Tax and Superannuation Laws Amendment (2014 Measures No. 2) Act 2014

No. 68, 2014

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

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Tax and Superannuation Laws Amendment (2014 Measures No. 2) Act 2014

No. 68, 2014

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

[*Assented to 30 June 2014*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax and Superannuation Laws Amendment (2014 Measures No. 2) Act 2014*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 June 2014
2. Schedules 1, 2 and 3	The day this Act receives the Royal Assent.	30 June 2014

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Medicare levy thresholds

Income Tax Assessment Act 1936

1 Subsection 251R(4)

Omit "subsection 159J(1A)", substitute "subsections 159J(1A) and (1F)".

Medicare Levy Act 1986

2 Subsection 8(5) (definition of *family income threshold*)

Omit "$33,693", substitute "$34,367".

3 Subsection 8(5) (definition of *family income threshold*)

Omit "$3,094", substitute "$3,156".

4 Subsection 8(5) (definition of *family income threshold*)

Omit "subsection 159J(1A)", substitute "subsections 159J(1A) and (1F)".

5 Subsections 8(6) and (7)

Omit "$33,693", substitute "$34,367".

6 Application of amendments

(1) The amendments made by items 1 and 4 apply to assessments for the 2012-13 year of income and later years of income.

(2) The amendments made by items 2, 3 and 5 apply to assessments for the 2013-14 year of income and later years of income.

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Schedule 2—Protection for anticipation of certain discontinued announcements

Income Tax Assessment Act 1936

1 Subsection 170(10) (after table item 27)

Insert:

27A	Subsection 170B(7)	Removal of protection relating to discontinued announcement because of later inconsistent return

2 After section 170A

Insert:

170B Protection for anticipation of certain discontinued announcements

Limit on amending assessments

(1) The Commissioner cannot amend an assessment of a taxpayer about a particular in a way that would produce a less favourable result for the taxpayer if:

(a) the taxpayer has anticipated amendments (see subsection (3)); and

(b) in making the assessment, the particular was ascertained on the basis of the taxpayer's anticipated amendments having been made; and

(c) that way of amending the assessment would instead ascertain the particular on the basis of the anticipated amendments *not* having been made.

Anticipation not to give rise to administrative overpayment

(2) If ascertaining that particular on the basis of the taxpayer's anticipated amendments *not* having been made:

(a) would not result in an amendment of the assessment; but

(b) would, apart from this subsection, result in an amount the Commissioner paid to the taxpayer on the basis of the

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assessment being an administrative overpayment (within the meaning of section 8AAZN of the *Taxation Administration Act 1953*);

the amount of the administrative overpayment is taken, for the purposes of the taxation law, to be an amount to which the taxpayer is entitled.

*Meaning of **anticipated amendments***

(3) One or more hypothetical amendments of the taxation law, taken together, are ***anticipated amendments*** a taxpayer has if:

(a) the amendments, if made, would reasonably reflect an announcement mentioned in the table in subsection (8); and

(b) a statement made by or on behalf of the taxpayer:

(i) is consistent with the amendments having been made; and

(ii) is made in good faith; and

(iii) meets the timing requirement in column 2 of an applicable item of the following table.

Timing requirements for statements

Item	Column 1 In this case:	Column 2 The timing requirement is:
1	The statement is made in a return lodged on or before 14 December 2013	The return: (a) is lodged in the period that the announcement is on foot (see subsection (8)); and (b) was not required to be lodged before the start of that period.
2	The statement is made otherwise than in a return	The statement is made in the period that the announcement is on foot.
3	All of the following apply: (a) the statement is made in a return of the taxpayer lodged after 14 December 2013; (b) the return was not required to be lodged on or before that date; (c) just before the statement is made,	The statement relates to the application of the taxation law (as hypothetically amended by the amendments) to events or circumstances: (a) that happened or existed on or before 14 December 2013; or

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Timing requirements for statements		
Item	**Column 1** **In this case:**	**Column 2** **The timing requirement is:**
	no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the year of income to which the statement relates	(b) to the happening or existence of which the taxpayer had definitively committed on or before 14 December 2013.

