of all other *BAS amounts whose notification is required on the same day as the GST return (ignoring any extension allowed by the Commissioner under section 31-10 of that Act or a deferral under section 388-55).

388-85 Truncating amounts

If an *approved form that you are required to give the Commissioner specifies that amounts set out in the form are to be expressed in whole dollars, you truncate the amounts to the nearest whole dollar.

Example: Stefan Pty Ltd calculates that its PAYG instalment for a quarter is $8,496.73. Because the approved form requires amounts to be truncated, the amount would be reported in its BAS as $8,496.

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

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Division 389—Reporting by employers

Guide to Division 389

389-1 What this Division is about

Employers must (unless they are exempt) notify the Commissioner of certain amounts that relate to payments in respect of their employees.

In many cases this Division has the effect of bringing forward the due dates for notification or reporting under other provisions. Notifying under this Division may satisfy an employer's obligations to notify or report under the other provisions.

Table of sections

389-5 Required reporting by employers
389-10 Exemptions
389-15 Voluntary reporting by employers
389-20 Effect on reporting requirements under Subdivision 16-C
389-25 Grace periods for correcting false or misleading notifications

389-5 Required reporting by employers

(1) An entity must notify the Commissioner of an amount of a kind referred to in column 1 of an item in the following table on or before the day referred to in column 2 of that item, if the amount arises as a result of conduct of the entity (such as payment of an amount or provision of a benefit).

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

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Amounts to be notified to the Commissioner		
Item	**Column 1** **The following must be notified …**	**Column 2** **… on or before this day**
1	The following amounts: (a) an amount the entity must withhold under Subdivision 12-B (other than section 12-55 or 12-60), paragraph 12-85(b), section 12-90, paragraph 12-110(1)(ca) or (cb) or section 12-319A; (b) the *withholding payment from which the amount referred to in paragraph (a) is required to be withheld	the day by which the amount is required to be withheld (regardless of whether it is withheld) (see section 16-5).
2	An amount (other than an amount covered by item 1) paid by the entity that constitutes: (a) the salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) of a person who is the entity's employee (within the meaning of that Act but disregarding subsection 12(3) of that Act); or (b) the ordinary time earnings (within the meaning of that Act) of such an employee	the day on which the amount is paid.

Note: Section 286-75 provides an administrative penalty for breach of this section.

(2) The notification must be in the *approved form. However, the approved form must not require information about an amount unless it is:

(a) the amount to be notified under subsection (1); or

(b) an amount of a kind determined by the Commissioner under subsection (3).

(3) The Commissioner may, by legislative instrument, determine kinds of amounts for the purposes of paragraph (2)(b).

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

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(4) In applying item 1 of the table in subsection (1), a requirement to withhold a nil amount is to be treated as a requirement to withhold an amount.

(5) This section does not apply to an entity to the extent (if any) that the entity is covered by an exemption under section 389-10 for the income year in which the entity's conduct occurs.

389-10 Exemptions

Exempting classes of entities

(1) The Commissioner may, by legislative instrument, exempt a class of entities from section 389-5 for one or more income years.

(2) The exemption may be limited to the extent specified in the instrument.

Exempting particular entities

(3) The Commissioner may, on application by an entity (an ***exemption application***) or on the Commissioner's own initiative, exempt the entity from section 389-5 for one or more income years.

(4) The exemption may be limited to the extent specified in the notice under paragraph (5)(a).

(5) The Commissioner must notify the entity in writing if:
  (a) the Commissioner exempts the entity under subsection (3); or
  (b) refuses an exemption application by the entity.

(6) The Commissioner is taken to have refused an exemption application if the Commissioner fails to notify the entity in writing of the Commissioner's decision on the application within 60 days after the application is made.

(7) The entity may object, in the manner set out in Part IVC, against:
  (a) a decision of the Commissioner to refuse an exemption application; or

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

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(b) a decision of the Commissioner to limit the extent of an exemption under subsection (4).

389-15 Voluntary reporting by employers

(3) If:

(a) an amount arises as a result of conduct of an entity (such as payment of an amount or provision of a benefit); and

(b) the amount is an amount of a kind referred to in column 1 of an item in the following table;

the entity may notify the Commissioner of the amount on or before the day referred to in column 2 of that item.

Amounts to be notified to the Commissioner

Item	Column 1 This amount may be notified …	Column 2 … on or before this day
1	A *reportable employer superannuation contribution made by the entity in respect of a *financial year for the benefit of an employee of the entity	14 July in the next *financial year.
2	A *reportable fringe benefits amount that an employee of the entity has for an income year in respect of the employee's employment with the entity	14 July in the *financial year most closely corresponding to the next income year.

(4) The notification must be in the *approved form.

Note: The approved form may require information about other amounts, in addition to the amount to be notified: see paragraph 388-50(1)(c).

389-20 Effect on reporting requirements under Subdivision 16-C

(1) An entity is not required to comply with a requirement of:

(a) subsection 16-150(1) (Commissioner must be notified of amounts); or

(b) section 16-153 (annual reports—other payments); or

(c) section 16-155 (annual payment summary); or

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

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(d) section 16-160 (part-year payment summary); or
(e) section 16-165 (payment summaries for superannuation lump sums and payments for termination of employment); or
(f) section 16-175 in relation to compliance with any requirements under section 16-155, 16-160 or 16-165;

to give a notice, report or statement to the extent that it would relate to an amount that the entity has notified under section 389-5 or 389-15.

(2) However, paragraphs (1)(b), (c) and (e) do not apply, in relation to requirement to give a notice, report or statement relating to payments made in a *financial year, unless, within 14 days after the end of the financial year, the entity makes a declaration to the Commissioner that:
(a) states that the entity has notified under section 389-5 or 389-15 all the information that the entity would otherwise be required to give under sections 16-153, 16-155 and 16-165 relating to payments made in the financial year; and
(b) is in the *approved form.

389-25 Grace periods for correcting false or misleading notifications

When notifications can be corrected

(1) An entity that has made a statement (a ***withholding statement***) under section 389-5 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) (and no other item in that table) may correct the statement:
(a) within the period determined by the Commissioner under subsection (2); or
(b) if paragraph (a) does not apply but the entity is covered by a determination under subsection (5)—within the period specified in that determination.

Note: Correcting the statement can protect the person from liability for a false or misleading withholding statement: see subsections 8K(2A), 8N(2) and 284-75(8).

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

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Determinations for particular entities

(2) The Commissioner may determine the period within which the entity may correct a withholding statement.

(3) The Commissioner must give the entity written notice of the determination.

(4) The entity may object, in the manner set out in Part IVC, against a decision of the Commissioner determining a period under subsection (2) relating to the entity.

Determinations for classes of entities

(5) The Commissioner may, by legislative instrument, determine the period within which entities included in a class of entities specified in the determination may correct a withholding statement.

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

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Division 390—Superannuation reporting

Table of Subdivisions

Guide to Division 390
390-A Member information statements and roll-over superannuation benefit statements
390-B Statements relating to release authorities
390-C Other statements

Guide to Division 390

390-1 What this Division is about

Superannuation providers must give the Commissioner information about superannuation plans (such as contributions to superannuation plans) periodically.

Superannuation providers are also required to give information about roll-over superannuation benefits paid from superannuation plans.

Life insurance companies must give the Commissioner information about holders of certain life insurance policies.

Note: For requirements for payment summaries in relation to superannuation lump sums, see section 16-165.

Subdivision 390-A—Member information statements and roll-over superannuation benefit statements

390-5 Member information statements

(1) A *superannuation provider in relation to a *superannuation plan must give the Commissioner a statement in relation to an individual if the individual held a *superannuation interest in the

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

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plan at any time during the period specified in a determination under subsection (6).

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

Note 2: If a person is dissatisfied with a statement given to the Commissioner by a superannuation provider under this section, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

(4) A statement under subsection (1) must be in the *approved form.

(5) The statement must be given to the Commissioner on a day specified in the determination under subsection (6).

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(6) The Commissioner may determine, by legislative instrument:
(a) the period mentioned in subsection (1); and
(b) the day on which a statement must be given to the Commissioner.

(7) The period specified in the determination:
(a) may be:
(i) all or part of an income year; or
(ii) all or part of a financial year; or
(iii) any other period; and
(b) may be different:
(i) for different kinds of *superannuation provider; and
(ii) in relation to any other matter.

(8) Subsection (7) does not limit the way in which the determination may specify the period.

(9) The *approved form may require the statement to contain the following information:
(a) information relating to the contributions made to the *superannuation plan, including the amount and type of the contributions;

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

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(b) the *value of any *superannuation interest, or superannuation account, the individual held in the superannuation plan at a particular time;

(c) if no contributions were made to the superannuation plan in respect of the individual during the period—a statement to that effect;

(d) information relating to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(9A) Treat the following as contributions for the purposes of this section:

(a) *notional taxed contributions in relation to a *defined benefit interest in the *superannuation plan;

(b) amounts, mentioned in subsection 291-25(3) or paragraph 292-90(4)(a) of the *Income Tax Assessment Act 1997*, allocated by the *superannuation provider in relation to the superannuation plan;

(c) amounts mentioned in paragraph 292-90(4)(c) of that Act;

(d) *defined benefit contributions in relation to a *defined benefit interest in the superannuation plan.

(10) Subsection (9) does not limit the information that the *approved form may require the statement to contain.

(11) The *approved form may require the statement to contain the *tax file number of:

(a) the *superannuation provider; and

(b) the *superannuation plan; and

(c) the individual who holds the *superannuation interest in the plan if:

(i) the individual has quoted the individual's tax file number to the superannuation provider; or

(ii) a person has quoted the individual's tax file number to the superannuation provider (and had authority to do so).

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

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390-7 Grace periods for correcting false or misleading member information statements

When statements can be corrected

(1) A *superannuation provider in relation to a *superannuation plan that has given a statement to the Commissioner under section 390-5 may correct the statement:

(a) within the period determined by the Commissioner under subsection (2) of this section; or

(b) if paragraph (a) does not apply but the superannuation provider is covered by a determination under subsection (5)—within the period specified in that determination.

Note 1: Correcting the statement can protect the superannuation provider from liability for a false or misleading statement: see subsections 8K(2B), 8N(3) and 284-75(9).

Note 2: If no period has been determined under subsection (2) or (5) in relation to a superannuation provider, the superannuation provider will not be able to take advantage of the grace period provided for by this section.

Determinations for particular superannuation providers

(2) The Commissioner may determine the period within which the *superannuation provider may correct a statement.

(3) The Commissioner must give the *superannuation provider written notice of the determination.

(4) The *superannuation provider may object, in the manner set out in Part IVC, against a decision of the Commissioner determining a period under subsection (2) relating to the superannuation provider.

Determinations for classes of superannuation providers

(5) The Commissioner may, by legislative instrument, determine the period within which *superannuation providers included in a class

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

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of superannuation providers specified in the determination may correct a statement.

390-10 Statements about roll-over superannuation benefits etc.

(1) This section applies if:

(a) a *superannuation provider (the ***first provider***) in relation to a *superannuation plan (the ***first plan***) pays a *roll-over superannuation benefit to another superannuation provider in relation to another superannuation plan; or

(b) a superannuation provider (also the ***first provider***) in relation to a superannuation plan (also the ***first plan***) pays to another superannuation provider in relation to another superannuation plan a *superannuation benefit (other than a roll-over superannuation benefit) in these circumstances:

(i) the first plan or the other superannuation plan is, or both are, a *non-complying superannuation plan for the income year in which the benefit is paid; or

(ii) the first plan or the other superannuation plan was, or both were, a non-complying superannuation plan for the previous income year.

(2) The first provider in relation to the first plan must:

(a) give the other superannuation provider a statement in relation to the benefit within 7 days after the day on which the benefit is paid; and

(b) unless the benefit is an *involuntary roll-over superannuation benefit, give the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.

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

(3) A statement under subsection (2) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

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

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(4) The *approved form may require the statement to contain the following information:

(a) information relating to contributions made to the first plan in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;

(b) other information relating to the benefit, including the *tax free component, *taxable component, *element taxed in the fund and *element untaxed in the fund (as applicable) of the benefit.

(5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).

(6) The period specified in the determination:

(a) may be:

(i) all or part of an income year; or

(ii) all or part of a financial year; or

(iii) any other period; and

(b) may be different:

(i) for different kinds of *superannuation provider; and

(ii) in relation to any other matter.

(7) Subsection (6) does not limit the way in which the determination may specify the period.

(8) The *approved form may require the statement to contain different information depending on whether paragraph (1)(a) or (b) applies.

(9) Subsections (4) and (8) do not limit the information that the *approved form may require the statement to contain.

(10) The *approved form may require the statement to contain the *tax file number of:

(a) the first provider; and

(b) the first plan; and

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

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(c) the individual in respect of whom the benefit is paid if:
  (i) the individual has quoted the individual's tax file number to the first provider; or
  (ii) a person who made at least some of the contributions mentioned in paragraph (4)(a) has quoted the individual's tax file number to the first provider (and had authority to do so).

390-12 Statements about benefits paid to KiwiSaver schemes

(1) This section applies if the trustee of a *complying superannuation fund pays a *superannuation benefit to a *KiwiSaver scheme provider.

