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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

A NEW TAX SYSTEM (TAX ADMINISTRATION) BILL (NO. 1) 2000

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Peter Costello, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

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Glossary

The following abbreviations and acronyms are used throughout this Explanatory Memorandum.

Abbreviation	***Definition***
ABN	Australian Business Number
ABSTUDY	Abstudy Student Financial Supplement Loan Scheme
ADF	approved deposit fund
ANTS	Government's Tax Reform Document: *Tax Reform: not a new tax, a new tax system*
ATO	Australian Taxation Office
BAS	business activity statement
Commissioner	Commissioner of Taxation
CS/RA	complying superannuation/roll-over annuity
ETP	eligible termination payment
FAAA 1999	*A New Tax System (Family Assistance) (Administration) Act 1999*
FBT	fringe benefits tax
FBTAA 1986	*Fringe Benefits Tax Assessment Act 1986*
GDP	gross domestic product
GIC	general interest charge
HEFA 1988	*Higher Education Funding Act 1988*
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
ITR 1936	Income Tax Regulations 1936
LCTA 1999	*A New Tax System (Luxury Car Tax) Act 1999*
PAYG	Pay As You Go
PAYG Bill	A New Tax System (Pay As You Go) Bill 1999
PAYG system	PAYG withholding regime and PAYG instalment regime
PBI	public benevolent institution
PRRTAA 1987	*Petroleum Resource Rent Tax Assessment Act 1987*
SAA 1973	*Student Assistance Act 1973*
SCTAC 1997	*Superannuation Contributions Tax (Assessment and Collection) Act 1997*
SCTM 1997	*Superannuation Contributions Tax (Members*

Abbreviation	***Definition***
	of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997
SFSS	Student Financial Supplement Scheme
SSA 1991	*Social Security Act 1991*
SSAA 1999	*Social Security (Administration) Act 1999*
TAA 1953	*Taxation Administration Act 1953*
Tax Administration Bill	A New Tax System (Tax Administration) Bill 1999
taxation law	acts of which the Commissioner has general administration, or regulations under such an Act
TCAA 1955	*Tobacco Charges Assessment Act 1955*
TFN	tax file number
TPTAC 1997	*Termination Payments Tax (Assessment and Collection) Act 1997*
TRTAA 1985	*Trust Recoupment Tax Assessment Act 1985*
VEA 1986	*Veterans' Entitlements Act 1986*
WETA 1999	*A New Tax System (Wine Equalisation Tax) Act 1999*
WTAA 1964	*Wool Tax (Administration) Act 1964*

General outline and financial impact

PAYG instalments and trusts

This Bill amends proposed Parts 2-1, 2-5 and 2-10 of Schedule 1 to the TAA 1953 to:

- state what is 'instalment income' for certain entities;
- provide that a trustee will pay PAYG instalments in relation to the trustee's tax liability in respect of:
  - a beneficiary; and/or
  - income to which no beneficiary is entitled;
- provide a way to calculate instalment rates for a trustee where the trustee is liable to pay tax in respect of different beneficiaries or in respect of income to which no beneficiary is entitled;
- provide a special rule for working out the adjusted taxable income of a life insurance entity or a registered organisation;
- clarify the transitional deferral of company instalments where an amended assessment issues;
- provide for collection of SFSS and ABSTUDY debts through the PAYG system; and
- make consequential and technical amendments.

Date of effect: The amendments discussed in this chapter will commence immediately after the commencement of section 1 of the Tax Administration Bill. The amendments to the PAYG instalments regime will have effect for the 2000-2001, and later, income years. The amendments to the PAYG withholding regime will have effect from 1 July 2000. The amendments to the SSA 1991 will commence immediately after item 6 of Schedule 2 of the Youth Allowance Consolidation Bill 1999.

Proposal announced: The PAYG instalments regime was announced in ANTS.

Financial impact: The financial impact of the new PAYG system was outlined in the Explanatory Memorandum to the PAYG Bill.

The financial impact of the measure to enable the collection of SFSS and ABSTUDY debts through the PAYG system is set out in the following table:

2000-2001	2001-2002	2002-2003	2003-2004
$30m	$20m	$30m	$55m

Compliance cost impact: The compliance cost impact of the new PAYG system was outlined in the Regulation impact statement to the PAYG Bill.

Summary of Regulation impact statement

A Regulation impact statement is not required for this measure.

Fringe benefits tax instalments

Schedule 2 to this Bill amends the FBTAA 1986 to:

- enable an employer to claim a credit for excess FBT instalments where the employer's notional tax amount is reduced during the FBT year (the 'credit measure'); and

- use an amount of tax that was assessed for the most recent earlier year of tax as the notional tax amount in the calculation of an instalment of tax (the 'notional tax measure').

Date of effect: The amendment to the credit measure will apply for the year of tax commencing 1 April 2000 and later years of tax. The amendment to the notional tax measure will apply for the year of tax commencing on 1 April 2001 and later years of tax.

Proposal announced: These measures were announced in ANTS.

Financial impact: Nil.

Compliance cost impact: Negligible.

Summary of Regulation impact statement

Regulation impact on business

Impact: Low.

Main points:

- Only quarterly FBT payers will be affected by this measure; that is, approximately 46,000 FBT payers.
- Employers making an estimate of tax will be able to claim a credit for earlier FBT instalments in the quarter that the credit arises. This credit will be available for offset against other business tax liabilities or for refund where there are excess credits.
- The revenue impact is expected to be nil as instalment credits will be either claimed or offset in the same year as if the credit had been refunded on assessment.
- Compliance costs will be insignificant because the affected payers will be completing a BAS for other business tax obligations.
- Employers estimating their FBT liability for a year of tax may receive a cash flow benefit as they will be able to claim a credit for an instalment in the quarter that it arises rather than on assessment.

Policy objective: The policy objective of this measure is to complete the alignment of FBT instalments with PAYG. Where an estimate of tax has been made, an employer will be able to claim a credit for earlier FBT instalments at the time that the credit arises. The credit may be used to offset other taxation liabilities and excess credits will be refunded.

Consequential amendments relating to collection and recovery rules

Schedule 3 to this Bill amends the ITAA 1936 and other Acts to complete the transition from the existing recovery provisions in the taxation laws to the standardised collection and recovery rules of Part 4-15 in Schedule 1 to the TAA 1953.

Date of effect: The amendments will generally apply from 1 July 2000.

Proposal announced: The amendments support the standardised collection and recovery rules which are part of the Government's broad commitment, announced in ANTS, to streamline administrative processes.

Financial impact: Nil.

Compliance cost impact: The compliance cost of the standardised collection and recovery rules was outlined in the Regulation Impact Statement to the Tax Administration Bill.

Summary of Regulation impact statement

A Regulation impact statement is not required for this measure.

PAYG withholding – technical and consequential amendments

Schedule 4 to this Bill will make a small number of technical amendments to the provisions introducing the PAYG withholding arrangements to clarify how those arrangements are intended to operate.

It will also further limit the No ABN withholding arrangements to payments for supplies all or a part of which are made on or after 1 July 2000.

In addition, it will make consequential amendments to sections 202DH, 202DI and 202DJ of the ITAA 1936 to reflect the new PAYG withholding legislation.

Date of effect: The amendments will apply from 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil.

Compliance cost impact: Negligible.

Summary of Regulation impact statement

A Regulation impact statement is not required for this measure.

Amendments to the oral rulings for individuals regime

Amendments contained in ***Schedule 4*** amend proposed Division 360 of Schedule 1 to the TAA 1953 which provides for binding oral advice to be given on income tax matters. The amendments are minor and:

- take account of amendments made to the ITAA 1936 and the ITAA 1997 by the *ANTS (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999* and the *ANTS (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; and

- ensure that an 'oral ruling' can only be made by a person who is authorised to perform a function, or exercise a power, of the Commissioner under proposed Division 360. The authorised person must perform the function, or exercise the power, at places approved by the Commissioner.

Date of effect: The amendments will apply from 1 July 2000 with effect for the 2000-2001 year of income and later years of income.

Proposal announced: Not previously announced.

Financial impact: Nil.

Compliance cost impact: Nil.

Summary of Regulation impact statement

A Regulation impact statement is not required for this measure.

Chapter 1
PAYG instalments and trusts

Outline of Chapter

1.1 The amendments contained in ***Schedules 1 and 5*** and some of the items of ***Schedule 4*** to this Bill comprise the third tranche of the proposed PAYG instalments regime. The first tranche is contained in the PAYG Bill and the second tranche is contained in the Tax Administration Bill.

1.2 The PAYG instalments regime will replace the existing company instalment and provisional tax systems. Broadly, the new regime will ensure that taxpayers pay:

- quarterly or annual instalments that reflect their current trading and investment conditions; or
- annual instalments based on last year's tax; or
- quarterly instalments based on last year's tax and a GDP adjustment.

1.3 This Bill will amend proposed Parts 2-1, 2-5 and 2-10 in Schedule 1 to the TAA 1953 to provide special rules for what is instalment income for certain entities and to provide for the application of the PAYG instalments regime to trustees.

1.4 Abbreviations used throughout this Chapter are summarised in the Glossary following the Table of contents for this Explanatory Memorandum. Unless otherwise stated, legislative references are to proposed Parts 2-1, 2-5 and 2-10 in Schedule 1 to the TAA 1953. Schedule 1 will be inserted by the PAYG Bill.

Background to the legislation

1.5 Currently, there are 2 instalment systems, the company instalments and provisional tax systems. The PAYG Bill and the Tax Administration Bill provide for a new PAYG instalments regime to replace the company instalment and provisional tax systems. The provisions in ***Schedule 1 and Schedule 4*** (in part) to this Bill will:

- state what is 'instalment income' for certain entities;

- provide that a trustee will pay PAYG instalments in respect of the trustee’s tax liability in respect of:
  - a beneficiary; and/or
  - income to which no beneficiary is entitled; and
- provide a way to calculate instalment rates for a trustee where the trustee is liable to pay tax in respect of different beneficiaries or in respect of income to which no beneficiary is entitled.

