



Taxation Laws Amendment Act (No. 5) 2002

No. 119, 2002

**An Act to amend the law relating to taxation, and
for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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An Act to amend the law relating to taxation, and for related purposes

[Assented to 2 December 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act
(No. 5) 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 December 2002
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent	2 December 2002
3. Items 1 to 12 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
4. Items 13 to 49 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances) Act 2001</i>	30 June 2001
5. Items 50 to 71 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
6. Items 72 to 75 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Simplified Tax System) Act 2001</i>	30 June 2001
7. Item 76 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
8. Items 77 to 78 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Simplified Tax System) Act 2001</i>	30 June 2001

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Items 79 to 99 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
10. Item 100 of Schedule 3	The day on which this Act receives the Royal Assent	2 December 2002
11. Schedule 4	The day on which this Act receives the Royal Assent	2 December 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Special transitional provision for some oyster farmers

Income Tax (Transitional Provisions) Act 1997

1 Section 70-40 (link note)

Repeal the link note, substitute:

70-41 Value of trading stock at the start of the 2001-2002 income year—oysters acquired by using the traditional stick farming method

Application

- (1) This section applies to you if:
- (a) you carry on a business of oyster farming (other than oyster farming carried on in hatcheries); and
 - (b) you held oysters that are covered by subsection (2) as trading stock on hand at the start of the 2001-2002 income year (the *relevant stock*); and
 - (c) some or all of those oysters should have been taken into account, as items of your trading stock on hand, and under Division 70 of the *Income Tax Assessment Act 1997*, at the end of the 2000-2001 income year; and
 - (d) none of those oysters was so taken into account.

Oysters covered by subsection

- (2) This subsection covers oysters all of which:
- (a) were farmed by you solely for use as food for human consumption; and
 - (b) had not yet been harvested at the start of the 2001-2002 income year; and
 - (c) at or before that time, were acquired by you in this manner:
 - (i) you placed plastic slats or wooden sticks in the water for the purposes of capturing oyster spat; and
 - (ii) the oysters, as spat, attached themselves to those slats or sticks;

whether or not the oysters were, at the start of the 2001-2002 income year, still attached to those slats or sticks.

What happens if this section applies to you

- (3) If this section applies to you, subsections (4) to (7) have effect for the purposes of Division 70, and Subdivision 328-E, of the *Income Tax Assessment Act 1997*.

General rule

- (4) The value of the relevant stock, as the value of items of your trading stock on hand at the start of the 2001-2002 income year:
- (a) is not to be worked out under section 70-40 of the *Income Tax Assessment Act 1997*; and
 - (b) is the amount worked out in accordance with subsection (6).

Special rule for an STS taxpayer

- (5) If you were an STS taxpayer for the 2001-2002 income year, the value of all your trading stock on hand at the start of that income year:
- (a) is not to be worked out under subsection 328-295(1) of the *Income Tax Assessment Act 1997*; and
 - (b) is the sum of:
 - (i) the value of the relevant stock (worked out in accordance with subsection (6)); and
 - (ii) the total value of items of your trading stock on hand at the end of the 2000-2001 income year that was taken into account under Division 70 of that Act at the end of the 2000-2001 income year.

Note 1: This means that, if no value was taken into account as mentioned in subparagraph (b)(ii), the value of all your trading stock on hand at the start of the 2001-2002 income year is the value of the relevant stock.

Note 2: The total value mentioned in subparagraph (b)(ii) would not include the value of any oysters that were items of the relevant stock (see paragraph (1)(d) and subsection (3)).

Value of the relevant stock

- (6) The **value of the relevant stock** is the amount worked out in accordance with the following method statement:

Method statement

- Step 1.* Work out the total number of plastic slats that were used to acquire any items of the relevant stock (see subsection (7)), where each of the slats was approximately 1 metre long.
- Step 2.* Add to the result of step 1 the number of times by which any of those slats were reused, after being used to acquire any items of the relevant stock for the first time, to acquire other items of the relevant stock.
- Step 3.* Multiply the result of step 2 by 50 cents.
- Step 4.* Work out the total number of wooden sticks, and plastic slats, that were used to acquire any items of the relevant stock, where each of the plastic slats was approximately 2 metres long.
- Step 5.* Add to the result of step 4 the number of times by which any of the sticks or slats covered by step 4 were reused, after being used to acquire any items of the relevant stock for the first time, to acquire other items of the relevant stock.
- Step 6.* Multiply the result of step 5 by \$1.
- Step 7.* Add the results of steps 3 and 6. The result of this step is the ***value of the relevant stock***.