(2) The trustee must:
  (a) give to the *KiwiSaver scheme provider a statement under this section within 7 days after the day on which the benefit is paid; and
  (b) give to the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.

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

(3) A statement under subsection (2) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(4) The *approved form may require the statement to contain the following information:
  (a) information relating to contributions made to the *complying superannuation fund in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;

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

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(b) other information relating to the benefit, including the *tax free component and *taxable component (as applicable) of the benefit.

(5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).

(6) The period specified in the determination:
(a) may be:
(i) all or part of an income year; or
(ii) all or part of a *financial year; or
(iii) any other period; and
(b) may be different:
(i) for different kinds of trustee; and
(ii) in relation to any other matter.

(7) Subsection (6) does not limit the way in which the determination may specify the period.

(8) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

390-15 Superannuation statements to members

(1) An individual, or the trustee of an individual's estate:
(a) may ask a *superannuation provider who has given information in a statement under section 390-5, 390-10 or 390-12 in relation to the individual to give the individual or the trustee the same information; and
(b) may ask a *life insurance company that has given information in a statement under section 390-20 in relation to the individual to give the individual or the trustee the same information; and
(c) may ask the superannuation provider or life insurance company to give the information in writing.

(2) The *superannuation provider or *life insurance company must:

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

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(a) comply with the request within 30 days after receiving the request; and

(b) if the individual or the trustee asked for the information to be given in writing—give the information in the *approved form.

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

Note 2: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(3) Subsection (2) does not apply if the *superannuation provider or *life insurance company has given the same information to the individual or the trustee previously (whether or not on request by the individual or trustee).

(4) If the individual or the trustee does not ask for the information to be given in writing, the *superannuation provider or *life insurance company may give the information to the individual or trustee in a way that the provider or company considers appropriate.

390-20 Statements relating to holders of certain life insurance policies

(1) A *life insurance company must give the Commissioner a statement in relation to an individual if:

(a) the individual held:

(i) an *exempt life insurance policy that provides for an *annuity that is a *superannuation income stream that is in the *retirement phase; or

(ii) a *life insurance policy covered by paragraph (b) of the definition of ***complying superannuation life insurance policy***; and

(b) the individual held the policy at any time during the period specified in the determination under subsection (3).

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

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

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(2) The statement must:
  (a) be in the *approved form; and
  (b) be given to the Commissioner on a day specified in the determination under subsection (3).

(3) The Commissioner may determine, by legislative instrument:
  (a) the period mentioned in subsection (1); and
  (b) the day on which a statement must be given to the Commissioner.

(4) The determination may specify a period beginning before, or a day before, the commencement of either or both of the following:
  (a) this section;
  (b) the determination.

(5) The *approved form may require the statement to contain information about the policy held by the individual.

(6) The *approved form may require the statement to contain the *tax file number of:
  (a) the *life insurance company; and
  (b) the individual who holds the policy if:
    (i) the individual has quoted the individual's tax file number to the life insurance company; or
    (ii) a person has quoted the individual's tax file number to the life insurance company (and had authority to do so).

Subdivision 390-B—Statements relating to release authorities

390-65 Statements relating to release authorities

(1) A *superannuation provider in relation to a *superannuation plan must give the Commissioner a statement under this section if the superannuation provider has:
  (a) been given a release authority in accordance with:
    (ii) section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; or

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

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(iii) Subdivision 135-B in this Schedule; and

(b) paid an amount out of the plan in accordance with the release authority.

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

(2) The statement must be given within 30 days after the amount is paid out of the plan.

(3) A statement under subsection (1) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(4) The *approved form must require the statement to contain information relating to the release authority.

(5) The *approved form may require the statement to contain the following information:

(a) the amount paid;

(b) details relating to the *superannuation provider in relation to the *superannuation plan;

(c) the individual in respect of whom the release authority was given to the superannuation provider.

(6) Subsection (5) does not limit the information that the *approved form may require the statement to contain.

(7) The *superannuation provider must also give the individual to whom the release authority relates a copy of the statement within 30 days after the amount is paid out of the plan.

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

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

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Subdivision 390-C—Other statements

390-115 Change or omission in information given to the Commissioner

(1) If a *superannuation provider in relation to a *superannuation plan becomes aware of a material change or material omission in any information given to the Commissioner in relation to the plan under this Division, the provider must:

(a) tell the Commissioner of the change in the *approved form; or

(b) give the omitted information to the Commissioner in the approved form.

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

(2) Information required by subsection (1) must be given no later than 30 days after the *superannuation provider becomes aware of the change or omission.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

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

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Division 392—Employee share scheme reporting

Table of Subdivisions

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392-A Statements
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Guide to Division 392

392-1 What this Division is about

A company that provides ESS interests to an individual under an employee share scheme during a year must, at the end of the year (and, in certain cases, at the end of a later year), give certain information to the Commissioner and to the individual.

Note: For the tax treatment of employee share schemes, see Division 83A of the *Income Tax Assessment Act 1997*.

Subdivision 392-A—Statements

Table of sections

392-5 Statements by providers
392-10 Change or omission in information given to the Commissioner

392-5 Statements by providers

Statements

(1) An entity (the ***provider***) must give a statement to the Commissioner and to an individual for a *financial year if:

(a) both of the following subparagraphs apply:

(i) the provider provides *ESS interests to the individual during the year;

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

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(ii) Subdivision 83A-B or 83A-C of the *Income Tax Assessment Act 1997* (about employee share schemes) applies to the interests; or

(b) all of the following subparagraphs apply:

(i) the provider has provided ESS interests to the individual (whether during the year or during an earlier year);

(ii) Subdivision 83A-C of the *Income Tax Assessment Act 1997* (about employee share schemes) applies to the interests;

(iii) the *ESS deferred taxing point for the interests occurs during the year.

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

Form of statements

(2) The statement must be in the *approved form.

(3) The *approved form may require the statement to contain the following information:

(a) the provider's *ABN;

(b) the following information about the individual:

(i) the individual's name and address;

(ii) if the individual has quoted his or her*tax file number to the provider—that tax file number;

(iii) if the individual acquired the interests in relation to any services provided to the provider, or to a *subsidiary of the provider, in the course or furtherance of an *enterprise *carried on by the individual, and the individual has *quoted his or her ABN to the provider—that ABN;

(c) the following information about any interests to which both paragraph (1)(a) of this section and Subdivision 83A-B of the *Income Tax Assessment Act 1997* apply:

(i) the number of the interests;

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

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(ii) the amount paid, at or before the time of acquisition, towards acquiring the interests;

(iii) the provider's estimate of the *market value of the interests at the time of acquisition;

(iv) the amount of *TFN withholding tax (ESS) paid or payable by the provider in respect of the interests during the year;

(d) the following information about any interests to which both paragraph (1)(a) of this section and Subdivision 83A-C of the *Income Tax Assessment Act 1997* apply:

(i) the number of the interests;

(ii) the amount paid, at or before the time of acquisition, towards acquiring the interests;

(e) the following information about any interests to which paragraph (1)(b) applies:

(i) the number of the interests;

(ii) the amount paid, after the time of acquisition but not after the *ESS deferred taxing point, towards acquiring the interests;

(iii) the provider's estimate of the market value of the interests at the ESS deferred taxing point;

(iv) the amount of TFN withholding tax (ESS) paid or payable by the provider in respect of the interests during the year.

Note: Regulations made for the purposes of section 83A-315 of the *Income Tax Assessment Act 1997* may substitute different amounts for the market values of the ESS interests: see section 392-15 in this Schedule.

(4) Subsection (3) does not limit the information that the *approved form may require the statement to contain.

When statements must be given

(5) The statement must be given:

(a) to the individual no later than 14 July after the end of the year; and

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

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(b) to the Commissioner no later than 14 August after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Disregard 30 day rule for ESS deferred taxing point if provider does not know when shares are disposed of etc.

(6) For the purposes of Subdivision 14-C (about TFN withholding tax (ESS)) and this Division, in working out the *ESS deferred taxing point for an *ESS interest, disregard subsection 83A-115(3) or 83A-120(3) (whichever is applicable) of the *Income Tax Assessment Act 1997* (about the 30 day rule) if the provider does not know the time worked out under that subsection at the earlier of:

(a) the time (if any) the provider gives a statement to the relevant individual under this section for the *financial year mentioned in subsection (7); and

(b) the later of:

(i) 14 July after the end of the financial year mentioned in subsection (7); and

(ii) if, under section 388-55, the Commissioner defers to a later time the time within which the statement under this section for that financial year is required to be given to the individual—that later time.

(7) The *financial year is the financial year in which the *ESS deferred taxing point for the *ESS interest occurs, disregarding subsection 83A-115(3) or 83A-120(3) (whichever is applicable) of the *Income Tax Assessment Act 1997* (about the 30 day rule).

392-10 Change or omission in information given to the Commissioner

(1) If the provider becomes aware of a material change or material omission in any information given to the individual or the Commissioner under this Division, the provider must:

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

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(a) tell the individual or the Commissioner, as applicable, of the change in the *approved form; or

(b) give the omitted information to the individual or the Commissioner, as applicable, in the approved form.

(2) Information required by subsection (1) must be given no later than 30 days after the provider becomes aware of the change or omission.

Note 1: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Note 2: Section 286-75 provides an administrative penalty for breach of this section.

Subdivision 392-B—Miscellaneous

Table of sections

392-15 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

392-15 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

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

(a) section 83A-130 (about takeovers and restructures);

(b) section 83A-305 (about associates);

(c) section 83A-315 (about market values and discounts);

(d) section 83A-320 (about trusts);

(e) section 83A-325 (about relationships similar to employment);

(f) section 83A-335 (about stapled securities);

(g) section 83A-340 (about indeterminate rights).

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

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Division 393—Reports by investment bodies

Guide to Division 393

393-1 What this Division is about

An investment body must give to the Commissioner quarterly reports about the quoting of investors' tax file numbers and ABNs, and annual reports on Part VA investments.

Table of sections

393-5 Reports about quoting tax file numbers and ABNs
393-10 Annual investment income reports
393-15 Errors in reports

393-5 Reports about quoting tax file numbers and ABNs

(1) If an entity is an *investment body in relation to a *Part VA investment for which either of the following occurs during a *quarter:

(a) an *investor's *tax file number is *quoted in connection with the investment;

(b) an investor's *ABN is quoted in connection with the investment;

the entity must give to the Commissioner a report on all Part VA investments, in relation to which the entity is an investment body, for which either of those events occurs during the quarter.

(2) The report must be in the *approved form.

(3) The report must be given to the Commissioner no later than 28 days after the end of the *quarter.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

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

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(4) Subsection (1) does not apply to an *investment body in relation to a *quarter for which the investment body has complied with an *arrangement in force between the investment body and the Commissioner relating to the reporting of *tax file numbers and *ABNs.

393-10 Annual investment income reports

(1) An entity must give to the Commissioner a report, for a *financial year, on all *Part VA investments in relation to which it was an *investment body at any time during the year.

(2) The report must be in the *approved form.

(3) The report must be given to the Commissioner within the following period after the end of the *financial year:

(a) the period the Commissioner specifies by legislative instrument; or

(b) otherwise—4 months.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(4) The report need not include particulars of an investment for which the return during the *financial year was less than $1.

(5) Despite subsection (1), the entity need not give to the Commissioner a report, for a *financial year during which the total number of *Part VA investments in relation to which it was an *investment body is less than:

(a) the number the Commissioner specifies by legislative instrument; or

(b) otherwise—10.

(5A) Paragraph (5)(b) does not apply to an *investment body that is a *managed investment trust.

(6) Subsection (1) does not apply to an *investment body in relation to a *financial year for which the investment body has complied with

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

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an *arrangement in force between the investment body and the Commissioner relating to the reporting on *Part VA investments.

393-15 Errors in reports

(1) An entity must give to the Commissioner a corrected report if:
   (a) the entity has given a report to the Commissioner under this Division; and
   (b) after giving the report, the entity becomes aware of a material error in it.

(2) The report must be in the *approved form.

(3) The report must be given to the Commissioner no later than 28 days after the entity becomes aware of the error.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

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

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Division 394—Reporting about forestry managed investment schemes

Guide to Division 394

394-1 What this Division is about

A forestry manager of a forestry managed investment scheme must give the Commissioner information about initial contributions by participants in the scheme. The forestry manager must also inform the Commissioner if the trees are not established under the scheme within 18 months of the first investment in the scheme.

Table of sections

394-5 Statements about initial contributions to scheme
394-10 Statements about failure to establish trees within 18 months

394-5 Statements about initial contributions to scheme

(1) The *forestry manager of a *forestry managed investment scheme must give the Commissioner a statement in relation to the scheme if:

(a) the scheme satisfies the requirement in paragraph 394-10(1)(c) of the *Income Tax Assessment Act 1997* (the *70% DFE rule); and

(b) the forestry manager (or an *associate of the forestry manager) receives an amount under the scheme that is included in the forestry manager's (or the associate's) assessable income under section 15-46 of that Act; and

(c) that amount is the amount that is first paid under the scheme by a *participant in the scheme.

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

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

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(2) A statement under subsection (1) must be in the *approved form.

