



Taxation Administration Act 1953

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This compilation is in 4 volumes

Volume 1: sections 1–18
Schedule 1 (sections 6-1 to 21-5)
Volume 2: Schedule 1 (sections 45-1 to 298-110)
Volume 3: Schedule 1 (sections 308-1 to 990-5)
Volume 4: Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Taxation Administration Act 1953* that shows the text of the law as amended and in force on 1 April 2024 (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 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 Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Chapter 4—Generic assessment, collection and recovery rules

Part 4-30—Offences and prosecutions

Division 308—Offences relating to tobacco

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Guide to Division 308

308-1 What this Division is about

This Division sets out offences and related provisions relating to tobacco.

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

Section 308-5

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;
- (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.

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

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;
 - (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

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

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- (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
 - (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:

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

- (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*).

308-15 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:

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

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- (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 *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).

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

- (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
 - (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:

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

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- (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*).

308-20 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:

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

- (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.

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;
 - (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

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

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- (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
 - (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:

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

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- (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*).

308-30 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:

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

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- (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 *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).

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

- (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
 - (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:

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

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- (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:
 - (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

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

*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*).

308-40 Buying of tobacco (500 kilograms or above)—reasonable suspicion offence

- (1) A person commits an offence if:
 - (a) the person buys a thing; and

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

- (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 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:

*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)(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

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

- (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*).

308-45 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;

*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 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 *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.

- (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*).

308-50 Buying of tobacco (5 kg or above)—reasonable suspicion offence

- (1) A person commits an offence if:
 - (a) the person buys a thing; and
 - (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

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

*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*).

308-55 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),

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

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 3 of the *Public Health (Tobacco and Other Products) Act 2023*;
- (b) the tobacco does not comply with the requirements for a tobacco product in Chapter 3 of the *Public Health (Tobacco and Other Products) Act 2023*;
- (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
 - (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;
- (ea) a permanent ban under Chapter 4 of the *Public Health (Tobacco and Other Products) Act 2023* 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:

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

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- (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
 - (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).

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

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.

Table of sections

308-110	Possession of tobacco (500 kg or above)—fault-based offence
308-115	Possession of tobacco (100 kg or above)—fault-based offence
308-120	Possession of tobacco (5 kg or above)—fault-based offence
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

*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 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

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

- (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*).
- (8) Subsection (1) does not apply if:

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

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- (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
 - (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;

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

- (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.
- (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 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

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

- (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
 - (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

*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)(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*).

(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*).

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

**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:
 - (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:

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

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- (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*).
- (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

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

- (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
 - (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

*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*).

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

(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
- (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:

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

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- (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
 - (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.

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

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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*).

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

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

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- (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*.

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

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

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).
- (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*).

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

Section 308-500

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
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

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

- (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
 - (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.

Section 340-1

Part 4-50—Release from particular liabilities

Division 340—Commissioner’s power in cases of hardship

Guide to Division 340

340-1 What this Division is about

The Commissioner may release you from a particular liability that you have incurred if you are an individual, or a trustee of the estate of a deceased person, and satisfying the liability would cause serious hardship.

Table of sections

Operative provisions

340-5	Release from particular liabilities in cases of serious hardship
340-10	Liabilities to which this section applies
340-15	Commissioner may take action to give effect to a release decision
340-20	Extinguishing your liability to pay a fringe benefits tax instalment if you are released
340-25	Extinguishing your liability to pay a PAYG instalment if you are released

Operative provisions

340-5 Release from particular liabilities in cases of serious hardship

Applying for release

- (1) You may apply to the Commissioner to release you, in whole or in part, from a liability of yours if section 340-10 applies to the liability.
- (2) The application must be in the *approved form.

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

- (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.

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

Section 340-10

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 <i>Fringe Benefits Tax Assessment Act 1986</i> ; or (b) former section 163B or subsection 221YDB(1), (1AAA), (1AA) or (1ABA) or Part VII of the <i>Income Tax Assessment Act 1936</i>
2	administrative penalty in relation to fringe benefits tax or *tax	Part 4-25 in this Schedule
3	general interest charge	(a) former section 163AA, former section 170AA, former subsection 204(3) or former subsection 221AZMAA(1), 221AZP(1), 221YD(3) or 221YDB(3) of the <i>Income Tax Assessment Act 1936</i> ; or (aa) section 5-15 in the <i>Income Tax Assessment Act 1997</i> ; or

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

Section 340-15

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 <i>Income Tax Assessment Act 1936</i>
5	penalty	former section 163A of the <i>Income Tax Assessment Act 1936</i>
6	*tax	(a) section 128B of the <i>Income Tax Assessment Act 1936</i> ; or (b) section 128V of the <i>Income Tax Assessment Act 1936</i> ; or (c) section 4-1 of the <i>Income Tax Assessment Act 1997</i> ; or (d) section 840-805 of the <i>Income Tax Assessment Act 1997</i> ; or (da) section 840-905 of the <i>Income Tax Assessment Act 1997</i> ; or (e) section 840-805 of the <i>Income Tax (Transitional Provisions) Act 1997</i>

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*.

Section 340-20

- (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.

- (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.

Section 342-1

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.

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.

*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.

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.

This Division also deals with procedural and evidentiary matters relating to proceedings to recover an amount of a tax-related liability.

Subdivision 350-A—Evidence

Table of sections

350-5	Application of Subdivision
350-10	Evidence
350-12	Prima facie evidence—particulars stated in evidentiary certificate
350-15	Judicial notice of signature
350-20	Certain statements or averments in proceedings to recover tax-related liabilities
350-25	Evidence by affidavit in proceedings to recover tax-related liabilities

350-5 Application of Subdivision

This Subdivision applies in relation to all *taxation laws.

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

Section 350-10

350-10 Evidence

Conclusive evidence

(1) The following table has effect:

Conclusive evidence		
Item	Column 1	Column 2
	The production of ...	is conclusive evidence that ...
1	<p>(a) a <i>Gazette</i> containing a notice purporting to be issued by the Commissioner for the purposes of a *taxation law; or</p> <p>(b) a document that:</p> <p>(i) is under the hand of the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner; and</p> <p>(ii) purports to be a copy of, or extract from, a document issued by the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner for the purposes of a taxation law;</p>	<p>the notice or document was so issued.</p>
2	a notice of *assessment under a *taxation law;	<p>(a) the assessment was properly made; and</p> <p>(b) except in proceedings under Part IVC of this Act on a review or appeal relating to the assessment—the amounts and particulars of the assessment are correct.</p>
3	a notice under any of the following:	(a) the notice was properly given;

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

Section 350-10

Conclusive evidence		
Item	Column 1	Column 2
	The production of ...	is conclusive evidence that ...
	(a) section 18-140 in this Schedule; (b) section 102UR, 177EA or 177EB of the <i>Income Tax Assessment Act 1936</i> ; (c) section 271-90 in Schedule 2F to that Act;	and (b) except in proceedings under Part IVC of this Act on a review or appeal relating to the notice—the amounts and particulars of the notice are correct.
4	a declaration under: (a) subsection 165-40(1) or 165-45(3) of the <i>*GST Act</i> ; or (b) subsection 75-40(1) or 75-45(3) of the <i>Fuel Tax Act 2006</i> ;	(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.
5	a <i>*public ruling</i> or <i>*private ruling</i> ;	the ruling was properly made.

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.

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

Section 350-12

Signed copies are evidence

- (4) The production of a document that:
- (a) appears to be a copy of, or extract from, any document (the ***original document***) made or given by or to an entity for the purposes of a *taxation law; and
 - (b) is signed by the Commissioner, a *Second Commissioner, a *Deputy Commissioner or a delegate of the Commissioner;
- is evidence of a matter to the same extent as the original document would have been evidence of the matter.

350-12 Prima facie evidence—particulars stated in evidentiary certificate

- (1) Without limiting subsection 350-10(3), the particulars that may be stated in a certificate under that subsection include the matters in subsections (2) and (3) of this section.
- (2) The certificate may state:
- (a) that a person named in the certificate has a *tax-related liability; or
 - (b) that an *assessment relating to a tax-related liability has been made, or is taken to have been made, under a *taxation law; or
 - (c) that notice of an assessment, or any other notice required to be served on a person in respect of an amount of a tax-related liability, was, or is taken to have been, served on the person under a *taxation law; or
 - (d) that the particulars of a notice covered by paragraph (c) are as stated in the certificate; or
 - (e) that a sum specified in the certificate is, as at the date specified in the certificate, a debt due and payable by a person to the Commonwealth.
- (3) The certificate may state:

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

- (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.

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.

350-20 Certain statements or averments in proceedings to recover tax-related liabilities

- (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.

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

Section 350-25

- (2) This section applies even if the matter is a mixed question of law and fact. However, the statement or averment is *prima facie* evidence of the fact only.
- (3) This section applies even if evidence is given in support or rebuttal of the matter or of any other matter.
- (4) Any evidence given in support or rebuttal of the matter stated or averred must be considered on its merits. This section does not increase or diminish the credibility or probative value of the evidence.
- (5) This section does not lessen or affect any onus of proof otherwise falling on a defendant.

350-25 Evidence by affidavit in proceedings to recover tax-related liabilities

In a proceeding to recover an amount of a *tax-related liability:

- (a) a person may give evidence by affidavit; and
- (b) the court may require the person to attend before it:
 - (i) to be cross-examined on that evidence; or
 - (ii) to give other evidence relating to the proceedings.

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

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
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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.

Section 352-25

- (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.

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.

- (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:

*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.

- (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

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

Section 353-25

- (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.

- (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);

*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.

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.

*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.

Division 355—Confidentiality of taxpayer information**Table of Subdivisions**

Guide to Division 355

- 355-A Objects and application of Division
- 355-B Disclosure of protected information by taxation officers
- 355-C On-disclosure of protected information by other people
- 355-D Disclosure of protected information that has been unlawfully acquired
- 355-E Other matters

Guide to Division 355**355-1 What this Division is about**

The disclosure of information about the tax affairs of a particular entity is prohibited, except in certain specified circumstances.

Those exceptions are designed having regard to the principle that disclosure of information should be permitted only if the public benefit derived from the disclosure outweighs the entity's privacy.

Note: This Division contains the main circumstances in which protected tax information can be disclosed. A number of other Commonwealth laws also allow for the disclosure of, or access to, such information in limited circumstances. Some of these other laws are as follows:

- sections 32 and 33 of the *Auditor-General Act 1997*;
- section 9 of the *Ombudsman Act 1976*;
- section 44 of the *Privacy Act 1988*.

*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.

