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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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A NEW TAX SYSTEM (TAXATION LAWS AMENDMENT) BILL (No. 1) 1999

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EXPLANATORY MEMORANDUM

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

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# **General outline and financial impact**

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## **Pay as you go (PAYG) system of collecting income tax and other liabilities**

Amends the *Taxation Administration Act 1953* to introduce the new comprehensive pay as you go arrangements. The introduction of the new PAYG arrangements will enable 11 existing payment and reporting systems (pay as you earn (PAYE), prescribed payments system (PPS), reportable payments system (RPS) and other withholding systems) as well as the provisional tax and company instalments systems to be abolished or replaced. The new PAYG arrangements will incorporate the following 2 systems:

- a ***PAYG withholding system*** to replace the PPS and RPS systems and incorporate the main elements of the current PAYE system. The remaining withholding systems which cover various payments (eg. dividends, interest and royalties) will also be standardised and become part of the new PAYG withholding system; and
- a ***PAYG instalments system*** to replace the current provisional tax and company tax instalment systems. Broadly, under this system, taxpayers will make payments, generally on a quarterly basis, that reflect their current trading and investment conditions or are based on last year's tax. Some taxpayers will be able to choose to pay an annual instalment.

The PAYG arrangements represent the most effective, simple and convenient way for most people to meet their annual tax obligations, either through instalments or withholding, as income is earned. They should eliminate large end-of-year tax bills and ensure that Government has the revenue it needs during the year to provide benefits and services.

***Date of effect:*** The withholding system will apply to payments made on or after 1 July 2000. The instalment system will apply for the 2000-2001 income year and later income years.

***Proposal Announced:*** These measures were announced in *Tax reform: not a new tax, a new tax system*.

***Financial impact:*** The estimated revenue from the measures in this Bill is \$210 million in 1999-2000; \$700 million in 2000-2001; \$2.54 billion in 2001-2002 and \$1.39 billion in 2002-2003.

**Compliance cost impact:** A separate Regulation Impact Statement is available for the measures in this Bill.

## **Running balance accounts, general interest charge and related matters**

Amends the *Taxation Administration Act 1953* and other Acts for which the Commissioner has the general administration to give effect to the aligned business tax obligations of *one return and one payment* outlined in the Government's tax reform document. The amendments will:

- extend the application of the current running balance account arrangements so that the Commissioner can establish accounting systems to record business tax debts which reflect administrative practice;
- align the payment dates for fringe benefits tax instalments with the quarterly remittance dates of other business taxes;
- facilitate the lodgment of a single compliance statement and corresponding net payment or refund claim;
- allow the Commissioner to accept voluntary payments from taxpayers on account of future taxation debts; and
- make technical amendments to the existing running balance account and general interest charge measures recently enacted.

**Date of effect:** The amendments will generally apply from 1 July 2000. Technical amendments to the existing arrangements will apply from 1 July 1999.

**Proposal Announced:** These measures were announced in *Tax reform: not a new tax, a new tax system*.

**Financial impact:** Nil.

**Compliance cost impact:** A separate Regulation Impact Statement is available for the measures in this Bill.

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# ***Guide to this Bill and Explanatory Memorandum***

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## **This Bill**

1. This Bill has the following **Schedules** and Parts.
  - Schedule 1** – Pay as you go (PAYG) system for collecting income tax and other liabilities
    - Part 1 – Amendment of the *Taxation Administration Act 1953*
    - Part 2 – Consequential amendment of Acts
  - Schedule 2** – Running balance accounts, general interest charge and related matters
    - Part 1 – Running balance accounts
    - Part 2 – General interest charge
    - Part 3 – Fringe benefits tax
  - Schedule 3** – Consequential amendment of Chapter 6 (the *Dictionary*) of the *Income Tax Assessment Act 1997*
2. Schedule 1 to this Bill introduces the PAYG system into **new Schedule 1** to the *Taxation Administration Act 1953* (TAA 1953). The amendments to support the PAYG system are in the following 3 Parts:
  - Part 2-1** – Introduction to the Pay as you go (PAYG) system
  - Part 2-5** – Pay as you go (PAYG) withholding
  - Part 2-10** – Pay as you go (PAYG) instalments
3. **New Part 2-1** contains a legislative guide for both the PAYG withholding in **new Part 2-5** and the PAYG instalments in **new Part 2-10**. Under PAYG, amounts collected under either the withholding or instalment systems will give rise to credit entitlements which can be applied under Division 3 of Part IIB of the TAA 1953 against tax debts with any excess credits being refunded. [*New sections 6-1, 6-5 and 6-10 in Schedule 1 to the TAA 1953*]
4. The running balance account (RBA) amendments in Schedule 2 to this Bill will build on the recently enacted RBA framework in anticipation

of tax reform. In particular, those amendments will support the provision of a single activity statement to record PAYG and other debts and related payments, including voluntary payments, as well as other administrative arrangements such as the refunding of excess credits referred to above.

## **The Explanatory Memorandum**

5. This Explanatory Memorandum has the following 3 Chapters:

**Chapter 1** – Pay as you go (PAYG) withholding

**Chapter 2** – Pay as you go (PAYG) instalments

**Chapter 3** – Running balance accounts, general interest charge and related matters

## **Location and interpretation of PAYG provisions**

6. As described above, the amendments to support the new PAYG system will be in **new Schedule 1** to the TAA 1953. This will be the first step towards putting the collection, recovery and administration rules for all the Acts administered by the Commissioner of Taxation (the Commissioner) in one place.

7. **New Schedule 1** to the TAA 1953 containing the PAYG provisions is intended to work together with the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Income Tax Assessment Act 1936* (ITAA 1936) as one body of law until the rewrite of the ITAA 1936 is completed. To achieve this outcome, a **new paragraph (c)** will be included in the definitions of ‘this Act’ in subsection 6(1) of the ITAA 1936 and subsection 995-1(1) of the ITAA 1997 to extend those definitions to include **new Schedule 1** containing the PAYG provisions. [*Item 10 of Part 2 in Schedule 1 to this Bill and item 63 of Schedule 3 to this Bill*]

8. To further assist in interpreting the new PAYG provisions, **item 1 of Part 1 of Schedule 1** to this Bill will insert **new section 3AA** in the TAA 1953. That section will provide that:

- **new Schedule 1** to the TAA 1953 containing the PAYG provisions has legal effect [*subsection 3AA(1)*];
- expressions used throughout the PAYG provisions will have the same meaning as in the ITAA 1997 [*subsection 3AA(2)*];
- the rules in Division 950 of the ITAA 1997 for interpreting that Act will apply in interpreting the PAYG provisions [*subsection 3AA(3)*];



- section 264B of the ITAA 1936, which contains rules regarding signatures and electronic signatures for notices given to the Commissioner will apply to PAYG provisions [subsection 3AA(4)].

9. Subsection 6(1AA) of the ITAA 1936 currently applies so that a definition giving an expression a particular meaning can only have effect for the ITAA 1997 where the definition is provided in the ITAA 1997 and adopts the ITAA 1936 meaning. Subsection 995-1(2) of the ITAA 1997 has similar application in relation to ITAA 1997 definitions having effect for the purposes of the ITAA 1936.

10. Subsection 6(1AA) of the ITAA 1936 will be amended to expand its current application by ensuring that defined terms in the ITAA 1936 do not also have effect for the purposes of the new PAYG provisions unless those terms are provided for in the ITAA 1997 or those provisions and adopt the ITAA 1936 meaning. [Item 9 of Part 2 in Schedule 1 to this Bill]

11. Defined terms used throughout this Bill are asterisked and listed in the Dictionary in section 995-1 of the ITAA 1997. New definitions are also being added to the Dictionary through Schedule 3 to this Bill.