Slats and sticks used to acquire items of relevant stock

- (7) For the purposes of subsection (6), a plastic slat or wooden stick is taken to have been ***used to acquire*** items of the relevant stock if it was used in the manner described in paragraph (2)(c) to capture oysters, as spat, that were items of the relevant stock.

Certain provisions are not affected

- (8) This section does not affect the operation of any of the following provisions:

- (a) section 102AAY of the *Income Tax Assessment Act 1936* (modified application of trading stock provisions for certain non-resident trust estates);
- (b) section 397 of that Act (modified application of trading stock provisions for eligible CFCs);
- (c) section 57-115 of Schedule 2D to that Act (modified application of trading stock provisions for tax exempt entities that become taxable);
- (d) section 165-115W of the *Income Tax Assessment Act 1997* (trading stock decrease for a CGT asset).

[The next section is section 70-55.]

Income Tax Assessment Act 1997

2 Subsection 70-40(2) (note)

Omit “Note”, substitute “Note 1”.

3 At the end of subsection 70-40(2)

Add:

Note 2: If you held, as trading stock at the start of the 2001-2002 income year, oysters that were acquired by using the traditional stick farming method, see section 70-41 of the *Income Tax (Transitional Provisions) Act 1997*.

4 Subsection 328-295(1) (note)

Omit “Note”, substitute “Note 1”.

5 At the end of subsection 328-295(1)

Add:

Note 2: If you held, as trading stock at the start of the 2001-2002 income year, oysters that were acquired by using the traditional stick farming method, see section 70-41 of the *Income Tax (Transitional Provisions) Act 1997*.

6 Subsection 995-1(1) (the note at the end of the definition of value of an item of trading stock)

Omit “Note”, substitute “Note 1”.

7 Subsection 995-1(1) (at the end of the definition of *value* of an item of trading stock)

Add:

- Note 2: For the value of oysters acquired by using the traditional stick farming method and held as trading stock at the start of the 2001-2002 income year, see section 70-41 of the *Income Tax (Transitional Provisions) Act 1997*.

8 Application of amendments

The amendments of the *Income Tax (Transitional Provisions) Act 1997* and the *Income Tax Assessment Act 1997* made by this Schedule apply to assessments for the 2001-2002 income year.

Schedule 2—Work in progress

Income Tax Assessment Act 1997

1 Section 10-5 (at the end of the table)

Add:

work in progress

receipt of a work in progress amount	15-50
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2 Section 12-5 (at the end of the table)

Add:

work in progress

payment of a work in progress amount	25-95
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3 At the end of Division 15

Add:

15-50 Work in progress amounts

Your assessable income includes a *work in progress amount that you receive.

Note: To find out whether the amount is deductible to the payer, see section 25-95.

4 Subsection 20-30(1) (after table item 1.8)

Insert:

1.8A	25-95	work in progress amount
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5 At the end of Division 25

Add:

25-95 Deduction for work in progress amounts

- (1) You can deduct a *work in progress amount that you pay for the income year in which you pay it to the extent that, as at the end of that income year:

- (a) a recoverable debt has arisen in respect of the completion or partial completion of the work to which the amount related; or
 - (b) you reasonably expect a recoverable debt to arise in respect of the completion or partial completion of that work within the period of 12 months after the amount was paid.
- (2) You can deduct the remainder (if any) of the *work in progress amount for the following income year.
- (3) An amount is a ***work in progress amount*** to the extent that:
 - (a) an entity agrees to pay the amount to another entity (the ***recipient***); and
 - (b) the amount can be identified as being in respect of work (but not goods) that has been partially performed by the recipient for a third entity but not yet completed to the stage where a recoverable debt has arisen in respect of the completion or partial completion of the work.
- (4) An amount does not stop being a ***work in progress amount*** merely because it is paid after a recoverable debt has arisen in respect of the completion or partial completion of the work to which the amount related.

6 Subsection 995-1(1)

Insert:

work in progress amount has the meaning given by section 25-95.