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
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355-35	Consent is not a defence
355-40	Generality of Subdivision not limited
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355-55	Exception—disclosure to Ministers
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355-75	Limits on disclosure to courts and tribunals

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

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Operative provisions

355-25 Offence—disclosure of protected information by taxation officers

- (1) An entity commits an offence if:
- (a) the entity is or was a *taxation officer; and
 - (b) the entity:
 - (i) makes a record of information; or
 - (ii) discloses information to another entity (other than the entity to whom the information relates or an entity covered by subsection (2)) or to a court or tribunal; and
 - (c) the information is *protected information; and
 - (d) the information was acquired by the first-mentioned entity as a taxation officer.

Penalty: Imprisonment for 2 years.

- (2) An entity (the **covered entity**) is covered by this subsection in relation to *protected information that relates to another entity (the **primary entity**) if:
- (a) the covered entity is the primary entity's *registered tax agent or BAS agent; or
 - (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

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

Section 355-30

- (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; or
- (h) the covered entity is the registered tax agent or BAS agent of another covered entity mentioned in paragraph (c), (d) or (e) in relation to the relevant primary entity mentioned in those paragraphs; or
- (i) the covered entity is a legal practitioner representing another covered entity mentioned in paragraph (c), (d) or (e) in relation to the affairs of the relevant primary entity mentioned in those paragraphs relating to one or more taxation laws.

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.

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

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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.

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

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

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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
 - (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, 3E and 3H.

- (2) Without limiting subsection (1), records or disclosures made in performing duties as a *taxation officer include those mentioned in the following table:

Records or disclosures in performing duties		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any entity, court or tribunal	is for the purpose of administering any *taxation law.
2	any entity, court or tribunal	is for the purpose of the making, or proposed or possible making, of an order under the <i>Proceeds of Crime Act 2002</i> that is related to a *taxation law.

*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 ...
3	any entity, court or tribunal	is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to a [*] taxation law.
4	any entity	is for the purpose of responding to a request for a statement of reasons under the <i>Administrative Decisions (Judicial Review) Act 1977</i> in relation to a decision made under a [*] taxation law.
5	any entity	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment; in connection with administering a [*] taxation law.
6	any entity	is for the purpose of enabling the entity to understand or comply with its obligations under a [*] taxation law.
7	the Secretary of the Department	(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.

^{*}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 ...
9	a competent authority referred to in an international agreement (within the meaning of section 23 of the <i>International Tax Agreements Act 1953</i>)	is for the purpose of exchanging information under such an international agreement.
10	any employer (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	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.
11	a payer (within the meaning of Part VA of the <i>Income Tax Assessment Act 1936</i>) in relation to whom an individual has made a *TFN declaration that is in effect	<p>(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</p> <p>(b) is for the purpose of assisting the individual to give a declaration under section 15-50 to the payer; and</p> <p>(c) is made as the result of a request made by the individual to the Commissioner</p>

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;

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

Section 355-55

- (ii) a Second Commissioner;
- (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

Records or disclosures to Ministers		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any Minister	is for the purpose of enabling the Minister to exercise a power or perform a function under a *taxation law.
2	the Minister	(a) is about an entity; and (b) is for the purpose of enabling the Minister to respond directly to the entity in relation to a representation made by the entity to: <ul style="list-style-type: none">(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: <ul style="list-style-type: none">(a) the waiver, or possible waiver, of a *tax debt under section 63 of the <i>Public Governance, Performance and Accountability Act 2013</i>; 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.

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

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Records or disclosures to Ministers

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
5	any Minister	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment.
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.

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

Section 355-60

355-60 Limits on disclosure to Ministers

- (1) Sections 355-45 and 355-55 are the only exceptions to the prohibition in section 355-25 on which an entity who has acquired *protected information as a *taxation officer can rely in making a record of the information for, or disclosing the information to, a Minister, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-25 are not affected by this subsection. For example, a taxation officer may disclose information to a Minister if the Minister is the entity to whom the information relates, or is an entity covered by subsection 355-25(2) in relation to the information.

- (2) Subsection (1) has effect despite section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of *protected information by a *taxation officer to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable taxation officers to 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:

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

Section 355-65

Table 1: Records or disclosures relating to social welfare, health or safety

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	an Agency Head (within the meaning of the <i>Public Service Act 1999</i>) of an agency (within the meaning of that Act) dealing with matters relating to the social security law (within the meaning of subsection 23(17) of the <i>Social Security Act 1991</i>)	is for the purpose of administering that law.
2	the *Health Secretary	is for the purpose of administering any law of the Australian Capital Territory or of the Northern Territory which is administered by the *Health Minister.
3	the Repatriation Commission	is for the purpose of administering any *Commonwealth law relating to pensions, allowances or benefits.
4	the *Student Assistance Secretary	is for the purpose of administering any *Commonwealth law relating to pensions, allowances or benefits.
4A	the Secretary of the Department administered by the Minister administering the <i>Fair Entitlements Guarantee Act 2012</i>	is for the purpose of administering the <i>Fair Entitlements Guarantee Act 2012</i> .
4B	the *Employment Secretary	is for the purpose of administering any *Commonwealth law relating to pensions, allowances or benefits, other than the <i>Fair Entitlements Guarantee Act 2012</i> .
5	(a) the *Student Assistance Secretary; or (b) the Secretary of the Department administered by the Minister administering the <i>Higher Education</i>	is for the purpose of administering any *Commonwealth law relating to financial assistance to students.

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

Section 355-65

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 ...
	<i>Support Act 2003; or</i> (c) the Secretary of the Department administered by the Minister administering the <i>VET Student Loans Act 2016</i>	
5AA	the Secretary of the Department administered by the Minister administering the <i>Australian Apprenticeship Support Loans Act 2014</i>	is for the purpose of administering that Act.
5A	the *Families Secretary or the Chief Executive Centrelink (within the meaning of the <i>Human Services (Centrelink) Act 1997</i>)	is for the purpose of administering the <i>Paid Parental Leave Act 2010</i> .
6	the *Families Secretary or the Chief Executive Centrelink (within the meaning of the <i>Human Services (Centrelink) Act 1997</i>)	is for the purpose of administering the <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> .
7	the Child Support Registrar	is for the purpose of administering the <i>Child Support (Registration and Collection) Act 1988</i> or the <i>Child Support (Assessment) Act 1989</i> .
8	the Chief Executive Medicare (within the meaning of the <i>Human Services (Medicare) Act 1973</i>)	is for the purpose of administering Part 2-2 (about premiums reduction scheme) or 6-4 (about administration of that scheme) of the <i>Private Health Insurance Act 2007</i> .
9	an *Australian government agency	is necessary for the purpose of preventing or lessening: (a) a serious threat to an individual's life, health or safety; or

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

Section 355-65

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 ...
		(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 <i>Australian Security Intelligence Organisation Act 1979</i>
11	the Chief Executive Officer of Services Australia	is for the purpose of administering the program known as the COVID-19 Disaster Payment.

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 <i>Australian Prudential Regulation Authority Act 1998</i>)	(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; and (b) is for the purpose of the agency performing any of its functions or exercising any of its powers.

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

Section 355-65

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 ...
2	<p>(a) an agency having the function, in Australia or in a foreign country, of supervising or regulating *financial institutions; or</p> <p>(b) any other agency (including a foreign agency) specified in the regulations</p>	<p>(a) is of information that was obtained under or in relation to the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i>; and</p> <p>(b) is for the purpose of performing any of its functions or exercising any of its powers; and</p> <p>(c) is made in accordance with the conditions (if any) imposed by the regulations in relation to the disclosure of information under this item.</p>
3	the operator of the AFCA scheme (within the meaning of the <i>Corporations Act 2001</i>)	<p>(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>; and</p> <p>(b) is for the purpose of the operator performing any of its functions or exercising any of its powers.</p>
4	the Australian Prudential Regulation Authority (APRA)	<p>is for the purpose of administering:</p> <p>(a) the <i>Financial Institutions Supervisory Levies Collection Act 1998</i>; or</p> <p>(b) the <i>Superannuation Industry (Supervision) Act 1993</i>.</p>
5	APRA	<p>(a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>; and</p> <p>(b) is for the purpose of APRA performing any of its functions or exercising any of its powers.</p>

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

Section 355-65

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 ...
6	APRA	is for the purpose of administering a reporting standard made under section 13 of the <i>Financial Sector (Collection of Data) Act 2001</i> , to the extent that the standard relates to amounts reported to *APRA for the purposes of the <i>Major Bank Levy Act 2017</i> .
6A	*ASIC	is for the purpose of administering Part 16 of the <i>Superannuation Industry (Supervision) Act 1993</i> .
7	an individual who is or was an employee (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	(a) is of information that relates to the Commissioner's response to a complaint by the individual about a failure by the individual's employer or former employer to comply with the employer's obligations under the <i>Superannuation Guarantee (Administration) Act 1992</i> , 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 <i>Superannuation Guarantee (Administration) Act 1992</i>)	(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 the <i>Superannuation Guarantee (Administration) Act 1992</i> , or under a provision of this Act as it relates to that Act, in relation to the employee; or

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

Section 355-65

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 ...
		(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 <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i> and is for the purpose of all or any of the following: (a) identifying a particular *self managed superannuation fund; (b) enabling members of the public to contact persons who perform functions in relation to a particular self managed superannuation fund; (c) enabling the Commissioner to provide an opinion to members of the public as to whether or not a particular self managed superannuation fund is a complying superannuation fund in relation to a particular income year for the purposes of Division 2 of Part 5 of the <i>Superannuation Industry (Supervision) Act 1993</i> ; (d) describing activity engaged in, or proposed to be engaged in, by the

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

Section 355-65

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 ...
		Commissioner in relation to a breach or suspected breach by a person of a provision of the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i> .
8A	a Senior Registry official (within the meaning of section 90XZJ of the <i>Family Law Act 1975</i>) of a court in response to that official's request under that section	(a) is of superannuation information (within the meaning of that section); and (b) is for the purpose of property settlement proceedings (within the meaning of that Act).
8B	the Principal Registrar of the Family Court of Western Australia in response to the Principal Registrar's request under section 90YZY of the <i>Family Law Act 1975</i>	(a) is of superannuation information (within the meaning of that section); and (b) is for the purpose of all of the relevant proceedings (within the meaning of that section).
9	an approved clearing house (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	is for the purposes of that body performing its functions in relation to superannuation contributions.
10	(a) a [*] regulated superannuation fund; or (b) a public sector superannuation scheme (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>); 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	is for the purpose of: (a) informing: (i) a beneficiary (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>) of such a fund or scheme; or (ii) a holder (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of an [*] RSA provided by the [*] RSA provider; or

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

Section 355-65

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 ...
	provider, provides administration services for:	(iii) an applicant to become such a beneficiary or holder;
	(i) beneficiaries (within the meaning of that Act) of the fund or scheme; or	of one or more of his or her *superannuation interests (whether with that fund, scheme or RSA provider or another fund, scheme or RSA provider); or
	(ii) holders (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of *RSAs provided by the RSA provider	(b) assisting such a beneficiary, holder or applicant to choose whether to maintain or create such a superannuation interest; or
		(c) assisting such a beneficiary, holder or applicant to give effect to such a choice; or
		(d) informing such a beneficiary, holder or applicant of an amount that is or may become payable, or that may be paid, credited or otherwise dealt with, in relation to the beneficiary, holder or applicant under:
		(i) the <i>Small Superannuation Accounts Act 1995</i> ; or
		(ii) the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> ; or
		(iii) the <i>Superannuation Guarantee (Administration) Act 1992</i> ; or
		(iv) the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or
		(e) assisting such a beneficiary, holder or applicant to give effect to a choice that he or she may make, or

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

Section 355-65

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 ...
		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 <i>Income Tax Assessment Act 1997</i> .
12	An employer (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>) 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.