## Terms

12. The following terms and abbreviations are used throughout the Explanatory Memorandum.

Abbreviation	Description
ABN	Australian Business Number
ABNA 1999	<i>A New Tax System (Australian Business Number) Act 1999</i>
ANTS	Government's Tax Reform Document: <i>Tax Reform: not a new tax, a new tax system</i>
DIR	Dividend, interest and royalty
ETP	Eligible termination payment
FBT	Fringe benefits tax
FBTAA 1986	<i>Fringe Benefits Tax Assessment Act 1986</i>
FMD	Farm management deposit
GIC	General interest charge
GST	Goods and Services Tax
GSTA 1999	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
HECS	Higher Education Contribution Scheme
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MWT	Mining withholding tax
NRP	Natural resource payments
PAYE	Pay as you earn
PAYG	Pay as you go
PPS	Prescribed payments system
RBA	Running balance account

<b>Abbreviation</b>	<b>Description</b>
RPS	Reportable payments system
TAA 1953	<i>Taxation Administration Act 1953</i>
TFN	Tax file number
The Commissioner	The Commissioner of Taxation
TLAA3 1999	<i>Taxation Laws Amendment Act (No. 3) 1999</i>
TLIP	Taxation Law Improvement Project

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# Chapter 1

## *Pay as you go (PAYG) withholding*

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### Overview

1.1 **Schedule 1** to this Bill will amend *the Income Tax Assessment Act 1936*, the *Taxation Administration Act 1953* and various other Acts for which the Commissioner of Taxation has general administration. The amendments will establish a PAYG withholding system as part of the new comprehensive PAYG arrangements by:

- closing down the PAYE system, prescribed payments system and reportable payments system and ensuring that withholding continues to apply to certain individuals (eg. employees and office holders) currently covered by the PAYE system;
- introducing 3 new cases where withholding is to apply (new withholding events);
- removing the current withholding arrangements for withdrawals of farm management deposits as those deposits will be included in the new *PAYG instalments system*;
- including the remaining withholding events in the new PAYG withholding system;
- establishing a standardised group of withholding machinery rules to support all withholding events; and
- making consequential amendments to other Acts (eg. *Fringe Benefits Tax Assessment Act 1986*) to enable the new PAYG withholding system to operate from 1 July 2000 within the overall framework of the reformed tax system.

## **Explanation of the amendments**

### **Summary of the amendments**

#### **Purpose of the amendments**

1.2 The amendments will give effect to the Government's Tax Reform policy by introducing a PAYG withholding system as part of the new PAYG arrangements.

1.3 The amendments will provide more certainty to industry and their workers about which payments made for work are to be subject to withholding at source. They provide the Government's response to industry concerns that there should be a withholding from payments for work which does not automatically attract the employer and employee labels that are part of the existing PAYE system.

1.4 The amendments also standardise and simplify the withholding machinery rules. Each of the existing 9 withholding systems contains its own set of machinery rules about matters such as remitting and reporting amounts withheld. The amendments standardise and simplify these rules by replacing them with a single set of common machinery rules which will support both current and new withholding arrangements.

1.5 The amendments further simplify the law by writing the new PAYG withholding system, according to TLIP drafting methods.

1.6 The amendments will also achieve flexibility and will be more readily adaptable to changes in our evolving economic circumstances than the current withholding systems.

1.7 The amendments in this Bill do not include recovery, procedural and evidentiary provisions to facilitate the Commissioner recovering debts under the new PAYG withholding system. These amendments will be introduced in a later Bill as generic recovery rules for those debts and debts arising under other Acts administered by the Commissioner. That Bill will also contain amendments detailing the reporting requirements of withholders to the Commissioner. The amendments in this Bill only deal with the reporting requirements of withholders to payees.

#### **Date of effect**

1.8 The amendments to introduce the new PAYG withholding system will apply to payments made on or after 1 July 2000. *[Item 3 of Part 1 of Schedule 1]*

1.9 The PAYE, PPS, RPS and other existing withholding systems will not apply to payments made on or after 1 July 2000. *[Items 11 to 14, 22 to 25, 30 to 47 in Part 2 of Schedule 1]*

## **Background to the legislation**

1.10 The income tax law presently has 9 systems under which amounts are withheld from income payments and remitted to the Commissioner. The systems are:

- the PAYE system, PPS and RPS;
- withholding where no TFN is quoted on investments;
- withholding from natural resource payments to non-residents;
- withholding from certain withdrawals from Australian Film Industry Trust Fund Accounts;
- withholding from repaid FMDs;
- the collection of withholding tax which applies to dividends, interest and royalties paid to non-residents; and
- the collection of mining withholding tax which applies to payments for mining on Aboriginal land.

1.11 Except for the 2 withholding tax systems, the amounts withheld from payments of income are not a final tax liability. They are generally applied as a credit against income tax payable for the income year in which the income is received.

### ***Evolution of current withholding and reporting systems***

1.12 In the past, as the need for a new withholding or reporting system has arisen, a separate legislative structure has been created and added to the existing withholding arrangements in Part VI of the ITAA 1936. Each new withholding system has been allocated its own Division or Subdivision within that Part.

1.13 Recent examples of this are the PPS, RPS and FMD scheme. The practice has been that each new system added to Part VI of the ITAA 1936 has included its own discrete set of machinery rules. These rules serve a similar or identical purpose to machinery rules already contained in all or many of the pre-existing withholding systems.

1.14 For example, in addition to containing distinct rules defining when a withholding is to occur and setting out the applicable rate of withholding, the existing systems have their own supporting machinery rules about matters such as:

- variations in the amount to be withheld from payments and remitted to the Commissioner;
- the timing of remittances;
- evidentiary matters in relation to recovery of unremitted amounts;
- allowing credits for amounts withheld; and
- recovery of amounts by the Commissioner.

1.15 As a result of this practice, a high degree of unnecessary repetition has been progressively introduced into the law.

1.16 The new withholding amendments will replace this repetition with a single set of common machinery rules to be shared by current and future withholding arrangements.

### ***Inefficient and outdated withholding arrangements***

1.17 As explained in the paragraphs below, there is a need to update the 3 current withholding and reporting systems (PAYE, PPS and RPS) which are intended to cover withholding from certain payments for work or services.

#### *The PAYE system*

1.18 The core withholding system – the PAYE system – relies on ideas of salary or wages, employee and employer to define its scope. The definition of salary or wages extends the scope of the PAYE system well beyond salary or wages paid to common law employees.

1.19 For example, payments made under contracts which are wholly or principally (more than 50%) for the labour of a payee, who is not a common law employee of the payer, are defined to be salary or wages under paragraph (a) of the definition of salary and wages in subsection 221A(1) of the ITAA 1936. Further, the payers and recipients of such payments are labelled employers and employees for PAYE purposes.

1.20 References to contracts wholly or principally for labour in paragraph (a) were intended to extend the scope of the PAYE system beyond traditional employer/employee arrangements to take in some independent contractors who principally provide their own labour to meet obligations under a contract.

Problems with paragraph (a) of the definition of salary or wages

1.21 Paragraph (a) has been in the law since 1941. Since then, there have been a number of cases<sup>1</sup> where the Commissioner has been unsuccessful in arguing that the paragraph applies to individual contractors.

1.22 Amendments were made in 1983 to clarify that a contract wholly or principally for labour for PAYE purposes includes the:

- performance of labour even though a right existed under the contract to delegate the work (paragraph 221A(2)(b) of the ITAA 1936); and
- rendering of services, or performance as a musician, entertainer or other person of creative talent (paragraph 221A(2)(c) of the ITAA 1936).

1.23 In *World Book (Australia) Pty Ltd v FC of T* (1992) 27 NSWLR 377, the Supreme Court of NSW Court of Appeal viewed contract arrangements involving an encyclopaedia salesperson as a contract to produce a result, rather than a contract wholly or principally for the labour of the salesperson. This meant the payments to the salesperson were not subject to PAYE.

1.24 The potential application of paragraph (a) is narrow and there is uncertainty as to what payments it covers. The concepts underlying paragraph (a) will not be part of the new PAYG withholding system. The new system will contain more flexible withholding arrangements to cover payments for work or services.

Other payments treated as salary or wages

1.25 The current definition of salary or wages in subsection 221A(1) of the ITAA 1936 also deems the recipients of many other payments to be employees for PAYE withholding purposes. These payments include:

- remuneration to company directors and statutory office holders;
- pensions, annuities and eligible termination payments;
- Commonwealth education or training payments; and
- certain compensation, sickness or accident payments.

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<sup>1</sup> *Neale v Atlas Products (Vic) Pty Ltd* (1955) 94 CLR 419, *Deputy Commissioner of Taxation v Bolwell* (1967) 1 ATR 862; *World Book (Australia) Pty Ltd v FC of T* 27 NSWLR 377; *Filsell v Top Notch Fashions Pty Ltd* 63 SASR 513.