7 Application

The amendments made by this Schedule apply to amounts paid on or after 23 September 1998.

Schedule 3—Capital allowances

Income Tax Assessment Act 1936

1 Subsection 57-85(3) of Schedule 2D (table items 10 and 11)

Before “40-I”, insert “40-B or”.

2 Section 57-130 of Schedule 2D

Omit “Subdivision 57-I”, substitute “Subdivisions 57-I and 57-J”.

3 At the end of section 57-130 of Schedule 2D

Add:

- (2) Despite subsection (1), Subdivision 57-J applies for the purposes of section 40-35 of the *Income Tax (Transitional Provisions) Act 1997* to capital expenditure incurred by a transition taxpayer before 1 July 2001 that relates to property that is not a depreciating asset.

Income Tax Assessment Act 1997

4 Subsection 27-80(3A)

After “*opening adjustable value for an income year”, insert “and its *cost”.

5 Paragraph 27-80(3A)(d)

Repeal the paragraph, substitute:

- (d) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

6 Subsection 27-80(4)

After “*opening adjustable value for an income year”, insert “and its *cost”.

7 Subsection 27-80(5)

Omit “or (4)”, substitute “, (3A) or (4)”.

8 Paragraph 27-80(5)(b)

Omit “subsection (4)”, substitute “subsection (3A) or (4)”.

9 Subsection 27-85(3)

After “*opening adjustable value for an income year”, insert “and its *cost”.

10 At the end of subsection 27-87(1)

Add:

; and (c) section 27-95 does not apply to the entity in relation to the asset.

11 Subsection 27-90(3)

After “*opening adjustable value for an income year”, insert “and its *cost”.

12 Subsection 27-105(5)

Repeal the subsection, substitute:

- (5) If the entity is a partnership and partners in that partnership can deduct amounts under Division 40 because section 40-570 or 40-665 applies, an amount equal to the *input tax credit, the *decreasing adjustment or the *increasing adjustment is apportioned to each of the partners as set out in subsection 40-570(2) or 40-665(2).

13 Subsection 40-25(1) (note 2)

After “STS taxpayers”, insert “both deduct and”.

14 At the end of subsection 40-25(5) (before the note)

Add:

Despite subsection (1), you can continue to deduct an amount equal to the decline in value for an income year (as worked out under this Division) of such an asset even though you do not continue to *hold that asset.

15 Subsection 40-45(2)

Repeal the subsection, substitute:

Capital works

- (2) This Division does not apply to capital works for which you can deduct amounts under Division 43, or for which you could deduct amounts under that Division:
- (a) but for expenditure being incurred, or capital works being started, before a particular day; or
 - (b) had you used the capital works for a purpose relevant to those capital works under section 43-140.

Note: Section 43-20 lists the capital works to which that Division applies.

16 Subsections 40-50(1) and (2)

After “You cannot deduct an amount”, insert “, or work out a decline in value,”.

17 Paragraph 40-75(2)(c)

Omit “for which the asset’s cost or *adjustable value”, substitute “for which the asset’s *opening adjustable value”.

18 Paragraph 40-75(2)(d)

Repeal the paragraph.

19 Paragraph 40-75(2)(e)

Omit “adjustable value”, substitute “opening adjustable value”.

20 Paragraph 40-75(2)(f)

Omit “*opening adjustable value”, substitute “opening adjustable value”.

21 Paragraph 40-75(2)(f)

Omit “27-80(4)”, substitute “27-80(3A) or (4)”.

22 Subsection 40-75(4)

Repeal the subsection, substitute:

- (4) The *remaining effective life* of a *depreciating asset is any period of its *effective life that is yet to elapse as at:
- (a) the start of the change year; or

- (b) in the case of a roll-over under section 40-340—the time when the *balancing adjustment event occurs for the transferor.

Note: Effective life is worked out in years and fractions of years.

23 Subsection 40-85(2) (notes 1 and 2)

Repeal the notes, substitute:

Note: The opening adjustable value of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(3);
- subsection 40-285(4);
- paragraph 40-365(5)(b).

24 At the end of section 40-175

Add:

Note: The cost of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(2);
- paragraph 40-365(5)(a).