(4) In determining, for the purpose of paragraph (3)(a), whether amendments would reasonably reflect an announcement, have regard to the following:

(a) the terms of the announcement;

(b) any related document published after the announcement on behalf of the Commonwealth Government, the Department of the Treasury or the Commissioner;

(c) if the announcement proposes to apply to a particular kind of scheme or practice—that kind of scheme or practice;

(d) existing provisions of the taxation law, if:

(i) the announcement proposes to effect a particular result in relation to the operation of the taxation law; and

(ii) those existing provisions effect that result, or a substantially similar result, in relation to another matter;

(e) any other relevant matter.

Operation of section

(5) Subsections (1) and (2) apply despite any other provision of the taxation law, apart from subsections (6) and (7), (which are about exceptions).

Exceptions

(6) Subsection (1) does not prevent an amendment if:

(a) the taxpayer applies for the amendment; or

(b) the Commissioner may make the amendment in accordance with item 6 (objection, review or appeal) of the table in subsection 170(1).

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(7) Subsections (1) and (2) do not apply in relation to a particular ascertained on the basis of a taxpayer's anticipated amendments, in any year of income, if:

(a) the taxpayer makes a statement (in a return of income or otherwise) for a later year of income that is not consistent with the taxpayer's anticipated amendments; and

(b) if the assessment for the later year of income was to be made on the basis of the taxpayer's anticipated amendments, instead of on the basis of the statement, the result would be less favourable to the taxpayer in that year of income.

Note: An amendment of an assessment can be made at any time to give effect to this subsection (see item 27A of the table in subsection 170(10)).

Table of discontinued announcements

(8) The following table lists the announcements to which this section applies. An announcement is ***on foot*** during the period:

(a) starting on the day mentioned in column 2 of the table for the announcement; and

(b) ending on 14 December 2013.

Discontinued announcements

Item	Column 1 Announcement	Column 2 Announcement date
1	Budget Paper No. 2, Budget Measures 2012-13, Part 1, topic headed "Bad debts—ensuring consistent treatment in related party financing arrangements".	8 May 2012
2	Budget Paper No. 2, Budget Measures 2012-13, Part 1, topic headed "Capital gains tax—refinements to the income tax law in relation to deceased estates", second dot point (which is about modifying application dates for 2 minor changes from the 2011-12 Budget).	8 May 2012
3	The following constitute the announcement: (a) Media Release No. 137, issued by the then Assistant Treasurer on 9 October 2011, titled "No Capital Gains Tax for Properties in Natural Disaster Land Swap Programs";	9 October 2011

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Discontinued announcements		
Item	**Column 1** **Announcement**	**Column 2** **Announcement date**
	(b) Budget Paper No. 2, Budget Measures 2012-13, Part 1, topic headed "Capital gains tax—broadening relief for taxpayers affected by natural disasters".	
4	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Income tax relief for water reforms".	10 May 2011
5	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Capital gains tax and other roll-overs for amalgamations of indigenous corporations".	10 May 2011
6	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Securities lending arrangements tax rules—extending the scope to address insolvency issues".	10 May 2011
7	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Capital gains tax—exemption for incentives related to renewable resources or for preserving environmental benefits".	10 May 2011
8	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Improvements to the company loss recoupment rules", but not the sentence stating "This measure will modify the continuity of ownership test so that ownership does not need to be traced through certain superannuation entities.".	10 May 2011
9	Mid-Year Economic and Fiscal Outlook 2010-11, Appendix A, Part 2, topic headed "Consolidation—operation of the rules following a demerger".	9 November 2010
10	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2009-10, Part 1, topic headed "Uniform capital allowance regime—technical changes"; (b) Media Release No. 048, issued by the then Assistant Treasurer on 12 May 2009, Attachment D headed "Technical changes to uniform capital allowance regime".	12 May 2009
11	The following constitute the announcement:	8 May 2007