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

Section 355-65

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 ...
6	Industry Innovation and Science Australia established under section 6 of the <i>Industry Research and Development Act 1986</i>	is for the purpose of administering any *Commonwealth law relating to venture capital.
6A	the Secretary of the Department administered by the Minister administering the <i>Shipping Reform (Tax Incentives) Act 2012</i>	is for the purpose of administering that Act.
7	the Secretary of the Department	is for the purpose of administering the <i>Foreign Acquisitions and Takeovers Act 1975</i> .
7A	a person appointed by the Commonwealth for the purposes of the <i>Foreign Acquisitions and Takeovers Act 1975</i>	is for the purpose of advising the Treasurer in relation to the administration of that Act.
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 <i>Parliamentary Service Act 1999</i>)	(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 <i>Parliamentary Service Act 1999</i> .

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

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 <i>First Home Owner Grant (New Homes) Act 2000</i> (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 <i>Inspector-General of Taxation Act 2003</i> ; or (b) provisions of the <i>Ombudsman Act 1976</i> , to the extent that they are applied by the <i>Inspector-General of Taxation Act 2003</i> .

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

Section 355-65

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 ...
6	the National Anti-Corruption Commissioner (within the meaning of the <i>National Anti-Corruption Commission Act 2022</i>)	(a) is for the purposes of the <i>National Anti-Corruption Commission Act 2022</i> ; and (b) is in relation to a corruption issue that relates to the Australian Taxation Office or the Inspector-General of Taxation.

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.

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

Section 355-65

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.

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 <i>Census and Statistics Act 1905</i> .
2	the Comptroller-General of Customs (within the meaning of the <i>Customs Act 1901</i>)	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 <i>Commonwealth Electoral Act 1918</i>)	(a) is of information disclosed to, or obtained by, the Commissioner of Taxation on or after the commencement of this table item; and (b) is for the purpose of administering the <i>Commonwealth Electoral Act 1918</i> or the <i>Referendum (Machinery Provisions) Act 1984</i> .

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

Section 355-65

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 ...
3	the *Immigration Secretary or the Australian Border Force Commissioner (within the meaning of the <i>Australian Border Force Act 2015</i>)	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.
4	the Regulator (within the meaning of the <i>Payment Times Reporting Act 2020</i>)	(a) is of information relating to whether an entity is a reporting entity (within the meaning of the <i>Payment Times Reporting Act 2020</i>); and (b) is for the purpose of enabling the Regulator to administer that Act.
5	the Fair Work Ombudsman (within the meaning of the <i>Fair Work Act 2009</i>)	(a) is of the fact of an entity's actual or reasonably suspected non-compliance with a *taxation law; and (b) is for the purpose of ensuring the entity's compliance with the <i>Fair Work Act 2009</i> .
5AB	(a) the Fair Work Commission (within the meaning of the <i>Fair Work Act 2009</i>); or (b) the Fair Work Ombudsman (within the meaning of that Act)	(a) is of information that relates to the jobkeeper scheme (within the meaning of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i>); and (b) is for the purpose of administering the <i>Fair Work Act 2009</i> .
5A	the Commissioner of the Australian Charities and Not-for-profits Commission	is for the purpose of administering the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .

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

Section 355-65

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 ...
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 <i>Petroleum and Other Fuels Reporting Act 2017</i>	is for the purpose of administering the <i>Petroleum and Other Fuels Reporting Act 2017</i> or the <i>Fuel Security Act 2021</i> .
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 (b) is for the purposes of contacting the person, and recovering from the person outstanding amounts relating to the loan.

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

Section 355-65

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 ...
9	an *Australian government agency that administers an *Australian law referred to in paragraph 980-10(1)(a) of the <i>Income Tax Assessment Act 1997</i>	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 <i>Income Tax Assessment Act 1997</i>	is for the purpose of determining whether an entity should be, or should continue to be, registered as described in that paragraph.
10A	an *Australian government agency	(a) is of information that relates to the jobkeeper scheme (within the meaning of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i>); and (b) is for the purpose of administering an *Australian law; and (c) is for a purpose relating to the coronavirus known as COVID-19.
12	an *Australian government agency	is for the purpose of administering a program declared under subsection (10) to be a relevant COVID-19 business support program.
13	an *Australian government agency	is for the purpose of administering a program declared under section 355-66 to be a major disaster support program.

- (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.

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

- (10) For the purposes of item 12 of Table 7 in subsection (8), the Minister may, by legislative instrument, declare a program administered by an *Australian government agency to be a relevant COVID-19 business support program if the Minister is satisfied that the program is, in effect:
- (a) responding to economic impacts of the coronavirus known as COVID-19; and
 - (b) directed at supporting *businesses the operations of which have been significantly disrupted as a result of a public health directive.

355-66 Major disaster support programs

- (1) For the purposes of item 13 of Table 7 in subsection 355-65(8), the Minister may, by legislative instrument, declare a program administered by an *Australian government agency to be a major disaster support program if the Minister is satisfied that the program is, in effect:
- (a) responding to the impacts of an event to which subsection (2) of this section applies; and
 - (b) directed at supporting:
 - (i) individuals whom the event has significantly impacted; or
 - (ii) *businesses the operations of which the event has significantly disrupted.
- (2) This subsection applies to an event if:
- (a) the event developed rapidly and resulted in:
 - (i) the death, serious injury or other physical suffering of a large number of individuals; or
 - (ii) widespread damage to property or the natural environment; or
 - (b) the event is an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates (including a national emergency declaration that is no longer in force).

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

Section 355-67

Period of effect

- (3) A declaration made under subsection (1) must specify the period for which the declaration is in force. The period must end no later than 2 years after the day the declaration is registered on the Federal Register of Legislation.

355-67 Exception—disclosure to registrars

- (1) Section 355-25 does not apply if:
- (a) the entity is a *taxation officer; and
 - (b) the Commissioner is appointed as a registrar specified in subsection (2); and
 - (c) no other person or body is appointed as that registrar; and
 - (d) the record or the disclosure is made for the purposes of the performance of that registrar's functions, or the exercise of that registrar's powers.

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) The following registrars are specified:
- (a) the *Registrar;
 - (b) the Registrar (within the meaning of the *Business Names Registration Act 2011*);
 - (c) the Registrar (within the meaning of the *Corporations Act 2001*);
 - (d) the Registrar (within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*);
 - (e) the Registrar (within the meaning of the *National Consumer Credit Protection Act 2009*).

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

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:
 - (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.

*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 ...
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 <i>Australian Security Intelligence Organisation Act 1979</i> .
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.
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.

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

Section 355-70

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 ...
6	<p>one or more of the following bodies:</p> <p>(a) a Royal Commission of a State or a Territory prescribed by the regulations for the purposes of this table item;</p> <p>(b) a commission of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item;</p> <p>(c) a board of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item</p>	<p>is for the purpose of:</p> <p>(a) investigating a *serious offence; or</p> <p>(b) enforcing a law, the contravention of which is a serious offence; or</p> <p>(c) the making, or proposed or possible making, of a *proceeds of crime order; or</p> <p>(d) supporting or enforcing a proceeds of crime order.</p>

- (2A) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

Meaning of various terms

- (2) **Authorised ASIO officer** means:

- (a) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*; or
- (b) 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

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

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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 National Anti-Corruption Commission; 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
- (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

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

- (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;
 - (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;

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

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- (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
 - (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.

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

355-72 Exception—disclosure to credit reporting bureaus

Exception—entities in declared class of entities

- (1) Section 355-25 does not apply if:
- (a) the entity is a *taxation officer; and
 - (b) the record is made for, or the disclosure is to, a *credit reporting bureau; and
 - (c) the record or disclosure is of information that relates to the *tax debts of an entity (the **primary entity**) that is included in a class of entities declared under subsection (5) of this section; and
 - (d) the record or disclosure is for the purpose of enabling the credit reporting bureau to prepare, issue, update, correct or confirm credit worthiness reports in relation to the primary entity; and
 - (e) in the case of a disclosure of information other than for the purposes of updating, correcting or confirming information previously disclosed under this exception—both:
 - (i) the Inspector-General of Taxation has been consulted on the disclosure; and
 - (ii) 28 days have passed after a notice under subsection (2) of this section was given to the primary entity for 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*.

Notice of disclosure

- (2) The Commissioner must notify a primary entity if:
- (a) information that relates to the primary entity is to be disclosed to a *credit reporting bureau under this section; and
 - (b) the information is not information that updates, corrects or confirms the information previously disclosed under the exception in subsection (1).
- (3) The notice must:

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

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- (a) be in writing; and
- (b) explain the type of information that is to be disclosed to the *credit reporting bureau; and
- (ba) explain:
 - (i) why the primary entity is included in a class of entities declared under subsection (5); and
 - (ii) the steps (if any) the primary entity may take to no longer be included in that class before the disclosure occurs; and
- (c) set out the amount of any *tax debts payable by the primary entity at the time the notice is given by the Commissioner; and
- (d) explain how the primary entity may make a complaint in relation to the proposed disclosure of the entity's information; and
- (e) be served on the primary entity.