25 Subsection 40-180(2) (table items 5 and 6)

Repeal the items, substitute:

5	A partnership asset that was *held, just before it became a partnership asset, by one or more partners (whether or not any other entity was a joint holder) or a partnership asset to which subsection 40-295(2) applies	The *market value of the asset when the partnership started to hold it or when the change referred to in subsection 40-295(2) occurred
6	There is roll-over relief under section 40-340 for a *balancing adjustment event happening to a *depreciating asset	The *adjustable value of the asset to the transferor just before the balancing adjustment event occurred

26 Subsection 40-180(2) (table item 12)

Omit “The asset’s *adjustable value at the time of death”, substitute “The asset’s *adjustable value on the day the person died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which the person died as is reasonably attributable to the asset”.

27 Subsection 40-215(1)

After “Division”, insert “or Division 328”.

28 Subsection 40-230(1)

After “section 40-225”, insert “and Subdivision 27-B”.

29 At the end of section 40-230

Add:

- (4) If you *hold a *car that is also held by one or more other entities, subsection (1) applies to the *cost of the car despite section 40-35. Then section 40-35 applies to the cost of the car as reduced under subsection (1).

30 Subsection 40-285(2) (note)

Omit “Note”, substitute “Note 1”.

31 At the end of subsection 40-285(2)

Add:

Note 2: The timing of a deduction allowed under this subsection is determined under Subdivision 170-D where that Subdivision applies to the balancing adjustment event.

32 Paragraph 40-295(2)(b)

Omit “held”, substitute “had an interest in”.

33 Subsection 40-300(2) (table item 9)

Omit “The *adjustable value of the asset when you die”, substitute “The asset’s *adjustable value on the day you died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which you died as is reasonably attributable to the asset”.

34 Subsection 40-300(2) (table item 10)

Omit “just before”, substitute “on the day”.

35 At the end of section 40-300

Add:

- (3) The *termination value* of a *depreciating asset does not include an amount that is included in assessable income as *ordinary income under section 6-5 or as *statutory income under section 6-10 (except an amount that is statutory income under this Division).

Note: Termination value may be adjusted under Subdivision 27-B so that any GST consequences are accounted for.

36 Section 40-325

After “*car limit”, insert “after applying Subdivision 27-B”.

37 Paragraph 40-340(3)(b)

Omit “*held”, substitute “had an interest in”.

38 Subsection 40-365(5)

Repeal the subsection, substitute:

- (5) For the purposes of applying this Act to the replacement asset:
- (a) its *cost is reduced by the amount covered by the choice for the income year in which the asset’s *start time occurs; and
 - (b) if the income year is later than the one in which the asset’s *start time occurs—the sum of its *opening adjustable value for that later year and any amount included in the second element of the asset’s cost for that later year is reduced by the amount covered by the choice.

39 Subsection 40-665(3)

Omit “this section”, substitute “this Subdivision”.

40 Paragraph 40-880(1)(a)

Omit “a *business”, substitute “your *business structure”.

41 At the end of paragraph 40-880(1)(a)

Add:

Example: You incorporate a company or create some other structure, such as a partnership or trust, through which your business will be

carried on. The capital expenditure you incur in doing this is covered by this paragraph.

42 At the end of paragraph 40-880(1)(b)

Add:

Example: Michael and Sandra operate a fish shop in partnership. They agree to incorporate their business so they dispose of the partnership assets to a company. The capital expenses of incorporating the company and of transferring the partnership assets to it are covered by this paragraph.

43 At the end of paragraph 40-880(1)(c)

Add:

Example: CL Ltd wishes to issue shares for business expansion. The capital expenditure it incurs to prepare and issue a prospectus for this purpose is covered by this paragraph.

44 At the end of paragraph 40-880(1)(d)

Add:

Example: MH Limited has made an offer to take over AL limited. The capital expenditure incurred by AL Limited in complying with subsection 633(1) or 635(1) of the *Corporations Act 2001* is covered by this paragraph.

45 At the end of paragraph 40-880(1)(e)

Add:

Example: MGP Ltd tried unsuccessfully to take over MM Ltd. Capital expenditure incurred by MGP in complying with subsection 633(1) or 635(1) of the *Corporations Act 2001* is covered by this paragraph.

46 Paragraph 40-880(1)(g)

Omit “a business”, substitute “your business”.