(3) The statement must be given to the Commissioner within 3 months after the end of the income year in which the *forestry manager (or the *associate) receives the amount.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(4) The *approved form may require the statement to contain the following information:

(a) the name of the scheme;

(b) information relating to the identity of the *forestry manager (or the *associate);

(c) information relating to the amounts paid or payable under the scheme by *participants in the scheme.

(5) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

394-10 Statements about failure to establish trees within 18 months

(1) If:

(a) a *forestry managed investment scheme satisfies the requirement in paragraph 394-10(1)(c) of the *Income Tax Assessment Act 1997* (the *70% DFE rule); and

(b) the condition in subsection 394-10(4) of that Act is not satisfied in relation to the scheme;

the *forestry manager of the scheme must give the Commissioner a statement in relation to the reasons why that condition was not satisfied.

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

(2) A statement under subsection (1) must be in the *approved form.

(3) The statement must be given to the Commissioner within 3 months after the end of the 18 months mentioned in subsection 394-10(4) of the *Income Tax Assessment Act 1997*.

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

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Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

(4) The *approved form may require the statement to contain the following information:

(a) the name of the scheme;

(b) information relating to the identity of the *forestry manager;

(c) information relating to the circumstances that gave rise to the condition not being satisfied.

(5) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

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

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Division 396—Third party reporting

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396-B Information about transactions that could have tax consequences for taxpayers
396-C Common Reporting Standard

Guide to Division 396

396-1A What this Division is about

This Division requires:

(a) financial institutions to give to the Commissioner information for the purposes of the FATCA Agreement and the Common Reporting Standard; and

(b) certain entities to give to the Commissioner information about transactions that could have tax consequences for other entities.

Subdivision 396-A—FATCA

Guide to Subdivision 396-A

396-1 What this Subdivision is about

This Subdivision gives effect to the FATCA Agreement between the Government of Australia and the Government of the United States of America.

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

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Reporting Australian Financial Institutions must give the Commissioner certain information about U.S. Reportable Accounts. For the 2015 and 2016 calendar years, they must also give the Commissioner information about payments made to Nonparticipating Financial Institutions.

This Subdivision also creates record-keeping obligations in relation to the requirements to give the Commissioner information.

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396-10 Statements about payments to Nonparticipating Financial Institutions
396-15 Meaning of the ***FATCA Agreement***
396-20 Permissions and elections
396-25 Record keeping

Operative provisions

396-5 Statements about U.S. Reportable Accounts

(1) Subsection (2) applies if:

(a) an entity is a Reporting Australian Financial Institution (within the meaning of the *FATCA Agreement) at any time in a calendar year; and

(b) the entity maintains a U.S. Reportable Account (within the meaning of the FATCA Agreement) at any time in the year.

(2) The entity must give the Commissioner a statement that contains the information in respect of that U.S. Reportable Account that the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement in respect of that U.S. Reportable Account.

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

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

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(3) The information contained in the statement must be determined by the entity by applying the due diligence procedures required under the *FATCA Agreement.

Note: Those due diligence procedures are specified in Annex I to the FATCA Agreement, subject to the application of Article 7 of that Agreement (consistency in the application of FATCA to partner jurisdictions).

(4) A statement under subsection (2) must be in the *approved form.

(5) More than one statement under subsection (2) may be included in the same document.

(6) The statement must be given to the Commissioner no later than the first 31 July after the end of the calendar year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-10 Statements about payments to Nonparticipating Financial Institutions

(1) Subsection (2) applies if:

(a) an entity is a Reporting Australian Financial Institution (within the meaning of the *FATCA Agreement) at any time in a calendar year; and

(b) the calendar year is the 2015 or 2016 year; and

(c) the entity makes a payment to a Nonparticipating Financial Institution (within the meaning of the FATCA Agreement) at any time in the year.

(2) The entity must give the Commissioner a statement that contains the information in respect of that payment that the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement in respect of that payment.

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

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

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(3) The information contained in the statement must be determined by the entity by applying the due diligence procedures required under the *FATCA Agreement.

Note: Those due diligence procedures are specified in Annex I to the FATCA Agreement, subject to the application of Article 7 of that Agreement (consistency in the application of FATCA to partner jurisdictions).

(4) A statement under subsection (2) must be in the *approved form.

(5) More than one statement under subsection (2) may be included in the same document.

(6) The statement must be given to the Commissioner no later than the first 31 July after the end of the calendar year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-15 Meaning of the *FATCA Agreement*

The ***FATCA Agreement*** is the Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, done at Canberra on 28 April 2014.

Note: The text of the Agreement is set out in Australian Treaty Series [2014] ATNIF 5. In 2014, the text of the Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

396-20 Permissions and elections

(1) This section applies, for the purposes of this Subdivision:
  (a) in determining whether the conditions in subsections 396-5(1) and 396-10(1) are satisfied; and
  (b) in determining which information the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement.

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

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(2) To the extent that the *FATCA Agreement gives Australia the ability to permit an entity to use or rely on matters provided for in U.S. Treasury Regulations in determining obligations under the FATCA Agreement, assume that the permission has been given.

(3) To the extent that the *FATCA Agreement gives Australia the ability to provide for an entity to make an election in determining obligations under the FATCA Agreement, assume that the entity may make the election.

396-25 Record keeping

(1) If an entity is obliged to give the Commissioner a statement under subsection 396-5(2) or 396-10(2), the entity must keep written records that:

(a) correctly record the procedures by which the entity determines the information that is required to be contained in the statement; and

(b) are in English, or readily accessible and easily convertible into English.

(2) The entity must retain the records until the expiration of 5 years after the entity gives the Commissioner the statement under subsection 396-5(2) or 396-10(2).

Note: Section 288-25 imposes an administrative penalty if an entity does not keep and retain records as required by this section.

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

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Subdivision 396-B—Information about transactions that could have tax consequences for taxpayers

Guide to Subdivision 396-B

396-50 What this Subdivision is about

The Commissioner can require certain entities to give information about transactions that could reasonably be expected to have tax consequences for other entities.

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396-60 Information required
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396-70 Exemptions—other cases
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Operative provisions

396-55 Reporting tax-related information about transactions to the Commissioner

An entity mentioned in column 1 of an item of this table must:

(a) prepare a report in the *approved form setting out information about any transactions described in that item that happened during this period:
  (i) a *financial year; or
  (ii) such other period as the Commissioner specifies by legislative instrument for that item; and
(b) give the report to the Commissioner on or before:
  (i) the 31st day after the end of that period; or

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

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(ii) such other time after the end of that period as the Commissioner specifies by legislative instrument for that item;

unless section 396-65, or a notice or determination under section 396-70, provides that the entity is not required to do so.

Information to be reported by third parties about transactions

	Column 1	Column 2
Item	**This entity:**	**must report information about this transaction:**
1	a government related entity (within the meaning of the *GST Act), other than a *local governing body	the provision of a grant by the entity to an entity that has an *ABN
2	a government related entity (within the meaning of the *GST Act)	the provision of consideration (within the meaning of the *GST Act): (a) by the entity to an entity; and (b) wholly or partly for a *supply of services; unless the supply of services is merely incidental to a supply of goods (within the meaning of the GST Act)
3	a State or Territory	the transfer of a freehold or leasehold interest in real property situated in the State or Territory
4	*ASIC	a transaction about which data has been delivered to *ASIC under the *market integrity rules
5	a participant (within the meaning of Chapter 7 of the *Corporations Act 2001*) in an *Australian financial market	a transaction, involving the participant, that: (a) results in a change to the type, name or number of *shares in a company, or units in a unit trust, that are held by another entity; and (b) is a transaction about which data is required to be delivered to *ASIC under the *market integrity rules

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

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Information to be reported by third parties about transactions

	Column 1	Column 2
Item	**This entity:**	**must report information about this transaction:**
6	a company whose *shares are listed for quotation in the official list of an *Australian financial market	a transaction that: (a) results in a change to the type, name or number of *shares in the company that are held by an entity; and (b) is not a transaction about which data is required to be delivered to *ASIC under the *market integrity rules
7	the trustee of a unit trust	a transaction that: (a) results in a change to the type, name or number of units in the unit trust that are held by an entity; and (b) is not a transaction about which data is required to be delivered to *ASIC under the *market integrity rules
8	the trustee of a trust (other than a unit trust)	a transaction that results in a change to the type, name or number of any *shares in a company, or units in a unit trust: (a) that are held as assets of the trust; and (b) to which one or more entities are absolutely entitled as beneficiaries of the trust; unless the trustee gives the Commissioner an *income tax return for the income year in which the transaction was entered into
9	an administrator of a payment system (within the meaning of the *Payment Systems (Regulation) Act 1998*)	a transaction involving an electronic payment if: (a) the transaction is facilitated by the payment system on behalf of an entity; and (b) the administrator reasonably believes that the transaction: (i) provides a payment to the entity, or provides a refund or cash to a customer of the entity; and (ii) is for the purposes of a *business carried on by the entity

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

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Information to be reported by third parties about transactions

	Column 1	Column 2
Item	**This entity:**	**must report information about this transaction:**
9A	an *eligible community housing provider	the issuing by the provider of a certificate under section 980-15 of the *Income Tax Assessment Act 1997*
10	a company	the issuing by the company of a *share that could give rise to an entitlement to a *tax offset (or a modified CGT treatment) under Subdivision 360-A of the *Income Tax Assessment Act 1997*
11	an entity that makes a *supply of a cleaning service and has an *ABN	the provision of consideration (within the meaning of the *GST Act) by the entity to another entity wholly or partly for the *supply by the other entity of a cleaning service, unless: (a) the entities are *members of the same *consolidated group or *MEC group; or (b) Division 12 requires that an amount be withheld from the payment of the consideration
12	an entity that makes a *supply of a courier service or a road freight service and has an *ABN	the provision of consideration (within the meaning of the *GST Act) by the entity to another entity wholly or partly for the *supply by the other entity of a courier service or a road freight service, unless: (a) the entities are *members of the same *consolidated group or *MEC group; or (b) Division 12 requires that an amount be withheld from the payment of the consideration
13	an entity that makes a *supply of a security, investigation or surveillance service and has an *ABN	the provision of consideration (within the meaning of the *GST Act) by the entity to another entity wholly or partly for the *supply by the other entity of a security, investigation or surveillance service, unless: (a) the entities are *members of the same *consolidated group or *MEC group; or (b) Division 12 requires that an amount be withheld from the payment of the consideration

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

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Information to be reported by third parties about transactions

	Column 1	Column 2
Item	**This entity:**	**must report information about this transaction:**
14	an entity that makes a *supply of an information technology service and has an *ABN	the provision of consideration (within the meaning of the *GST Act) by the entity to another entity wholly or partly for the *supply by the other entity of an information technology service, unless: (a) the entities are *members of the same *consolidated group or *MEC group; or (b) Division 12 requires that an amount be withheld from the payment of the consideration

Note: An administrative penalty applies to a failure to give the report by that time (see subsection 286-75(1)). An administrative penalty applies for any false statements in the report (see section 284-75).

396-60 Information required

Transactions not involving market participants

(1) For the purposes of section 396-55, the information required by the *approved form about a transaction (other than a transaction described in table item 5 in that section):

(a) must relate to:

(i) the identification, collection or recovery of a possible *tax-related liability; or

(ii) the identification of a possible reduction of a possible tax-related liability;

of a party to the transaction (disregarding any exemption under a *taxation law that may apply to those parties); and

(b) may relate to identifying the parties to the transaction; and

(c) for a transaction described in table item 3 in that section—may include the *tax file numbers of those parties to the transaction who have quoted their tax file numbers to the State or Territory concerned.

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

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Transactions involving market participants

(2) For the purposes of section 396-55, the information required by the *approved form about a transaction described in table item 5 in that section must relate to identifying the parties to the transaction.

Some reporting entities may request tax file numbers

(3) A State or Territory may request an entity to quote the entity's *tax file number to the State or Territory if:

(a) the tax file number is for a report by the State or Territory under section 396-55 about a transaction described in table item 3 in that section; and

(b) the entity is a party to the transaction.

396-65 Exemptions—wholesale clients

(1) An entity is not required to include, in a report under section 396-55, information about a transaction described in table item 5, 6 or 7 in that section to the extent that the information relates to a party to the transaction:

(a) who is not an individual; and

(b) who, under the transaction, is being provided with:

(i) a financial product (within the meaning of Chapter 7 of the *Corporations Act 2001*); or

(ii) a financial service (within the meaning of that Chapter);

as a wholesale client (within the meaning of that Chapter).

Note: This exemption does not apply to information relating to any other party to the transaction, such as the party providing the product or service.

(2) An entity is not required to include, in a report under section 396-55, information about a transaction described in table item 8 in that section to the extent that the information relates to a beneficiary mentioned in that item:

(a) who is not an individual; and

(b) who, under the transaction, is being provided with:

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

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(i) a financial product (within the meaning of Chapter 7 of the *Corporations Act 2001*); or

(ii) a financial service (within the meaning of that Chapter);

as a wholesale client (within the meaning of that Chapter).

Note: This exemption does not apply to information relating to any other party to the transaction, such as the party providing the product or service.

396-70 Exemptions—other cases

Exemptions for particular entities

(1) The Commissioner may, in writing, notify an entity that it:

(a) is not required to prepare and give reports under section 396-55; or

(b) is not required to do so for specified classes of transactions.