1.6 Other provisions in ***Schedule 4 and Schedule 5*** to this Bill will insert amendments to:

- provide a special rule for working out the adjusted taxable income of a life insurance entity or a registered organisation;
- provide for the transitional deferral of company instalments where an amended assessment issues;
- provide for collection of SFSS and ABSTUDY debts through the PAYG system; and
- make consequential and technical amendments.

Summary of new law

1.7 The amendments in ***Schedule 1*** to this Bill insert special rules which will provide that distributions from:

- a ‘corporate limited partnership’; and
- a ‘public trading trust’ or ‘corporate unit trust’

are instalment income at the time they are distributed to a partner or trust beneficiary.

1.8 Consequently, the general provisions dealing with the instalment income of partners and beneficiaries which are contained in the PAYG Bill will be amended so that they do not apply to:

- partners of a ‘corporate limited partnership’ in respect of income from that partnership; or
- a beneficiary of a ‘public trading trust’ or ‘corporate unit trust’ (usually an investment trust) in respect of income from that trust.

1.9 ***New Subdivision 45-N*** will be inserted by ***Schedule 1*** to this Bill to define 'instalment income' for a trustee that is liable to pay PAYG instalments in respect of:

- a beneficiary's share of the trust net income; or
- the net income of the trust (or a share of) where no beneficiary is entitled to trust income.

1.10 This new Subdivision will also provide that a trustee has a separate instalment liability for each liability to pay tax in respect of:

- a beneficiary who is under a legal disability;
- a beneficiary who has a vested and indefeasible interest in trust income, but cannot require the trustee to pay that amount to them; and
- income to which no beneficiary is entitled.

1.11 ***Subdivision 45-N*** provides for how the Commissioner works out one or several instalment rates for a trustee referred to in paragraph 1.10.

1.12 ***Subdivision 45-N*** will also contain rules to:

- ensure that some trustees have the same choices as an individual to pay PAYG instalments on a notional tax basis (GDP-adjusted if quarterly) and annually; and
- enable the Commissioner to work out a 'benchmark instalment rate' and 'benchmark tax' where the trustee has varied an instalment or an instalment rate.

1.13 Provisions in ***Schedule 4*** to this Bill will:

- set out what is 'instalment income' for a 'life insurance entity' or a 'registered organisation' and introduce a special rule for working out their 'adjusted taxable income';
- state the effect of an amended assessment for the 1999-2000 income year on the amount of a final company instalment that an instalment taxpayer may defer and on the period for which it may be deferred;
- enable SFSS and ABSTUDY debts to be collected through the proposed PAYG system; and
- make consequential and technical amendments.

Comparison of key features of new law and old law

1.14 The PAYG instalments regime provisions in the PAYG Bill include a general rule about instalment income at section 45-120 and some special rules about the instalment income of partners and beneficiaries at section 45-260 and section 45-280 respectively. ***Items 6 and 9 to 11 in Schedule 1*** and ***item 36 in Schedule 4*** to this Bill will:

- modify those special rules for partners and beneficiaries; and
- introduce additional rules for trustees, 'life insurance entities' and 'registered organisations'.

1.15 The provisions will provide that, where a partnership or a trust is taxed as an entity, a partner's or beneficiary's 'instalment income' will include a distribution made from the partnership or trust during an instalment period (that is, the 'instalment quarter' or income year as appropriate).

1.16 New provisions will also set out how Part 2-10 in Schedule 1 to the TAA 1953 applies to trustees. These provisions will provide that a trustee that is liable to pay tax in respect of a beneficiary's share of the trust's net income, or the income to which no beneficiary is entitled, will also be liable to pay PAYG instalments in respect of such a liability.

1.17 Currently, SFSS and ABSTUDY debts are collected through the assessment process. New provisions in this Bill provide that these debts can be collected under the PAYG system, that is, progressively throughout the year.

Detailed explanation of new law

Working out the instalment income of certain entities.

1.18 ***Items 6, 9 to 11 and 16 of Schedule 1*** to this Bill and ***item 36 of Schedule 4*** to this Bill will make amendments and insert new provisions to provide a fuller explanation of what is 'instalment income' for different entities.

Partners in partnerships

1.19 A partner in a partnership works out its 'instalment income' in relation to the partnership according to proposed section 45-260.

1.20 However, ***item 6 of Schedule 1*** to this Bill will insert ***subsection 45-260(4)*** which will provide that proposed section 45-260 does not apply to a partner in a 'corporate limited partnership'.

1.21 Instead the general rule in proposed section 45-120 will apply. A partner in a 'corporate limited partnership' will include any distribution from that partnership in its 'instalment income' for the instalment period in which the distribution is made. ***[Note to subsection 45-260(4)]***

1.22 Consequential amendments are made by ***items 3 and 4 of Schedule 1*** to this Bill to ensure that the notes to proposed subsection 45-120(1) clearly convey that this is the intended result. ***[Notes 1 and 2 to subsection 45-120(1)]***

Beneficiaries who are required to apply subsection 45-280(1)

1.23 Proposed subsection 45-280(1) is a general provision that requires a beneficiary of a trust to include a share of the trust's 'instalment income' in its instalment income for each instalment period. The share is worked out by dividing the beneficiary's *assessable income from the trust for the last income year* by the trust's instalment income for that year. Proposed subsection 45-280(2) defines the beneficiary's assessable income from the trust for the last income year.

1.24 ***Item 9 of Schedule 1*** to this Bill will repeal proposed subsection 45-280(2) and insert ***new subsection 45-280(2)***. The beneficiary's ***assessable income from the trust for the last income year*** is the amount included in the beneficiary's assessable income less any part of that amount that is attributable to a capital gain made by the trust. The new subsection 45-280(2) is more consistent with proposed section 45-120 in its treatment of capital gains.

1.25 However, there are two circumstances in which the capital gain is not excluded from the 'instalment income'. ***[Note to subsection 45-280(2) and subsection 45-290(1)]***

1.26 First, a capital gain is not excluded if the beneficiary is:

- an 'eligible ADF'; or
- an 'eligible superannuation fund'; or
- a 'pooled superannuation trust'.

[Subsection 45-290(2)]

1.27 Secondly, a capital gain is not excluded from the *CS/RA class* of assessable income (that is, the complying superannuation or roll-over annuity income) of a:

- 'life insurance entity'; or
- 'registered organisation'.

[Subsection 45-290(3)]

1.28 ***Item 11 of Schedule 1*** to this Bill will insert section 45-290.

Beneficiary of an entity taxed trust

1.29 Proposed subsection 45-280(1) is a general provision that requires a beneficiary of a trust to include a share of the trust's 'instalment income' in its instalment income each instalment period.

1.30 ***Item 10 of Schedule 1*** to this Bill will insert ***subsection 45-280(4)***. It will provide that proposed section 45-280 does not apply to a beneficiary of a trust where the trustee is liable to be assessed, and to pay tax, under sections 102K or 102S of the ITAA 1936 for the income year that is, or includes, the instalment period. Those sections tax the trustees of 'public trading trusts' and 'corporate unit trusts' as if the trusts are companies.

1.31 Instead, a beneficiary of a 'corporate unit trust' or a 'public trading trust' will apply the general rule in proposed section 45-120 and include any distribution from the trust in its 'instalment income' for the period in which the distribution is made. ***[Note to subsection 45-280(4)]***

1.32 The consequential amendments made by ***items 3 and 4 of Schedule 1*** to this Bill are needed to convey clearly that this is the intended result.

Life insurance entities and registered organisations

1.33 Proposed section 45-120 states generally that an entity's 'instalment income' is its ordinary income to the extent that it is assessable income. However, other amounts are included in instalment income in certain circumstances.

1.34 ***Item 36 of Schedule 4*** to this Bill will insert ***subsection 45-120(2A)***. It will provide that the 'instalment income' of a 'life insurance entity' or a 'registered organisation' includes its statutory income to the extent that it is included in the *CS/RA class* of assessable income (i.e. the complying superannuation or roll-over annuity income).

How Part 2-10 applies to the trustee of a trust

1.35 ***Item 16 of Schedule 1*** to this Bill will insert ***Subdivision 45-N*** at the end of the Division. This Subdivision will explain how the PAYG instalments regime applies to a trustee.

Trustees to whom a single instalment rate is given

1.36 ***Subdivision 45-N*** explains that Part 2-10, with the exception of proposed Subdivision 45-D ('GDP-adjusted notional tax' instalments), applies to a trustee that is covered by any of items 6 to 12 in the table in section 9-1 of the ITAA 1997. ***[Subsection 45-450(1)]***

1.37 As each of these trustees is taxed on the trust's income as if the trust is a company, the trustee will only have one instalment rate. These trustees are called ***single-rate trustees***. ***[Subsection 45-450(2)]***

1.38 If the *single-rate trustee* is a trustee of a 'corporate unit trust' or a 'public trading trust', ***subsection 45-450(3)*** will provide that Part 2-10 (except for Subdivision 45-D) applies as if the trustee had a taxable income for the income year that is equal to the net income of the trust. ***Subsection 45-450(3)*** is necessary to give full effect to the provisions in Part 2-10 in relation to these trustees. In particular, it allows the Commissioner to treat the trust's net income as taxable income of the trustee for the purposes of calculating an instalment rate, 'benchmark instalment rate' or 'benchmark tax' for the trustee.

1.39 A *single-rate trustee*, cannot choose to pay quarterly PAYG instalments on the basis of 'GDP-adjusted notional tax' even if the trustee fulfils the requirements of Subdivision 45-D. This is because the trustee is liable to tax in respect of the trust as a company and not as an individual. ***[Subsection 45-450(3)]***

1.40 The remaining sections in ***Subdivision 45-N*** will not apply to a *single-rate trustee*. ***[Section 45-460]***

Trustees to whom several instalment rates are given

1.41 Some trustees have several separate liabilities to pay tax as the trustee of one particular trust. If a trustee has one or more liabilities to pay tax through the assessment process as a trustee, it may also have one or more liabilities to pay PAYG instalments.