Exception—entities no longer in declared class of entities

- (4) Section 355-25 does not apply if:
 - (a) the entity is a *taxation officer; and
 - (b) the record is made for, or the disclosure is to, a *credit reporting bureau; and
 - (c) the record or disclosure is of information that relates to the *tax debts of an entity that:
 - (i) has had information previously disclosed under the exception in subsection (1) of this section; and
 - (ii) is no longer an entity that is included in a class of entities declared under subsection (5) of this section; and
 - (d) the record or disclosure is of information that relates to why the entity to which the information relates is no longer included in a class of entities declared under subsection (5) of this section; and
 - (e) the record or disclosure is for the purpose of enabling the credit reporting bureau to update or correct credit worthiness

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

reports in relation to the entity to which the information relates.

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

Class of entities

- (5) The Minister may, by legislative instrument, declare one or more classes of entities for the purposes of this section.
- (5A) Before making an instrument under subsection (5), the Minister must:
 - (a) consult the Inspector-General of Taxation; and
 - (b) consider any submissions made by the Inspector-General of Taxation because of that consultation.
- (6) Before making an instrument under subsection (5), the Minister must:
 - (a) consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*) and would be affected by the proposed instrument; and
 - (b) consider any submissions made by the Information Commissioner because of that consultation.

Credit reporting bureau

- (7) An entity is a **credit reporting bureau** if the entity is recognised by the Commissioner as an entity that prepares and issues credit worthiness reports in relation to other entities.
- (8) The Commissioner must keep and publish a list of credit reporting bureaus on the Australian Taxation Office website.
- (9) The list of credit reporting bureaus is not a legislative instrument.

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

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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.

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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
- (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*.

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

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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*.

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:

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

Section 355-175

- (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:

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.

*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
4	one of the purposes specified in column 3 of item 6 of the table in subsection 355-70(1)	one of the other purposes specified in column 3 of item 6 of that table.

355-180 Exception—on-disclosure to Ministers in relation to statutory powers or functions

Section 355-155 does not apply if:

- (a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the *original purpose*); and
- (b) the record is made for, or the disclosure is to, a Minister who has a statutory power or function in relation to the original purpose; and
- (c) the record or disclosure is for the purpose of enabling the Minister to:
 - (i) decide whether to exercise the power or perform the function; or
 - (ii) exercise the power or perform the function.

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

355-182 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:

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

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- (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*.

355-185 Exception—on-disclosure to IGIS officials

(1) Section 355-155 does not apply if:

- (a) the entity is an officer of an *Australian government agency; and
- (b) the record is made for, or the disclosure is to, an *IGIS official; and
- (c) the record or disclosure is for the purposes of the IGIS official performing functions or duties, or exercising powers, as an IGIS official.

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

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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 *IGIS official; and
 - (b) the information was acquired by the entity under subsection (1) or this subsection; and
 - (c) the record or disclosure is for the purposes of the IGIS official performing functions or duties, or exercising powers, as an IGIS official.

355-190 Exception—on-disclosure in relation to ASIO

- (1) Section 355-155 does not apply if:
- (a) the entity is an *authorised ASIO officer; and
 - (b) the record is made for, or the disclosure is to, an officer of a *law enforcement agency; and
 - (c) the record or disclosure is for the purpose of, or in connection with:
 - (i) investigating a *serious offence; or
 - (ii) enforcing a law, the contravention of which is a serious offence; or
 - (iii) the making, or proposed or possible making, of a *proceeds of crime order.

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

- (2) Section 355-155 does not apply if:
- (a) the entity is an officer of a *law enforcement agency; and
 - (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

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

- (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*.

355-192 Exception—on-disclosure in relation to *National Anti-Corruption Commission Act 2022*

- (1) Section 355-155 does not apply if:
- (a) the entity is the Inspector-General of Taxation; and
 - (b) the information was acquired by the Inspector-General of Taxation under the exception in subsection 355-65(1) operating in relation to item 5 in the table in subsection 355-65(5); and
 - (c) the record is made for, or the disclosure is to:
 - (i) the National Anti-Corruption Commissioner (within the meaning of the *National Anti-Corruption Commission Act 2022*); or
 - (ii) another staff member of the NACC (within the meaning of that Act); and
 - (d) the record or disclosure is:
 - (i) for the purposes of the *National Anti-Corruption Commission Act 2022*; and
 - (ii) in relation to a corruption issue (within the meaning of that Act) that relates to the Australian Taxation Office or the Inspector-General of Taxation.

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 National Anti-Corruption Commissioner (within the meaning of the *National Anti-Corruption Commission Act 2022*); or
 - (ii) another staff member of the NACC (within the meaning of that Act); and

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

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- (b) the information was acquired by the entity under subsection (1) or this subsection; and
- (c) the record or disclosure is for the purpose of performing a function or duty of the National Anti-Corruption Commissioner or another staff member of the NACC under the *National Anti-Corruption Commission Act 2022*.

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

355-195 Exception—on-disclosure by Royal Commissions

- (1) Section 355-155 does not apply if:
 - (a) the entity is a member of a Royal Commission to which column 2 of item 5 of the table in subsection 355-70(1) relates; and
 - (b) the information was acquired by the entity under item 5 of the table in subsection 355-70(1); and
 - (c) the record or disclosure is in accordance with section 6P of the *Royal Commissions Act 1902*.

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

Note 2: Section 6P of the *Royal Commissions Act 1902* sets out the circumstances in which a Royal Commission covered by that Act may disclose information it acquires in the course of its inquiry.

- (2) Section 355-155 does not apply to particular information if the information was disclosed under subsection (1).

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

355-200 Exception—records made in compliance with Australian laws

Section 355-155 does not apply if the record is made in compliance with a requirement of an *Australian law.

Example: The Australian Taxation Office obtains information about an entity from a credit reporting body by giving a notice under

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

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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).

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

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

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continues to operate, for example, to enable an entity to disclose protected information to a committee of one or both Houses of the Parliament.

355-215 Exception—on-disclosure of information disclosed to credit reporting bureaus

Section 355-155 does not apply if:

- (a) the information was originally disclosed under the exception in subsection 355-72(1) or (4); and
- (b) the information was acquired by the entity under that exception or the exception in section 355-175; and
- (c) when making the record, or disclosing the information, the entity is not:
 - (i) a *credit reporting bureau; or
 - (ii) an entity appointed or employed by, or otherwise performing services for, a credit reporting bureau.

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

Subdivision 355-D—Disclosure of protected information that has been unlawfully acquired

Guide to Subdivision 355-D

355-260 What this Subdivision is about

The disclosure of protected tax information that has been unlawfully acquired is prohibited.

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

355-275 Exception—disclosure in relation to a taxation law

355-280 Limits on disclosure to courts and tribunals

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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*.

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

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

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(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.

Table of sections

Operative provisions

355-325 Oath or affirmation to protect information

355-330 Injunctions to prevent contravention of non-disclosure provisions

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

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 conduct of the kind referred to in that subsection pending the determination of the application.

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

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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.

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

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

Section 355-335

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.
- (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:

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

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- (a) prevent the Commissioner from issuing the instructions after this time; or
 - (b) affect the validity of the instructions when issued.
- (6) A failure to comply with the instructions does not, of itself, mean that a *taxation officer is not entitled to rely on the exceptions in sections 355-55, 355-65 and 355-70.
- (7) The instructions are not a legislative instrument.

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

Division 356—General administration of tax laws

Table of Subdivisions

	Guide to Division 356
356-A	Indirect tax laws
356-B	Major bank levy
356-C	Laminaria and Corallina decommissioning levy

Guide to Division 356

356-1 What this Division is about

<p>This Division gives the Commissioner the general administration of the indirect tax laws and the <i>Major Bank Levy Act 2017</i>.</p>
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Subdivision 356-A—Indirect tax laws

Table of sections

356-5	Commissioner has general administration of indirect tax laws
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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
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*For definition, see section 995-1 of the Income Tax Assessment Act 1997.

Section 356-10

356-10 Commissioner has general administration of major bank levy

The Commissioner has the general administration of the *Major Bank Levy Act 2017*.

Subdivision 356-C—Laminaria and Corallina decommissioning levy

Table of sections

356-15	Commissioner has general administration of Laminaria and Corallina decommissioning levy
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356-15 Commissioner has general administration of Laminaria and Corallina decommissioning levy

The Commissioner has the general administration of the *Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Act 2022*.

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

Part 5-5—Rulings

Division 357—Object and common rules

Table of Subdivisions

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357-A	Object of this Part
357-B	Common rules for rulings

Guide to Division 357

357-1 What this Division is about

This Division sets out the object of this Part, and common rules that apply to public, private and oral rulings. (For the rules specific to each of those kinds of ruling, see Divisions 358, 359, 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, Industry Innovation and Science Australia can make rulings.

Subdivision 357-A—Object of this Part

Table of sections

357-5	Object of this Part
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*For definition, see section 995-1 of the Income Tax Assessment Act 1997.

Section 357-5

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
*Industry 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 Industry Innovation and Science Australia: see Division 362.

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

Subdivision 357-B—Common rules for rulings

Table of sections

Rules for all rulings

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357-60	When rulings are binding on the Commissioner
357-65	Stopping relying on a ruling
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357-75	Inconsistent rulings
357-80	Contracts for schemes
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Common rules for public and private rulings

357-95	Electronic communications
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Common rules for private and oral rulings

357-105	Further information must be sought
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357-115	Additional information provided by applicant
357-120	Commissioner may take into account information from third parties
357-125	Applications and objections not to affect obligations and powers

Rules for all rulings

357-50 Scope of Division

This Division applies to *public rulings, *private rulings and *oral rulings.

Note: Section 362-70 modifies how this Subdivision applies to rulings by Industry Innovation and Science Australia.

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

Section 357-55

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*;
- (fe) *Laminaria and Corallina decommissioning levy;
- (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:

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

- (a) the ruling applies to you; and
- (b) you rely on the ruling by acting (or omitting to act) in accordance with the ruling.

Example 1: A public ruling is expressed to apply to a class of entities in relation to a particular scheme. Tim is a member of that class of entities and he is one of a number of taxpayers who enter into that scheme. The ruling applies to Tim.

Tim relies on the ruling by lodging an income tax return that is in accordance with the ruling.

Under the ruling, Tim's deductions in relation to the scheme are worked out to be a particular amount. Because Tim has relied on the ruling, the Commissioner must use that amount in making Tim's assessment (unless Tim stops relying on the ruling or the law is more favourable to him: see sections 357-65 and 357-70).

Example 2: Cecelia applies for, and obtains, a private ruling that, when she makes a payment in specified circumstances, she would not have to withhold an amount under a relevant provision. Cecelia makes the payment in the circumstances specified in the ruling, so the ruling applies to her.

Cecelia relies on the ruling by not withholding an amount from the payment. The Commissioner must not apply the provision in relation to Cecelia in a way that is inconsistent with the ruling (unless Cecelia stops relying on the ruling or the law is more favourable to her: see sections 357-65 and 357-70).