47 At the end of paragraph 40-880(1)(g)

Add:

Example: You stop carrying on your business and, in doing this, you incur legal costs in terminating the services of your employees. This expenditure is covered by this paragraph.

48 Subsection 40-880(1)

Omit “is or was”, substitute “is, was or will be”.

49 At the end of subsection 40-880(3)

Add:

- ; or (d) it is in relation to a lease or other legal or equitable right; or
- (e) it would, apart from this section, be taken into account in working out:
 - (i) a profit that is included in your assessable income (for example, under section 6-5 or 15-15); or
 - (ii) a loss that you can deduct (for example, under section 8-1 or 25-40); or
- (f) it would, apart from this section, be taken into account in working out the amount of a *capital gain or *capital loss from a *CGT event; or
- (g) it is specifically made non-deductible under another provision of this Act.

50 At the end of section 43-140

Add:

- (2) This Division applies to an entity as if the entity used property for the *purpose of producing assessable income if the entity uses the property for:
 - (a) *environmental protection activities; or
 - (b) the environmental impact assessment of a project;unless a provision of this Act expressly provides that that use is not for the purpose of producing assessable income.

51 Section 45-1

Omit “depreciation”, substitute “the decline in value”.

52 Paragraph 45-15(1)(a)

Omit “depreciation”, substitute “the decline in value”.

53 Paragraph 45-15(1)(b)

Omit “owned or was the *quasi-owner of”, substitute “*held”.

54 Paragraph 45-15(1)(c)

Omit “owned or was the quasi-owner of”, substitute “held”.

55 Subparagraph 45-20(1)(b)(ii)

Omit “owned or was the *quasi-owner of”, substitute “*held”.

56 Paragraph 45-20(1)(c)

Omit “*held”, substitute “held”.

57 Paragraph 45-35(2)(b)

Omit “depreciation”, substitute “the decline in value”.

58 Paragraph 45-35(3)(b)

Omit “depreciation”, substitute “the decline in value”.

59 Subsection 104-235(1A)

Repeal the subsection, substitute:

(1A) However, subsection (1) does not apply if:

- (a) you are an eligible company (within the meaning of section 73B of the *Income Tax Assessment Act 1936*) and the *depreciating asset is a section 73BA depreciating asset (within the meaning of section 73BB of that Act); or
- (b) there is roll-over relief for the *balancing adjustment event under section 40-340 of this Act; or
- (c) the asset is one for which you or another entity has deducted or can deduct amounts under Subdivision 40-F or 40-G.

60 Paragraph 104-235(4)(b)

Omit “asset’s decline in value”, substitute “asset”.

61 Subsection 106-5(5)

Repeal the subsection.

62 Paragraph 108-55(1)(b)

After “73B”, insert “or 73BM”.

63 Paragraph 108-55(1)(b)

After “73B”, insert “, 73BF”.

64 After paragraph 110-45(2)(a)

Insert:

- (ab) the deduction is under Division 243; or

65 Subsection 115-20(1)

Repeal the subsection, substitute:

- (1) To be a *discount capital gain, the *capital gain must have been worked out:
 - (a) using a *cost base that has been calculated without reference to indexation at any time; or
 - (b) for a capital gain that arose under *CGT event K7—using the *cost of the *depreciating asset concerned.

Note: A listed investment company must also calculate capital gains without reference to indexation in order to allow its shareholders to access the concessions in Subdivision 115-D.

66 Section 116-25 (table item K7)

Repeal the item.

67 Section 118-24

Repeal the section, substitute:

- (1) A *capital gain or *capital loss you make from a *CGT event (that is also a *balancing adjustment event) that happens to a *depreciating asset or a section 73BA depreciating asset (within the meaning of section 73BB of the *Income Tax Assessment Act 1936*) is disregarded if the asset was:
 - (a) an asset you *held; or
 - (b) if you are a partner, an asset of the partnership; or
 - (c) if you are absolutely entitled to the asset as against the trustee of a trust (disregarding any legal disability), an asset of the trustee;where the decline in value of the asset was worked out under Division 40, or the deduction for the asset was calculated under Division 328, or would have been if the asset had been used.
- (2) However, subsection (1) does not apply to:
 - (a) a *capital gain or *capital loss you make from *CGT event J2 or *CGT event K7 happening; or
 - (b) a *depreciating asset for which you or another entity has deducted or can deduct amounts under Subdivision 40-F or 40-G.