1.42 A trustee that is liable to pay tax for a previous income year in respect of:

- a beneficiary's share of the trust's net income under subsection 98(1) or (2) of the ITAA 1936; or
- income to which no beneficiary is entitled under section 99 or 99A of that Act

will have a liability to pay PAYG instalments for each of those liabilities. Such a trustee is called a ***multi-rate trustee***. ***[Subsections 45-455(1), (3) and (6)]***

1.43 However, a trustee that is liable to pay tax under subsection 98(1) of the ITAA 1936 for a particular beneficiary for a particular year does not have to pay PAYG instalments if that beneficiary will no longer be under a legal disability at the end of the subsequent year. ***[Subsection 45-455(2)]***

1.44 The sections of Part 2-10 have to be applied separately to a trustee in respect of each of its distinct liabilities. Some sections are specifically modified by Subdivision 45-N. ***[Subsections 45-455(4) and (5)]***

Instalment income of a trustee

1.45 The trustee will work out the amount of its instalments under proposed Subdivision 45-C. When calculating an instalment by multiplying the 'instalment income' by the instalment rate, the instalment income to which the instalment rate is applied is the *total* instalment income of the trust. That is, the trustee applies the rules as to what is 'instalment income' in the same way as any other entity. ***[Section 45-465]***

1.46 The approach in section 45-465 ensures that a *multi-rate trustee* does not have to work out, for example, the share of the 'instalment income' of the particular beneficiary in respect of whom the liability to pay instalments arises.

1.47 The Commissioner works out the separate instalment rates for a trustee using the trust's *total* 'base assessment instalment income'. The matching of the 'instalment income' to the rate calculation enables the correct amount of an instalment to be worked out by the trustee in respect of each of the trustee's different instalment liabilities.

Multi-rate trustee may choose to pay instalments on the basis of GDP-adjusted notional tax

1.48 A *multi-rate trustee* may choose to pay quarterly instalments on a 'GDP-adjusted notional tax' basis if the trustee has a liability to pay instalments in relation to its tax liability in respect of:

- a beneficiary; or
- income to which no beneficiary is entitled.

This is so even when the trustee is not an individual. ***[Section 45-468]***

1.49 The reason for giving the *multi-rate trustee* this choice is that the beneficiaries, in respect of whose interests in the trust the trustee is liable to pay tax, are themselves individuals. The trustee is also taxed as an individual in respect of income to which no beneficiary is entitled.

1.50 To make the choice to pay instalments on a 'GDP-adjusted notional tax' basis, the *multi-rate trustee* must, in its capacity as a trustee, also fulfil all other conditions in proposed Subdivision 45-D that are prerequisites to making that choice.

How the Commissioner works out instalment rate and notional tax for a multi-rate trustee

Working out the instalment rate

1.51 As for other taxpayers, the Commissioner will work out instalment rates for a *multi-rate trustee* that has a liability to pay tax for a previous income year. ***Subsection 45-470(1)*** sets out the formula for how an instalment rate is worked out. The formula is essentially the same as for other PAYG instalment payers. The 'notional tax' is the notional tax in respect of a particular liability for:

- a beneficiary; or
- income to which no beneficiary is entitled.

In effect, the notional tax is worked out on a share of the trust's net income. The 'base assessment instalment income' is, on the other hand, the *total* base assessment instalment income of the trust, not a share of it.

1.52 The instalment rate is worked out in this way to allow the trustee, in working out the amount of an instalment, to apply the instalment rate to the total 'instalment income' of the trust for an instalment period. The trustee will not need to work out each beneficiary's share of the trust's instalment income in order to calculate the amount of the trustee's various instalment liabilities.

1.53 Since the beneficiary's instalment rate is based on the trust's 'instalment income' (rather than a share of it because the beneficiary would have included it in its instalment income) the trustee's instalment rate will be lower than it otherwise would have been. This will have the effect that, when the particular instalment rate is applied to the total instalment income of the trust, the amount of the instalment will correctly reflect that the particular liability is only in respect of an interest in a part of the trust's income or capital.

1.54 ***Subsection 45-470(2)*** defines ***base assessment instalment income***. It is so much of the assessable income of the trust as the Commissioner determines is 'instalment income' for an income year.

1.55 The income year referred to is the ***base year***, which is the year to which the *base assessment* relates. ***[Subsection 45-470(5)]***

1.56 The ***base assessment*** is the latest assessment for the most recent income year for which an assessment has been made of the tax payable by the trustee under subsection 98(1) or (2) or section 99 or 99A of the ITAA 1936. ***[Subsection 45-470(3)]***

1.57 However, if the Commissioner is satisfied that there is a later income year for which no tax is payable, the ***base assessment*** is the latest return (or other information) from which an assessment of tax could have been made. ***[Subsection 45-470(4)]***

Working out the notional tax

1.58 As with other taxpayers, the ***notional tax*** for the trustee is the trustee's *adjusted tax* on the trustee's *adjusted taxable income* reduced by the *adjusted tax* on the trustee's *adjusted withholding income*. ***[Subsections 45-475(1), (2) and (3)]***

<u>Working out the adjusted taxable income</u>

1.59 The difference in working out the ***adjusted taxable income*** for a *multi-rate trustee* from other taxpayers is that the adjusted taxable income is worked out on a part of the *adjusted net income* of the trust rather than on a total taxable income of an entity. This reflects the trustee's multiple liabilities in respect of beneficiaries' entitlements or of income to which no beneficiary is entitled.

1.60 The ***adjusted net income of the trust*** is worked out in much the same way as the 'adjusted taxable income' is worked out under proposed section 45-330 for other PAYG instalment payers. The net income that is adjusted is the net income of the trust as worked out under subsection 95(1) of the ITAA 1936.

1.61 The *adjusted net income of the trust* is multiplied by a ratio which is designed to determine the particular share of the trust's adjusted net income for which the trustee is assessed. That share is:

$$\frac{\text{Relevant share}}{\text{Reduced net income of the trust}}$$

[Subsection 45-480(1)]

1.62 Each component is defined. The ***adjusted net income of the trust*** means the net income of the trust as worked out for the purposes of the *base assessment* and:

- reduced by any net capital gain included in the trust's assessable income as so worked out;
- increased by any deductions for tax losses that were made in so working out that net income; and
- reduced by the amount of any tax loss, to the extent that it can be carried forward for working out the trust's net income for the next income year.

[Subsection 45-280(2)]

1.63 The ***reduced net income of the trust*** is the net income of the trust, as worked out for the purposes of the *base assessment*, reduced by any net capital gain included in the trust's assessable income. ***[Subsection 45-480(2)]***

1.64 The ***relevant share*** means the *reduced beneficiary's share*, or the *reduced no beneficiary's share*, as appropriate, of the net income of the trust, as worked out for the purposes of the *base assessment*. ***[Subsection 45-480(2)]***

1.65 ***Reduced beneficiary's share*** is the share of net income of the trust on which the trustee is liable to pay tax under subsection 98(1) or (2) of the ITAA 1936 in respect of a particular beneficiary. However, it does not include so much of that amount as is attributable to a net capital gain included in the trust's net income. ***[Subsection 45-483(1)]***

1.66 ***Reduced no beneficiary's share*** is the amount on which the trustee is liable to pay tax under section 99 or 99A of the ITAA 1936 except so much of that amount that is attributable to a capital gain included in the trust's net income. ***[Subsection 45-483(2)]***

Working out adjusted withholding income

1.67 In some instances, the trust may have withholding income. In such cases the *notional tax* is reduced by the *adjusted tax* on the *adjusted withholding income*. ***[Subsections 45-475(2) and (3)]***

1.68 The formula for working out the ***adjusted withholding income*** is set out in ***subsection 45-485(1)***. The formula provides that the *net withholding income* of the trustee is multiplied by the ratio that the particular *relevant share* is to the *reduced net income of the trust*.

1.69 The terms, ***relevant share*** and ***reduced net income of the trust***, have the meaning given by subsection 45-480(2). ***[Subsection 45-285(2)]***

1.70 The ***net withholding income of the trust*** is the total of the amounts included in the trust's assessable income for the *base assessment* in respect of 'withholding payments' (except 'non-quotation withholding payments') reduced by any deduction to the extent that it reasonably relates to those amounts.

Taking account of new or prospective law

1.71 The Commissioner may take proposed subsections 45-325(4) and (5) into account for the purposes of working out the *notional tax* under section 45-475. That is, the Commissioner is required to apply the law that applies to the income year in which he or she is working out the instalment rate as if it had applied to the income year to which the *base assessment* relates. The Commissioner may also take account of likely changes to the law if, as a result of the change, the instalment rate is reduced. ***[Subsection 45-475(4)]***

The Commissioner notifies the multi-rate trustee of the instalment rate and notional tax

1.72 The Commissioner will notify the *multi-rate trustee* of the instalment rate, and when he or she does so, must also notify the trustee of the *notional tax* for each of the trustee's liabilities. The Commissioner may include the information in an assessment notice. ***[Section 45-473]***

1.73 The *notional tax* is notified to the *multi-rate trustee* so that the trustee may for example, make a choice, if appropriate, to pay annual PAYG instalments. The trustee may make a different choice in respect of each different PAYG instalment liability.

How the Commissioner works out the benchmark instalment rate and benchmark tax for a multi-rate trustee

Benchmark instalment rate and benchmark tax

1.74 The Commissioner may work out a *multi-rate trustee's benchmark instalment rate* for an income year if the trustee chooses to vary the instalment rate under section 45-205. The year for which the Commissioner works out the benchmark instalment rate is called the ***variation year***. The Commissioner may also work out a multi-rate trustee's *benchmark tax* where the trustee has estimated that amount for the purpose of calculating an annual instalment or a quarterly instalment worked out on the basis of 'GDP-adjusted notional tax'. ***[Section 45-525]***

<u>Benchmark instalment rate</u>

1.75 ***Section 45-530*** sets out how the Commissioner works out the *benchmark instalment rate* where the trustee, under proposed section 45-205, chooses an instalment rate to work out the amount of an instalment for an instalment period. The trustee does not need to work out a benchmark instalment rate. However, an understanding of how it is worked out by the Commissioner may help the trustee work out the instalment rate that the trustee chooses.