Example 3: Cathie obtains a private ruling that a type of supply she makes is GST-free. She relies on the ruling by:

- (a) giving her customers invoices that show no GST payable on the supplies; and
- (b) lodging her GST return on the basis that the supplies are GST-free.

The Commissioner must administer the GST law in relation to Cathie on the basis that the supplies to which the ruling relates are GST-free. This does not apply if Cathie stops relying on the ruling, such as by 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.

*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.

- (a) the ruling applies to the member entity; and
- (b) the ruling relates to what would be:
 - (i) a liability of the member entity to *indirect tax; or
 - (ii) an entitlement of the member entity to a credit (other than a *fuel tax credit) under an *indirect tax law; or
 - (iii) an *increasing adjustment, a *decreasing adjustment, or a luxury car tax adjustment (within the meaning of the *Luxury Car Tax Act), that the member entity has;if the rules in the indirect tax law relating to *GST groups, *GST joint ventures or *incapacitated entities did not apply; and
- (c) because of those rules:
 - (i) if that indirect tax were payable, it would be payable by the representative entity; or
 - (ii) if there was an entitlement to that credit, it would be an entitlement of the representative entity; or
 - (iii) if any entity had that adjustment, it would be an adjustment that the representative entity had.

357-65 Stopping relying on a ruling

- (1) You can stop relying on a ruling. You do this by acting (or omitting to act) in a way that is not in accordance with the ruling.

Note: There is no penalty for a shortfall resulting from failing to follow a ruling. However, there are penalties for shortfalls resulting from failing to take reasonable care, and from taking a position about a large income tax item that is not reasonably arguable: see Division 284.

- (2) You may stop relying on a ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law.
- (3) Having stopped relying on a ruling, you may rely on the ruling again unless prevented from doing so by a time limit imposed by a *taxation law.

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

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357-70 Commissioner may apply the law if more favourable than the ruling

- (1) The Commissioner may apply a relevant provision to you in the way it would apply if you had not relied on a ruling if:
 - (a) doing so would produce a more favourable result for you; and
 - (b) the Commissioner is not prevented from doing so by a time limit imposed by a *taxation law.
- (2) The Commissioner does not have a duty to consider whether to apply subsection (1) to you, whether he or she is requested to do so by you or by any other entity.

357-75 Inconsistent rulings

- (1) The rules in this table have effect if:
 - (a) a ruling and a later ruling both apply to you; and
 - (b) the 2 rulings are inconsistent.However, the rules in the table only apply to the extent of the inconsistency, and do not apply to *indirect tax or excise rulings.

Inconsistent rulings (other than indirect tax or excise rulings)			
Item	If the earlier ruling is:	And the later inconsistent ruling is:	The result is:
1	A *public ruling	Any ruling	You may rely on either ruling.
2	A *private ruling or an *oral ruling	A private ruling or an oral ruling	If you informed the Commissioner about the existence of the earlier ruling when you applied for the later ruling, the earlier ruling is taken not to have been made. Otherwise, the later ruling is taken not to have been made.

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

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Inconsistent rulings (other than indirect tax or excise rulings)

Item	If the earlier ruling is:	And the later inconsistent ruling is:	The result is:
3	A *private ruling or an *oral ruling	A *public ruling	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*.

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.

Common rules for private and oral rulings

357-105 Further information must be sought

- (1) If the Commissioner considers that further information is required to make a *private ruling or an *oral ruling, the Commissioner must request the applicant to give that information to him or her.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner requests further information under this section, that period is extended: see subsection 359-50(2).

- (2) The Commissioner may decline to make the ruling if the applicant does not give the information to the Commissioner within a reasonable time.

Note: The Commissioner must give the applicant written reasons for declining to make a private ruling: see section 359-35.

357-110 Assumptions in making private or oral ruling

- (1) If the Commissioner considers that the correctness of a *private ruling or an *oral ruling would depend on which assumptions were made about a future event or other matter, the Commissioner may:
 - (a) decline to make the ruling; or
 - (b) make such of the assumptions as the Commissioner considers to be most appropriate.
- (2) Before making the ruling, the Commissioner must:
 - (a) tell the applicant which assumptions (if any) the Commissioner proposes to make; and
 - (b) give the applicant a reasonable opportunity to respond.

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

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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
- (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

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

- (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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- 358-10 Application of public rulings
- 358-15 When a public ruling ceases to apply

Withdrawing public rulings

- 358-20 Withdrawing public rulings

Making public rulings

358-5 What is a public ruling?

- (1) The Commissioner may make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to:
 - (a) entities generally or a class of entities; or
 - (b) entities generally, or a class of entities, in relation to a class of *schemes; or

*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, by notifiable instrument, publish notice of the making of a *public ruling.

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.

Withdrawing public rulings

358-20 Withdrawing public rulings

- (1) The Commissioner may, by notifiable instrument, withdraw a *public ruling, either wholly or to an extent.
- (2) The withdrawal takes effect from the time specified in the instrument. That time must not be before the day after the instrument is registered on the Federal Register of Legislation under the *Legislation Act 2003*.
- (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.

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

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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*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.

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

- (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.

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

Section 359-35

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

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

- (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.

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

Section 359-50

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.

Section 359-55

Extending the 60 day period

Item	If the Commissioner, during the 60 day period:	The 60 day period is extended by the number of days in this period:
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.

Section 359-60

- (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.

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.

Section 360-1

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.

Section 360-5

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.

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

Section 360-10

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.

Division 361—Non-ruling advice and general administrative practice

Table of sections

361-5 Non-ruling advice and general administrative practice

361-5 Non-ruling advice and general administrative practice

- (1) You are not liable to pay the *general interest charge or the *shortfall interest charge under a relevant provision to the extent that the charge would relate to a *shortfall amount or a *scheme shortfall amount that was caused by:
- (a) you reasonably relying in good faith on:
 - (i) advice (other than a ruling) given to you or your *agent by the Commissioner; or
 - (ii) a statement in a publication approved in writing by the Commissioner;unless the advice, or the statement or publication, is labelled as non-binding; or
 - (b) you reasonably relying in good faith on the Commissioner's general administrative practice.

Note: Section 357-55 specifies the relevant provisions.

- (2) However, subsection (1) does not apply to any *general interest charge accruing more than 21 days after the Commissioner notifies you of the correct position.

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

Section 362-1

**Division 362—Rulings by Industry Innovation and Science
Australia that activities are not ineligible activities**

Guide to Division 362

362-1 What this Division is about

Industry 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 Industry Innovation and Science Australia

- 362-5 Industry 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 Industry Innovation and Science Australia

- 362-25 Industry Innovation and Science Australia may make private rulings on a specified activity
- 362-30 Applying for a private ruling
- 362-35 Industry 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.

General provisions

- 362-65 When rulings are binding on the Commissioner and Industry 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 Industry Innovation and Science Australia

362-5 Industry Innovation and Science Australia may make public rulings on a specified class of activities

- (1) *Industry Innovation and Science Australia may make a ruling that Industry 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 Industry 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) *Industry Innovation and Science Australia must, by notifiable instrument, publish notice of the making of a *public ruling.
- 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.

Section 362-10

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) *Industry Innovation and Science Australia must, by notifiable instrument, withdraw a *public 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 362-5(1); or
 - (b) the ruling is inconsistent with a decision of a court.
- (2) The withdrawal takes effect from the time specified in the instrument. That time must not be before the day after the instrument is registered on the Federal Register of Legislation under the *Legislation Act 2003*.

Private rulings by Industry Innovation and Science Australia

362-25 Industry Innovation and Science Australia may make private rulings on a specified activity

- (1) *Industry Innovation and Science Australia may, on application, make a ruling that Industry Innovation and Science Australia considers that a specified activity:
 - (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

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

(b) in specified circumstances, is not such an ineligible activity; if Industry 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, *Industry Innovation and Science Australia must apply any principles made under subsection (4).

(4) *Industry 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 *Industry Innovation and Science Australia, apply to Industry Innovation and Science Australia for a *private ruling under this Division.

362-35 Industry Innovation and Science Australia must give notice of its decision

(1) If *Industry Innovation and Science Australia makes a *private ruling under this Division, Industry Innovation and Science Australia must notify the *general partner, and the Commissioner, as soon as practicable after the ruling is made.

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

Section 362-40

- (2) If *Industry Innovation and Science Australia refuses to make a *private ruling under this Division, Industry 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: Industry Innovation and Science Australia must tell the applicant which assumptions Industry 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 *Industry Innovation and Science Australia a written notice requiring Industry Innovation and Science Australia to make the ruling if, at the end of 60 days after the application was made, Industry Innovation and Science Australia has neither:
- (a) made the ruling; nor
 - (b) told the applicant that Industry Innovation and Science Australia has refused 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

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

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 *Industry 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 *Industry Innovation and Science Australia
2	tells the applicant about assumptions *Industry 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 *Industry Innovation and Science Australia tells the applicant and ending on the day on which Industry Innovation and Science Australia receives the applicant's response about the assumptions
3	tells the applicant about information provided by a third party that *Industry 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 *Industry Innovation and Science Australia tells the applicant and ending on the day on which Industry Innovation and Science Australia receives the applicant's response about the information

(3) If *Industry 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;

Industry 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.

Section 362-55

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) *Industry 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) *Industry 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 Industry Innovation and Science Australia

- (1) A ruling under this Division binds the Commissioner and *Industry 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 *Industry 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.

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

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 *Industry 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 Industry 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 Industry 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.

Section 370-1

Part 5-10—Commissioner's remedial power

Division 370—Commissioner's remedial power

Table of Subdivisions

Guide to Division 370

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.

Subdivision 370-A—Commissioner's remedial power**Table of sections**

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.

Section 370-10

- (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.

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*.

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

Section 382-1

Part 5-25—Record-keeping and other obligations relating to taxpayers

Division 382—Record-keeping

Table of Subdivisions

Guide to Division 382

382-A Keeping records of indirect tax transactions

382-B Record keeping obligations of deductible gift recipients

Guide to Division 382

382-1 What this Division is about

You are required to keep records of indirect tax transactions in accordance with this Division.

Deductible gift recipients are required to keep records in accordance with this Division.

Subdivision 382-A—Keeping records of indirect tax transactions

Table of sections

382-5 Keeping records of indirect tax transactions

382-5 Keeping records of indirect tax transactions

Records of transactions

- (1) You must:
- (a) keep records that record and explain all transactions and other acts you engage in that are relevant to a *supply,

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

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.

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

Section 382-5

- (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.

- (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.