1.26 The new PAYG withholding system will avoid the misuse of common terms so that an employer or employee label will only apply to employers and employees at common law. The system will continue to cover the above payments and refer to them as they are rather than defining them as salary or wages. In general, where the new PAYG withholding system refers to the payments it covers, these will be referred to as “withholding events”.

*The PPS and RPS systems*

1.27 The PPS and RPS systems currently apply to work or services in certain prescribed industries and have been essential in maintaining the integrity of the current tax system in relation to income from work. However, the Government recognises that both systems add significant compliance costs in industries where they apply and would impede a smooth transition to a GST.

1.28 The PPS and RPS systems apply to business transactions and any interaction between these systems and the proposed GST would complicate those transactions, if a withholding obligation continued to apply.

1.29 These systems will not apply to payments from 1 July 2000. Taxpayers currently covered by PPS or RPS will generally meet their tax obligations by paying quarterly instalments of income tax under the PAYG instalment arrangements, unless they are covered by one of the 3 withholding events for work or services which have no current equivalent.

1.30 The new PAYG withholding system will contain, as one of 3 new cases where withholding applies, a mechanism whereby payments for work or services can be specified in regulations as being subject to withholding. Only one category of these payments – a payment to a worker from a labour hire firm, for work performed for a client of the labour hire firm – will initially be in the PAYG law. New categories will be added by regulation, but this will only occur after appropriate consultation.

1.31 The other 2 new cases when withholding will apply will cover:

- payments for work or services where businesses and workers voluntarily agree that withholding will occur from payments made; and
- payments requested on an invoice that does not include quotation of an ABN.

1.32 All 3 cases are explained in the *Explanation of Amendments* below. The new arrangements involving voluntary agreements are similar to those recently introduced into the PPS.



### ***Anticipating tax reform***

1.33 From 1 July 1998, new Division 1AAA in Part VI of the ITAA 1936 has combined the PAYE, PPS and RPS remittances for large, medium and small remitters. Recent amendments to Division 1AAA ensure that, from 1 July 1999, medium and small remitters make their remittances not later than the 21<sup>st</sup> day after the month (for medium remitters) or quarter (for small remitters) in which amounts are withheld.

1.34 This alignment of dates to the 21<sup>st</sup> of a month was in anticipation of the new Tax Reform arrangements under which most businesses will complete a single compliance or activity statement by the 21<sup>st</sup> of each quarter for the purposes of meeting their various tax obligations.

### ***Standardisation and removing complexity***

1.35 Although some of the machinery rules referred to above are reasonably standard across the 9 withholding systems there are differences in other rules, such as the variation of the amount of instalments and when amounts must be remitted.

1.36 As part of the current review of business taxation, Chapter 3 of the Review of Business Taxation discussion paper *A Strong Foundation*, released in November 1998, explored the problem of complexity in the current taxation law. As a case study, the discussion tracked the respective payments in 8 of the 9 withholding systems through the various stages leading to remittance to the Commissioner. Features such as variations, exemptions and refunds of amounts withheld were examined.

1.37 The discussion concluded that:

*If a single set of rules had been uniformly applied, rather than each of these systems of withholding having a separate set of rules designed for them, the resultant system would be far simpler.....*

*A standardised withholding system could leave in place different withholding bases. If they serve separate policy needs, they will still do so once collection, variation, exemption and refund are simplified into a single system.*

1.38 The amendments to achieve that outcome through one PAYG withholding system are explained below.

## **Explanation of the Amendments**

1.39 The main objectives of the PAYG withholding amendments in this Bill are to:

- introduce 3 new withholding events to provide more certainty about which payments made by business for work or services are to be subject to withholding;
- standardise and simplify the elements of the current withholding arrangements which are to become part of the new PAYG withholding system from 1 July 2000; and
- make the necessary transitional and consequential amendments to ensure that the new PAYG withholding system interacts with other legislation and applies as intended.

1.40 This *Explanation of the Amendments* is in the following 4 Sections:

- Section 1** New cases where withholding is required
- Section 2** The new PAYG withholding system
- Section 3** Consequential amendments and application provisions
- Section 4** Finding tables

1.41 Where not specifically stated, legislative references throughout this Chapter (eg. new Divisions, sections, subsections and paragraphs) in relation to the new PAYG withholding system are references to provisions in *new Part 2-5 of Schedule 1* to the TAA 1953.

## **SECTION 1 NEW CASES WHERE WITHHOLDING IS REQUIRED**

1.42 As explained in the *Overview* and *Background* to this Chapter, existing withholding systems will be either:

- closed down from 1 July 2000 (PAYE, PPS, RPS);
- removed from the existing withholding provisions because they are no longer operative (Film Industry Trust Accounts) or because they are being moved to the new *PAYG instalments system* (FMDs); or
- included in the new PAYG withholding system. This category will include payments under existing withholding systems and payments to employees and other individuals (eg. office holders) within the existing PAYE arrangements.

1.43 The new PAYG withholding system will introduce 3 new withholding cases which will cover payments:

- for work or services under labour hire arrangements or as specified in regulations [*new section 12-60*];
- for work or services where an entity and an individual agree that withholding will occur [*new section 12-55*]; and
- for a supply (for GST purposes) made by the payee where the payee's ABN is not quoted on an invoice relating to the supply [*new section 12-190*].

1.44 Further, the existing TFN withholding event for investments where a payee's TFN is not quoted will also be modified to ensure that withholding is not required where the payee's TFN or ABN is quoted. [*New sections 12-140 and 12-155*]

1.45 These 3 new withholding events and the extension to the current rules covering the quotation of TFNs in relation to certain investments are explained in the following paragraphs.

### **Payment under a labour hire arrangement, or specified by regulations**

1.46 This new event provides for withholding by a 'labour hire firm' from payments it makes to individuals which are for work or services and made under a labour hire arrangement or specified in regulations. Specifying payments in regulations will provide flexibility to extend the categories of payments for work or services to be subject to withholding under this event. [*New section 12-60*]

1.47 Any new categories of payments to be added by regulation under this new withholding event will only occur after appropriate consultation.

1.48 A labour hire arrangement is described, for withholding purposes, in *new paragraph 12-60(a)*, as one where an end user of labour engages an individual to perform work or services through an intermediary (a labour hire firm). In practice, the labour hire firm contracts with the individual and pays the individual to provide the end user with work or services.

1.49 This new event, which only applies when the individual is not an employee of either the labour hire firm or the end user, will ensure that withholding specifically applies to these arrangements. The event will address the current uncertainty which exists in relation to applying the current withholding system to labour hire arrangements. The general description of the payment by reference to the nature of the arrangement, rather than by specifically referring to labour hire arrangements, ensures that the operation of this event will not be avoided through argument that a labour hire firm as such, is not a party to the arrangement.

1.50 Withholding will not be required where the whole of the payment is exempt income of the recipient. This is because no tax is payable by the individual on these amounts. *[New subsection 12-1(1)]*

### **Voluntary agreement to withhold**

1.51 This new event will provide added flexibility to meet the needs of businesses and their individual workers. The event covers arrangements, which wholly or partly involve the performance of work or services and which are not otherwise in the new withholding system. *[New paragraphs 12-55(1)(a) and (b)]*

1.52 Under this event, entities and individuals must agree that withholding will be made from payments. The agreement must be in an approved form as specified in section 995-1 of the ITAA 1997. The recipient of the payment must also have an ABN. This requirement will ensure that payees, who would otherwise be covered by the new instalment system as business taxpayers, will be covered by withholding. *[Item 9 of Schedule 3; new paragraphs 12-55(1)(c) and (d)]*

1.53 Both parties to the agreement are required to keep a copy of the agreement while the agreement is in force and for 5 years after the last payment is made under the agreement. To reduce compliance costs, there is no requirement for the agreement to be lodged with the Commissioner. The 5 year record keeping requirement is consistent with the general record keeping requirements, in section 262A of the ITAA 1936. *[New subsection 12-55(2)]*

1.54 Because of the voluntary nature of this withholding event, the new provision allows either party to terminate the agreement by giving notice to the other party in writing. *[New subsection 12-55(3)]*

1.55 The general exception provision for exempt income applies to this withholding event. That is, the business making the payment will not be required to withhold an amount where the whole of the payment is exempt income of the individual worker. *[New subsection 12-1(1)]*

### ***Interaction with the GSTA 1999***

1.56 Payments for work or services which are covered under the new PAYG withholding system will generally be excluded from the definition of ***enterprise*** in subsection 9-20(2) of the GSTA 1999. Consequential amendments, which are explained in **Section 3** of this Chapter, are being made to the GSTA 1999 to generally exclude payments for work or services under the new PAYG withholding system. *[Items 50 to 52 in Part 2 of Schedule 1]*

1.57 Payments under ***new section 12-55*** will generally be excluded from the GSTA 1999 through consequential amendments (also explained in **Section 3**) to the definition of ***supply***. The exception to this general rule

will be situations where the payer is not entitled to an input tax credit for the supply. [Items 53, 54 and 64 in Part 2 of Schedule 1]

## No ABN withholding event

1.58 This new withholding event provides that a payer must withhold from a payment for a supply in the course of the recipient's enterprise where an invoice or some other document relating to the supply does not quote the recipient's ABN. The terms *supply* and *enterprise* are as defined in the GSTA 1999. [New subsections 12-190(1) and (2)]

1.59 This new withholding event is a compliance measure to ensure that entities, especially those who are not required to be registered for GST, do not avoid their taxation obligations by requesting cash payments.