1.76 The ***benchmark instalment rate*** is the percentage calculated to 2 decimal places (rounding the third decimal place up if it is 5 or more) using the formula:

$$\frac{\text{Your benchmark tax}}{\text{Variation year instalment income}} \times 100$$

[Subsection 45-530(1)]

1.77 The ***variation year instalment income*** (the denominator in the formula contained in subsection 45-530(1)) is so much of the trust's assessable income for the *variation year* as the Commissioner determines is 'instalment income' for the year. ***[Subsection 45-530(2)]***

1.78 The Commissioner works out the *benchmark tax* under ***section 45-535***.

Benchmark tax

1.79 The Commissioner works out the *benchmark tax* to apply in the formula for working out a *benchmark instalment rate*.

1.80 The Commissioner may also work out the *multi-rate trustee's benchmark tax* for a *variation year* if the trustee:

- has varied the amount of an instalment and the instalment is worked out on the basis of the trustee's estimate of the benchmark tax for the income year ***[subsection 45-525(2)]***;
- estimates the amount of an annual instalment under proposed paragraph 45-115(1)(c) or proposed paragraph 45-175(1)(b) ***[subsection 45-525(3)]***.

1.81 The ***benchmark tax*** is the trustee's *adjusted assessed tax* as worked out under section 45-375 on the *reduced beneficiary's share* or the *reduced no beneficiary's share* of the net income of the trust for the *variation year*. That is, the benchmark tax is worked out in respect of a particular instalment liability. ***[Subsection 45-535(1)]***

1.82 If the trust's assessable income for the variation year includes 'withholding payments', the trustee's adjusted assessed tax is reduced by the total amount of the credits to which the trustee is entitled under proposed section 18-25 in Schedule 1 to the TAA 1953. ***[Subsections 45-535(2) and (3)]***

Amendments consequential upon the insertion of new Subdivision 45-N

1.83 ***Items 1, 2, 5, 7, 8 and 12 to 15*** to this Bill will make minor amendments consequential upon ***Subdivision 45-N*** being inserted by ***item 16 of Schedule 1*** to this Bill.

Instalment rate and notional tax for life insurance entities and registered organisations

1.84 ***Item 37 of Schedule 4*** to this Bill will insert a special rule for how the Commissioner works out the instalment rate and 'notional tax' for a 'life insurance entity' or a 'registered organisation'.

1.85 The special rule will recognise that an amount attributable to a capital gain will not reduce the *CS/RA component* of taxable income (i.e. the complying superannuation or roll-over annuity income) for one of these entities.

1.86 ***Subsection 45-330(3)*** will be inserted after proposed subsection 45-330(2) in Schedule 1 to the TAA 1953 providing for a method statement in working out the 'adjusted taxable income' for a 'life insurance entity' or a 'registered organisation'.

1.87 Under Step 1 each component of taxable income (except the *CS/RA component*) for the 'base assessment' is recalculated disregarding any capital gain.

1.88 These recalculated components are added up in step 2. Step 3 adds the *CS/RA component* (that is not recalculated to exclude any capital gains) to the step 2 result. Step 4 will reduce that result by any tax losses used in making the 'base assessment'. Finally, step 5 will add any tax losses available to be carried forward to the following income year.

1.89 There are special rules about what constitutes 'instalment income' for these entities and they are discussed in paragraphs 1.33 and 1.34.

Collection of SFSS and ABSTUDY debts through the PAYG system

1.90 New provisions will be inserted by ***Schedule 4*** to this Bill to provide for the collection of SFSS and ABSTUDY debts through the PAYG system. Currently, these debts are only collected through the income tax assessment process. The new collection measures will provide that these debts may be collected progressively throughout the income year under the PAYG system.

1.91 ***Items 18 and 19 of Schedule 4*** will amend proposed section 6-1, which is a guide to Parts 2-5 and 2-10 in Schedule 1 to the TAA 1953, to make it clear that amounts collected under the PAYG system also go towards meeting the liability for these debts.

1.92 ***Item 20 of Schedule 4*** will add 2 paragraphs to proposed section 11-1 to ensure that the statement of the object for the PAYG withholding regime also includes the collection of a SFSS or ABSTUDY debt ***[paragraphs 11-1(da) and (db)]***.

1.93 ***Item 30 of Schedule 4*** will add 2 paragraphs to proposed section 15-30 to ensure that, when making a withholding schedule, the Commissioner must have regard to the rates specified for repayment of accumulated SFSS and ABSTUDY debts ***[paragraphs 15-30(da) and (db)]***.

1.94 ***Item 31 of Schedule 4*** makes a minor amendment consequential upon the amendment made by ***item 20***.

1.95 ***Item 35 of Schedule 4*** will amend proposed section 45-5 to ensure that the statement of the object of the PAYG instalments regime includes the efficient collection of SFSS and ABSTUDY debts.

1.96 To enable these debts to be collected through the PAYG instalments regime, they have to be taken into account in working out an entity's instalment rate. Therefore, the method statement for working out the ‘adjusted tax’ in proposed section 45-340 will be amended as it is used to work an entity’s ‘notional tax’ (which is one of the components of the formula used to calculate an instalment rate). ***Items 38 and 39 of Schedule 4*** will insert Step 3A and make a consequential amendment to Step 4 to take account of Step 3A. ***[Step 3A in section 45-340 method statement]***

1.97 ***Items 40 and 41 of Schedule 4*** will amend the method statement for working out the ‘adjusted assessed tax’ in proposed section 45-375. Step 3A will be inserted and a consequential amendment made to Step 4 to ensure that SFSS and ABSTUDY debts are taken into account in working out the adjusted assessed tax. The adjusted assessed tax is used by the Commissioner to work out an entity’s ‘benchmark instalment rate’ or ‘benchmark tax’ when an entity varies its instalments. ***[Step 3A in section 45-375 method statement]***

Company tax instalment deferrals

1.98 To facilitate the transition from the company instalment system to the PAYG instalments regime, company instalment taxpayers will be entitled to defer some or all of their assessed tax for the 1999-2000 income year (proposed sections 221AZKB & 221AZKC of the ITAA 1936).

1.99 ***Schedule 4*** to this Bill will amend ITAA 1936 to set out the effect of amending the assessment for the 1999-2000 income year on deferred payments of company instalments.

1.100 ***Item 11 of Schedule 4*** will insert ***section 221AZKEA*** to outline the effect on proposed sections 221AZKB and 221AZKC of the ITAA 1936 if an assessment for the 1999-2000 income year is amended. Taxpayers will be put in the position that they would have been in had the original assessment been correct. That is, how much of the final instalment for the 1999-2000 income year can be deferred, and the amount and timing of the repayment of the deferred amount, will be determined by reference to the amended assessment.

1.101 ***Item 12 of Schedule 4*** will insert ***subsection 221AZKE(2)***. This amendment is consequential upon the insertion of section 221AZKEA.

1.102 ***Item 12*** will also make a technical correction by the insertion of subsection 221AZKE(3). It will define the term ***entity*** that is used in section 221AZKE of the ITAA 1936 but is not defined in that Act.

1.103 ***Item 10 of Schedule 4*** will make an amendment consequential upon ***item 11*** referred to in paragraph 1.100.

Application

1.104 The amendments discussed in this chapter will commence immediately after the commencement of section 1 of the Tax

Administration Bill. The amendments to the PAYG instalments regime will have effect for the 2000-2001, and later, income years. The amendments to the PAYG withholding regime will have effect from 1 July 2000. The amendments to the SSA 1991 will commence immediately after item 6 of Schedule 2 of the Youth Allowance Consolidation Bill 1999.

Consequential amendments made by this Bill

Consequential amendments to Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997

1.105 ***Schedule 5*** to this Bill will make amendments to the Dictionary to the ITAA 1997 to:

- insert new dictionary terms; or
- make amendments to existing definitions which are consequential upon the other amendments to the PAYG system.

1.106 The following table explains each of the amendments to be made to subsection 995-1(1) of the ITAA 1997.

Item No.	*Term*	*Explanation*
1	***Adjusted tax*** on 'adjusted taxable income' or on 'adjusted withholding income'	A new definition will be inserted to provide that this term has the meaning given by section 45-340 in Schedule 1 to the TAA 1953. This amendment is by way of technical correction, as it should have been included in the PAYG Bill.
2	***Adjusted taxable income***	A consequential amendment will be made to this definition to reflect that the Commissioner will calculate the 'adjusted taxable income' for a trustee under section 45-480.
3	***Adjusted withholding income***	A consequential amendment will be made to this definition to reflect that the Commissioner will calculate the 'adjusted withholding income' for a trustee under section 45-485.
4	***Base assessment***	A consequential amendment will be made to this definition to reflect that the 'base assessment' for a trustee is defined under section 45-470.
5	***Base year***	A consequential amendment will be made to this definition to reflect that the 'base year' for a trustee is defined under section 45-470.
6	***Benchmark instalment rate***	A consequential amendment will be made to this definition to reflect that the 'benchmark instalment rate' for a trustee is worked out under section 45-530.