68 Paragraph 124-75(2)(a)

After “*depreciating asset”, insert “whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328”.

69 Subsection 124-75(5)

After “*depreciating asset”, insert “whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328”.

70 Subsection 124-80(2)

After “*depreciating asset”, insert “whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328”.

71 At the end of section 152-110

Add:

Exception

- (3) However, subsection (2) does not apply to income *derived by a company or trust as a result of a *balancing adjustment event occurring to a *depreciating asset:
- (a) whose decline in value is worked out under Division 40; or
 - (b) deductions for which are calculated under Division 328.

72 Subsection 328-175(6)

Omit “is intended”, substitute “might reasonably be expected”.

73 Subsection 328-180(1)

Omit “You cannot deduct any further amount for the asset.”.

74 Subsection 328-180(2)

Repeal the subsection, substitute:

- (2) You can also deduct for an income year for which you are an *STS taxpayer the *taxable purpose proportion of an amount included in the second element of the *cost of a *low-cost asset for which you have deducted an amount under subsection (1) if:
- (a) the amount so included is less than \$1,000; and

- (b) you started to use the asset, or have it *installed ready for use, for a *taxable purpose during an earlier income year.
- (3) A *low-cost asset for which you have deducted an amount under this section is allocated to your *general STS pool if:
 - (a) an amount of \$1,000 or more is included in the second element of the asset's *cost; or
 - (b) any amount is included in the second element of the asset's cost and you have deducted or can deduct an amount under subsection (2) for an amount previously included in the second element of the asset's cost.
- (4) This Division applies to the asset as if its *adjustable value were the amount included in the second element of its *cost as mentioned in subsection (3).
- (5) Subsection (3) applies even if the amount is included in the second element of the asset's *cost when you are not an *STS taxpayer.

75 Subsection 328-225(3)

Omit “the end of”, substitute “the beginning of”.

76 Subsection 995-1(1) (after paragraph (a) of the definition of *capital allowance*)

Insert:

- (ab) Division 43 (capital works) of this Act; or

77 Subsection 995-1(1) (before paragraph (b) of the definition of *capital allowance*)

Insert:

- (ac) Subdivision 328-D (capital allowances for STS taxpayers) of this Act; or

78 Subsection 995-1(1) (paragraph (b) of the definition of *in-house software*)

Omit “Division 40”, substitute “Divisions 40 and 328”.

Income Tax (Transitional Provisions) Act 1997

79 Paragraph 40-10(1)(a)

After “2001”, insert “and the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*”.

80 Subsection 40-10(2)

After “2001”, insert “and the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*”.

81 Paragraph 40-10(2)(b)

After “Act”, insert “, or that you would have used if you had used the plant for the purpose of producing assessable income at the end of 30 June 2001”.

82 Paragraph 40-20(1)(a)

After “former Act”, insert “or you would have been able to deduct an amount for it under that Division if you had used it for the purpose of producing assessable income before 1 July 2001”.

83 Paragraph 40-20(2)(a)

After “former Act”, insert “or that you would have used if you had used the IRU for the purpose of producing assessable income before 1 July 2001”.

84 Subsection 40-25(2)

After “former Act” (first occurring), insert “or for which you could have deducted amounts under that Subdivision if you had used the software for the purpose of producing assessable income before 1 July 2001”.

85 Subsection 40-25(2)

Omit “Subdivision 40-B”, substitute “Division 40”.

86 Paragraph 40-25(2)(d)

After “former Act”, insert “or that you would have used if you had used the software for the purpose of producing assessable income before 1 July 2001”.

87 At the end of subsection 40-30(1)

Add “or you could have deducted an amount under that Division for that expenditure if you had used the licence for the purpose of producing assessable income on or before that day”.

88 Subsection 40-30(2)

Omit “Subdivision 40-B”, substitute “Division 40”.

89 Paragraph 40-45(1)(b)

After “former Act”, insert “or you could have deducted an amount under that Division for that expenditure if you had used the asset for the purpose of producing assessable income on or before that day”.

90 Subsection 40-45(2)

Omit “Subdivision 40-B”, substitute “Division 40”.