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

Section 382-15

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.

- (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.

Section 384-5

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 a superannuation guarantee education direction may be given
384-12	When a tax-records education direction may be given
384-15	Content of, and matters relating to compliance with, education directions
384-17	Compliance with superannuation guarantee education directions
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 a superannuation guarantee education direction may be given

- (1) The Commissioner may give you a written direction (a *superannuation guarantee education direction*) 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).

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

Section 384-12

Education directions

Item	The item applies to you if...
2	You fail to comply with an obligation to give a statement or information to the Commissioner under the <i>Superannuation Guarantee (Administration) Act 1992</i> .
3	You fail to comply with an obligation to keep records under the <i>Superannuation Guarantee (Administration) Act 1992</i> .
4	You fail to comply with an obligation under this Act that relates to the <i>Superannuation Guarantee (Administration) Act 1992</i> .

Note: For the requirements in the direction, see subsection 384-15(1).

(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 <i>Superannuation Guarantee (Administration) Act 1992</i>
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)

384-12 When a tax-records education direction may be given

- (1) The Commissioner may give you a written direction (a ***tax-records education direction***) if the Commissioner reasonably believes you have failed, at a specified time or for a specified period, to comply with one or more specified record-keeping obligations under a taxation law that:
- (a) is not set out in paragraph 288-25(2)(a) or (b); and
 - (b) is not the *Superannuation Guarantee (Administration) Act 1992*.

Note: For the requirements in the direction, see subsection 384-15(2).

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

Section 384-15

- (2) However, the Commissioner must not give you a *tax-records education direction if the Commissioner reasonably believes:
- (a) you are disengaged from the tax system; or
 - (b) you are deliberately avoiding any of those obligations to keep records.

384-15 Content of, and matters relating to compliance with, education directions

- (1) A *superannuation guarantee education direction, or a *tax-records education direction, given to you requires 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
 - (b) provide the Commissioner with evidence that the individual has completed the course.
- (2) The 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 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.

Note 1: For a failure to comply with a superannuation guarantee education direction, see section 384-17.

Note 2: A failure to comply with a tax-records education direction will give rise to the administrative penalty set out in subsection 288-25(1).

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

384-17 Compliance with superannuation guarantee education directions

- (1) If you are given a *superannuation guarantee education direction, you must comply with it within the period specified in the direction.

Note: Failure to comply with this subsection is an offence against section 8C.

- (2) You are liable to an administrative penalty of 5 penalty units if you contravene subsection (1).

Note: Division 298 contains machinery provisions for administrative penalties.

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.

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.

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

Section 384-35

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
 - (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 when you must comply with the direction, 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:

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

- (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.

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

Section 388-5

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.

- (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.

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

Section 388-60

- (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.

- (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.

Section 388-80

- (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.

Division 389—Reporting by employers

Guide to Division 389

389-1 What this Division is about

This Division establishes the “Single Touch Payroll” reporting framework.

Employers must (unless they are exempt) notify the Commissioner of certain amounts that relate to payments in respect of their employees.

Employers may notify the Commissioner of certain other amounts on a voluntary basis.

In many cases, this Division has the effect of bringing forward the due date 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 in relation to taxation laws
389-20	Effect on reporting requirements under Subdivision 16-C
389-25	Grace periods for correcting false or misleading notifications
389-30	Voluntary reporting by employers in relation to child support laws

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.

Section 389-5

Amounts to be notified to the Commissioner		
Item	Column 1 The following must be notified ...	Column 2 ... on or before this day
1	<p>The following amounts:</p> <p>(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 section 12-319A;</p> <p>(b) the *withholding payment from which the amount referred to in paragraph (a) is required to be withheld</p>	<p>the day by which the amount is required to be withheld (regardless of whether it is withheld) (see section 16-5).</p>
2	<p>An amount that consists of either or both of the following:</p> <p>(a) an amount (other than an amount covered by item 1) paid, on a particular day, by the entity that constitutes the ordinary time earnings (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>) of an individual who is the entity's employee (within the meaning of that Act but disregarding subsection 12(3) of that Act);</p> <p>(b) a sacrificed ordinary time earnings amount (within the meaning of that Act) of such an employee of the entity, in respect of the entity, that would be paid as ordinary time earnings on a particular day if it was not sacrificed</p>	<p>the day on which the amount is paid, or would be paid, as mentioned in column 1.</p>

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

Amounts to be notified to the Commissioner

Item	Column 1 The following must be notified ...	Column 2 ... on or before this day
2A	<p>An amount that consists of either or both of the following:</p> <p>(a) an amount (other than an amount covered by item 1) paid, on a particular day, by the entity that constitutes the salary or wages (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>) of an individual who is the entity's employee (within the meaning of that Act but disregarding subsection 12(3) of that Act);</p> <p>(b) a sacrificed salary or wages amount (within the meaning of that Act) of such an employee of the entity, in respect of the entity, that would be paid as salary or wages on a particular day if it was not sacrificed</p>	<p>the day on which the amount is paid, or would be paid, as mentioned in column 1.</p>

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).
- (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.

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

Section 389-10

- (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
 - (b) a decision of the Commissioner to limit the extent of an exemption under subsection (4).

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

389-15 Voluntary reporting by employers in relation to taxation laws

(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
 - (d) section 16-160 (part-year payment summary); or

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

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- (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, 2 or 2A 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.

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.

389-30 Voluntary reporting by employers in relation to child support laws

- (1) If there is an amount of a kind referred to in column 1 of an item of the following table, the entity referred to in that item may notify the Commissioner of the amount on or before the day referred to in column 2 of that item.

Amounts that may be notified to the Commissioner		
Item	Column 1	Column 2
	This amount may be notified on or before this day
1	An amount the entity deducted under Part IV of the <i>Child Support (Registration and Collection) Act 1988</i> from salary or wages paid to an employee of the entity	the day on which the deduction is made.

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

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Amounts that may be notified to the Commissioner		
Item	Column 1 This amount may be notified ...	Column 2 ... on or before this day
2	<p>A nil amount, if:</p> <p>(a) a notice given to the entity under subsection 45(1) of the <i>Child Support (Registration and Collection) Act 1988</i> is in force on a day (the reporting day) in relation to a payer who is an employee of the entity; and</p> <p>(b) either:</p> <p>(i) the entity pays salary or wages to the employee on the reporting day but does not make a deduction under Part IV of that Act in relation to the employee and the payment; or</p> <p>(ii) the reporting day is a day on which the entity would ordinarily pay salary or wages to the employee, but the entity does not do so because no salary or wages are payable</p>	the reporting day.
3	<p>An amount the entity paid to the Child Support Registrar if:</p> <p>(a) the entity paid the amount in accordance with a notice given to the entity under section 72A of the <i>Child Support (Registration and Collection) Act 1988</i>; and</p> <p>(b) the entity is the employer of the relevant debtor referred to in that section</p>	the day on which the amount is paid.
<p>Note: Voluntary reporting of an amount referred to in item 1 or 2 of the table may affect the entity's reporting requirements under the <i>Child Support (Registration and Collection) Act 1988</i>: see subsection 47(1B) of that Act.</p>		

(2) The notification must be in the *approved form.

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

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Note: The approved form may require information about other amounts, in addition to the amount to be notified: see paragraph 388-50(1)(c).

- (3) A disclosure of personal information (within the meaning of the *Privacy Act 1988*) under subsection (1) is taken for the purposes of that Act to be authorised by this section.
- (4) The following terms used in the table in subsection (1) have the same meaning as in the *Child Support (Registration and Collection) Act 1988*:
 - (a) **employee** (for this purpose, the term has the same meaning as it has when used in Part IV of that Act);
 - (b) **employer**;
 - (c) **payer**;
 - (d) **salary or wages**.

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

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Division 390—Superannuation reporting

Table of Subdivisions

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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.

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 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*;
 - (e) if the superannuation plan is a *regulated superannuation fund in relation to which the individual has an LRBA amount under section 307-231 of the *Income Tax Assessment Act 1997* (about limited recourse borrowing arrangements)—the amount of the LRBA amount.
- (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

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

- (ii) a person has quoted the individual's tax file number to the superannuation provider (and had authority to do so).

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.

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

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Determinations for classes of superannuation providers

- (5) The Commissioner may, by legislative instrument, determine the period within which *superannuation providers included in a class 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.

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

- (3) A statement under subsection (2) must be in the *approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (4) The *approved form may require the statement to contain the following information:
- (a) information relating to contributions made to the first plan in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;
 - (b) other information relating to the benefit, including the *tax free component, *taxable component, *element taxed in the fund and *element untaxed in the fund (as applicable) of the benefit.
- (5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).
- (6) The period specified in the determination:
- (a) may be:
 - (i) all or part of an income year; or
 - (ii) all or part of a financial year; or
 - (iii) any other period; and
 - (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.

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

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- (10) The *approved form may require the statement to contain the *tax file number of:
- (a) the first provider; and
 - (b) the first plan; and
 - (c) the individual in respect of whom the benefit is paid if:
 - (i) the individual has quoted the individual's tax file number to the first provider; or
 - (ii) a person who made at least some of the contributions mentioned in paragraph (4)(a) has quoted the individual's tax file number to the first provider (and had authority to do so).

390-12 Statements about benefits paid to KiwiSaver schemes

- (1) This section applies if the trustee of a *complying superannuation fund pays a *superannuation benefit to a *KiwiSaver scheme provider.
- (2) The trustee must:
- (a) give to the *KiwiSaver scheme provider a statement under this section within 7 days after the day on which the benefit is paid; and
 - (b) give to the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.

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

- (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

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

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which the benefit is paid, to the extent those contributions are reflected in that benefit;

- (b) other information relating to the benefit, including the *tax free component and *taxable component (as applicable) of the benefit.
- (5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).
 - (6) The period specified in the determination:
 - (a) may be:
 - (i) all or part of an income year; or
 - (ii) all or part of a *financial year; or
 - (iii) any other period; and
 - (b) may be different:
 - (i) for different kinds of trustee; and
 - (ii) in relation to any other matter.
 - (7) Subsection (6) does not limit the way in which the determination may specify the period.
 - (8) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

390-15 Superannuation statements to members

- (1) An individual, or the trustee of an individual's estate:
 - (a) may ask a *superannuation provider who has given information in a statement under section 390-5, 390-10 or 390-12 in relation to the individual to give the individual or the trustee the same information; and
 - (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.

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

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- (2) The *superannuation provider or *life insurance company must:
- (a) comply with the request within 30 days after receiving the request; and
 - (b) if the individual or the trustee asked for the information to be given in writing—give the information in the *approved form.