(2) An entity dissatisfied with a decision to:

(a) give it a notice under subsection (1); or

(b) not give it a notice under subsection (1);

may object against the decision in the manner set out in Part IVC.

(3) A notice under subsection (1) is not a legislative instrument.

General exemptions

(4) The Commissioner may, by legislative instrument, determine that specified classes of entities:

(a) are not required to prepare and give reports under section 396-55; or

(b) are not required to do so for specified classes of transactions.

396-75 Errors in reports

(1) An entity must give to the Commissioner a corrected report if:

(a) the entity has given a report to the Commissioner under this Subdivision; and

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

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(b) after giving the report, the entity becomes aware of a material error in it.

(2) The report must be in the *approved form.

(3) The report must be given to the Commissioner no later than 28 days after the entity becomes aware of the error.

Note 1: An administrative penalty applies to a failure to give the report by that time (see subsection 286-75(1)). An administrative penalty applies for any false statements in the report (see section 284-75).

Note 2: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Subdivision 396-C—Common Reporting Standard

Guide to Subdivision 396-C

396-100 What this Subdivision is about

Australian Financial Institutions must give the Commissioner certain information about accounts of foreign residents. This obligation is based on the Common Reporting Standard.

Note 1: This obligation will assist the Australian Government to exchange information with other jurisdictions in accordance with international agreements, such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988.

In 2015, the text of the Convention was available on the OECD's website (http://www.oecd.org).

Note 2: The purpose of the Common Reporting Standard is to reduce international tax evasion. It sets out due diligence procedures for financial institutions to apply to identify account holders that are foreign tax residents, and provides for financial institutions to report information with respect to such account holders.

This Subdivision also creates record-keeping obligations in relation to the requirement to give the Commissioner information.

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

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This Subdivision also requires the Commissioner to report on certain Reportable Accounts that are maintained by Australian Reporting Financial Institutions.

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396-125 Record keeping
396-130 Anti-avoidance provisions
396-135 Application of penalty to false or misleading self-certification
396-136 Report on Reportable Accounts maintained by Australian Reporting Financial Institutions

Operative provisions

396-105 Statements about Reportable Accounts

(1) Subsection (2) applies if:

(a) at any time in a calendar year, an entity:

(i) is a Reporting Financial Institution (within the meaning of the *CRS); or

(ii) is an institution that a notice under subsection 396-130(5) requires to act as a Reporting Financial Institution; and

(b) at that time in the year, the entity:

(i) is resident in Australia (within the meaning of the CRS); or

(ii) is a branch located in Australia (within the meaning of the CRS); and

(c) at any time in the year, the entity maintains:

(i) a Reportable Account (within the meaning of the CRS); or

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

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(ii) an account that a notice under subsection 396-130(2) requires the entity to treat as a Reportable Account.

Note: Subsection 396-120(3) applies the CRS to all jurisdictions.

(2) The entity must give the Commissioner a statement that contains in respect of the account the information that the *CRS states the entity must report.

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

(3) Whether an entity maintains a Reportable Account (within the meaning of the *CRS) must be determined by the entity by applying the due diligence procedures described in the CRS.

Note: Section 288-85 provides an administrative penalty for failing to obtain a self-certification in relation to the account when applying the due diligence procedures.

(4) A statement under subsection (2) must be in the *approved form.

(5) More than one statement under subsection (2) may be included in the same document.

(6) The statement must be given to the Commissioner no later than the first 31 July after the end of the calendar year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-110 Meaning of *CRS*

(1) The ***CRS*** is the Common Reporting Standard set out in Part II.B of the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the Organisation for Economic Co-Operation and Development on 15 July 2014.

Note: In 2015, the text of the Standard was available on the OECD's website (http://www.oecd.org).

(2) Subject to section 396-120, for the purposes of this Subdivision, the *CRS must be applied consistently with Part III.B (the ***CRS***

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

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Commentary) of the Standard for Automatic Exchange of Financial Account Information in Tax Matters.

396-115 Matters Common Reporting Standard leaves to domestic law

Defined terms

(1) For the purposes of subparagraph B(1)(c) of Section VIII of the *CRS, the following Entities (within the meaning of the CRS) are defined as Non-Reporting Financial Institutions:

(a) an Entity to which any of the following paragraphs of Annex II of the *FATCA Agreement applies:

(i) paragraph A (government entity), B (international organisation) or C (central bank) of section I;

(ii) paragraph A (retirement fund) of section II;

(b) an Entity the Minister prescribes by legislative instrument.

(2) Subparagraph (1)(a)(i) does not apply with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution (within the meaning of the *CRS).

(3) For the purposes of subparagraph C(17)(g) of Section VIII of the *CRS, the following accounts are defined as Excluded Accounts:

(a) an account to which any of the following subparagraphs of paragraph A of section V of Annex II of the *FATCA Agreement applies:

(i) subparagraph (1) (retirement and pension accounts);

(ii) subparagraph (3) (certain other tax-favoured accounts);

(b) an account the Minister prescribes by legislative instrument.

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

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Elections by entities

(4) To the extent that the *CRS gives Australia the ability to provide for an entity to make an election in determining obligations under the CRS, assume that the entity may make the election.

Modifications mentioned in CRS Commentary

(5) The *CRS has effect with the following modifications mentioned in the *CRS Commentary:

(a) the inclusion mentioned in paragraph 13 of the Commentary on Section VII concerning Special Due Diligence Requirements;

(b) the 2 replacements mentioned in paragraph 82 of the Commentary on Section VIII concerning Defined Terms.

396-120 Application of Common Reporting Standard

Scope of this section

(1) This section applies:

(a) for the purposes of section 288-85 (Failure by Reporting Financial Institution to obtain self-certification); and

(b) for the purposes of this Subdivision:

(i) in determining whether the conditions in subsection 396-105(1) are satisfied; and

(ii) in determining which information the *CRS states a Reporting Financial Institution must report.

General reporting requirements

(2) Paragraph F of Section I of the *CRS is to be disregarded.

Reportable and Participating Jurisdictions

(3) All jurisdictions (other than Australia) are to be treated as Reportable Jurisdictions.

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

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(4) Without limiting subparagraph D(5) of Section VIII of the *CRS, Australia is to be treated as a Participating Jurisdiction.

Accounts

(5) Without limiting subparagraph D(1) of Section VIII of the *CRS, an account maintained by a Reporting Financial Institution for an entity is treated as being a Reportable Account (within the meaning of the CRS) if:

(a) the Reporting Financial Institution does not apply the due diligence procedures described in the CRS in relation to the account; and

(b) the CRS does not state that the account is not required to be identified; and

(c) the account would be such a Reportable Account if the Reporting Financial Institution applied those procedures.

(6) The date provided for in subparagraph C(9) of Section VIII of the *CRS (about Preexisting Accounts) (as affected by paragraph 396-115(5)(b) in this Schedule) is taken to be 30 June 2017.

(7) A reference in the *CRS to a New Account is treated as being a reference to a Financial Account maintained by a Reporting Financial Institution that is not a Preexisting Account.

Dollar amounts

(8) An entity may choose to treat all dollar amounts in the *CRS as being in Australian dollars.

Note: Otherwise, all dollar amounts are in United States dollars: see subparagraph C(4) of Section VII of the CRS.

396-125 Record keeping

(1) If paragraph 396-105(1)(a) applies to an entity for a calendar year, the entity must keep written records that:

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

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(a) correctly record the procedures by which the entity determines:

(i) whether, at any time during the year, the entity maintains an account to which paragraph 396-105(1)(c) applies; and

(ii) the information that is required to be contained in the statement (if any) the entity is obliged to give the Commissioner under subsection 396-105(2); and

(b) are in English, or readily accessible and easily convertible into English.

(2) The entity must retain the records, to the extent that they relate to a particular account, until:

(a) the expiration of 5 years after the entity gives the Commissioner the statement in respect of the account under subsection 396-105(2); or

(b) if the entity is not required to give the Commissioner a statement in respect of the account for the year—31 July in the sixth year after the end of the year.

Note: Section 288-25 imposes an administrative penalty if an entity does not keep and retain records as required by this section.

396-130 Anti-avoidance provisions

Commissioner may require an account to be treated as a Reportable Account

(1) The Commissioner may require an entity that:

(a) is a Reporting Financial Institution (within the meaning of the *CRS); or

(b) is a Financial Institution that a notice under subsection (5) requires to act as a Reporting Financial Institution;

to treat an account the institution maintains or has maintained as if it is a Reportable Account (within the meaning of the CRS), if the Commissioner reasonably believes that:

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

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(c) the account would not be, or would not have been, such a Reportable Account if the Commissioner had not made such a requirement; and

(d) the Reporting Financial Institution or the Account Holder (within the meaning of the CRS) undertook a transaction, or entered into an *arrangement:

(i) for the purpose of causing the account not to be such a Reportable Account; or

(ii) for 2 or more purposes of which that purpose is the dominant purpose.

(2) The Commissioner must give written notice of the requirement to the Reporting Financial Institution.

(3) The Reporting Financial Institution may object, in the manner set out in Part IVC, against the Commissioner's decision to give the notice.

Commissioner may require a Financial Institution to act as a Reporting Financial Institution

(4) The Commissioner may require an entity that is a Financial Institution (within the meaning of the *CRS) to act as if it is a Reporting Financial Institution (within the meaning of the CRS), if the Commissioner reasonably believes that:

(a) the institution would not be, or would not have been, such a Reporting Financial Institution if the Commissioner had not made such a requirement; and

(b) the Financial Institution undertook a transaction, or entered into an *arrangement:

(i) for the purpose of causing the institution not to be such a Reporting Financial Institution; or

(ii) for 2 or more purposes of which that purpose is the dominant purpose.

(5) The Commissioner must give written notice of the requirement to the institution.

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

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(6) The institution may object, in the manner set out in Part IVC, against the Commissioner's decision to give the notice.

396-135 Application of penalty to false or misleading self-certification

For the purposes of applying Part 4-25 (Charge and penalties) in relation to a statement that is, or that relates to, a self-certification (within the meaning of the *CRS) that a Reporting Financial Institution is required to obtain when applying, under subsection 396-105(3), the due diligence procedures described in the CRS:

(a) the CRS is treated as permitting the self-certification; and

(b) the CRS is treated as being a *taxation law (but not an *Excise Act).

Note: You are liable to an administrative penalty under subsection 284-75(4) if you give a self-certification that is false or misleading in a material particular.

396-136 Report on Reportable Accounts maintained by Australian Reporting Financial Institutions

(1) This section applies if:

(a) the Commissioner receives one or more statements under subsection 396-105(2) in relation to:

(i) the 2018 calendar year; or

(ii) a calendar year commencing after 2018; and

(b) the statement contains information about a Reportable Account (within the meaning of the CRS); and

(c) the total number of accounts of the kind mentioned in paragraph (b) for a jurisdiction (other than Australia) that is a Reportable Jurisdiction (within the meaning of the CRS) (the ***relevant jurisdiction***) for the calendar year is 6 or more.

(2) The Commissioner must, no later than 31 December of the year following the calendar year, prepare and give to the Minister a

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

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report that sets out for each relevant jurisdiction in relation to the calendar year the following information:

(a) the total number of accounts of the kind mentioned in paragraph (1)(b);

(b) the sum of the amounts in those accounts.

(3) The Minister must cause a copy of the report given under subsection (2) to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(4) The report given under subsection (2) is not a legislative instrument.

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

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Division 398—Miscellaneous reporting obligations

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Guide to Division 398

398-1 What this Division is about

This Division contains reporting obligations not covered by other Divisions of this Part.

Subdivision 398-A—Farm Management Deposit reporting

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398-5 Reporting to Agriculture Department

398-5 Reporting to Agriculture Department

FMD provider must provide monthly information

(1) An *FMD provider must, before the 11th day after the end of a calendar month, give in writing to the *Agriculture Secretary the information specified in subsection (3) if the provider holds a *farm management deposit at the end of that month.

Penalty: 10 penalty units.

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

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

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

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Information required

(3) The information is:
  (a) the number of *farm management deposits held at the end of that month; and
  (b) the number of depositors in respect of such deposits at the end of that month; and
  (c) the sum of the balances of such deposits at the end of that month; and
  (d) any other information, in relation to farm management deposits held by the *FMD provider at any time in that month, that is required by the regulations for the purposes of this section.

Regulations not to require identity of depositor

(4) Regulations made for the purposes of paragraph (3)(d) must not require information:
  (a) that discloses the identity of a depositor; or
  (b) from which the identity of a depositor could reasonably be inferred.

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

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Part 5-30—Payment, ABN and identification verification system

Division 400—Guide to Part 5-30

400-1 What Part 5-30 is about

To improve compliance with the tax laws that relate to payments for certain supplies, this Part imposes additional requirements on purchasers and suppliers.

The additional requirements relate to verification of ABNs and to reporting information about payments.

Regulations will specify the supplies that are covered and the additional requirements that apply to payments for those supplies.

400-5 The payment, ABN and identification verification system

(1) There are 4 components in the payment, ABN and identification verification system:

(a) transaction reporting by purchasers (Division 405);

(b) transaction reporting by suppliers (Division 410);

(c) verification of suppliers' *ABNs by purchasers (Division 415);

(d) verification of suppliers' identities by purchasers (Division 417);

One or more of the components may apply to a particular payment. The regulations will specify which components apply.