1.60 Unlike the new withholding events discussed above and the current PAYE coverage which will become part of the new PAYG withholding system, this event can apply to payments made to an entity (eg. an individual, a partnership, company or trust). The event will also apply where a payer has reasonable grounds to believe that the recipient is using a number that is not the recipient's ABN. [New paragraph 12-190(3)(c)]

1.61 Businesses will generally provide an ABN on an invoice. Failure to provide an ABN will indicate that the payee is not in business and is more appropriately covered by the PAYG withholding system. These payees will be subject to withholding at the top marginal rate and Medicare levy (currently 48.5%).

1.62 This new rule, like the new labour hire arrangement rule, will address current uncertainty for businesses in deciding whether the service provider is a business, an employee or an independent contractor. This uncertainty as to whether or not withholding should apply has caused considerable difficulty in correctly applying the current law.

1.63 The exceptions to this event are generally consistent with those exceptions for the other withholding events, operating where the payment is not taxable in the hands of the payee. There are also a number of specific exclusions to this event. Withholding will not be required where the payment does not exceed the threshold below which a *tax invoice* cannot be required. This threshold is \$50 or a higher amount specified in the GST regulations for the purposes of subsection 29-80(1) of the GSTA 1999. In addition, the event will not apply where the *no TFN on investments* event applies, as the no TFN event similarly achieves the compliance assurance outcome that is desired. [New paragraphs 12-190(4)(a) and (b) and subsection 12-190(5)]

1.64 In order to complement the ABNA 1999, withholding under this event will not be required where the supply involves activities done by a member of a local governing body as these persons are not eligible for an ABN under the ABNA 1999. [New paragraph 12-190(4)(c)]

1.65 Also, withholding is not required under the *no ABN* event where the payee is an individual and gives a statement that the supply is:

- an activity done as a private recreational pursuit or hobby; or
- wholly of a private or domestic nature for the payee.

1.66 This rule supplements the exclusion of payments that are wholly of a private or domestic nature in order to exclude from withholding those amounts that are not subject to income tax. However the exclusion will not apply if the payer has reasonable grounds to believe that the statement is false or misleading in a material particular (ie. it is intended only to avoid withholding). [*New paragraph 12-190(4)(a) and subsection 12-190(6)*]

### ***Extension to existing TFN withholding for investments – no ABN***

1.67 In the current law, Part VA and Division 3B of Part VI of the ITAA 1936 form a withholding system under which an investor may quote their TFN to their investment body in relation to certain investments which are described in Part VA. The current law requires that, where a TFN is not quoted, an amount is to be withheld at the top marginal rate plus Medicare levy (currently 48.5%) from any income on the investment.

1.68 ***New sections 12-140 and 12-145*** carries forward this requirement to withhold to the PAYG withholding system. However, recognising that some investments are held in a business capacity, the event extends the current requirements so that a business may quote either an ABN or a TFN to avoid withholding.

1.69 This extension is achieved through ***new section 12-155*** which provides an exception to the requirement to withhold an amount under ***new sections 12-140 and 12-145*** if the investment is made in the course or furtherance of an enterprise carried on in Australia, and the investor has quoted their ABN to the investment body. A sole trader may only quote their ABN in relation to their business bank accounts (ie. where the income from the investment will be properly returned as part of business receipts), and not in relation to their personal accounts.

## **SECTION 2 THE NEW PAYG WITHHOLDING SYSTEM**

1.70 The explanation for the amendments to introduce the new PAYG withholding system is provided in the following Parts:

**Part 1** Structure, Scope, Rates of Withholding, Interpretation, Finding Tables

**Part 2** Machinery Provisions to support PAYG withholding system

**Part 3** Transitional Arrangements for 2000-2001 financial year

**Part 4** Changes to current arrangements and terminology

**Part 5** Crediting rules, reviewable decisions, payment summaries, offences.

**PART 1                    STRUCTURE, SCOPE, RATES OF WITHHOLDING, INTERPRETATION, FINDING TABLES**

**Structure**

1.71     The various elements of the new PAYG withholding system are in the following Divisions in *New Part 2-5 of Schedule 1* to the TAA 1953:

<i>Division – Subdivision</i>	<i>Element</i>
10	Guide to Part 2-5
11	Preliminary matters
12	Payments from which amounts must be withheld
12-A	General Rules
12-B	Payments for work and services
12-C	Retirement payments, eligible termination payments and annuities
12-D	Benefit and compensation payments
12-E	Payments where TFN or ABN not quoted
12-F	Dividend, interest and royalty payments
12-G	Payments in respect of mining on Aboriginal land, and natural resources
14	Non-cash benefits for which amounts must be paid to the Commissioner
16	Payer’s obligations and rights
16-A	To withhold
16-B	To pay withheld amounts to the Commissioner
16-C	To provide information
16-D	Additional rights and obligations of entity that makes a dividend, interest or royalty payment
18	Recipient’s entitlements and obligations
18-A	Crediting withheld amounts against liability for income tax, withholding tax or mining withholding tax
18-B	Refund of certain withheld amounts
18-C	Recipient’s obligations

<i>Division – Subdivision</i>	<i>Element</i>
20	Other matters
20-A	How this Part applies to certain entities
20-B	Offences
20-C	Commissioner’s power to obtain information and evidence
20-D	Review of decisions

1.72 ***New Division 12*** groups the different withholding events for the purposes of the withholding provisions and to assist the reader in interpreting those provisions. These groupings are not intended to have any implications for other areas of the law. For example, they are not intended to have any implications for determining whether a benefit is taxable under the fringe benefits tax law.

1.73 The new standardised legislative provisions supporting the PAYG withholding system are expressed differently to the numerous provisions they replace. Subject to certain exceptions discussed later in this Chapter, this different expression is not intended to change the application or effect of the current law.

### **Scope of new PAYG withholding system**

1.74 As discussed in the *Background to the legislation*, the scope of the new PAYG withholding system as described in ***new Division 12*** will include the new withholding events discussed above as well as existing withholding arrangements for:

- most individuals (eg. employees and office holders) currently covered by the PAYE system; [***new Subdivisions 12-A, 12-B, 12-C and 12-D***]
- the collection of withholding tax from payments of dividends, interest or royalties to non-residents [***new Subdivision 12-F***];
- the collection of mining withholding tax [***new section 12-320***];
- withholding from natural resource payments to non-residents [***new section 12-325***]; and
- withholding where a TFN has not been quoted to an investment body [***new sections 12-140 and 12-145***].

1.75 The scope of the new PAYG withholding system covers 24 different withholding events which are summarised in the table in ***new section 10-5***.



## Rates of Withholding

1.76 *New section 16-10* provides that an amount to be withheld from a payment under the new PAYG withholding system is to be worked out under the regulations. The only exception is for natural resource payments to non-residents where the rate of withholding is set by the Commissioner. Amounts to be withheld from payments for work or services in *new Subdivision 12-B*, including payments under voluntary agreements and labour hire arrangements, will be determined like the current PAYE amounts (ie. progressive rather than flat rates) having regard to marginal tax rates. [*New section 12-325*]

1.77 Under *new section 16-15*, variations to the amounts to be withheld will be possible where ‘special circumstances’ exist. Special circumstances will usually only arise where the payee’s final liability for all income types for that year does not justify the standard withholding rate.