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

Note 2: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (3) Subsection (2) does not apply if the *superannuation provider 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.

- (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.

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.

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

Section 392-1

Division 392—Employee share scheme reporting

Table of Subdivisions

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392-A	Statements
392-B	Miscellaneous

Guide to Division 392

392-1 What this Division is about

A company that provides ESS interests to an individual under an employee share scheme during a year must, at the end of the year (and, in certain cases, at the end of a later year), give certain information to the Commissioner and to the individual.

Note: For the tax treatment of employee share schemes, see Division 83A of the *Income Tax Assessment Act 1997*.

Subdivision 392-A—Statements

Table of sections

392-5	Statements by providers
392-10	Change or omission in information given to the Commissioner

392-5 Statements by providers

Statements

- (1) An entity (the **provider**) must give a statement to the Commissioner and to an individual for a *financial year if:
 - (a) both of the following subparagraphs apply:
 - (i) the provider provides *ESS interests to the individual during the year;

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

- (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.

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.

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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.

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

Section 393-10

- (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.

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.

Section 394-1

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*.

Section 394-10

- (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*.

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

Section 394-10

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.

Division 396—Third party reporting

Table of Subdivisions

	Guide to Division 396
396-A	FATCA
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.

Section 396-5

Reporting Australian Financial Institutions must give the Commissioner certain information about U.S. Reportable Accounts. For the 2015 and 2016 calendar years, they must also give the Commissioner information about payments made to Nonparticipating Financial Institutions.

This Subdivision also creates record-keeping obligations in relation to the requirements to give the Commissioner information.

Table of sections

Operative provisions

396-5	Statements about U.S. Reportable Accounts
396-10	Statements about payments to Nonparticipating Financial Institutions
396-15	Meaning of the <i>FATCA Agreement</i>
396-20	Permissions and elections
396-25	Record keeping

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.

Section 396-10

- (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.

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

Section 396-15

- (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.

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

Section 396-25

- (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.

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.

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

Section 396-55

Table of sections

Operative provisions

396-55	Reporting tax-related information about transactions to the Commissioner
396-60	Information required
396-65	Exemptions—wholesale clients
396-70	Exemptions—other cases
396-75	Errors in reports

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
 - (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	the provision of a grant by the entity to an entity that has an *ABN

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

Section 396-55

Information to be reported by third parties about transactions		
	Column 1	Column 2
Item	This entity:	must report information about this transaction:
	Act), other than a *local governing body	
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 the <i>Corporations Act 2001</i>) 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
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

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

Section 396-55

Information to be reported by third parties about transactions		
Column 1		Column 2
Item	This entity:	must report information about this transaction:
		(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 <i>Payment Systems (Regulation) Act 1998</i>)	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
9A	an *eligible community housing provider	the issuing by the provider of a certificate under section 980-15 of the <i>Income Tax Assessment Act 1997</i>
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 <i>Income Tax Assessment Act 1997</i>

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

Information to be reported by third parties about transactions		
	Column 1	Column 2
Item	This entity:	must report information about this transaction:
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.

Section 396-55

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	<p>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:</p> <p>(a) the entities are *members of the same *consolidated group or *MEC group; or</p> <p>(b) Division 12 requires that an amount be withheld from the payment of the consideration</p>
15	an operator of an electronic distribution platform (within the meaning of the *GST Act, but disregarding paragraph 84-70(1)(c) of that Act)	<p>the provision of consideration (within the meaning of the GST Act) by an entity to another entity (the supplier) wholly or partly for a *supply made by the supplier through the electronic distribution platform, if:</p> <p>(a) the supply is connected with the indirect tax zone (within the meaning of the GST Act), or would be connected with the indirect tax zone (within the meaning of the GST Act) if the definition of indirect tax zone in the GST Act included the external Territories; and</p> <p>(b) no amount is required by Division 12 to be withheld from the payment of the consideration; and</p> <p>(c) the operator and the supplier are not *members of the same *consolidated group or *MEC group; and</p> <p>(d) the supply is not any of the following:</p> <p>(i) a supply by way of transfer of ownership of goods (within the meaning of the GST Act);</p> <p>(ii) a supply by way of transfer of ownership of real property (within the meaning of the GST Act);</p> <p>(iii) a financial supply (within the meaning of the GST Act)</p>

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

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.

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.

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

Section 396-65

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 Division 3 of Part 7.1 of the *Corporations Act 2001*); or
 - (ii) a financial service (within the meaning of that Act);as a wholesale client (within the meaning of that Act).

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:
 - (i) a financial product (within the meaning of Division 3 of Part 7.1 of the *Corporations Act 2001*); or
 - (ii) a financial service (within the meaning of that Act);as a wholesale client (within the meaning of that Act).

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

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

- (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
 - (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.

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

Section 396-100

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.

This Subdivision also requires the Commissioner to report on certain Reportable Accounts that are maintained by Australian Reporting Financial Institutions.

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396-110	Meaning of CRS
396-115	Matters Common Reporting Standard leaves to domestic law
396-120	Application of Common Reporting Standard
396-125	Record keeping
396-130	Anti-avoidance provisions

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

- 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
 - (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.

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

Section 396-110

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 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:

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

- (a) an Entity (other than a *self managed superannuation fund or a *small superannuation fund) 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);
 - (aa) a *self managed superannuation fund account;
 - (ab) a *small superannuation fund account;
 - (b) an account the Minister prescribes by legislative instrument.

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:

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

Section 396-120

- (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.
- (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:

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

- (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:
- (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.

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

Section 396-130

- (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:
- (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) one or more of the following:
 - (ia) the Reporting Financial Institution;
 - (ib) the Account Holder (within the meaning of the CRS);
 - (ic) an intermediary of the Reporting Financial Institution or the Account Holder;
 - (id) any other entity;
- undertook a transaction, or entered into an *arrangement:
- (i) for the purpose of causing the account not to be such a Reportable Account; or

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

- (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.
- (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

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

Section 396-136

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 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.

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

- (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.

Section 398-1

Division 398—Miscellaneous reporting obligations

Table of Subdivisions

Guide to Division 398

398-A Farm Management Deposit reporting

Guide to Division 398

398-1 What this Division is about

<p>This Division contains reporting obligations not covered by other Divisions of this Part.</p>
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Subdivision 398-A—Farm Management Deposit reporting

Table of sections

398-5 Reporting to Agriculture Department

398-5 Reporting to Agriculture Department

FMD provider must provide monthly information

- (1) An *FMD provider must, before the 11th day after the end of a calendar month, give in writing to the *Agriculture Secretary the information specified in subsection (3) if the provider holds a *farm management deposit at the end of that month.

Penalty: 10 penalty units.

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

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

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

Information required

- (3) The information is:
- (a) the number of *farm management deposits held at the end of that month; and
 - (b) the number of depositors in respect of such deposits at the end of that month; and
 - (c) the sum of the balances of such deposits at the end of that month; and
 - (d) any other information, in relation to farm management deposits held by the *FMD provider at any time in that month, that is required by the regulations for the purposes of this section.

Regulations not to require identity of depositor

- (4) Regulations made for the purposes of paragraph (3)(d) must not require information:
- (a) that discloses the identity of a depositor; or
 - (b) from which the identity of a depositor could reasonably be inferred.

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

Section 400-1

Part 5-30—Payment, ABN and identification verification system

Division 400—Guide to Part 5-30

400-1 What Part 5-30 is about

To improve compliance with the tax laws that relate to payments for certain supplies, this Part imposes additional requirements on purchasers and suppliers.

The additional requirements relate to verification of ABNs and to reporting information about payments.

Regulations will specify the supplies that are covered and the additional requirements that apply to payments for those supplies.

400-5 The payment, ABN and identification verification system

- (1) There are 4 components in the payment, ABN and identification verification system:
 - (a) transaction reporting by purchasers (Division 405);
 - (b) transaction reporting by suppliers (Division 410);
 - (c) verification of suppliers' *ABNs by purchasers (Division 415);
 - (d) verification of suppliers' identities by purchasers (Division 417);

One or more of the components may apply to a particular payment. The regulations will specify which components apply.

- (2) Where a component of the system applies to a payment, the requirements of that component must be complied with.

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

Division 405—Transaction reporting by purchasers

Table of sections

405-5	Payments to which this Division applies
405-10	Reporting requirements
405-15	Invoices produced by purchasers

405-5 Payments to which this Division applies

- (1) This Division applies to any payments made, or liable to be made, for a *supply where the supply is specified in regulations made for the purpose of this section.
- (2) A payment is liable to be made if the obligation to make the payment is notified in an *invoice.
- (3) Payments to which this Division applies are called **Division 405 payments**.
- (4) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

405-10 Reporting requirements

- (1) Any entity (the **purchaser**) that makes, or is liable to make, a *Division 405 payment during a *quarter must give a *Division 405 report to the Commissioner within 21 days after the end of the quarter.
- (2) A **Division 405 report** is a written statement in the *approved form that names the purchaser and, for each supplier in relation to whom the purchaser made, or was liable to make, a *Division 405 payment during the *quarter:
 - (a) names the supplier; and

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

Section 405-15

- (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.

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.

Section 410-15

- (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.

Division 415—Verification of suppliers' ABNs by purchasers

Table of sections

415-5	Payments to which this Division applies
415-10	ABN verification requirements
415-15	Method of obtaining ABN verification
415-20	Verification applies to later payments

415-5 Payments to which this Division applies

- (1) This Division applies if:
 - (a) a payment is made, or is liable to be made, by an entity (the ***purchaser***) to another entity (the ***supplier***) for a ^{*}supply; and
 - (b) the supply is specified in regulations made for the purpose of this section; and
 - (c) the supplier has purported to ^{*}quote his or her ^{*}ABN to the purchaser.
- (2) Payments to which this Division applies are called ***Division 415 payments***.
- (3) Without limiting the ways in which the regulations may specify a ^{*}supply, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

415-10 ABN verification requirements

Before the purchaser makes a ^{*}Division 415 payment to the supplier, the purchaser must obtain verification that the ^{*}ABN ^{*}quoted by the supplier is the ABN entered in the ^{*}Australian Business Register with the name given by the supplier.

Note: If the purchaser has reasonable grounds to believe that the supplier has not correctly quoted his or her ABN, the purchaser is required to withhold an amount under section 12-190.