(2) Where a component of the system applies to a payment, the requirements of that component must be complied with.

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

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Division 405—Transaction reporting by purchasers

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405-10 Reporting requirements
405-15 Invoices produced by purchasers

405-5 Payments to which this Division applies

(1) This Division applies to any payments made, or liable to be made, for a *supply where the supply is specified in regulations made for the purpose of this section.

(2) A payment is liable to be made if the obligation to make the payment is notified in an *invoice.

(3) Payments to which this Division applies are called ***Division 405 payments***.

(4) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
  (a) the goods or services supplied; or
  (b) the supplier; or
  (c) the purchaser.

405-10 Reporting requirements

(1) Any entity (the ***purchaser***) that makes, or is liable to make, a *Division 405 payment during a *quarter must give a *Division 405 report to the Commissioner within 21 days after the end of the quarter.

(2) A ***Division 405 report*** is a written statement in the *approved form that names the purchaser and, for each supplier in relation to whom the purchaser made, or was liable to make, a *Division 405 payment during the *quarter:
  (a) names the supplier; and

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

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(b) specifies the supplier's *ABN (if known by the purchaser); and

(c) specifies the total of the Division 405 payments that the purchaser made, or was liable to make, to the supplier during the quarter that:

(i) were notified in an invoice during the quarter (unless the payment was reported in an earlier Division 405 report); or

(ii) were made during the quarter but for which no invoice had been received before the end of the quarter.

The report must also include any other information that the Commissioner requires.

(3) The Commissioner may, in writing, require particular information to be included in a *Division 405 report or a class of Division 405 reports.

(4) The Commissioner may, by written notice, vary any requirements under subsection (1), (2) or (3) in relation to a purchaser or class of purchaser. The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

405-15 Invoices produced by purchasers

If a purchaser produces an *invoice that notifies the purchaser's obligation to make a payment, the purchaser is taken to have been notified of the payment at the time that the invoice is produced.

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

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Division 410—Transaction reporting by suppliers

Table of sections

410-5 Payments to which this Division applies
410-10 Reporting requirements
410-15 Invoices produced by purchasers

410-5 Payments to which this Division applies

(1) This Division applies to any payments received, or entitled to be received, for a *supply where the supply is specified in regulations made for the purpose of this section.

(2) A payment is entitled to be received if the obligation to make the payment is notified in an *invoice.

(3) Payments to which this Division applies are called ***Division 410 payments***.

(4) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
  (a) the goods or services supplied; or
  (b) the supplier; or
  (c) the purchaser.

410-10 Reporting requirements

(1) Any entity (the ***supplier***) that receives, or is entitled to receive, a *Division 410 payment during a *quarter must give a *Division 410 report to the Commissioner within 21 days after the end of the quarter.

(2) A ***Division 410 report*** is a written statement in the *approved form that names the supplier and, for each purchaser in relation to whom the supplier received, or was entitled to receive, a *Division 410 payment during the *quarter:
  (a) names the purchaser; and

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

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(b) specifies the purchaser's *ABN (if known by the supplier); and

(c) specifies the total of the Division 410 payments that the supplier received, or was entitled to receive, from the purchaser during the quarter that:

(i) were notified in an invoice during the quarter (unless the payment was reported in an earlier Division 410 report); or

(ii) were received during the quarter but for which no invoice had been provided before the end of the quarter.

The report must also include any other information that the Commissioner requires.

(3) The Commissioner may, in writing, require particular information to be included in a *Division 410 report or a class of Division 410 reports.

(4) The Commissioner may, by written notice, vary any requirements under subsection (1), (2) or (3) in relation to a supplier or class of supplier. The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

410-15 Invoices produced by purchasers

If a purchaser produces an *invoice that notifies the purchaser's obligation to make a payment, the supplier is taken to have notified the purchaser of the payment at the time that the invoice is produced.

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

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Division 415—Verification of suppliers' ABNs by purchasers

Table of sections

415-5 Payments to which this Division applies
415-10 ABN verification requirements
415-15 Method of obtaining ABN verification
415-20 Verification applies to later payments

415-5 Payments to which this Division applies

(1) This Division applies if:

(a) a payment is made, or is liable to be made, by an entity (the ***purchaser***) to another entity (the ***supplier***) for a *supply; and

(b) the supply is specified in regulations made for the purpose of this section; and

(c) the supplier has purported to *quote his or her *ABN to the purchaser.

(2) Payments to which this Division applies are called ***Division 415 payments***.

(3) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:

(a) the goods or services supplied; or

(b) the supplier; or

(c) the purchaser.

415-10 ABN verification requirements

Before the purchaser makes a *Division 415 payment to the supplier, the purchaser must obtain verification that the *ABN *quoted by the supplier is the ABN entered in the *Australian Business Register with the name given by the supplier.

Note: If the purchaser has reasonable grounds to believe that the supplier has not correctly quoted his or her ABN, the purchaser is required to withhold an amount under section 12-190.

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

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415-15 Method of obtaining ABN verification

(1) To obtain verification of a supplier's *ABN, a purchaser must seek the verification in a manner approved in writing by the Commissioner.

(2) Without limiting the Commissioner's power under subsection (1), the Commissioner may approve verifications being sought orally or by way of electronic transmission.

(3) Verification of an *ABN may be obtained in such form, including orally or by way of electronic transmission, as the Commissioner approves in writing.

(4) The Commissioner may, by written notice, vary any requirements under subsection (1) in relation to:

(a) a purchaser or class of purchaser; or

(b) a supplier or class of supplier.

The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

415-20 Verification applies to later payments

(1) Verification of a supplier's ABN applies to all later *Division 415 payments by the purchaser to the supplier unless there is a period of 2 years during which no *Division 415 payment is made by the purchaser to the supplier. If this occurs, the verification continues to apply to any purchases before 1 July first occurring after the end of the 2 year period.

(2) However, verification of a supplier's *ABN does not apply to a *Division 415 payment if the purchaser has reasonable grounds to believe that the *ABN *quoted by the supplier is no longer the ABN entered in the *Australian Business Register with the name given by the supplier.

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

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Division 417—Verification of suppliers' identities by purchasers

Table of sections

417-5 Payments to which this Division applies
417-10 Identity verification requirements
417-15 Method of obtaining identity verification
417-20 Verification applies to later payments

417-5 Payments to which this Division applies

(1) This Division applies if:

(a) a payment is made, or liable to be made, by an entity (the ***purchaser***) to another entity (the ***supplier***) for a *supply; and

(b) the supply is specified in regulations made for the purpose of this section.

(2) Payments to which this Division applies are called ***Division 417 payments***.

(3) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:

(a) the goods or services supplied; or

(b) the supplier; or

(c) the purchaser.

417-10 Identity verification requirements

Before the purchaser makes a *Division 417 payment, the purchaser must obtain verification of the supplier's identity.

Note: If the purchaser has reasonable grounds to believe that the supplier has not correctly quoted his or her ABN, the purchaser is required to withhold an amount under section 12-190.

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

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417-15 Method of obtaining identity verification

(1) To obtain verification of a supplier's identity, a purchaser must carry out the identity verification procedure that is determined, in writing, by the Commissioner.

(2) The Commissioner may determine different identity verification procedures for:
   (a) different purchasers or classes of purchasers; or
   (b) different suppliers or classes of suppliers.

417-20 Verification applies to later payments

(1) Verification of a supplier's identity applies to all later *Division 417 payments by the purchaser to the supplier unless there is a period of 2 years during which no *Division 417 payment is made by the purchaser to the supplier. If this occurs, the verification continues to apply to any purchases before 1 July first occurring after the end of the 2 year period.

(2) However, verification of a supplier's identity does not apply to a later *Division 417 payment if the purchaser has reasonable grounds to believe that the verified identity is not the supplier's true identity.

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

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Division 420—Penalties for not reporting or verifying

Table of sections

420-5 Failing to report or verify: administrative penalty

420-5 Failing to report or verify: administrative penalty

An entity that fails to:

(a) give a *Division 405 report to the Commissioner as required by section 405-10; or

(b) give a *Division 410 report to the Commissioner as required by section 410-10; or

(c) verify a supplier's *ABN as required by section 415-10; or

(d) verify a supplier's identity as required by section 417-10;

is liable to pay to the Commissioner a penalty of 20 penalty units.

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

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

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

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Division 425—Other matters

Table of sections

425-20 Constructive payment
425-25 Non-cash benefits

425-20 Constructive payment

(1) In working out whether an entity has paid an amount to another entity, and when the payment is made, the amount is taken to have been paid to the other entity when the first entity applies or deals with the amount in any way on the other's behalf or as the other directs.

(2) An amount is taken to be payable by an entity to another entity if the first entity is required to apply or deal with it in any way on the other's behalf or as the other directs.

425-25 Non-cash benefits

For the purposes of this Part, if an entity (the ***payer***) provides a *non-cash benefit to another entity (the ***recipient***), the payer is taken to have made a payment of an amount equal to the *market value of the benefit provided.

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

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Part 5-35—Registration and similar processes for various taxes

Division 426—Process of endorsing charities and other entities

Table of Subdivisions

Guide to Division 426
426-A Application of Subdivision 426-B to various kinds of endorsement
426-B Process of endorsement etc.
426-C Entries on Australian Business Register
426-D Public and private ancillary funds

Guide to Division 426

426-1 What this Division is about

This Division sets out procedural rules relating to endorsement of charities and other entities (the conditions for entitlement to endorsement are set out in the GST Act, the *Fringe Benefits Tax Assessment Act 1986*, and the *Income Tax Assessment Act 1997*). These rules cover matters such as application for and revocation of endorsement, and entry of the details of endorsement on the Australian Business Register.

Subdivision 426-D deals with types of philanthropic trust funds known as ***public ancillary funds*** and ***private ancillary funds***.

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

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Subdivision 426-A—Application of Subdivision 426-B to various kinds of endorsement

Table of sections

426-5 Application of Subdivision 426-B to various kinds of endorsement
426-10 How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*

426-5 Application of Subdivision 426-B to various kinds of endorsement

Subdivision 426-B applies separately in relation to each of these kinds of endorsement:

(a) endorsement of an entity as a charity under subsection 176-1(1) of the *GST Act;

(ba) endorsement of:

(i) a fund as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986*; or

(ii) an entity for the operation of a fund as an approved worker entitlement fund under subsection 58PB(3A) of that Act;

(c) endorsement of an entity as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;

(e) endorsement of an entity as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;

(f) endorsement of an entity under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a registered charity covered by table item 1 in subsection 65J(1) of that Act;

(g) endorsement of an entity as a *deductible gift recipient, or as a deductible gift recipient for the operation of a fund, authority or institution, under section 30-120 of the *Income Tax Assessment Act 1997*;

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

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(h) endorsement of an entity as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*.

426-10 How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*

(1) This section applies in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*.

(2) Subdivision 426-B applies in relation to a *government entity in the same way as it applies in relation to an entity.

(3) If, apart from this subsection, section 426-40 or 426-45 (as applied by this section) would impose an obligation on a *government entity:

(a) that is an unincorporated association or body; and

(b) for whose management a single person is responsible to persons or bodies outside the government entity;

the obligation is imposed on that person.

(4) Subsection (3) has effect despite:

(a) subsection (2); and

(b) subsection 426-50(2) as it applies because of this section.

Subdivision 426-B—Process of endorsement etc.

Table of sections

426-15 Applying for endorsement
426-20 Dealing with an application for endorsement
426-25 Notifying outcome of application for endorsement
426-30 Date of effect of endorsement
426-35 Review of refusal of endorsement
426-40 Checking entitlement to endorsement
426-45 Telling Commissioner of loss of entitlement to endorsement
426-50 Partnerships and unincorporated bodies
426-55 Revoking endorsement

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

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426-60 Review of revocation of endorsement

426-15 Applying for endorsement

(1) An entity may apply to the Commissioner for endorsement.

(2) The application:
  (a) must be in a form approved by the Commissioner; and
  (b) may be *lodged electronically; and
  (c) must be signed for the entity, or include the entity's *electronic signature if the application is lodged electronically; and
  (d) must be lodged at, or posted to, an office or facility designated by the Commissioner as a receiving centre for applications of that kind.

Note: The Commissioner could approve a form that is part of an application form for an ABN.

(3) Section 426-5 does not prevent the Commissioner from approving a single form to be used by an entity to make applications for 2 or more kinds of endorsement.

426-20 Dealing with an application for endorsement

Requiring further information or documents

(1) The Commissioner may require an applicant to give the Commissioner specified information, or a specified document, that the Commissioner needs in order to decide whether the applicant is entitled to endorsement.

Treating application as being refused

(2) After the time worked out under subsection (3), the applicant may give the Commissioner written notice that the applicant wishes to treat the application as having been refused, if the Commissioner has not given the applicant before that time written notice that the Commissioner endorses or refuses to endorse the applicant.

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

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Note: Section 426-25 requires the Commissioner to give the applicant written notice if the Commissioner endorses or refuses to endorse the applicant.