## Interpretation

1.78 There are matters and rules which provide interpretative support to *new Subdivisions 12-B to 12-G* which describe the withholding events in the new PAYG withholding system.

### *Preliminary matters – constructive payments*

1.79 For the purposes of PAYG withholding, *new subsection 11-5(1)* provides that an entity will be taken to have paid an amount to another if the amount is applied or dealt with on the other’s behalf, or as the other directs. For example, an employer will be treated as paying an amount to an employee if the employer, at the employee’s direction, pays the amount to a health fund to meet the employee’s liability to pay health insurance contributions to the fund.

1.80 Four existing withholding systems have an express rule to this effect. The other withholding systems are applied as containing a constructive payment principle. Consequently, there will be no change in administrative practice.

1.81 *New subsection 11-5(2)* provides a complementary rule which will ensure that an amount is taken to be payable by an entity to another if the entity is required to apply or deal with it in any way on the other’s behalf, or as the other directs. The provision is only relevant to rules depending on an amount being payable. For example, a lender’s obligation under *new section 12-260* to notify a borrower where the borrower pays interest in Australia that is derived by the lender in carrying on business through a permanent establishment outside Australia.

1.82 The provision does not result in any obligations to withhold because those obligations depend on an amount being paid, or in one case present entitlement to a share of income.

1.83 *New section 11-5* does not exclude any principles of constructive payment or entitlement which extend beyond the rules in the section.

***General rules***

1.84 *New Subdivision 12-A* contains general rules on non-cash benefits, priority of events, expressing amounts in Australian currency and general exceptions which are discussed below.

*Non-cash benefits and priority rules*

1.85 *New section 12-10* provides that *new Division 12* does not extend to non-cash benefits as these benefits are afforded special treatment in *new Division 14*.

1.86 *New subsection 12-5(1)* makes clear that if the particular circumstances of a payment result in more than one withholding event applying to that payment, only one amount is to be withheld. The general priority rule, which is in *new subsection 12-5(2)*, provides that the amount should be withheld under the provision which is most specific to the circumstances of the payment. This general rule is subject to specific priority rules contained in the table in *new subsection 12-5(2)*.

1.87 In addition to the general priority rules explained above, other sections have self-contained priority rules. For example, *new subsection 12-190(5)* makes clear that *new section 12-140* has priority over the *no ABN* event. It also ensures that if the quotation of a TFN prevents *new section 12-140* from applying to a payment, then the *no ABN* event cannot then apply to that payment.

1.88 Another example of a self-contained priority rule is in *new paragraph 12-55(1)(b)* which provides that withholding under the voluntary agreement event can only take place if the relevant payment is not subject to any other withholding event.

1.89 Further, if a payment is subject to dividend, interest and royalty (DIR) withholding, there can be no withholding from the payment under most of the new withholding events. This is because section 128D of the ITAA 1936 and subsection 6-20(2) of the ITAA 1997 apply so that income subject to DIR withholding is exempt income. Most of the withholding events (eg. a payment for a supply where the payee does not quote its ABN) do not apply to exempt income.

*General exceptions and expressing amounts in Australian currency*

1.90 *New section 12-1* summarises the withholding events where withholding is not required in relation to exempt income, payments of living-away-from-home allowance and expense payment benefits under the FBTA 1986.

1.91 The exception for expense payment benefits clarifies that reimbursements of the expenses of employees, office holders and directors are not subject to withholding. They may be taxable under Division 5 (expense payment fringe benefits) of Part III of the FBTAA 1986. The exception does not apply to payments for car expenses based on distance travelled (commonly called ‘cents per kilometre reimbursements’). Those payments are exempt from fringe benefits tax but are assessable income under paragraph 26(eaa) of the ITAA 1936 or as ordinary income.

1.92 The existing withholding provisions have no specific rules about foreign currency transactions. Furthermore, it is unclear how the general provision about foreign currency transactions in section 20 of the ITAA 1936 applies to obligations under the withholding provisions.

1.93 *New section 12-15* clarifies that payments in a foreign currency must be expressed in Australian dollars based on the exchange rate when the amount must be withheld. Thus, currency fluctuations that happen after the time when the amount must be withheld do not affect the amount which the withholder must pay to the Commissioner.

## Finding tables

1.94 Detailed finding tables are located in **Section 4**. These finding tables relate the rewritten standardised provisions in the new law to the current provisions in the withholding systems which will form part of the new PAYG withholding system. The finding tables should also assist in understanding the basis for new provisions which are not given separate explanations in this Chapter.

## **PART 2                    MACHINERY PROVISIONS TO SUPPORT PAYG WITHHOLDING SYSTEM**

1.95 This Part provides background and some explanation for the machinery provisions being used to support the new PAYG withholding system. Some provisions are common to all withholding systems while others only apply to some systems. Finally, there are provisions adopted (eg. status of withholder) which currently apply for remittances of withheld amounts under PAYE, PPS and RPS and which will be used for all remittances.

### **Machinery provisions common to current system**

1.96 Many of the current machinery rules about matters such as paying withheld amounts to the Commissioner and advising the Commissioner of withholding liabilities are similar if not identical under each of the current withholding arrangements.

1.97 Rather than repeating these rules for each withholding event, the new law contains a single standardised version of each rule which can be shared by:

- the existing withholding arrangements which will continue from 1 July 2000;
- the withholding events which will apply to most people currently within the PAYE arrangements; and
- the 3 new withholding events.

1.98 The introduction of these generic machinery rules enables the new law to avoid much of the repetition and complexity contained in the existing law. The generic nature of these rules will also enable them to support any future withholding events.

1.99 **Table A** below sets out the machinery rules that are currently contained in all the existing withholding arrangements which will continue to operate after 1 July 2000 as part of the new PAYG withholding system. The existing provisions and the new standardised provision, are also referred to in the Table.

**Table A**

Topic	Current Provisions in ITAA 1936				New Standard Provision
	DIR	No TFN and NRP	MWT	PAYE	
Failure to withhold – offence	221YL(4A) & (4B)	221YHZC(1A) & (2)	221ZB(2) & (3)	221C(1A)	16-25
Failure to withhold – penalty amount	221YQ(1)	221YHZD(2)	221ZD(1)	221EAA(1)	16-30, 16-35, 16-40 and 16-50
Payer must pay withheld amounts to ATO	221YN(1)	221YHZD(1A)	221ZC(1)	220AAE(1) 220AAM(1) 220AAR(1)	16-70
Failure to pay on time	221YN(4)	221YHZD(2)	221ZC(5)	220AAE(3) 220AAM(3) 220AAR(3)	16-80
Duty to notify of amount withheld	221YN(2)	221YHZCA(1)	221ZC(2)	220AAGA(1) 220AAOA(1) 220AATA(1)	16-150(1)
Failure to notify penalty	221YN(2A)	221YHZCA(2)	221ZC(2A)	220AAGA(2) 220AAOA(2) 220AATA(2)	16-150(2)

## Machinery provisions NOT common to current systems

1.100 There are a number of other situations where machinery provisions are:

- present in some but not all of the existing withholding arrangements; or
- present in all of those arrangements but different for each one.

In order to achieve a PAYG withholding system which applies consistently to all withheld amounts, a standardised provision has also been adopted for those situations.

1.101 **Table B** below summarises the majority of situations, the current provisions and the proposed standardised provision.

**Table B**

Topic	Current Provisions in ITAA 1936				New Standard Provision
	DIR	No TFN &/or NRP	MWT	PAYE	
Time of withholding	221YL(1), (2), (2A), (2B), (2G), (2H)	221YHZA(1) & (1A)	221ZB(1)	221C(1A)	16-5
How much to withhold	As above	221YHZC(1C) & 221YHZB(1)	221ZB(1)	221C(1)	16-10
Variation of amounts to be withheld	221YM(b)	No provision	No provision	221D	16-15
How amounts must be paid to the Commissioner	No provision	No provision	No provision	220AAE 220AAN 220AAS	16-85
Application to partnerships	No provision	221YHZN	No provision	220AAZD	20-5
Application to unincorporated companies	No provision	No provision	No provision	220AAZE	20-10
Joinder of Charges	221YY	No provision	221ZL	221W	20-40
Payer protected from civil action	221YV	221YHZH	221ZH	No provision	16-20
Information gathering powers	No provision	221YHZO	No provision	221YAA	20-60
Review of decisions	No provision	221YHZM	No provision	221N(4) & 221EDC	20-80

Topic	Current Provisions in ITAA 1936				New Standard Provision
	DIR	No TFN &/or NRP	MWT	PAYE	
Non-cash benefits	221YL(4)	221YHZC(1B) & (1E)	No provision	No provision	14-5 and 14-10
Refunds of excess withheld amounts	No provision	221YHZDA & YHZDAA	No provision	No provision	18-65 and 18-70

1.102 While the new withholding system has expanded the rules in **Table B** into standard provisions capable of applying to all withholding events, some of these provisions will not always be applicable or relevant to a particular event.