Item No.	Term	Explanation
7	***Benchmark tax***	A consequential amendment will be made to this definition to reflect that the 'benchmark tax' for a trustee is defined under section 45-535.
8	***Commissioner's instalment rate***	A new definition will be inserted to provide that this term has the meaning given by section 45-115 in Schedule 1 to the TAA 1953. This amendment is by way of technical correction, as it should have been included in the PAYG Bill.
9	***CS/RA class*** of assessable income	This is a new definition. The 'CS/RA class' of assessable income of a 'life insurance entity' or 'registered organisation' has the meaning given by section 116CE or 116GD of the ITAA 1936. In effect, it is the assessable income arising from the complying superannuation or roll-over annuity business of those entities. The term is used in subsection 45-120(2A) and section 45-290 that are being inserted by this Bill. Those provisions deal with the 'instalment income' of those entities.
10	***CS/RA component*** of taxable income	This is a new definition. The 'CS/RA component' of taxable income of a 'life insurance entity' or 'registered organisation' has the meaning given by section 110 or 116E of the ITAA 1936. In effect, it is the component of taxable income arising from the complying superannuation or roll-over annuity business of those entities. The term is used in subsection 45-330(3) that is being inserted by this Bill. That subsection states how the Commissioner works out the 'adjusted taxable income' of those entities.
11	***Instalment income***	A consequential amendment will be made to this definition to reflect that 'instalment income' of certain entities is defined under sections 45-285 and 45-465.
12	***FS assessment debt***	A new definition will be inserted to provide that this term means an assessment debt for SFSS arising under subsection 19AB(2) of the SSA 1991 and ABSTUDY under the SAA 1973. The amendment is consequential upon the insertion of provisions to enable the collection of SFSS and ABSTUDY debts through the PAYG system.
13	***Majority control***	A new definition will be inserted to provide that this term has the meaning given by section 45-145 in Schedule 1 to the TAA 1953. This amendment is by way of technical correction, as it should have been included in the PAYG Bill.
14	***Multi-rate trustee***	A new definition will be inserted to provide that this term has the meaning given by section 45-455 in Schedule 1 to the TAA 1953. The term is used in Subdivision 45-N that is being inserted by this Bill.
15	***Notional tax***	A consequential amendment will be made to this definition to reflect that 'notional tax' for a trustee is worked out under section 45-475.

Item No.	*Term*	*Explanation*
16	***Reduced beneficiary's share*** of a trust's net income	A new definition will be inserted to provide that this term has the meaning given by section 45-483 in Schedule 1 to the TAA 1953. The term is used in Subdivision 45-N that is being inserted by this Bill.
17	***Reduced no beneficiary's share*** of a trust's net income	A new definition will be inserted to provide that this term has the meaning given by section 45-483 in Schedule 1 to the TAA 1953. The term is used in Subdivision 45-N that is being inserted by this Bill.
18	***Single rate trustee***	A new definition will be inserted to provide that this term has the meaning given by section 45-450 in Schedule 1 to the TAA 1953. The term is used in Subdivision 45-N that is being inserted by this Bill.

Consequential amendment to the Social Security Act 1991

1.107 ***Item 47 in Schedule 3*** to this Bill will insert a non-operative note to proposed subsection 1061ZZFG(1) of the SSA 1991. Note 2 to that subsection will alert the reader that *FS assessment debts* (i.e. a debt arising under the SFSS or ABSTUDY scheme) will be collected through the PAYG system. This amendment is consequential upon the amendments made to the PAYG system by this Bill.

Commencement

1.108 This amendment will be taken to have commenced immediately after the later of commencement of:

- item 6 of Schedule 2 to the Youth Allowance Consolidation Bill 1999; or
- section 1 of the Tax Administration Bill.

Consequential amendment to the Student Assistance Act 1973

1.109 ***Item 50 in Schedule 3*** to this Bill will insert a non-operative ***note to subsection 12ZN(1)*** of the SAA 1973. Note 2 to that subsection will alert the reader that *FS assessment debts* (i.e. debts arising under the SFSS or ABSTUDY scheme) will be collected through the PAYG system. This amendment is consequential upon the amendments made to the PAYG system by this Bill.

Chapter 2
Fringe benefits tax instalments

Overview

2.1 ***Schedule 2*** to this Bill will amend the FBTAA 1986 to complete the alignment of FBT instalments with other business tax instalment obligations. In ANTS, the Government announced the introduction of the PAYG system, which will align business tax obligations so that businesses will be able to complete a single compliance statement and make one payment either monthly or quarterly. A net payment will be made after creditable amounts have been offset against liabilities. The Government also announced that excess credits will be refunded and refund claims can be lodged on the first day after the quarter.

Summary of the amendments

Purpose of the amendments

2.2 The purpose of the amendments is to:

- enable an employer to claim a credit for earlier FBT instalments where the notional tax amount is reduced during the FBT year (the 'credit measure'); and
- use an amount of tax that was assessed for the most recent year of tax as the notional tax amount in the calculation of an instalment of tax (the 'notional tax measure').

2.3 To achieve this, amendments are made to the following sections in Division 2 of Part VII of the FBTAA 1986:

- section 105 which gives an employer a credit for each instalment payable ***[item 1]***;
- section 110 which determines the notional tax amount of an employer ***[item 2]***;
- section 111 which calculates the amount of an instalment of tax ***[items 3 to 6]***;
- section 112 which provides rules for an employer estimating the tax liability for the year ***[item 7]***;

- ***new section 112A*** which is inserted to provide a credit in certain cases where the amount of an instalment for a quarter is nil ***[item 8]***; and

- ***new section 112B*** which is inserted to impose liability for the GIC and to calculate the charge on shortfalls in quarterly instalments that are worked out on the basis of estimated tax ***[item 8]***.

Date of effect

2.4 The amendment to the credit measure will apply for the year of tax commencing 1 April 2000 and later years of tax. The amendment to the notional tax measure will apply for the year of tax commencing on 1 April 2001 and later years of tax.

Background to the legislation

2.5 An employer is liable to pay instalments of tax under section 102 of the FBTAA 1986.

2.6 Section 103, as amended by the PAYG Bill, sets out when instalments of FBT are payable:

- the first instalment is due and payable on 21 July in that year of tax;

- the second instalment is due and payable on 21 October in that year of tax;

- the third instalment is due and payable on 21 January in that year of tax; and

- the fourth instalment is due and payable on 21 April in the next year of tax.

2.7 Under section 111, the amount payable by an employer as an instalment of tax for a quarter is calculated as:

$$\left[\begin{array}{c}\text{Employer's}\\ \text{notional tax}\\ \text{amount in}\\ \text{respect of the}\\ \text{FBT year}\end{array} \times \begin{array}{c}\text{the relevant}\\ \text{fraction}\end{array}\right] - \begin{array}{c}\text{the sum of the amounts}\\ \text{of any tax instalments}\\ \text{for the FBT year that}\\ \text{have become due and}\\ \text{payable before the due}\\ \text{date of the current}\\ \text{instalment}\end{array}$$

2.8 Subsection 111(2) provides that an instalment of tax is not payable in certain cases where the notional tax amount is less than a particular amount (currently $3,000).

2.9 The employer's ***notional tax amount*** is currently defined in section 110 as the amount of tax that was assessed in respect of the employer for the immediately preceding year of tax. However, an employer may make an estimate of the amount of tax that will be payable for the FBT year under subsection 112(1). Where an estimate has been made, the notional tax amount equals the estimated tax amount (subsection 110(5)). It should be noted that GIC is payable where the employer's estimate is less than 90% of the amount of tax assessed to the employer (section 112).

2.10 The relevant fraction is defined in section 109, as amended by PAYG Bill, as:

- 0.25 for the first instalment;
- 0.50 for the second instalment;
- 0.75 for the third instalment; and
- 1.00 for the fourth instalment.

2.11 Under section 105, as amended by PAYG Bill, an employer receives a credit upon assessment for each instalment that is payable for the year of tax, regardless of whether an instalment is paid. The credit arises upon assessment so as not to immediately eliminate the instalment liability.

Explanation of the amendments

Amount of instalment of tax

2.12 Subsection 111(1) – the calculation of an amount payable by an employer as an instalment of tax – is repealed and replaced by ***new subsection 111(1)*** to take into account credits that may arise under ***new section 112A*** (see paragraphs 2.28 to 2.31 for an explanation of the credits). ***[Item 3]***

2.13 Under ***new subsection 111(1)***, the amount of an employer's instalment of tax for a FBT year (the current instalment) is calculated as:

$$\left[\begin{matrix}\text{Notional}\\\text{tax amount}\end{matrix}\times\begin{matrix}\text{Relevant}\\\text{fraction}\end{matrix}\right]-\left[\begin{matrix}\text{Previous}\\\text{instalments}\end{matrix}-\begin{matrix}\text{Previous}\\\text{credits}\end{matrix}\right]$$

2.14 Where this calculation gives a positive result, the amount is due and payable 21 days after the end of the quarter. Where the result is negative, the amount of the instalment is nil.

2.15 New subsection 111(1A) defines the terms used in new subsection 111(1).

- ***Notional tax amount*** means the employer's notional tax amount for the year of tax, as defined in section 110, and is determined at the end of the last day of the quarter. The quarter is the one for which the current instalment is calculated.

- ***Previous instalments*** is defined as the total of any tax instalments for the year of tax that have become due and payable before the due date of the current instalment.

- ***Previous credits*** is the total of any credits that the employer has claimed under ***new section 112A*** because of any instalments for the FBT year that have become due and payable before the due date of the current instalment. ***[Item 3]***

2.16 Subsection 111(2) currently provides that an employer is not required to pay an instalment in certain circumstances. Subsection 111(2) is amended to include an additional condition that must be met before an instalment of tax is not payable.

2.17 The amendment to subsection 111(2) provides that an instalment of tax – that would otherwise be due and payable by the employer 21 days after the end of a quarter ***[item 4]*** – is not payable if:

- the instalment is calculated using the notional tax amount ascertained under subsection 110(1) (see paragraphs 2.19 to 2.27 for an explanation of the notional tax amount);

- the notional tax amount is less than either $1,000 if a determination has not been made by the Commissioner or the amount determined by the Commissioner (currently $3,000); and

- the instalment of the previous quarter was not payable because subsection 111(2) applied. This condition does not apply when the instalment calculated under section 111 is the first instalment of the year of tax. ***[Item 6, new paragraph 111(2)(c)]***

2.18 This ensures that once an employer is liable to pay an instalment of tax for the FBT year, the employer continues to be liable to pay instalments for later quarters of the year even though the notional tax amount falls below the threshold level.