(3) The time is the end of the 60th day after the application was made. However, if before that time the Commissioner requires the applicant under subsection (1) to give information or a document, the time is the later of the following (or either of them if they are the same):

(a) the end of the 28th day after the last day on which the applicant gives the Commissioner information or a document he or she has required;

(b) the end of the 60th day after the application was made.

(4) If the applicant gives notice under subsection (2), section 426-35 operates as if the Commissioner had refused the application on the day on which the notice is given.

Note: Section 426-35 lets the applicant object against refusal of an application in the manner set out in Part IVC of this Act. That Part provides for review of the refusal objected against.

(5) The notice given by the applicant:

(a) may be *lodged electronically; and

(b) must be signed for the applicant, or include the applicant's *electronic signature if the application is *lodged electronically.

426-25 Notifying outcome of application for endorsement

(1) The Commissioner must give the applicant written notice if:

(a) the Commissioner endorses the applicant; or

(b) the Commissioner refuses to endorse the applicant.

(2) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

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

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426-30 Date of effect of endorsement

(1) The endorsement has effect from a date specified by the Commissioner.

(2) The date specified may be any date (including a date before the application for endorsement was made and a date before the applicant had an *ABN).

426-35 Review of refusal of endorsement

If the applicant is dissatisfied with the Commissioner's refusal to endorse the applicant in accordance with the application, the applicant may object against the refusal in the manner set out in Part IVC of this Act.

Note: That Part provides for review of the refusal objected against.

426-40 Checking entitlement to endorsement

(1) The Commissioner may require an entity that is endorsed to give the Commissioner information or a document that is relevant to the entity's entitlement to endorsement. The entity must comply with the requirement.

Note 1: The conditions for an entity to be entitled to be endorsed are set out in:
(a) subsections 176-1(2) of the GST Act; and
(b) subsections 123C(2), 123D(2) and 123E(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
(c) sections 30-120 and 50-105 of the *Income Tax Assessment Act 1997*.

Note 2: Failure to comply with this subsection is an offence against section 8C. Also, the Commissioner may revoke the endorsement of the entity under section 426-55 if it fails to comply with this subsection.

Note 3: Section 426-50 modifies the way this subsection operates in relation to partnerships and unincorporated bodies.

(2) The requirement:
(a) is to be made by notice in writing to the entity; and

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

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(b) may ask the entity to give the information in writing; and

(c) must specify:

(i) the information or document the entity is to give; and

(ii) the period within which the entity is to give the information or document.

The period specified under subparagraph (c)(ii) must end at least 28 days after the notice is given.

(3) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

(4) If the requirement is for the entity to give information in writing, the document setting out the information:

(a) must be given to the Commissioner; and

(b) may be *lodged electronically; and

(c) must be signed for the entity, or include the entity's *electronic signature if the document is lodged electronically.

426-45 Telling Commissioner of loss of entitlement to endorsement

(1) Before, or as soon as practicable after, an entity that is endorsed ceases to be entitled to be endorsed, the entity must give the Commissioner written notice of the cessation.

Note 1: Failure to comply with this subsection is an offence against section 8C.

Note 2: Section 426-50 modifies the way this subsection operates in relation to partnerships and unincorporated bodies.

(2) The notice:

(a) may be *lodged electronically; and

(b) must be signed for the entity, or include the entity's *electronic signature if the document is lodged electronically.

(3) Subsection (1) does not apply to an entitlement to endorsement ceasing because the entity ceases to have an *ABN.

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

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426-50 Partnerships and unincorporated bodies

Application to partnerships

(1) If, apart from this subsection, section 426-40 or 426-45 would impose an obligation on a partnership, the obligation is imposed on each partner, but may be discharged by any of the partners.

Application to unincorporated bodies

(2) If, apart from this subsection, section 426-40 or 426-45 would impose an obligation on an unincorporated association or body, the obligation is imposed on each member of the committee of management of the association or body, but may be discharged by any of the members of the committee.

Defences for partners and members of committee of management

(3) In a prosecution of a person for an offence against section 8C of this Act because of subsection (1) or (2), it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

426-55 Revoking endorsement

(1) The Commissioner may revoke the endorsement of an entity if:

(a) at any time after the date of effect of the endorsement, the entity is not, or was not, entitled to be endorsed; or

(b) the Commissioner has required the entity under section 426-40 to provide information or a document that is relevant to its entitlement to endorsement and the entity has

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

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not provided the required information or document within the time specified in the requirement; or

(c) in the case of an entity endorsed under section 30-120 of the *Income Tax Assessment Act 1997*—the entity has contravened Subdivision 30-CA of that Act (which requires the entity to ensure that certain things are stated in any receipts it issues for certain gifts).

Note: The conditions for an entity to be entitled to be endorsed are set out in:

(a) subsections 176-1(2) of the GST Act; and

(b) subsections 58PB(4) and (4A), 123C(2), 123D(2) and 123E(2) of the *Fringe Benefits Tax Assessment Act 1986*; and

(c) sections 30-120 and 50-105 of the *Income Tax Assessment Act 1997*.

(2) The revocation has effect from a day specified by the Commissioner (which may be a day before the Commissioner decided to revoke the endorsement).

(3) However, if the Commissioner revokes the endorsement because the entity is not, or was not, entitled to it, the Commissioner must not specify a day before the day on which the entity first ceased to be entitled.

(4) The Commissioner must give the entity written notice if the Commissioner revokes its endorsement.

(5) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

426-60 Review of revocation of endorsement

If the entity is dissatisfied with the revocation of its endorsement, the entity may object against the revocation in the manner set out in Part IVC of this Act.

Note: That Part provides for review of the revocation objected against.

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

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Subdivision 426-C—Entries on Australian Business Register

Table of sections

426-65 Entries on Australian Business Register

426-65 Entries on Australian Business Register

(1) If an entity that is endorsed in any of these ways:

(a) as a charity under subsection 176-1(1) of the *GST Act;

(ba) as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986*;

(bb) for the operation of an approved worker entitlement fund under subsection 58PB(3A) of the *Fringe Benefits Tax Assessment Act 1986*;

(c) as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;

(e) as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;

(f) as a registered charity covered by table item 1 in subsection 65J(1) of the *Fringe Benefits Tax Assessment Act 1986* under subsection 123E(1) of that Act;

(g) as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*;

the *Australian Business Registrar must enter in the *Australian Business Register a statement that the entity is so endorsed for a specified period.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect concessions available to the entity under the Act for the purposes of which it is endorsed.

Note 2: For entities and government entities that are endorsed under section 30-120 of the *Income Tax Assessment Act 1997*, see section 30-229 of that Act.

(2) The *Australian Business Registrar may remove the statement from the *Australian Business Register after the end of the period.

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

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(2A) If the endorsed entity is also registered under the *Australian Charities and Not-for-profits Commission Act 2012* as an entity of a particular type or subtype, the *Australian Business Registrar must also enter in the *Australian Business Register:
(a) a statement that the entity is so registered; and
(b) a statement as to the date of effect of the registration.

(2B) The *Australian Business Registrar may remove the statements from the *Australian Business Register if the registration is revoked under the *Australian Charities and Not-for-profits Commission Act 2012*.

(3) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:
(a) change the statement; or
(b) remove the statement from the Register if the statement is not true; or
(c) remove the statement from the Register and enter another statement in the Register under this section.

(4) Making, changing or removing an entry in the *Australian Business Register as required or permitted by this section does not contravene section 355-25 or 355-155.

Subdivision 426-D—Public and private ancillary funds

Guide to Subdivision 426-D

426-100 What this Subdivision is about

This Subdivision deals with types of philanthropic trust funds known as ***public ancillary funds*** and ***private ancillary funds***.

The Minister may make guidelines determining when ancillary funds are entitled to be endorsed as deductible gift recipients.

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

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Section 426-100

This Subdivision also provides for:

(a) penalties for trustees who fail to comply with the public ancillary fund guidelines or private ancillary fund guidelines (whichever are applicable), and the liability of directors of trustees to pay those penalties in certain circumstances; and

(b) powers for the Commissioner to suspend or remove trustees who breach their obligations.

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Public ancillary funds

426-102 Public ancillary funds
426-103 Public ancillary fund guidelines
426-104 Australian Business Register must show public ancillary fund status

Private ancillary funds

426-105 Private ancillary funds
426-110 Private ancillary fund guidelines
426-115 Australian Business Register must show private ancillary fund status

Administrative penalties

426-120 Administrative penalties for trustees of ancillary funds

Suspension and removal of trustees

426-125 Suspension or removal of trustees
426-130 Commissioner to appoint acting trustee in cases of suspension or removal
426-135 Terms and conditions of appointment of acting trustee
426-140 Termination of appointment of acting trustee
426-145 Resignation of acting trustee
426-150 Property vesting orders
426-155 Powers of acting trustee
426-160 Commissioner may give directions to acting trustee
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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Transfers between ancillary funds

426-170 Ancillary funds must not provide funds to other ancillary funds

Public ancillary funds

426-102 Public ancillary funds

(1) A trust is a ***public ancillary fund*** if:

(a) at least one of the following subparagraphs applies:

(i) each trustee of the trust is a *constitutional corporation;

(ii) the only trustee of the trust is the Public Trustee of a State or Territory, or each trustee of the trust is prescribed by the regulations for the purposes of this subparagraph; and

(b) each trustee of the trust has agreed, in the *approved form given to the Commissioner, to comply with the rules in the *public ancillary fund guidelines, as in force from time to time; and

(c) none of the trustees has revoked that agreement in accordance with subsection (2).

(2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the *approved form.

(3) Sections 426-125 to 426-165 do not apply to a *public ancillary fund if subparagraph (1)(a)(ii) of this section applies to the fund.

426-103 Public ancillary fund guidelines

The Minister must, by legislative instrument, formulate guidelines (the ***public ancillary fund guidelines***) setting out:

(a) rules that *public ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as *deductible gift recipients; and

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

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(b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to public ancillary funds.

426-104 Australian Business Register must show public ancillary fund status

(1) If a *public ancillary fund has an *ABN, the *Australian Business Registrar must enter in the *Australian Business Register in relation to the fund a statement that it is a public ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a public ancillary fund.

Note 2: The Australian Business Register will also show if a public ancillary fund is endorsed as a deductible gift recipient: see section 30-229 of the *Income Tax Assessment Act 1997*.

(2) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:

(a) change the statement; or

(b) remove the statement from the Register if the statement is not true.

Private ancillary funds

426-105 Private ancillary funds

(1) A trust is a ***private ancillary fund*** if:

(a) each trustee of the trust is a *constitutional corporation; and

(b) each trustee has agreed, in the *approved form given to the Commissioner, to comply with the rules in the *private ancillary fund guidelines, as in force from time to time; and

(c) none of the trustees has revoked that agreement in accordance with subsection (2).

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

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(2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the *approved form.

426-110 Private ancillary fund guidelines

The Minister must, by legislative instrument, formulate guidelines (the ***private ancillary fund guidelines***) setting out:

(a) rules that *private ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as *deductible gift recipients; and

(b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to private ancillary funds.

426-115 Australian Business Register must show private ancillary fund status

(1) If a *private ancillary fund has an *ABN, the *Australian Business Registrar must enter in the *Australian Business Register in relation to the fund a statement that it is a private ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a private ancillary fund.

Note 2: The Australian Business Register will also show if a private ancillary fund is endorsed as a deductible gift recipient: see section 30-229 of the *Income Tax Assessment Act 1997*.

(2) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:

(a) change the statement; or

(b) remove the statement from the Register if the statement is not true.

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

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Administrative penalties

426-120 Administrative penalties for trustees of ancillary funds

Administrative penalty

(1) The persons mentioned in subsection (2) are jointly and severally liable to an administrative penalty if:

(a) a trustee of an *ancillary fund holds the fund out as being endorsed, entitled to be endorsed, or entitled to remain endorsed, as a *deductible gift recipient; and

(b) the fund is not so endorsed or entitled.

(2) The persons are:

(a) each person who is a trustee of the fund; and

(b) each director of each *constitutional corporation that is a trustee of the fund, if:

(i) any of the penalty cannot reasonably be recovered from the constitutional corporation; and

(ii) the constitutional corporation is neither a licensed trustee company (within the meaning of Chapter 5D of the *Corporations Act 2001*) nor the Public Trustee of a State or Territory.

Note: A person mentioned in paragraph (2)(a) may, in certain circumstances, not be a constitutional corporation: see item 28 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 4) Act 2009* (former prescribed private funds).

(3) The amount of the penalty is:

(a) the amount specified in the *public ancillary fund guidelines under paragraph 426-103(b), or the *private ancillary fund guidelines under paragraph 426-110(b), whichever are applicable; or

(b) the amount worked out in accordance with the method specified under that paragraph.

The guidelines may specify different penalties or methods for different circumstances.

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

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(4) The penalty must not be reimbursed from the fund.

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

Defences for directors

(5) Paragraph (2)(b) does not apply to a director if:
(a) the director was not aware of the holding out mentioned in paragraph (1)(a) and it would not have been reasonable to expect the director to have been aware of that holding out; or
(b) the director took all reasonable steps to ensure that the holding out mentioned in that paragraph did not occur; or
(c) there were no such steps that the director could have taken.

(6) In determining what is reasonable for the purposes of paragraph (5)(a), (b) or (c), have regard to all relevant circumstances.