91 Subsection 40-50(2)

Omit “Subdivision 40-B”, substitute “Division 40”.

92 At the end of Subdivision 40-B

Add:

40-100 Commissioner’s determination of effective life

A determination by the Commissioner of the effective life of an asset that was made under section 42-110 of the former Act and that was in force at the end of 30 June 2001 has effect as if it had been made under section 40-100 of the new Act.

93 Paragraph 40-340(1)(b)

After “subsection 40-10(3)”, insert “or 40-12(3)”.

94 Paragraph 40-340(2)(d)

After “subsection 40-10(3)”, insert “or 40-12(3)”.

95 Subsection 40-340(3)

After “subsection 40-10(3)”, insert “or 40-12(3)”.

96 Section 40-425

Repeal the section.

New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001

97 Subitem 488(1) of Schedule 2

Omit “subitem (2)”, substitute “this item”.

98 After subitem 488(1) of Schedule 2

Insert:

- (1A) The amendment made by item 194 applies to amounts received on or after 1 July 2001.
- (1B) The amendments made by items 255 to 258 (inclusive) and 260 to 314 (inclusive) apply to CGT events happening on or after 1 July 2001.
- (1C) The amendment made by item 259 applies to balancing adjustment events occurring on or after 1 July 2001.

99 Subitem 488(3) of Schedule 2

Repeal the subitem, substitute:

- (3) Despite its repeal by item 336 of this Schedule, Division 388 of the former Act continues to apply until the end of the 2002-03 income year.

100 Application of amendments

- (1) The amendments made by items 1 to 39 (inclusive), 50 to 58 (inclusive) and 76 of this Schedule apply to:
 - (a) depreciating assets:
 - (i) you start to hold under a contract entered into after 30 June 2001; or
 - (ii) you constructed where the construction started after that day; or
 - (iii) you start to hold in some other way after that day; and
 - (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.
- (2) The amendments made by items 40 to 49 (inclusive) of this Schedule apply to expenditure that does not form part of the cost of a depreciating asset incurred on or after 1 July 2001.
- (3) The amendments made by items 59 and 60 of this Schedule apply to balancing adjustment events occurring on or after 1 July 2001.

- (4) The amendments made by items 61 and 64 to 71 (inclusive) of this Schedule apply to CGT events happening on or after 1 July 2001.
- (5) The amendment made by item 62 of this Schedule applies to assessments for the income year in which 29 January 2001 occurs and later income years.
- (6) The amendment made by item 63 of this Schedule applies to assessments for the income year in which 1 July 2001 occurs and later income years.
- (7) The amendment made by item 64 of this Schedule applies to debts that are terminated after 27 February 1998.
- (8) The amendments made by items 72, 73, 74, 75, 77 and 78 of this Schedule apply to assessments for the first income year starting after 30 June 2001, and for later income years.

Schedule 4—Recovery of Pay as you go (PAYG) withholding amounts

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Subsection 222AFB(1) (definition of *due date*)

Repeal the definition, substitute:

due date, in relation to an amount required to be paid to the Commissioner under a remittance provision, means the day on, by or before which the amount must be paid to the Commissioner.

2 Subsection 222AFB(1)

Insert:

non-cash benefit has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Subsection 222AFB(1) (at the end of the definition of *person*)

Add:

and (h) an entity within the meaning of the *Income Tax Assessment Act 1997*.

4 Paragraphs 222AGA(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) a person (the *person liable*) has become liable under a remittance provision to pay an amount to the Commissioner;
and
- (b) the liability to pay that amount remains undischarged after the due date;

5 Subsection 222AGA(2)

Repeal the subsection, substitute:

- (2) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant, for example, information about:

- (a) amounts deducted; or
 - (b) amounts withheld from payments; or
 - (c) payments received; or
 - (d) non-cash benefits provided;
- during a period earlier than the period in relation to which the liability arose.