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Discontinued announcements		
Item	**Column 1** **Announcement**	**Column 2** **Announcement date**
	(a) Budget Paper No. 2, Budget Measures 2007-08, Part 1, topic headed "Consolidation—further improvements to the operation of the income tax law for consolidated groups"; (b) Media Release No. 050, issued by the then Minister for Revenue and Assistant Treasurer on 8 May 2007, topic headed "Extension of the single entity rule and entry history rule for certain CGT integrity provisions affecting third parties".	
12	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2007-08, Part 1, topic headed "Consolidation—further improvements to the operation of the income tax law for consolidated groups"; (b) Media Release No. 050, issued by the then Minister for Revenue and Assistant Treasurer on 8 May 2007, topic headed "Trusts joining or leaving a consolidated group or MEC group part way through an income year".	8 May 2007
13	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2006-07, Part 1, topic headed "Simplified imputation system—franking credits available to life tenants"; (b) Media Release No. 010, issued by the then Minister for Revenue and Assistant Treasurer on 20 March 2006, titled "Franking credits available to life tenants".	20 March 2006

(9) In this section:

anticipated amendments, in relation to a taxpayer, has the meaning given by subsection (3).

on foot, in relation to an announcement, has the meaning given by subsection (8).

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taxation law has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

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Schedule 3—Preventing distribution washing

Part 1—Main amendments

Income Tax Assessment Act 1997

1 After paragraph 207-145(1)(d)

Insert:

(da) the distribution is one to which section 207-157 (which is about distribution washing) applies;

2 After paragraph 207-150(1)(e)

Insert:

(ea) the distribution is one to which section 207-157 (which is about distribution washing) applies;

3 After section 207-155

Insert:

207-157 Distribution washing

(1) This section applies to a *franked distribution received by a *member of a *corporate tax entity on a *membership interest (the ***washed interest***) if:

(a) the washed interest was acquired after the member, or a *connected entity of the member, disposed of a substantially identical membership interest; and

(b) a corresponding franked distribution is made to the member, or the connected entity, on the substantially identical interest.

Further requirement for connected entities

(2) However, if the entity that disposed of the substantially identical interest was a *connected entity of the member, this section does not apply to the *franked distribution unless:

(a) it would be concluded that the disposal took place wholly or partly because there was an expectation that the acquisition would, or would be likely to, take place; or

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(b) it would be concluded that the acquisition took place wholly or partly because there was a belief that the disposal had taken place.

Substantially identical interests

(3) Without limiting paragraph (1)(a), for the purpose of that paragraph a *membership interest is substantially identical to the washed interest if it is any one or more of the following:

(a) fungible with, or economically equivalent to, the washed interest;

(b) a membership interest in the same *corporate tax entity as the washed interest and of a class that is the same as, or not materially different from, the washed interest;

(c) a membership interest in the same corporate tax entity as the washed interest and of a class that is exchangeable at a fixed rate for an interest of the same class as the washed interest;

(d) a membership interest in another corporate tax entity that holds predominantly membership interests that are covered by any of the preceding paragraphs;

(e) a membership interest in another corporate tax entity that is exchangeable at a fixed rate for interests that are covered by any one or more of paragraphs (a) to (c).

Exception for individuals who are small holders

(4) Despite subsection (1), this section does not apply to a *franked distribution made to an individual in an income year if the sum of the *tax offsets to which the individual would be entitled, worked out on the basis mentioned in subsection (5), is $5000 or less.

(5) Work out the sum of the *tax offsets:

(a) disregarding this Subdivision, to the extent it applies to the individual; and

(b) not disregarding this Subdivision, to the extent it applies to any other entity through which a *franked distribution *flows indirectly to the individual.

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4 Application

The amendments made by this Part apply to distributions made on or after 1 July 2013.

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Part 2—Miscellaneous amendments

Income Tax Assessment Act 1997

5 Paragraph 207-95(6)(b)

Omit "this Subdivision", substitute "this Division".

6 Paragraph 207-145(1)(f)

Omit "this Subdivision", substitute "this Division".

7 Paragraph 207-150(1)(g)

Omit "this Subdivision", substitute "this Division".

8 Paragraph 207-150(6)(b)

Omit "this Subdivision", substitute "this Division".

9 Application

Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by this Part apply to events that occur on or after 1 July 2002.

[*Minister's second reading speech made in—*
House of Representatives on 29 May 2014
Senate on 16 June 2014]

(114/14)

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