1.103 For example, the ability of the Commissioner to vary the rate of withholding under *new section 16-15* will not apply to an investor who has not provided a TFN under *new sections 12-140 and 12-145* because the rate of withholding for that event is a sanction rate. Furthermore, *new section 16-15* will generally not be relevant to the NRP event. This is because under that event the Commissioner sets the rate of withholding on a case by case basis and is able to take into account any special circumstances affecting the recipient as part of that process. Specific explanation is provided below for the standard provisions covering non-cash benefits and refunds of excess withheld amounts.

#### *Provisions for non-cash benefits*

1.104 In order to address situations where withholding obligations can be avoided through the payment of non-cash benefits, *new Division 14* contains provisions which, when applied to non-cash benefits, will achieve similar outcomes to those which would result if money rather than benefits were paid.

1.105 In the existing law, only 2 withholding systems, the *no TFN on investments* and *DIR* withholding systems contain provisions explaining how to treat non-cash payments. The *no TFN on investments* system requires an investment body to pay an amount to the Commissioner equal to the amount that would have been deducted if the payment had been in cash (subsection 221YHZD(1B)). The *DIR* system has a similar rule. Under the *no TFN system* the investment body is able to recover the amount it has paid to the Commissioner from the payee (subsection 221YHZD(1C)).

1.106 *New section 14-5* in the PAYG withholding system is modelled on the *no TFN on investments* provision discussed above. The new provision is based on the assumption that an entity making a non-cash payment to a recipient has instead made a cash payment to that recipient. The amount paid is equal to the market value of the non-cash benefit

provided, when it is provided. Payers are required to pay to the Commissioner, before providing the benefit, an amount equal to an amount that would have been withheld if the non-cash benefit had been made in cash. The amount withheld is called the *notionally withheld amount*.

1.107 *New section 14-10* contains a similar rule where an entity in Australia receives, in a non-cash form, a dividend, interest or a royalty for a non-resident.

1.108 *New section 14-15* will allow the payer to recover the notionally withheld amount from the payee. This ensures that the net amount of the payment made by the payer is equal to what it would have been if the payment had been in money.

1.109 The payer may also set off the whole or part of the payee's debt against any amount that is, or becomes, due and payable by the payer to the payee. This right to offset will assist payers to recover an amount owed by payees that has been paid to the Commissioner. To the extent such offsetting occurs, the debt of the payee is satisfied. [*New subsection 14-15(3)*]

### ***Refund of excess withheld amounts***

#### *Outline*

1.110 The current *no TFN withholding* arrangements contain rules allowing amounts withheld in error to be refunded to recipients. The rules are in sections 221YHZDA and 221YHZDAA of the ITAA 1936. The new withholding arrangements include generic equivalents to these rules which will enable amounts withheld in error under any withholding arrangement to be refunded to recipients. The new rules will also enable amounts erroneously paid to the Commissioner in respect of non-cash benefits to be refunded. [*New sections 18-65 and 18-70*]

1.111 The new law maintains the special refund rules for:

- situations where an exemption has not been claimed under the *no TFN* system (subsection 221YHZDB(1)) [*new section 18-80*]; and
- situations where a refund is claimed because ETP amounts have been rolled over (subsection 221H(5A)) [*new section 18-75*].

#### *Refunds from payers*

1.112 *New section 18-65* allows for an amount that has been withheld under *new Division 12*, or paid to the Commissioner under *new Division 14*, in error to be refunded by the payer to the recipient. This refund mechanism applies to amounts withheld or paid under any withholding arrangement.

1.113 A withheld amount or an amount paid to the Commissioner under ***new Division 14*** must be refunded by the payer to the recipient if the amount was withheld or paid in error and either:

- the payer discovers the error; or
- the recipient applies to the payer for a refund on the basis of the error;

by the 21<sup>st</sup> of July in the financial year after the financial year in which the amount was erroneously withheld or paid. This varies slightly the refund rule existing under the current *no TFN* system where the relevant date is the 16<sup>th</sup> of July.

1.114 An example of where an amount could be withheld in error is where an investor quotes his or her TFN to an investment body and that body fails to record the number, and later withholds from a payment of investment income under ***new section 12-140***.

1.115 An amount can also be withheld due to an error on the part of the payee. An example of this would be where an investor is entitled to give an investment body a declaration under Division 5 of Part VA of the ITAA 1936 in relation to an investment but fails to do so. Because a declaration has not been given to the investment body by the investor, and the investor has not otherwise quoted it's TFN to the body, the body withholds an amount from income it pays to the investor. In this case the amount has been withheld due to an oversight on the part of the investor and the investor will be entitled to seek a refund of the amount withheld under ***new section 18-65***.

1.116 Under ***new subsection 18-65(1)*** an erroneously withheld amount can be refunded regardless of whether it has been paid to the Commissioner. Under the current *no TFN on investment* rules, an amount withheld in error can only be refunded if it has already been paid to the Commissioner – refer to paragraph 221YHZDA(1)(b) of the ITAA 1936.

1.117 ***New subsection 18-65(6)*** allows a payer who has refunded an amount to a recipient under ***new subsection 18-65(1)*** to offset the whole or part of the refunded amount against other amounts to be paid to the Commissioner under the withholding arrangements. However this can only take place if the amount refunded has previously been paid to the Commissioner ***new paragraph 18-65(6)(d)*** . A payer that does not decide to offset is entitled to recover the refunded amount from the Commissioner under ***new subsection 18-65(5)***.

1.118 Where an amount has been withheld due to an error involving the quotation of a recipient's TFN or ABN, the payer may request under ***new subsection 18-65(3)*** the provision of the recipient's TFN or ABN before refunding the amount. This provision will enable payers to correct their records before refunding an amount withheld in error, thereby reducing the



risk of future errors. If the recipient does not provide their TFN or ABN to the payer, the payer is not required to refund the amount under **new subsection 18-65(1)**.

1.119 If a recipient does not apply for a refund by the 21<sup>st</sup> of July following the financial year in which the amount was withheld, and the payer does not otherwise become aware by that date that an amount was withheld in error, **new section 18-65** will no longer apply. In such a case, the recipient will be entitled to claim a credit on assessment for the amount withheld in error (as is the case for amounts correctly withheld – **new subdivision 18-A**) or, if that is not appropriate, the investor can apply to the Commissioner for a direct refund of the amount under **new section 18-70**.

#### *Refunds from the Commissioner*

1.120 **New subsection 18-70(1)** enables a recipient to apply to the Commissioner for a direct refund of an amount withheld in error where the recipient did not apply to the payer for a refund by the 21<sup>st</sup> of July in the relevant year, or the payer did not otherwise become aware of the error by that date. To be able to seek a refund from the Commissioner the amount withheld in error must already have been paid to the Commissioner by the payer.

1.121 Under **new subsection 18-70(2)**, the Commissioner is required to refund the amount if the application contains specified information and the Commissioner is satisfied that it would be fair and reasonable to do so.

1.122 In considering whether it would be fair and reasonable to refund the amount under **new subsection 18-70(2)** the Commissioner may have regard to the factors listed in that subsection and to matters such as whether:

- it is unlikely that the recipient will become entitled to a credit for the erroneously withheld amount before the end of the financial year after the one in which the amount was withheld; or
- the recipient will suffer hardship if the Commissioner does not refund the amount.

1.123 The first of these matters relates to situations where a person would not otherwise need to lodge an income tax return (for example a company or individual that has been granted exemption from lodging an income tax return) or is unable to lodge before the end of the financial year (for example because of a delay in receiving information from overseas). The second matter relates to cases where, for example, a person depended on using the full amount of income from which an amount had been erroneously withheld to pay their immediate living expenses.