(7) A person who wishes to rely on subsection (5) bears an evidential burden in relation to the matters in that subsection.

Power of courts to grant relief

(8) Section 1318 of the *Corporations Act 2001* (power of Court to grant relief in case of breach of director's duty) does not apply to a liability of a director under this section.

Suspension and removal of trustees

426-125 Suspension or removal of trustees

Suspension

(1) The Commissioner may suspend all of the trustees of an *ancillary fund if the Commissioner is satisfied that the fund, or any of the trustees of the fund, have breached:
(a) the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable); or

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

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(b) any other *Australian law.

(2) The suspension of a trustee:
(a) starts when the Commissioner gives the trustee notice of the suspension under subsection (3); and
(b) ends at the time specified in the notice.

(3) If the Commissioner decides to suspend a trustee under this section, the Commissioner must give to the trustee a written notice:
(a) setting out the decision; and
(b) giving the reasons for the decision; and
(c) setting out the time the suspension ends.

Extension of suspensions

(4) The Commissioner may change the time the suspension of a trustee ends.

(5) If the Commissioner decides to change the time the suspension of a trustee ends under this section, the Commissioner must give to the trustee a written notice:
(a) setting out the decision; and
(b) giving the reasons for the decision; and
(c) setting out the new time the suspension ends.

Removal

(6) The Commissioner may remove all of the trustees of an *ancillary fund if the Commissioner is satisfied that the fund, or any of the trustees of the fund, have breached:
(a) the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable); or
(b) any other *Australian law.

(7) If the Commissioner decides to remove a trustee under this section, the Commissioner must give to the trustee a written notice:
(a) setting out the decision; and

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

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(b) giving the reasons for the decision.

Review of decisions under this section

(8) A trustee who is dissatisfied with any of the following decisions under this section may object in the manner set out in Part IVC of this Act:
   (a) a decision to suspend the trustee;
   (b) a decision to change the time a suspension of the trustee ends;
   (c) a decision to remove the trustee.

426-130 Commissioner to appoint acting trustee in cases of suspension or removal

Appointment of acting trustee

(1) If the Commissioner suspends all of the trustees of an *ancillary fund under section 426-125, the Commissioner must appoint a single entity to act as the trustee (the ***acting trustee***) of the fund during the period of the suspension.

(2) If the Commissioner removes all of the trustees of an *ancillary fund under section 426-125, the Commissioner must appoint a single entity to act as the trustee (the ***acting trustee***) of the fund until all of the vacancies in the position of trustee are filled.

Acting trustee need not be constitutional corporation

(3) An acting trustee need not be a *constitutional corporation, and may be the Commissioner. Paragraph 426-105(1)(a) does not apply in relation to an acting trustee.

(4) An entity that is not a *constitutional corporation may not act as trustee under this section for longer than 6 months.

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

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Acting trustee must have agreed to comply with guidelines

(5) An entity may only be appointed as acting trustee if the entity has, in accordance with paragraph 426-102(1)(b) or 426-105(1)(b), agreed to comply with the rules in the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable) as in force from time to time.

426-135 Terms and conditions of appointment of acting trustee

(1) The Commissioner may determine the terms and conditions of the appointment of the acting trustee, including fees. The determination has effect despite anything in:
   (a) any *Australian law other than this section; or
   (b) the *ancillary fund's governing rules.

(2) Without limiting subsection (1), the Commissioner may make a determination under that subsection to the effect that the acting trustee's fees are to be paid out of the corpus of the *ancillary fund.

426-140 Termination of appointment of acting trustee

The Commissioner may terminate the appointment of the acting trustee at any time.

426-145 Resignation of acting trustee

(1) The acting trustee may resign by writing given to the Commissioner.

(2) The resignation does not take effect until the end of the seventh day after the day on which it was given to the Commissioner.

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

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426-150 Property vesting orders

(1) If the Commissioner appoints an acting trustee, the Commissioner must make a written order vesting the property of the *ancillary fund in the acting trustee.

(2) If the appointment ends, the Commissioner must make a written order vesting the property of the fund in the new acting trustee, the previously suspended trustee or trustees or the new actual trustee or trustees (whichever is applicable).

(3) If the Commissioner makes an order under this section vesting property of an *ancillary fund in an entity or entities, then, subject to subsection (4), the property immediately vests in the entity or entities by force of this section.

(4) If:

(a) the property is of a kind whose transfer or transmission may be registered under an *Australian law; and

(b) that law enables the registration of such an order, or enables the entity or entities to be registered as the owner of that property;

the property does not vest in the entity or entities until the requirements of the law referred to in paragraph (a) have been complied with.

426-155 Powers of acting trustee

Subject to section 426-150:

(a) the acting trustee has and may exercise all the rights, title and powers, and must perform all the functions and duties, of the original trustee or trustees; and

(b) the *ancillary fund's governing rules and every *Australian law apply in relation to the acting trustee as if the acting trustee were the trustee of the fund.

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

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426-160 Commissioner may give directions to acting trustee

(1) The Commissioner may give the acting trustee a written notice directing the acting trustee to do, or not to do, one or more specified acts or things in relation to the *ancillary fund.

(2) The acting trustee commits an offence if:
  (a) the acting trustee engages in conduct (within the meaning of subsection 2(1) of this Act); and
  (b) that engagement in conduct contravenes a notice given to the acting trustee under subsection (1).

  Penalty: 100 penalty units.

(3) This section does not affect the validity of a transaction entered into in contravention of a notice given under subsection (1).

426-165 Property vested in acting trustee—former trustees' obligations relating to books, identification of property and transfer of property

Books

(1) An entity commits an offence if:
  (a) the Commissioner makes an order under subsection 426-150(1) or (2) vesting the property of an *ancillary fund in an acting trustee; and
  (b) just before the Commissioner made the order, the property was vested in:
    (i) the entity (the ***former trustee***); or
    (ii) 2 or more entities (the ***former trustees***), including the entity; and
  (c) the former trustee or former trustees do not, within 14 days of the Commissioner making the order, give the acting trustee all books (within the meaning of the *Corporations Act 2001*) relating to the fund's affairs that are in the former trustee's or former trustees' possession, custody or control.

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

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Penalty: 50 penalty units.

Identification of property and transfer of property

(2) Subsections (3) to (5) apply if:
  (a) the property of an *ancillary fund is vested in an entity (the ***former trustee***) or entities (the ***former trustees***); and
  (b) the Commissioner makes an order under subsection 426-150(1) or (2) vesting the property in an acting trustee.

(3) The acting trustee may, by notice in writing to the former trustee or former trustees, require the former trustee or former trustees, so far as the former trustee or former trustees can do so:
  (a) to identify property of the fund; and
  (b) to explain how the former trustee or former trustees have kept account of that property.

(4) The acting trustee may, by notice in writing to the former trustee or former trustees, require the former trustee or former trustees to take specified action that is necessary to bring about a transfer of specified property of the fund to the acting trustee.

(5) The former trustee, or each of the former trustees, commits an offence if:
  (a) the acting trustee gives the former trustee or former trustees a notice under subsection (3) or (4); and
  (b) the former trustee or former trustees do not, within 28 days of the notice being given, comply with the requirement in the notice.

Penalty: 50 penalty units.

Strict liability

(6) Subsections (1) and (5) are offences of strict liability.

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

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

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Transfers between ancillary funds

426-170 Ancillary funds must not provide funds to other ancillary funds

An *ancillary fund must not provide money, property or benefits to another ancillary fund unless permitted to do so by the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable).

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

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Part 5-45—Application of taxation laws to certain entities

Division 444—Obligations of entities on behalf of other entities

Table of Subdivisions

Guide to Division 444
444-A Unincorporated associations and bodies and companies
444-B Partnerships
444-C Superannuation funds
444-D Incapacitated entities
444-E Indirect tax specific entities

Guide to Division 444

444-1 What this Division is about

This Division imposes onto other entities the liabilities of unincorporated associations or bodies, companies, partnerships, superannuation funds, incapacitated entities, trusts and various indirect tax specific entities.

Subdivision 444-A—Unincorporated associations and bodies and companies

Table of sections

444-5 Unincorporated associations and bodies
444-10 Public officers of companies
444-15 Notifying and serving companies

444-5 Unincorporated associations and bodies

(1) Obligations that would be imposed under this Schedule or an *indirect tax law on an unincorporated association or body of

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

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entities are imposed on each member of the committee of management of the association or body, but may be discharged by any of those members.

(2) Any offence against this Schedule or an *indirect tax law that is committed by the association or body is taken to have been committed by each member of its committee of management.

(3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:

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

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

Note 1: The defence in subsection (3) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (3): see section 13.4 of the *Criminal Code*.

444-10 Public officers of companies

(1) The individual who is the public officer of a company for the purposes of the *Income Tax Assessment Act 1936* is also the public officer of the company for the purposes of an *indirect tax law. The public officer's address for service under that Act is also the public officer's address for service for the same purposes.

(2) The public officer is answerable for doing everything required to be done by the company under an *indirect tax law, and in case of default is liable to the same penalties.

(3) A proceeding under an *indirect tax law that is brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.

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

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(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company.

(5) Service of a notice or other document on the public officer or at the public officer's address for service is sufficient service on the company for the purposes of an *indirect tax law. If at any time there is no public officer, service on an individual who is acting or appears to be acting in the business of the company is sufficient.

Note: See section 444-15 for alternative ways to give a notice to, or serve a process on, a company (through its officers, attorneys or agents).

(6) This section does not, by implication, reduce any of the obligations or liabilities of the company.

444-15 Notifying and serving companies

For the purposes of an *indirect tax law, if the Commissioner considers it appropriate, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

(a) a director, the secretary or another officer of the company; or

(b) an attorney or agent of the company.

Note: See subsection 444-10(5) for alternative ways to serve a notice or another document on a company (through its public officer or someone else acting or appearing to act for the company).

Subdivision 444-B—Partnerships

Table of sections

444-30 Partnerships

444-30 Partnerships

(1) Obligations that are imposed under this Schedule or an *indirect tax law on a partnership are imposed on each partner, but may be discharged by any of the partners.

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

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(2) The partners are jointly and severally liable to pay any amount that is payable under this Schedule or an *indirect tax law by the partnership.

(3) Any offence against this Schedule or an *indirect tax law that is committed by a partnership is taken to have been committed by each of the partners.

(4) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (3), it is a defence if the entity proves that the entity:

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

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

Note 1: The defence in subsection (4) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (4): see section 13.4 of the *Criminal Code*.

Subdivision 444-C—Superannuation funds

Table of sections

444-50 Superannuation funds

444-50 Superannuation funds

If a superannuation fund does not have a trustee of the fund, this Schedule applies to the fund as if:

(a) the entity that manages the fund were the trustee of the fund; or

(b) each of the entities that manage the fund were a trustee of the fund.

Note: The trustee of a superannuation fund is taken to be an entity: see subsection 960-100(2) of the *Income Tax Assessment Act 1997*.

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

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Subdivision 444-D—Incapacitated entities

Table of sections

444-70 Representatives of incapacitated entities

444-70 Representatives of incapacitated entities

(1) If:

(a) there are, at the same time, 2 or more *representatives of the same *incapacitated entity; and

(b) the representatives were not appointed to act in different capacities as representatives;

the representatives are jointly and severally liable to pay any amount that is payable under an *indirect tax law by any of the representatives in relation to that same incapacitated entity.

(2) If:

(a) there are, at the same time, 2 or more *representatives of the same *incapacitated entity; and

(b) the representatives were not appointed to act in different capacities as representatives;

any offence against an *indirect tax law that is committed by one of the representatives is taken to have been committed by each of the representatives.

(3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:

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

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

Note 1: The defence in subsection (3) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

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

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Note 2: A defendant bears a legal burden in relation to the matters in subsection (3): see section 13.4 of the *Criminal Code*.

Subdivision 444-E—Indirect tax specific entities

Table of sections

444-80 GST joint ventures
444-85 Non-profit sub-entities
444-90 GST groups

444-80 GST joint ventures

Joint and several liability

(1) The *participants in a *GST joint venture are jointly and severally liable to pay any amount (an ***indirect tax amount***) that is payable under an *indirect tax law by the *joint venture operator for the joint venture, to the extent that the amount relates to the joint venture.

Indirect tax sharing agreements

(1A) Despite subsection (1), if:

(a) before the *joint venture operator for the joint venture is required to give to the Commissioner a *GST return for a *tax period, an agreement (the ***indirect tax sharing agreement***) has been entered into between:

(i) the joint venture operator; and

(ii) one or more *participants in the joint venture (the ***contributing participant***) (other than the joint venture operator); and

(b) a particular amount (the ***contribution amount***) could be determined under the indirect tax sharing agreement for each contributing participant in relation to that tax period; and

(c) the contribution amounts for each of the contributing participants under the indirect tax sharing agreement represent a reasonable allocation among:

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

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(i) the joint venture operator; and

(ii) the contributing participants;

of the total amount payable, under *indirect tax laws, for which the participants in the joint venture would be jointly or severally liable under subsection (1) in relation to that tax period;

then:

(d) if the contributing participant leaves the joint venture before the joint venture operator for the joint venture is required to give to the Commissioner a GST return for that tax period, and subsection (1B) applies—the contributing participant is not liable under subsection (1) in relation to an indirect tax amount relating to that tax period; or

(e) otherwise—the contributing participant's liability under subsection (1) in relation to that tax period is not to exceed that contribution amount.