6 Paragraph 222AGB(2)(e)

Repeal the paragraph, substitute:

- (e) state that if the person or the person's trustee gives the Commissioner a statutory declaration substantiating the actual unpaid amount of the liability to which the estimate relates, the estimate will be reduced accordingly; and
- (ea) state that the estimate will be revoked if the person or the person's trustee gives the Commissioner a statutory declaration to the effect that, during the period concerned, the person did not:
 - (i) make any deductions for the purposes of Division 1AA, 2, 3A, 3B or 4; or
 - (ii) withhold any amounts under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iii) receive any payments that gave rise to a liability under Division 13 in that Schedule; or
 - (iv) provide any non-cash benefits that gave rise to a liability under Division 14 in that Schedule;as the case requires; and
- (eb) state that a statutory declaration mentioned in paragraph (e) or (ea) must comply with section 222AGF; and

7 Paragraph 222AGD(1)(b)

Repeal the paragraph, substitute:

- (b) the declaration is to the effect that, during the period concerned, the person did not:
 - (i) make any deductions for the purposes of Division 1AA, 2, 3A, 3B or 4; or
 - (ii) withhold any amounts under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iii) receive any payments that gave rise to a liability under Division 13 in that Schedule; or

- (iv) provide any non-cash benefits that gave rise to a liability under Division 14 in that Schedule;
as the case requires.

8 Subsection 222AGF(4)

Repeal the subsection, substitute:

- (4) The declaration must:
 - (a) specify:
 - (i) the total of the amounts of the deductions that the person made for the purposes of Division 1AA, 2, 3A, 3B or 4 during the period concerned; or
 - (ii) the total of the amounts withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during the period concerned; or
 - (iii) the total of the amounts of the payments received during the period concerned that gave rise to a liability under Division 13 in that Schedule and the total of the amounts of those liabilities; or
 - (iv) the total of the values of the non-cash benefits, or the amounts of the dividends, interest or royalties, provided during the period concerned that gave rise to a liability under Division 14 in that Schedule and the total of the amounts of those liabilities;as the case requires; or
 - (b) state to the effect that during the period concerned, the person did not:
 - (i) make any deductions for the purposes of Division 1AA, 2, 3A, 3B or 4; or
 - (ii) withhold any amounts under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iii) receive any payments that gave rise to a liability under Division 13 in that Schedule; or
 - (iv) provide any non-cash benefits that gave rise to a liability under Division 14 in that Schedule;as the case requires.

9 Subsection 222AGF(5)

Omit “that Division in relation to the deductions (if any) that the person so made”, substitute “a remittance provision”.

10 At the end of section 222ANB

Add:

- (3) A person purporting to withhold an amount under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* is taken to have withheld the amount under that Division.

Part 2—Technical amendments

Income Tax Assessment Act 1936

11 Paragraph 222AIB(1)(a)

Omit “section 260”, substitute “section 234”.

12 Section 222AIC

Before “that section”, insert “of”.

13 Paragraph 222AJB(1)(b)

Omit “a penalty payable”, substitute “pay a general interest charge”.

Note: The heading to section 222AJB is altered by omitting “**or late payment penalty**”.

14 Paragraph 222AJB(1)(b)

Omit “this Act”, substitute “this Part”.

15 Subsection 222AJB(3)

Repeal the subsection, substitute:

- (3) If, because a judgment debt carries interest, section 8AAH of the *Taxation Administration Act 1953* reduces the amount of a general interest charge payable as mentioned in paragraph (1)(b), the amount of the reduction is taken for the purposes of subsection (2) to have been applied towards discharging the person’s liability to the charge.

16 Subsection 222AOF(1)

Omit “ASC documents”, substitute “ASIC documents”.

17 Subsection 222AOF(2) (definition of *ASC document*)

Repeal the definition.

18 Subsection 222AOF(2)

Insert:

ASIC document means a return:

- (a) lodged with the Australian Securities and Investments Commission under section 205B or 345 of the *Corporations Act 2001*; or
- (b) lodged with a person under a law that, for the purposes of the *Corporations Act 2001*, is a previous law corresponding to section 205B or 345 of that Act.

Part 3—Application of amendments

19 Application

The amendments made by Part 1 of this Schedule apply to:

- (a) an amount withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during a financial year beginning on or after 1 July 2001; and
- (b) a payment received during a financial year beginning on or after 1 July 2001 that gives rise to a liability under Division 13 of that Schedule; and
- (c) a non-cash benefit provided during a financial year beginning on or after 1 July 2001 that gives rise to a liability under Division 14 of that Schedule.

*[Minister's second reading speech made in—
House of Representatives on 27 June 2002
Senate on 11 November 2002]*

(159/02)