1.124 A person dissatisfied with a decision of the Commissioner not to refund an amount can object against the decision in the manner set out in Part IVC of the TAA 1953. [*New section 20-80; table item 65 and 70*]

**Other machinery provisions – When and how withheld amounts must be remitted**

1.125 Division 1AAA of Part VI of the ITAA 1936 contains rules about remitting PAYE, PPS and RPS amounts to the Commissioner. Under those rules, the timing and method of remitting those amounts depends on whether a withholder is large, medium or small. These categories depend on the level of those remittances over a financial year.

1.126 Under the new PAYG withholding system, a withholder’s status for a month will be determined under *new sections 16-95, 16-100 and 16-105* by using the same threshold remittances in Division 1AAA and having regard to remittances under *all* withholding events. *New sections 16-110 and 16-115*, which deal with variations to status, generally reflect the current provisions in Division 1AAA referred to above.

1.127 Special transition rules in *new sections 16-120 to 16-135*, which cover timing of remittances and status for withholding purposes, will apply for the year commencing on 1 July 2000 to assist withholders whose arrangements are such that remittances under different withholding systems are administered separately. These transition rules are explained in Part 3 of this Section.

1.128 **Table C** below summarises the operation of the new provisions covering status, timing and method of payment under the new system. The Table also contains the new sections covering those features.

**Table C – Status, timing and payment method**

Withholder's status	Basic thresholds	Due date for payments <i>New section 16-75</i>		Method of payment <i>New section 16-85</i>
		If withholder withholds on:	Withholder must pay by:	
Large	(1) total amount of withholding remittances for a year in excess of \$1 million;	Saturday or Sunday	The second Monday after that day	Electronic payment
		Monday or Tuesday	The first Monday after that day	
	(2) part of a company group for which total amount of remittances exceeds the \$1 million	Wednesday	The second Thursday after that day	

Withholder status	Basic thresholds	Due date for payments <i>New section 16-75</i>		Method of payment <i>New section 16-85</i>
	threshold; (3) payer is a large withholder for June 2001; or (4) the Commissioner determines that payer is a large withholder under <i>new section 16-115</i> . <i>New section 16-95</i>	Thursday or Friday	The first Thursday after that day	
Medium	(1) total amount of withholding remittances for a year of between \$25,000 and \$1 million [ <i>new section 16-100</i> ]; or (2) the Commissioner has given a notice to the person under [ <i>new sections 16-110 or 16-115</i> ] requiring the person to be a medium withholder.	Payment due by the 21 <sup>st</sup> day after the end of the month in which the amount was withheld.		Electronic payment or other means approved by the Commissioner
Small	a person is a small withholder if they are not a medium or large withholder. <i>New section 16-105 or 16-110</i>	Payment due by the 21 <sup>st</sup> day after the end of the quarter in which the amount was withheld.		Electronic payment or other means approved by the Commissioner

1.129 If the day for payment falls on a weekend or a holiday, the payment must still be made by that day. Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply to extend the due date to the next working day.

### **PART 3 TRANSITIONAL ARRANGEMENTS FOR 2000-2001**

1.130 This Bill contains a number of special rules for managing the transition from the current withholding systems to the new PAYG withholding system. For example, large, medium and small withholders under Division 1AAA of Part VI of the ITAA 1936 will be allowed a 12 month phase-in period before their withholding status is determined

under *new sections 16-95 to 16-105* having regard to all remittances under the new system. These transition rules, which are contained in *new sections 16-125 to 16-135*, are summarised in **Table D** below.

**Table D: Transitional Arrangements**

<b>Withholder status</b>	<b>Status under current rules in ITAA 1936</b>	<b>Status under new withholding system</b>
Large	<p>Payer is classed as a large remitter for June 2000 under section 220AAB.</p> <p>Payer is not classed as large for June 2000 but has PAYE remittances greater than \$1 million (alone or as part of a company group) during the period 1 July 1999 to 30 June 2000.</p> <p>Payer has notional remittances greater than \$1 million under labour hire arrangements (alone or as part of a company group) assuming <i>new section 12-60</i> had applied during the period 1 July 1999 to 30 June 2000.</p>	<p>Payer will be classed as a large withholder from July 2000. [<i>New paragraph 16-125(1)(a)</i>]</p> <p>Payer will be classed as a large withholder from July 2000. [<i>New paragraph 16-125(1)(b) and subparagraph 16-125(1)(d)(i)</i>]</p> <p>Payer will be classed as a large withholder from July 2000. [<i>New paragraph 16-125(1)(c) and subparagraph 16-125(1)(d)(ii)</i>]</p>
Medium	<p>Payer is classed as a medium remitter for June 2000 and has made more than \$25,000 in PAYE remittances during the period 1 July 1999 to 30 June 2000.</p> <p>Payer is classed as a medium remitter for June 2000 only because of PPS and/or RPS remittances.</p> <p>Payer is classed as a small remitter for June 2000 but has made PAYE remittances of between \$25,000 and \$1 million during the period 1 July 1999 to 30 June 2000.</p>	<p>Payer will be classed as a medium withholder from 1 July 2000, unless the amounts withheld from all events exceed \$1 million (in which case they are classed as large). [<i>New paragraph 16-135(1)(a)</i>]</p> <p>Payer will be classed as a small withholder from 1 July 2000, unless they are classed as large under <i>new section 16-125</i>.</p> <p>Payer will be classed as a medium withholder from 1 July 2000. [<i>New paragraph 16-135(1)(b)</i>]</p>
Small	<p>Payer is classed as a small remitter for June 2000.</p>	<p>Payer will be classed as a small withholder from July 2000 unless it is affected by any of the rules above. [<i>New section 16-105</i>]</p>

1.131 *New section 16-130* provides a concession to new withholders who are classed as large at July 2000 under these transitional rules. These withholders will be given 2 months in which to organise their electronic payments. For July and August 2000 they may continue to remit as monthly payers and then remit amounts (other than those referred to in the next paragraph) as large withholders from 1 September 2000.

1.132 *New section 16-120* provides a special transitional rule applying to the timing of payments for amounts withheld under the DIR, No TFN, MWT and NRP events. The rule allows withholders classed as large as at 1 July 2000 to continue to pay these amounts to the Commissioner on a monthly basis in respect of the 2000-2001 financial year rather than according to the large withholder payment rules under *new sections 16-75 and 16-85*. From 1 July 2001, all large withholders will have the same remittance obligations.

## **PART 4                    CHANGES TO CURRENT ARRANGEMENTS AND TERMINOLOGY**

1.133 Standardising the current withholding arrangements into one PAYG withholding system from 1 July 2000 will result in changes to existing elements in those arrangements. Some of these changes are discussed below.

### **Terminology**

#### *Entity*

1.134 The term *entity* as defined in section 960-100 of the ITAA 1997 is consistently used in the new withholding provisions. The use of this term will change the effect of the current law as follows:

- the withholding tax provisions will extend to Territory governments and their authorities. This change to the law will reflect the existing practice under which Territory governments and their authorities collect withholding tax although the provisions do not expressly cover them;
- the MWT provisions will extend to the government of the Australian Capital Territory and its authorities. This change is not expected to have any practical significance as that Government and its authorities do not currently make mining payments; and
- the references to ‘a person’ in the existing provisions have been changed to an ‘entity’. This change potentially expands the scope of some of the existing arrangements to include bodies which are not legal persons, for example partnerships.

#### *Definition of ‘money’*

1.135 The new PAYG withholding system provisions do not contain an equivalent to the current definition of ‘money’ in subsection 221YL(5) of the ITAA 1936. This term is not used directly in the new system but forms part of the definition of *non-cash benefit* being inserted into subsection 995-1(1) of the ITAA 1997 for the purposes of the withholding provisions.

It is considered that the ordinary meaning of the term ‘money’ includes the kinds of financial instruments denominated in money which are currently included in the subsection 221YL(5) definition of that term.

## **Withholding from dividends, interest and royalties**

1.136 Two changes are being made to the existing law about DIR withholding tax.

### ***Interest derived through an overseas permanent establishment - period of grace***

1.137 The rewritten interest withholding tax provisions will modify the operation of subsection 221YL(2F) of the ITAA 1936. Currently under that provision, a borrower who has received a notification under subsection 221YL(2E) must withhold from interest paid one month after receipt of the notice. The effect of subsection 221YL(2F) is that if interest is paid within one month of the receipt of a notice under subsection 221YL(2E), the borrower is under no obligation to withhold from the payment.