(1B) This subsection applies if:

(a) leaving the joint venture was not part of an arrangement, a purpose of which was to prejudice the recovery by the Commissioner of the indirect tax amount; and

(b) before the day on which the *joint venture operator is required to give to the Commissioner a *GST return for that tax period, the contributing participant pays to the joint venture operator:

(i) the contribution amount relating to that tax period; or

(ii) if the contribution amount cannot be determined at the time of the payment—an amount that is a reasonable estimate of the contribution amount.

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

(a) the indirect tax sharing agreement was entered into as part of an arrangement; and

(b) a purpose of the arrangement was to prejudice the recovery by the Commissioner of the indirect tax amount.

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

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

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(a) the Commissioner gives the *joint venture operator of the joint venture written notice under this subsection in relation to the indirect tax sharing agreement (whether before, when or after an indirect tax amount to which the agreement relates becomes payable); and

(b) the notice requires the joint venture operator to give the Commissioner a copy of the agreement in the *approved form within 14 days after the notice is given; and

(c) the Commissioner does not receive a copy of the agreement by the time required.

(1E) Subsection (1A) does not apply if, apart from this subsection, the requirements of subsection (1A) would be satisfied in relation to 2 or more agreements:

(a) that were entered into by the *joint venture operator; and

(b) that relate to the same tax period.

Criminal liability of participants in GST joint ventures

(2) Any offence against an *indirect tax law that:

(a) is committed by the *joint venture operator for a *GST joint venture; and

(b) relates to the joint venture;

is taken to have been committed by each of the *participants in the joint venture.

(3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:

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

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

Note 1: The defence in subsection (3) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

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

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Note 2: A defendant bears a legal burden in relation to the matters in subsection (3): see section 13.4 of the *Criminal Code*.

444-85 Non-profit sub-entities

(1) Obligations that would be imposed under the *GST law or the *fuel tax law on a *non-profit sub-entity are imposed on each entity who is responsible, to entities or bodies outside the sub-entity, for the management of the sub-entity, but may be discharged by any entity who is so responsible.

(2) The entities who are so responsible in respect of the sub-entity are jointly and severally liable to pay any amount that is payable under the *GST law or the *fuel tax law by the sub-entity.

(3) Any offence against the *GST law or the *fuel tax law that is committed by the sub-entity is taken to have been committed by each entity who is responsible, to entities or bodies outside the sub-entity, for the management of the sub-entity.

(4) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (3), it is a defence if the entity proves that the entity:
  (a) did not aid, abet, counsel or procure the relevant act or omission; and
  (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (4) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (4): see section 13.4 of the *Criminal Code*.

444-90 GST groups

Joint and several liability

(1) The *members of a *GST group are jointly and severally liable to

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

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pay any amount (an ***indirect tax amount***) that is payable under an *indirect tax law by the *representative member for the group.

Indirect tax sharing agreements

(1A) Despite subsection (1), if:

(a) before the *representative member of the group is required to give to the Commissioner a *GST return for a *tax period, an agreement (the ***indirect tax sharing agreement***) has been entered into between:

(i) the representative member; and

(ii) one or more other *members of the group (the ***contributing member***); and

(b) a particular amount (the ***contribution amount***) could be determined under the indirect tax sharing agreement for each contributing member in relation to that tax period; and

(c) the contribution amounts for each of the contributing members under the indirect tax sharing agreement represent a reasonable allocation among:

(i) the representative member; and

(ii) the contributing members;

of the total amount payable, under *indirect tax laws, for which the members of the group would be jointly or severally liable under subsection (1) in relation to that tax period;

then:

(d) if the contributing member leaves the group before the representative member of the group is required to give to the Commissioner a GST return for that tax period, and subsection (1B) applies—the contributing member is not liable under subsection (1) in relation to an indirect tax amount relating to that tax period; or

(e) otherwise—the contributing member's liability under subsection (1) in relation to that tax period is not to exceed that contribution amount.

(1B) This subsection applies if:

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

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(a) leaving the group was not part of an arrangement, a purpose of which was to prejudice the recovery by the Commissioner of the indirect tax amount; and

(b) before the day on which the *representative member is required to give to the Commissioner a *GST return for that tax period, the contributing member pays to the representative member:

(i) the contribution amount relating to that tax period; or

(ii) if the contribution amount cannot be determined at the time of the payment—an amount that is a reasonable estimate of the contribution amount.

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

(a) the indirect tax sharing agreement was entered into as part of an arrangement; and

(b) a purpose of the arrangement was to prejudice the recovery by the Commissioner of the indirect tax amount.

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

(a) the Commissioner gives the *representative member of the group written notice under this subsection in relation to the indirect tax sharing agreement (whether before, when or after an indirect tax amount to which the agreement relates becomes payable); and

(b) the notice requires the representative member to give the Commissioner a copy of the agreement in the *approved form within 14 days after the notice is given; and

(c) the Commissioner does not receive a copy of the agreement by the time required.

(1E) Subsection (1A) does not apply if, apart from this subsection, the requirements of subsection (1A) would be satisfied in relation to 2 or more agreements:

(a) that were entered into by the *representative member; and

(b) that relate to the same tax period.

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

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Effect of prohibitions on certain arrangements

(2) Subsection (1) does not apply to a *member of a *GST group if an *Australian law has the effect of prohibiting the member from entering into any *arrangement under which the member becomes subject to the liability referred to in that subsection.

(3) However, a *member to which subsection (2) applies remains liable for any amount payable under an *indirect tax law by the *representative member for the group, to the extent that the liability arises from an act or omission of the member to which subsection (2) applies.

Criminal liability of members of GST groups

(4) Any offence against an *indirect tax law that is committed by the *representative member for a *GST group is taken to have been committed by each of the *members of the group.

(5) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (4), it is a defence if the entity proves that the entity:

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

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

Note 1: The defence in subsection (5) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (5): see section 13.4 of the *Criminal Code*.

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

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Division 446—Local governing bodies

Guide to Division

446-1 What this Division is about

A local governing body can resolve that its members are subject to Pay As You Go withholding. This also results in the members being treated as employees for a wide range of other taxation purposes.

Table of sections

Operative provisions

446-5 Requirements for unanimous resolutions by local governing bodies

Operative provisions

446-5 Requirements for unanimous resolutions by local governing bodies

When section applies

(1) This section applies to the following unanimous resolutions made by a *local governing body:

(a) a resolution that the remuneration of members of the body be subject to withholding under Part 2-5 (about Pay As You Go withholding);

(b) a resolution cancelling a resolution covered by paragraph (a).

When resolution takes effect

(2) The resolution must specify a day as the day on which the resolution takes effect. The specified day must be within the

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

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28-day period beginning on the day after the day on which the resolution was made.

Resolution not affected by change in membership of body

(3) The resolution continues in force in spite of a change in the membership of the *local governing body.

Commissioner to be notified of resolution

(4) The *local governing body must give written notice of the resolution to the Commissioner within 7 days after the resolution was made.

Eligible local governing bodies to be notified in Gazette

(5) If the Commissioner is notified of the resolution, the Commissioner must cause to be published in the *Gazette* a notice setting out:
  (a) the name of the *local governing body; and
  (b) the day on which the resolution takes effect.

When resolution applies for purposes of affected provisions

(6) This table sets out when the resolution applies for the purposes of particular provisions whose operation it affects.

When the resolution applies

Item	If the resolution affects the operation of ...	the resolution applies to ...
1	section 12-45	amounts that become payable after the day on which the resolution takes effect
2	Subdivision AB of Division 17 of Part III of the *Income Tax Assessment Act 1936* (about tax offset for lump sum payments in arrears)	*ordinary income *derived, and amounts that become *statutory income, after the day on which the resolution takes effect

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

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When the resolution applies		
Item	**If the resolution affects the operation of ...**	**the resolution applies to ...**
3	sections 26-30 and 34-5 of the *Income Tax Assessment Act 1997* (about deductions for relatives' travel expenses and non-compulsory uniforms)	expenditure incurred after the day on which the resolution takes effect
4	Divisions 28 and 900 of the *Income Tax Assessment Act 1997* (about car expenses and substantiation)	expenses incurred after the day on which the resolution takes effect
5	section 130-80 of the *Income Tax Assessment Act 1997* (about capital gains tax and employee share trusts)	*shares and rights to which a beneficiary becomes absolutely entitled after the day on which the resolution takes effect
6	provisions of the *Fringe Benefits Tax Assessment Act 1986* relating to assessments	(a) in the case of a loan benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*—a loan made after the day on which the resolution takes effect; (b) in the case of a housing benefit within the meaning of that Act—the subsistence, after the day on which the resolution takes effect, of the housing right concerned; (c) in the case of a residual benefit within the meaning of that Act that is *provided during a period—so much of the period as occurs after the day on which the resolution takes effect; (d) any other *fringe benefit provided after the day on which the resolution takes effect.

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

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When the resolution applies		
Item	**If the resolution affects the operation of ...**	**the resolution applies to ...**
7	Division 4 of Part II of the *Income Tax Rates Act 1986* (about pro-rating the tax-free threshold)	amounts that become assessable income after the day on which the resolution takes effect
8	the provisions of the *Child Support (Registration and Collection) Act 1988*	*ordinary income *derived, and amounts that become *statutory income, after the day on which the resolution takes effect
9	section 9-20 of the *GST Act (about the meaning of ***enterprise***)	activities, or series of activities, done after the day on which the resolution takes effect
10	Division 111 of the *GST Act (about reimbursement of employees)	reimbursements made after the day on which the resolution takes effect

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

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Part 5-100—Miscellaneous

Division 850—Transactions exempt from application of taxation laws

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850-A Declaration relating to security or intelligence agency

Subdivision 850-A—Declaration relating to security or intelligence agency

Table of sections

850-100 Declaration relating to security or intelligence agency

850-100 Declaration relating to security or intelligence agency

Object

(1) The object of this section is to remove the possibility of a conflict arising between Australia's national security interests and Australia's taxation laws.

Making a declaration

(2) The Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979* may declare that this section applies to one or more specified entities (the Australian Security Intelligence Organisation itself may be specified) in relation to one or more specified transactions.

(3) The Director-General of the Australian Secret Intelligence Service (***ASIS***) may declare that this section applies to one or more specified entities (ASIS itself may be specified) in relation to one or more specified transactions.

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

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(3A) The Director-General of the Australian Signals Directorate (***ASD***) may declare that this section applies to one or more specified entities (ASD itself may be specified) in relation to one or more specified transactions.

(4) A declaration under this section may only be made if the relevant Director-General is satisfied that the making of the declaration is necessary for the proper performance of the functions of:

(a) for the Director-General of Security—the Australian Security Intelligence Organisation; or

(b) for the Director-General of ASIS—ASIS; or

(c) for the Director-General of ASD—ASD.

(5) A declaration under this section must be in writing, signed by the relevant Director-General.

Note 1: A declaration may specify an entity or transaction by reference to a class of entities or transactions (see subsection 33(3AB) of the *Acts Interpretation Act 1901*). For example, a declaration may specify the subsidiaries of a specified company, or the parties to a specified transaction.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) A declaration may be made even though:

(a) a transaction it specifies has already been entered into or carried out; or

(b) an entity it specifies has died or ceased to exist;

(whether before or after the commencement of this section).

(7) A written document signed by the relevant Director-General purporting to be a declaration is prima facie evidence that this section has been complied with in making the declaration, but this subsection does not affect the performance of the functions of the Inspector-General of Intelligence and Security.

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

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Effect of declaration

(8) For an entity specified in a declaration in relation to a specified transaction, the transaction is to be disregarded in determining any of the following:

(a) the existence or amount of a liability of the entity relating to taxation under any *Commonwealth law, even if the law requires express words to be used to exempt an entity or transaction from liability to taxation under that law;

Example: Examples of liabilities covered by paragraph (a) are a liability to GST (despite section 177-5 of the GST Act), and amounts required to be paid by Part 2-5 in this Schedule (Pay as you go (PAYG) withholding).

(b) the existence or amount of any kind of benefit (however the benefit is expressed) relating to taxation under any Commonwealth law;

Example: Examples of benefits covered by paragraph (b) are deductions, credits and offsets under the *Income Tax Assessment Act 1997*, and input tax credits under the GST Act.

(c) the existence or extent of any other obligation (or right) of the entity relating to a liability or benefit of a kind mentioned in paragraph (a) or (b).

Example: Examples of obligations covered by paragraph (c) include the following:

(a) an obligation to withhold money from a payment;

(b) an obligation to lodge a return, or to provide information, to the Commissioner of Taxation;

(c) an obligation to become registered under a taxation law.

(9) A declaration under this section is not a legislative instrument.

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

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Division 990—Miscellaneous

Table of Subdivisions

990-A Combining notices

Subdivision 990-A—Combining notices

Table of sections

990-5 Commissioner may combine notices

990-5 Commissioner may combine notices

(1) For the purposes of a *taxation law under which the Commissioner must or may give you a document (however described), that document may be included in or with any other document (however described) that the Commissioner gives you under a taxation law.

(2) This section is enacted for the avoidance of doubt.

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

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