Example 2.1

An employer has a notional tax amount of $20,000 which is used to calculate the instalments for the first and second quarters of the FBT year. During the third quarter, the employer estimates that the tax payable for the FBT year will be $10,000. The calculation of each instalment for the year is:

	Amount of instalment
Quarter 1	($20,000 × 0.25) – (0 – 0) = $5,000
Quarter 2	($20,000 × 0.5) – ($5,000 – 0) = 5,000
Quarter 3	($10,000 × 0.75) – ($10,000 – 0) = –$2,500 Because this result is negative, the amount of the instalment is nil ***[new subsection 111(1)]***. Under ***new section 112A***, the employer is entitled to claim a credit of $2,500.
Quarter 4	($10,000 × 1) – ($10,000 – $2,500) = $2,500

Notional tax amount

2.19 ***Schedule 2*** repeals subsections 110(1) and 110(2) and inserts ***new subsection 110(1)***. ***New subsection 110(1)*** replaces the definition of ‘notional tax amount’ to enable the calculation of an instalment of tax where the employer has not had tax assessed in the immediately preceding FBT year. ***[Item 2]***

2.20 Depending on the circumstances of an employer, the ***notional tax amount*** is determined in one of 4 ways by ***new subsection 110(1)***. For most employers (the general case), the notional tax amount for a year of tax (the current year) at a particular time (the test time) is:

- the amount of tax assessed for the most recent FBT year (the base year) for which an assessment has been made before the test time. ***[Item 2, new subsection 110(1), item 1 of the table]***

2.21 This allows an assessment of an earlier year to be used as the notional tax amount when an assessment has not been made for the immediately preceding FBT year at the time that the instalment is calculated.

Example 2.2

An employer is calculating the first instalment for the FBT year commencing 1 April 2001. The employer has not lodged a return for the year commencing 1 April 2000, but has had tax assessed for the year commencing 1 April 1999 of $20,000. The first instalment for the year commencing 1 April 2001 will be calculated using a notional tax amount of $20,000.

2.22 Where an employer has not had tax assessed at any time before the current year, the notional tax amount is nil. This relates to employers who lodge a FBT return for the first time. ***[Item 2, new subsection 110(1), item 3 of the table]***

2.23 Where an employer has not had tax assessed for the immediately preceding FBT year but has had a nil assessment for an earlier year of tax, the notional tax amount is nil. This situation would arise where an employer has had a nil assessment for a year and then does not lodge a FBT return in the following year. ***[Item 2, new subsection 110(1), item 2 of the table]***

2.24 Where the general case would otherwise apply but Parliament has changed the rate of tax for the current year from that of the base year and regulations provide for a variation in the notional tax amount for the current year, the notional tax amount is either:

- where the instalment is due and payable before the day the tax rate change comes into effect – the notional tax amount for the base year for which an assessment has been made; or

- where the instalment of tax is due and payable on or after the day the tax rate change comes into effect – the amount as varied in accordance with the regulations. ***[Item 2, new subsection 110(1), item 4 of the table]***

2.25 Subsection 110(3) has been repealed and rewritten to reflect the changes in ***new subsection 110(1)*** *[item 2]*. ***New subsection 110(3)*** provides that the Commissioner may substitute his own estimate of the tax payable for the notional tax amount for the current year when the estimate will exceed:

- the amount of the employer's tax for the base year (that is, when the notional tax amount would be worked out under either item 1 or item 4 of the table in ***new subsection 110(1)***); or

- nil when the notional tax amount would be worked out under either item 2 or 3 of the table in ***new subsection 110(1)***.

[Item 2]

2.26 A definition of 'notional tax amount' is inserted in subsection 136(1). 'Notional tax amount' has the meaning given by section 110. ***[Item 9]***

2.27 Because subsection 110(2) has been repealed by ***item 2*** of this Bill, a consequential amendment is made to paragraph 111(2)(a) to remove a reference to subsection 110(2). ***[Item 5]***

Credit in certain cases where amount of instalment is nil

2.28 ***New section 112A*** is inserted to allow an employer to claim a credit in relation to instalments of tax in certain circumstances. ***[Item 8]*** This credit is available to offset other business tax liabilities or to be refunded where there are excess credits in accordance with Division 3 of Part IIB of the TAA 1953.

2.29 Under ***new subsection 111(1)***, the calculation of an instalment of tax may result in a negative amount, in which case the amount of the instalment is nil (see paragraphs 2.12 to 2.14). Where the result is negative, ***new subsection 112A(1)*** entitles an employer to claim a credit equal to that amount. ***[Item 8]***

2.30 The calculation of an instalment of tax may give a negative result where:

- an employer makes an estimate of tax for the FBT year that is less than the notional tax amount used for the calculation of an earlier instalment for the year; or
- during a FBT year, an employer has tax assessed for the most recent preceding year of tax that is less than the tax assessed for an earlier year of tax and the tax assessed for the earlier year of tax was the notional tax amount used in the calculation of an instalment.

2.31 Where an employer is entitled to claim a credit, the amount must be claimed in the approved form (which is the BAS) on or before 21 days after the end of the quarter. ***[Item 8, new subsection 112A(2)]***

Example 2.3

> Using the information contained in Example 2.1, the calculation of the third instalment gives a negative result, that is, -$2,500. The employer is entitled to claim a credit of $2,500 in relation to the third instalment. The credit is applied in accordance with Division 3 of Part IIB of the TAA 1953.

Liability to GIC on shortfall in quarterly instalment worked out on the basis of the estimated tax

2.32 ***New section 112B*** makes an employer liable to pay the GIC where the 'notional tax amount' has been underestimated for the purposes of calculating an instalment of tax ***[item 8]***. ***New section 112B*** replaces subsections 112(4), (4A) and (5) which have been repealed by ***item 7 of Schedule 2***. 'GIC' is defined in subsection 136(1) as the charge worked out under Division 1 of Part IIA of TAA 1953.

2.33 An employer is liable for the GIC when:

- in working out the amount of an instalment of tax (the underpaid instalment), an amount (the actual amount) was worked out under ***new subsection 111(1)***;
- the employer made an estimate of tax under section 112 which was taken to be the notional tax amount for calculating the actual amount (subsection 110(5));
- that notional tax amount is less than 90% of the employer's tax assessed for the year of tax; and
- that tax assessed has become due and payable.

[Item 8, new subsection 112B(1)]

2.34 Under ***new subsection 112B(2)***, the employer is liable to the GIC on any amount by which the actual amount is less than the amount worked out using the formula:

$$\left[\begin{matrix}\text{Minimum} \\ \text{tax amount}\end{matrix} \times \begin{matrix}\text{Relevant} \\ \text{fraction}\end{matrix}\right] - \left[\begin{matrix}\text{Previous} \\ \text{instalments}\end{matrix} - \begin{matrix}\text{Previous} \\ \text{credits}\end{matrix}\right]$$

The employer is liable to pay the charge for each day in the GIC period that there is a shortfall ***[item 8]***. GIC period is defined in section 109 to be the period starting at the beginning of the day that the instalment became due and payable and ending at the end of the last day of the quarter.

2.35 New subsection 112B(3) defines the terms used in new subsection 112B(2).

- ***Minimum tax amount*** is the lesser of:
  - the amount that would have been the 'notional tax amount' had the employer not made an estimate under section 112 when calculating the actual amount; and
  - the amount of tax assessed to the employer for the year.
- ***Previous instalments*** means the total of instalments for the FBT year that became due and payable before the due date of the underpaid instalment or, if the underpaid instalment was a nil instalment, the due date that would have applied if the actual amount had been positive.
- ***Previous credits*** is the total of any credits that the employer has claimed under ***new section 112A*** because of any instalments for the year of tax that have become due and payable before the due date of the underpaid instalment.

[Item 8]

2.36 The amount of the GIC is additional tax payable. ***[Item 8, new subsection 112B(4)]***

2.37 A consequential amendment is made to subsection 8AAB(5) of the TAA 1953 to refer to ***new section 112B*** ***[item 11]***.

Example 2.4

> Using the information in Example 2.1, an employer has an amount of tax assessed for the year of $25,000. The notional tax amount used for the first 2 quarters of the year was $20,000, but in the third quarter the employer made an estimate of tax payable of $10,000. Because $10,000 is less than 90% of the tax assessed (i.e. $25,000), the employer has a liability to GIC.
>
> For the third quarter, the GIC is calculated on the amount by which the actual amount (see Quarter 3 in Example 2.1 for the calculation of this amount) – that is, -$2,500 – is less than:
>
> $$(\$20{,}000 \times 0.75) - (\$10{,}000 - 0) = \$5{,}000$$
>
> which is $7,500. Therefore, GIC is calculated on an amount of $7,500.
>
> For the fourth quarter, the GIC is calculated on the amount by which the actual amount (see Quarter 4 in Example 2.1) – that is, $2,500 – is less than:
>
> $$(\$20{,}000 \times 1) - (\$10{,}000 - \$2{,}500) = \$12{,}500$$
>
> which is $10,000. Therefore, GIC is calculated on an amount of $10,000.

Credit for instalments payable

2.38 Section 105 is repealed and replaced to take account of the credits that an employer may claim under ***new section 112A***. ***[Item 1]***

2.39 ***New subsection 105(1)*** provides that an employer is entitled to a credit upon assessment of tax for a year. The amount of the credit is calculated in ***new subsection 105(2)*** as:

$$\left[\begin{array}{c}\text{Total instalments}\\ \text{payable by the}\\ \text{employer for the}\\ \text{FBT year}\end{array}\right] \text{ less } \left[\begin{array}{c}\text{Total credits claimed by}\\ \text{the employer under } \boldsymbol{\mathit{new}}\\ \boldsymbol{\mathit{section\ 112A}} \text{ because of}\\ \text{any instalments of tax}\\ \text{for the FBT year}\end{array}\right]$$

2.40 An employer is still liable to pay an instalment of tax regardless of the fact that an assessment has been made and an entitlement to a credit has arisen. ***[Item 1, new subsection 105(3)]***

Application

2.41 The amendment made by ***Schedule 2*** to the credit measure will apply for the year of tax commencing 1 April 2000 and later years of tax. The amendment to the notional tax measure will apply for the year of tax commencing on 1 April 2001 and later years of tax. ***[Item 10]***

Regulation impact statement

Policy objective

2.42 In the Government's ANTS package released on 13 August 1998, it was announced that business tax obligations would be aligned so that businesses will be able to complete a single compliance statement either once a month or once a quarter and make one payment. The payment will be a net amount after creditable amounts have been offset. The Government also announced that excess credits will be refunded and refund claims can be lodged on the first day after the quarter. This is known as the PAYG system.