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

Section 415-15

415-15 Method of obtaining ABN verification

- (1) To obtain verification of a supplier's *ABN, a purchaser must seek the verification in a manner approved in writing by the Commissioner.
- (2) Without limiting the Commissioner's power under subsection (1), the Commissioner may approve verifications being sought orally or by way of electronic transmission.
- (3) Verification of an *ABN may be obtained in such form, including orally or by way of electronic transmission, as the Commissioner approves in writing.
- (4) The Commissioner may, by written notice, vary any requirements under subsection (1) in relation to:
 - (a) a purchaser or class of purchaser; or
 - (b) a supplier or class of supplier.The Commissioner may do so in such instances and to such extent as the Commissioner thinks fit.

415-20 Verification applies to later payments

- (1) Verification of a supplier's ABN applies to all later *Division 415 payments by the purchaser to the supplier unless there is a period of 2 years during which no *Division 415 payment is made by the purchaser to the supplier. If this occurs, the verification continues to apply to any purchases before 1 July first occurring after the end of the 2 year period.
- (2) However, verification of a supplier's *ABN does not apply to a *Division 415 payment if the purchaser has reasonable grounds to believe that the *ABN *quoted by the supplier is no longer the ABN entered in the *Australian Business Register with the name given by the supplier.

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

Division 417—Verification of suppliers' identities by purchasers

Table of sections

417-5	Payments to which this Division applies
417-10	Identity verification requirements
417-15	Method of obtaining identity verification
417-20	Verification applies to later payments

417-5 Payments to which this Division applies

- (1) This Division applies if:
 - (a) a payment is made, or liable to be made, by an entity (the **purchaser**) to another entity (the **supplier**) for a *supply; and
 - (b) the supply is specified in regulations made for the purpose of this section.
- (2) Payments to which this Division applies are called **Division 417 payments**.
- (3) Without limiting the ways in which the regulations may specify a *supply, the regulations may specify a supply by reference to:
 - (a) the goods or services supplied; or
 - (b) the supplier; or
 - (c) the purchaser.

417-10 Identity verification requirements

Before the purchaser makes a *Division 417 payment, the purchaser must obtain verification of the supplier's identity.

Note: If the purchaser has reasonable grounds to believe that the supplier has not correctly quoted his or her ABN, the purchaser is required to withhold an amount under section 12-190.

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

Section 417-15

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.

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

Division 420—Penalties for not reporting or verifying

Table of sections

420-5 Failing to report or verify: administrative penalty

420-5 Failing to report or verify: administrative penalty

An entity that fails to:

- (a) give a *Division 405 report to the Commissioner as required by section 405-10; or
 - (b) give a *Division 410 report to the Commissioner as required by section 410-10; or
 - (c) verify a supplier's *ABN as required by section 415-10; or
 - (d) verify a supplier's identity as required by section 417-10;
- is liable to pay to the Commissioner a penalty of 20 penalty units.

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

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

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

Section 425-20

Division 425—Other matters

Table of sections

425-20	Constructive payment
425-25	Non-cash benefits

425-20 Constructive payment

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

425-25 Non-cash benefits

For the purposes of this Part, if an entity (the *payer*) provides a *non-cash benefit to another entity (the *recipient*), the payer is taken to have made a payment of an amount equal to the *market value of the benefit provided.

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

Part 5-35—Registration and similar processes for various taxes

Division 426—Process of endorsing charities and other entities

Table of Subdivisions

Guide to Division 426

- 426-A Application of Subdivision 426-B to various kinds of endorsement
- 426-B Process of endorsement etc.
- 426-C Entries on Australian Business Register
- 426-D Public and private ancillary funds

Guide to Division 426

426-1 What this Division is about

This Division sets out procedural rules relating to endorsement of charities and other entities (the conditions for entitlement to endorsement are set out in the GST Act, the *Fringe Benefits Tax Assessment Act 1986*, and the *Income Tax Assessment Act 1997*). These rules cover matters such as application for and revocation of endorsement, and entry of the details of endorsement on the Australian Business Register.

Subdivision 426-D deals with types of philanthropic trust funds known as *public ancillary funds* and *private ancillary funds*.

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

Section 426-5

Subdivision 426-A—Application of Subdivision 426-B to various kinds of endorsement

Table of sections

426-5	Application of Subdivision 426-B to various kinds of endorsement
426-10	How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the <i>Income Tax Assessment Act 1997</i>

426-5 Application of Subdivision 426-B to various kinds of endorsement

Subdivision 426-B applies separately in relation to each of these kinds of endorsement:

- (a) endorsement of an entity as a charity under subsection 176-1(1) of the **GST Act*;
- (ba) endorsement of:
 - (i) a fund as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986*; or
 - (ii) an entity for the operation of a fund as an approved worker entitlement fund under subsection 58PB(3A) of that Act;
- (c) endorsement of an entity as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (e) endorsement of an entity as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (f) endorsement of an entity under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a registered charity covered by table item 1 in subsection 65J(1) of that Act;
- (g) endorsement of an entity as a **deductible gift recipient*, or as a deductible gift recipient for the operation of a fund, authority or institution, under section 30-120 of the *Income Tax Assessment Act 1997*;

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

- (h) endorsement of an entity as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*.

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*.

Section 426-15

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.

Section 426-25

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.

Section 426-30

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.

Section 426-45

- (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.

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.

*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.

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

- (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.

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.

Table of sections

Public ancillary funds

- 426-102 Public ancillary funds
- 426-103 Public ancillary fund guidelines
- 426-104 Australian Business Register must show public ancillary fund status

Private ancillary funds

- 426-105 Private ancillary funds
- 426-110 Private ancillary fund guidelines
- 426-115 Australian Business Register must show private ancillary fund status

Administrative penalties

- 426-120 Administrative penalties for trustees of ancillary funds

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
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- 426-160 Commissioner may give directions to acting trustee
- 426-165 Property vested in acting trustee—former trustees' obligations relating to books, identification of property and transfer of property

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

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.

Section 426-104

- (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).

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

- (2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the *approved form.

426-110 Private ancillary fund guidelines

The Minister must, by legislative instrument, formulate guidelines (the *private ancillary fund guidelines*) setting out:

- (a) rules that *private ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as *deductible gift recipients; and
- (b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to private ancillary funds.

426-115 Australian Business Register must show private ancillary fund status

- (1) If a *private ancillary fund has an *ABN, the *Australian Business Registrar must enter in the *Australian Business Register in relation to the fund a statement that it is a private ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a private ancillary fund.

Note 2: The Australian Business Register will also show if a private ancillary fund is endorsed as a deductible gift recipient: see section 30-229 of the *Income Tax Assessment Act 1997*.

- (2) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:
- (a) change the statement; or
 - (b) remove the statement from the Register if the statement is not true.

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

Section 426-120

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 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.

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

- (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.

Section 426-125

- (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
 - (b) giving the reasons for the decision.

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

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.

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

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

Section 426-135

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.

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).

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

- (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.

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.

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

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- (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.

Penalty: 50 penalty units.

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

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*.

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

Section 426-170

Transfers between ancillary funds

426-170 Ancillary funds must not provide funds to other ancillary funds

An *ancillary fund must not provide money, property or benefits to another ancillary fund unless permitted to do so by the *public ancillary fund guidelines or the *private ancillary fund guidelines (whichever are applicable).

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

Part 5-45—Application of taxation laws to certain entities

Division 444—Obligations of entities on behalf of other entities

Table of Subdivisions

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- 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.

Section 444-10

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.

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

Section 444-15

- (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.

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

Section 444-50

- (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*.

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*.

*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.

- (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.

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 pay any amount (an ***indirect tax amount***) that is payable under an

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

Section 444-90

*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:

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

- (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.

*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.

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.

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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 by notifiable instrument

- (5) If the Commissioner is notified of the resolution, the Commissioner must, by notifiable instrument, publish notice of the making of the resolution. The instrument must also set 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

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

When the resolution applies		
Item	If the resolution affects the operation of ...	the resolution applies to ...
2	Subdivision AB of Division 17 of Part III of the <i>Income Tax Assessment Act 1936</i> (about tax offset for lump sum payments in arrears)	*ordinary income *derived, and amounts that become *statutory income, after the day on which the resolution takes effect
3	sections 26-30 and 34-5 of the <i>Income Tax Assessment Act 1997</i> (about deductions for relatives' travel expenses and non-compulsory uniforms)	expenditure incurred after the day on which the resolution takes effect
4	Divisions 28 and 900 of the <i>Income Tax Assessment Act 1997</i> (about car expenses and substantiation)	expenses incurred after the day on which the resolution takes effect
5	section 130-80 of the <i>Income Tax Assessment Act 1997</i> (about capital gains tax and employee share trusts)	*shares and rights to which a beneficiary becomes absolutely entitled after the day on which the resolution takes effect

*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 ...
6	provisions of the <i>Fringe Benefits Tax Assessment Act 1986</i> relating to assessments	<p>(a) in the case of a loan benefit within the meaning of the <i>Fringe Benefits Tax Assessment Act 1986</i>—a loan made after the day on which the resolution takes effect;</p> <p>(b) in the case of a housing benefit within the meaning of that Act—the subsistence, after the day on which the resolution takes effect, of the housing right concerned;</p> <p>(c) in the case of a residual benefit within the meaning of that Act that is *provided during a period—so much of the period as occurs after the day on which the resolution takes effect;</p> <p>(d) any other *fringe benefit provided after the day on which the resolution takes effect.</p>
7	Division 4 of Part II of the <i>Income Tax Rates Act 1986</i> (about pro-rating the tax-free threshold)	amounts that become assessable income after the day on which the resolution takes effect
8	the provisions of the <i>Child Support (Registration and Collection) Act 1988</i>	*ordinary income *derived, and amounts that become *statutory income, after the day on which the resolution takes effect
9	section 9-20 of the *GST Act (about the meaning of <i>enterprise</i>)	activities, or series of activities, done after the day on which the resolution takes effect
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.

Part 5-100—Miscellaneous

Division 850—Transactions exempt from application of taxation laws

Table of Subdivisions

850-A Declaration relating to security or intelligence agency

Subdivision 850-A—Declaration relating to security or intelligence agency

Table of sections

850-100 Declaration relating to security or intelligence agency

850-100 Declaration relating to security or intelligence agency

Object

- (1) The object of this section is to remove the possibility of a conflict arising between Australia's national security interests and Australia's taxation laws.

Making a declaration

- (2) The Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979* may declare that this section applies to one or more specified entities (the Australian Security Intelligence Organisation itself may be specified) in relation to one or more specified transactions.
- (3) The Director-General of the Australian Secret Intelligence Service (**ASIS**) may declare that this section applies to one or more specified entities (ASIS itself may be specified) in relation to one or more specified transactions.

*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.

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

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.

Section 990-5

Division 990—Miscellaneous

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990-A Combining notices

Subdivision 990-A—Combining notices

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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.