2.43 The policy objective of this measure is to complete the alignment of FBT instalments with PAYG. Where there is a reduction in the employer's notional tax amount, an employer will be able to claim a credit for earlier FBT instalments at the time that the credit arises. The credit may be used to offset other taxation liabilities and excess credits will be refunded.

Implementation options

2.44 There is only one implementation option to complete the alignment of FBT instalments with PAYG. Employers must be able to claim a credit for earlier FBT instalments where there is a reduction in the notional tax amount. This credit may be offset against other business tax liabilities or refunded where there are excess credits. This is in line with the policy intent of PAYG.

Assessment of impacts

Impact group identification

2.45 Only quarterly FBT payers will be affected by this measure; that is, approximately 46,000 FBT payers. In addition, it is estimated that 15,000 PBIs will be affected to the extent that they provide fringe benefits in excess of the threshold that is proposed in the ANTS package.

Analysis of costs / benefits

2.46 The revenue impact of this measure is expected to be nil as instalment credits will be either claimed or offset in the same year as if the credit had been refunded on assessment.

2.47 This measure will add to the ATO's administrative costs which have been estimated for PAYG.

2.48 This measure may provide a cash flow benefit to employers with an estimated FBT liability because they will be able to claim a credit for an instalment in the quarter that it arises rather than on assessment.

Compliance costs

2.49 It is not possible to separately identify the incremental compliance costs of introducing this measure. However, it is likely to be small, especially given that those affected have to comply with PAYG for their other business tax obligations.

Consultation

2.50 Broad exposure of PAYG has already been achieved through release of ANTS. Consultation on the PAYG measures has also been undertaken since the introduction of the PAYG Bill into Parliament.

Conclusion

2.51 The alignment of FBT instalments with other business tax instalment obligations will be completed by enabling employers to claim a credit for earlier instalments where there has been a reduction in the notional tax amount. This credit will be available for offset against other business tax liabilities or where there are excess credits, a refund will be made.

Chapter 3
Consequential amendments relating to collection and recovery rules

Overview

3.1 ***Schedule 3*** to this Bill will make amendments to existing recovery provisions in the ITAA 1936 and other taxation laws. These amendments are consequential upon the introduction of the standardised collection and recovery rules to Part 4-15 in Schedule 1 to the TAA 1953.

3.2 Abbreviations used throughout this Chapter are summarised in the Glossary following the Table of contents for this Explanatory Memorandum.

Summary of the legislation

Purpose of the amendments

3.3 The purpose of the amendments is to complete the transition from the existing recovery provisions throughout the various taxation laws to the standardised collection and recovery rules of Part 4-15 in Schedule 1 to the TAA 1953.

Date of effect

3.4 The amendments contained in this Bill will generally apply from 1 July 2000.

Background to the legislation

3.5 Standardised collection and recovery rules were introduced into Part 4-15 in Schedule 1 to the TAA 1953 in the Tax Administration Bill. These standardised rules enable the Commissioner to collect and recover tax-related liabilities which arise under taxation laws and which remain unpaid after they become due and payable. They consolidate and replace the existing recovery provisions which were scattered throughout the taxation laws.

3.6 The Tax Administration Bill contained consequential amendments which either terminated or repealed some of the existing recovery provisions of the taxation law.

3.7 This Bill includes further consequential amendments to existing recovery provisions to complete the transition to the standardised collection and recovery rules.

Explanation of the amendments

3.8 The amendments contained in ***Schedule 3***:

- amend or repeal references to the existing recovery provisions which will no longer operate on or after 1 July 2000; and

- include references from various recovery provisions in different Acts to the standardised collection and recovery rules of Part 4-15 in Schedule 1 to the TAA 1953.

3.9 The amendments will apply to the ITAA 1936, the ITAA 1997, the TAA 1953 and to other taxation laws. Some of the amendments apply to Acts which are not taxation laws but which, by virtue of specific provisions, apply the existing income tax collection and recovery provisions. For example, the HEFA 1988 and the SAA 1973 apply the existing provisions of Division 1 of Part VI of the ITAA 1936, even though these Acts are not administered by the Commissioner.

3.10 In some instances, savings provisions are required to enable repealed provisions to continue to have effect as appropriate on or after 1 July 2000.

3.11 The amendments fall into several groups and are summarised in Tables 3.1 to 3.3.

Table 3.1: Summary of collection and recovery consequential amendments – ITAA 1936, ITAA 1997 and TAA 1953

Amendment	*Legislative reference*
Signpost from a due and payable provision to standardised collection and recovery rules of Part 4-15 in Schedule 1 to the TAA 1953.	***Items 19, 65, 66, 68***
Terminates the operation of a provision on or after 1 July 2000.	***Items 14 to 18, 32, 33***
Terminates the extended application of a provision to other Acts.	***Items 20 to 28, 36, 37***
Replaces reference to a provision which will not operate on or after 1 July 2000 with the equivalent standardised collection and recovery rule of Part 4-15 in Schedule 1 to the TAA 1953.	***Items 29, 30, 57, 59 to 61***
Removes reference to a provision which will not operate on or after 1 July 2000.	***Items 31, 38, 67***
Repeals a provision or part of a provision.	***Items 56, 58, 63, 64***
Technical amendments to correct drafting errors.	***Items 4, 34, 35, 55***
Savings provisions.	***Item 62***

Table 3.2: Summary of collection and recovery consequential amendments – other Acts not administered by the Commissioner

Amendment	*HEFA 1988*	*SSA 1991*	*SSAA 1999*	*SAA 1973*	*VEA 1986*
Includes reference to standardised collection and recovery rules of Part 4-15 in Schedule 1 to the TAA 1953.	***Items 11 to 13***	***Items 46 to 47***		***Items 49 to 50***	
Includes reference to Subdivision 260-A of standardised collection and recovery rules; replaces 'tax' with 'an amount', to ensure that Subdivision 260-A operates as intended.			***Item 48***		***Items 75 to 77***

Table 3.3: Summary of collection and recovery consequential amendments - other Acts administered by the Commissioner

Amendment	***FAAA 1999***	***LCTA 1999***	***WETA 1999***	***FBTAA 1986***	***PRRTAA 1987***	***SCTAC 1997***	***SCTM 1997***	***TCAA 1955***	***TPTAC 1997***	***TRTAA 1985***	***WTAA 1964***
Signpost from a due and payable provision to standardised collection and recovery rules of Part 4-15 in Schedule 1 to the TAA 1953.		***Items 2 and 3***	***Items 5 and 6***	***Item 10***	***Item 45***	***Item 51***	***Item 54***		***Item 69***		
Includes reference to standardised collection and recovery rules, or to a specific provision of that Part.										***Item 72***	
Includes reference to Subdivision 260-A of standardised collection and recovery rules; and replaces 'tax' with 'an amount', to ensure that Subdivision 260-A operates as intended.	***Item 1***										
Removes reference to a provision which has been repealed.				***Items 7 and 8***	***Items 41 and 43***						
Repeals a provision or part of a provision.					***Item 39***		***Item 52***	***Items 70 and 71***		***Item 73***	***Items 78 and 79***
Savings provisions.				***Item 9***	***Items 40, 42 and 44***		***Item 53***			***Item 74***	

Chapter 4
PAYG withholding – technical and consequential amendments

Overview

4.1 *Schedule 4* to this Bill will make a small number of technical amendments to the provisions introducing the PAYG withholding arrangements. These provisions are contained in Schedule 1 to the PAYG Bill.

4.2 It will also further limit the application of withholding where a supplier does not quote an ABN so that it only applies to supplies all or part of which are made on or after 1 July 2000.

4.3 In addition, it will make consequential amendments to sections 202DH, 202DI and 202DJ of the ITAA 1936 to reflect the new PAYG withholding legislation.

4.4 The abbreviations used in this Chapter are in the Glossary.

4.5 References in this Chapter to regulations are to regulations in the ITR 1936.

Summary of the amendments

Purpose of the amendments

4.6 The amendments will:

- ensure that the new No ABN withholding event in proposed section 12-190 of Schedule 1 to the TAA 1953 only applies to a payment for a supply all or part of which is made on or after 1 July 2000 ***[items 2 and 3]***;

- make consequential amendments to sections 202DH, 202DI and 202DJ of the ITAA 1936 to remove references to regulations which will cease to apply from 1 July 2000. The amendments will replace these with references to equivalent arrangements applying from 1 July 2000 ***[items 4 to 9]***;

- clarify when an entity receiving a dividend, interest or royalty payment on behalf of a foreign resident is required to withhold from the payment ***[items 21, 29 and 32]***;
- incorporate the ETP group certificate rules currently in the ITR 1936 into the new PAYG withholding payment summary provisions. The new payment summary arrangements are to replace all group certificate obligations from 1 July 2000 ***[items 33 and 34]***;
- limit the effect of proposed section 26-25 of the ITAA 1997 to interest or royalty payments from which an amount must be withheld under Subdivision12-F ***[item 14 to 16]***; and
- add 'foreign resident' to the list of basic terms not asterisked in the ITAA 1997 ***[item 13]***.

Date of effect

4.7 The amendments will apply from 1 July 2000. ***[Subclauses 2(1) and (10)]***

Background to the legislation

4.8 The provisions establishing the new PAYG withholding system were introduced on 30 June 1999 in the PAYG Bill. Once enacted, these provisions will be located in Schedule 1 to the TAA 1953.

4.9 Under the PAYG Bill, No ABN withholding will apply to payments made on or after 1 July 2000. An amendment is required to clarify that withholding under the No ABN arrangement will only be required from payments made on or after 1 July 2000 that relate to supplies made in whole or in part on or after 1 July 2000.

4.10 A small number of technical amendments are also needed to other PAYG withholding provisions to clarify their intended operation.

4.11 Consequential amendments are also needed to sections 202DH, 202DI and 202DJ of the ITAA 1936 to remove the references to a TFN statement as mentioned in subregulations 98(8) and 100. The TFN statements referred to in those regulations will become redundant from 1 July 2000 because of the new TFN declaration arrangements being inserted into Division 3 of Part VA of the ITAA 1936. The amendments establishing the new TFN declaration arrangements are in Schedule 5 to the Tax Administration Bill.

Explanation of the amendments

No ABN withholding

4.12 Under proposed section 12-190 in the PAYG Bill, the requirement to withhold where a supplier fails to quote an ABN applies to payments made on or after 1 July 2000. Without some further rule, a business that made supplies and issued invoices without an ABN before 1 July 2000, would have a potential problem where invoices were still unpaid at the end of 30 June 2000. Unless the business issued new invoices containing its ABN, the No ABN event would require amounts to be withheld at the top marginal rate plus the Medicare levy from each payment relating to those invoices.

4.13 To address this problem, the application provision for the PAYG withholding provisions in item 3 of Schedule 1 to the PAYG Bill will be amended. The obligations to withhold will continue to apply generally to payments made on or after 1 July 2000. No ABN withholding will also apply to payments made on or after 1 July 2000, but only if some or all of the supply is made on or after 1 July 2000. The rules about when a supply is made will be the same as those in the GST transitional provisions. ***[Items 2 and 3]***

Example 4.1

> Company A supplies services to Company B on 15 May 2000 and Company A does not give Company B an invoice quoting Company A's ABN. Company B pays the consideration of $1,000 on 15 July 2000. Company B does not have to withhold under the No ABN event because all of the supply was made before 1 July 2000.

ETP payment summaries

4.14 Currently, subregulation 99I(3) requires a person making an ETP which is not entirely rolled over to give both the recipient of the ETP and the Commissioner an 'ETP group certificate' detailing the payment.

4.15 From 1 July 2000 group certificate obligations will be replaced by the new payment summary rules in proposed sections 16-155 to 16-175 in Schedule 1 to the TAA 1953.

4.16 For this reason, the obligation under subregulation 99I(3) to provide an 'ETP group certificate' needs to be incorporated into the new payment summary rules.

4.17 ***New subsections 16-165(1) and (2)*** will achieve this by amending proposed section 16-165 so that it replicates the effect of current subregulations 99I(3) and 99I(4). ***[Item 33]***

4.18 Under ***new subsection 16-165(1)*** an entity making an ETP will be required to provide a payment summary about the ETP to both the recipient and the Commissioner if all or part of the ETP comprises one or more retained amounts mentioned in subsection 27AC(2) of the ITAA 1936. In effect this requires a payment summary to be given for an ETP if it is not entirely rolled over by the recipient. This will maintain the current operation of subregulation 99I(3).

4.19 ***New subsection 16-165(2)*** will maintain the current exemption from this requirement in subregulation 99I(4). However, it will also introduce a new exemption not currently in the law. Under ***new subsection 16-165(3)***, an entity will not need to provide an ETP payment summary if the payment is a death benefit made to a dependant of the deceased. This new exemption will allow the law to reflect the long-standing administrative practice for this type of ETP under which ETP group certificates have not been required by the ATO.

4.20 ***Items 34*** will also amend proposed section 16-170 by adding ***new paragraphs 16-170(1)(f) and 16-170(1)(g)***. These will ensure that where an ETP covered by section 16-165 is paid, the payment summary about that ETP contains all the information required by the Commissioner and is given in the approved form. The addition of these paragraphs will ensure ETP payment summaries are subject to the same rules about form and content currently prescribed in regulations 99J and 99K.

Dividends, interest and royalties received on behalf of foreign residents

4.21 ***Items 21 to 29*** make technical corrections to proposed sections 12-215, 12-250 and 12-285 of the PAYG withholding arrangements. The corrections clarify that these provisions impose the same withholding obligations on an entity that receives a payment of a dividend, interest or royalty on behalf of a foreign resident as are currently imposed by subsections 221YL(2), 221YL(2B) and 221YL(2H) of the ITAA 1936. The corrections clarify that the obligation to withhold from these payments may arise when or after the entity receives the payment depending on when the foreign resident becomes entitled to the payment.

4.22 ***Item 32*** amends note 2 to proposed section 16-5 in the PAYG Bill to reflect the effect of these technical corrections.

Technical improvement to proposed section 26-25 of the ITAA 1997

4.23 Under the existing law, section 221YRA of the ITAA 1936 prevents a taxpayer claiming a deduction for interest or a royalty subject to withholding tax until that tax has been paid. Proposed section 26-25, set out at item 5 of Part 2 to Schedule 1 to the PAYG Bill, is intended to replicate the effect of section 221YRA from 1 July 2000. However, in its present form section 26-25 could have a different effect to section 221YRA. This is because it could apply generally where there is an obligation to withhold from interest or a royalty, rather than only to interest or a royalty subject to withholding tax. For example, the section could apply to a financial institution required to withhold an amount from interest if the investor has not quoted its TFN (proposed section 12-140 of the PAYG withholding arrangements).

4.24 To overcome this problem, subsections 26-25(1) and (2) will be replaced by ***new subsections 26-25(1) and 26-25(2)*** to ensure that the proposed law has the same coverage as existing section 221YRA of the ITAA 1936. ***[Item 14]***

4.25 There will also be a minor wording change to section 26-25 to clarify that the section can prevent a deduction for the *incurring* of an interest or royalty liability that has not yet been paid. ***[Items 15 and 16]***

Consequential amendments to sections 202DH, 202DI and 202DJ

4.26 ***Items 4, 6 and 8*** amend sections 202DH, 202DI and 202DJ of the ITAA 1936 respectively to:

- remove the references to subregulation 98(8) and regulation 100 of the ITAA 1936 which will cease to apply from 1 July 2000; and
- replace those references with references to the new TFN declaration arrangements applying from 1 July 2000. These new arrangements will replace the TFN statements referred to in subregulation 98(8) and regulation 100 of the ITAA 1936 from that date.

Addition of 'foreign resident' to terms not asterisked in the ITAA 1997

4.27 In the ITAA 1997, most defined terms are identified by an asterisk. However, a small number of frequently used terms are not asterisked. 'Foreign resident' is to be added to the list of terms not asterisked which is in subsection 2-15(3) of the ITAA 1997. The term 'foreign resident' is used in a number of the new PAYG withholding provisions. ***[Item 13]***

Collection of SFSS and ABSTUDY debts through PAYG withholding

4.28 This Bill will also make amendments to the PAYG withholding provisions to enable the collection of SFSS and ABSTUDY debts through the PAYG withholding arrangements from 1 July 2000. These amendments are explained in more detail at paragraphs 1.107 to 1.111. ***[Items 18 to 20, 30 and 31]***

Chapter 5
Amendments to the oral rulings for individuals regime

Outline of Chapter

5.1 Amendments contained in ***Schedule 4*** will amend proposed Division 360 of Schedule 1 to the TAA 1953. This Division provides for binding oral advice to be given on income tax matters. The amendments are minor and:

- take account of amendments made to the ITAA 1936 and ITAA 1997 by the *ANTS (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999* and the *ANTS (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; and

- ensure that an oral ruling can only be made by a person who is authorised to perform a function, or exercise a power, of the Commissioner under proposed Division 360. The authorised person must perform the function, or exercise the power, at places approved by the Commissioner.

Detailed explanation of new law

Amendments to Schedule 1 of the TAA 1953

Items 42 to 44

5.2 *Provision being amended*: Proposed subsection 360-60(1), which provides that where the Commissioner delegates his powers and functions to a person, that person must perform the function, or exercise the power, only at places specified in the delegation.

5.3 *Amendment will*: Ensure that an oral ruling can only be made by a person who is authorised to perform a function, or exercise a power, of the Commissioner under proposed Division 360. The authorised person must perform the function, or exercise the power, at places approved by the Commissioner.

5.4 *Reason for amendment*: The amendment will align arrangements for binding oral advice with the standard approach to delegations and authorisations taken in the income tax law.

Items 45 and 46

5.5 *Provision being amended*: Proposed section 360-75, which specifies what exempt income a person may have and still be eligible for binding oral advice.

5.6 *Amendments will*:

- repeal table item 35 which refers to child care assistance and child care rebate as provided for by section 52-120 of the ITAA 1997; and
- insert ***item 53*** which refers to family assistance payments as provided for by section 52-150 of the ITAA 1997.

5.7 *Reason for amendment*: It is necessary to repeal table item 35 as the existing child care assistance and child care rebate payments are replaced by the child care benefit for the 2000-2001 year of income and all later years of income.

5.8 It is necessary to insert ***item 53*** as section 52-150 provides that payments of child care benefit, family tax benefit, maternity allowance and maternity immunisation allowance are exempt from income tax for the 2000-2001 year of income and all later years of income. This amendment will ensure that taxpayers in receipt of these payments, and who have simple tax affairs and simple enquiries, are not excluded from the binding oral advice regime.

Item 47

5.9 *Provision being amended*: Proposed section 360-80, which specifies what deductions a person may have, and still be eligible for binding oral advice.

5.10 *Amendment will*: Insert a provision which includes deductions under section 25-7 of the ITAA 1997 in the basic categories of deductions.

5.11 *Reason for amendment*: This amendment will ensure that taxpayers with simple tax affairs and simple enquiries are not excluded from the binding oral advice regime where they incur a fee or commission for advice about family tax benefit, as mentioned in section 25-7 of the ITAA 1997. This deduction is available for the 2000-2001 year of income and all later years of income.

Item 48

5.12 *Provision being amended*: Proposed section 360-85, which specifies what tax offsets a person may have, and still be eligible for binding oral advice.

5.13 *Amendment will*: Repeal table item 10 which refers to the sole parent rebate as provided for in section 159K of the ITAA 1936.

5.14 *Reason for amendment*: The existing sole parent rebate will be replaced by the family tax benefit and will no longer be available in assessments in relation to the 2000-2001 year of income and all later years of income.