1.138 ***New section 12-255***, which replaces subsection 221YL(2F), removes the one month period of grace currently applying under that provision. It requires the borrower to withhold from any payment of interest made following the receipt of a notice under ***new section 12-260*** or subsection 221YL(2E) of the ITAA 1936 informing the borrower that the payment is subject to withholding tax. This change removes the opportunity for the collection of withholding tax to be avoided by timing relevant payments of interest to fall within the current one month period of grace.

### ***Avoidance of withholding tax - GIC on unpaid penalty where Part IVA applies***

1.139 Currently section 221YQA of the ITAA 1936 requires the payer to pay an amount equal to the penalty imposed on the non-resident payee where the Commissioner has made a determination under Part IVA (Anti-avoidance provisions) that an amount is subject to withholding tax. ***New subsection 16-200(2)*** clarifies that the amount is payable when the payee becomes liable to pay the penalty. ***New subsection 16-200(4)*** corrects an anomaly in the current law by imposing the GIC if the amount is not paid by that time. When the GIC is paid the payee will be entitled to a credit for that amount under ***new subsection 18-40(1)***.

## **Non-electronic payment penalty – large withholders**

1.140 The current penalty for when a large withholder fails to make payments electronically is the greater of \$500 and the GIC for 7 days on the amount. ***New section 16-90*** will vary this regime to one where a

penalty of 5 penalty units (currently \$550) will become payable at least 14 days after the Commissioner notifies the large withholder. GIC will then accrue on any unpaid penalty amount.

### **PAYE system - payments not specifically carried forward**

1.141 New withholding events will be introduced to ensure withholding continues to apply to the majority of individuals currently within the PAYE system. These new arrangements are contained in *new Subdivisions 12-B to 12-D of new Schedule 1* to the TAA 1953. The new PAYG withholding system will not specifically refer to the following payments mentioned in the PAYE provisions:

- payments by way of commission to an insurance or time payment canvasser or collector (currently set out in paragraph (d) of the definition of salary or wages in subsection 221A(1) of the ITAA 1936). This category of payments does not reflect modern commercial practice in relevant industries and has become obsolete;
- payments by way of allowance under the *Re-establishment and Employment Act 1945* or payments of a like nature (currently set out in paragraph (e) of the definition of salary or wages in subsection 221A(1) of the ITAA 1936). These payments are no longer made; and
- payments subject to paragraph (a) of the definition of salary or wages in subsection 221A(1) of the ITAA 1936. These payments were discussed above in the *Background to the legislation*.

### **Natural Resource Payments**

1.142 The payment rules in *new section 16-75* will defer the due date for payment of amounts withheld under the NRP arrangements from the 14<sup>th</sup> day of the relevant month to the 21<sup>st</sup> day of that month. This change aligns the due date for these payments with the due date for amounts withheld under other events.

## **PART 5 CREDITING RULES, REVIEWABLE DECISIONS, PAYMENT SUMMARIES, OFFENCES**

1.143 This Part explains the amendments in the new PAYG withholding system covering the above matters.

## **Crediting rules**

1.144 *New Subdivision 18-A* deals with when a person will be entitled to a credit for an amount withheld under the PAYG withholding arrangements and how to calculate the amount of that credit.

1.145 The crediting rules currently applying under the DIR and MWT arrangements have been maintained as separate rules applying only to those arrangements. They are set out in *new sections 18-30 and 18-45* respectively.

1.146 Standardised crediting rules applying to all other withholding arrangements are set out in *new sections 18-15 to 18-25*. These standardised rules are the same as those currently applying under the PAYE, PPS, RPS, no TFN and NRP withholding arrangements.

1.147 The finding table in Section 4 will assist in locating the generic equivalent in the new law to the crediting provisions applying under the existing withholding arrangements.

## **Reviewable decisions**

1.148 *New section 20-80* sets out the decisions against which a person may object in the manner set out in Part IVC of the TAA 1953. It also ensures that current reviewable decisions under the different withholding systems will extend to the new withholding arrangements commencing on 1 July 2000. Item 65 of the table in *new section 20-80* introduces a new objection right against a decision of the Commissioner not to refund an amount under *new subsection 18-70(2)*. Items 1, 5 and 10 in the table in *new section 20-80* also introduce objection rights against a decision of the Commissioner not to give an exemption certificate under *new section 12-335* or to revoke or vary a condition of the certificate.

## **Offences**

1.149 *New section 20-35* contains a generic equivalent to the offence provisions currently applying to the PAYE arrangements under section 221V of the ITAA 1936.

1.150 These offences relate to:

- fraudulent or other improper use of a document issued by the Commissioner for the purposes of obtaining a credit for, or payment of, an amount withheld under the PAYG withholding arrangements, including improper use of a payment summary; and
- endeavouring to obtain the benefit of an amount withheld from a payment made to another person.



1.151 The penalty for these offences is 60 penalty units and/or imprisonment for 12 months.

## Payment Summaries

1.152 The current withholding systems require a range of summary documents to be issued by payers to payees detailing withheld amounts during a period. Payment summaries currently include PAYE group certificates, PPS payment summaries and statements about deductions under the DIR withholding and MWT systems. The PAYG withholding system will replace these summaries with *one* payment summary. [New sections 16-155 and 16-170]

1.153 The new payment summary provisions generally reflect those for the PAYE system. A payer will be required to issue 2 copies of the payment summary for a summary period. A departure from the current law is that payees are permitted to apply for a part-year payment summary at any time. This rule is not linked to the cessation of employment. [New subsection 16-155(2) and section 16-170]

### ***Reportable fringe benefits and ETPs***

1.154 The recently enacted rules for the reporting of reportable fringe benefit amounts will be included in the payment summary provisions. As a result, part-year payment summaries covering reportable fringe benefits amounts may not be issued; nor may part year payment summaries be issued covering withholding payments if there is a reportable fringe benefit amount in respect of the recipient for the year of income. The exception is required because there are reportable amounts which can only be calculated at the end of the FBT year (31 March). This is achieved by providing for part-year payment summaries only for withholding payments. [New section 16-160]

1.155 The current law provides a special rule where an employee ceases employment between 1 April and 30 June in a particular financial year. The payer must provide a separate payment summary for this particular amount. The new payment summary provisions also provide for this outcome. The reportable fringe benefits amount for the period from 1 April to when the employee ceased employment will be included on a payment summary issued by 14 July after the end of the following financial year. The withholding payments for this period are already included on the payment summary issued by 14 July after the end of the current financial year together with any reportable fringe benefits amount calculated to 31 March of the current financial year. This is illustrated in the following example:

### **Example**

If David ceased employment on 12 April 2001 and there was a reportable fringe benefit amount in respect of his employment, then

David's employer George would be required to issue 2 copies of a separate payment summary for the reportable fringe benefit amount paid from 1 April 2001 to 12 April 2001 no later than 14 July 2002.

Amounts withheld from payments made to David up to 12 April 2001 and the reportable fringe benefits amounts calculated to 31 March 2001 must be included on a payment summary provided by George to David by 14 July 2001.

1.156 Where an ETP is made, a separate payment summary must be provided to the payee within 14 days after the ETP has been made. This rule reflects the existing law for group certificates. *[New section 16-165]*

1.157 The new system adopts the same penalty of 20 penalty units for non-compliance as that in the group certificate rules in Division 2 of Part VI of the ITAA 1936. *[New section 16-175]*

## **SECTION 3 CONSEQUENTIAL AMENDMENTS AND APPLICATION PROVISIONS**

### **Consequential amendments**

1.158 *Part 2 in Schedule 1* to this Bill contains consequential amendments to the Acts listed below.

1.159 The amendments are necessary to update terminology, in particular the definitions of PAYE earner and employee used in those Acts, and ensure that those Acts interact as intended with the new PAYG withholding system. Unless otherwise shown, references to item numbers in this explanation are references to numbers in *Part 2 of Schedule 1* to this Bill. Further, references to new sections are references to sections in the new PAYG withholding system in the TAA 1953.

### ***Income Tax Assessment Act 1997***

#### ***Deduction for interest and royalty amounts***

1.160 Section 221YRA of the ITAA 1936 provides that no deduction is allowed for an amount of interest or royalty, unless the withholding obligations associated with payment of that amount have been fulfilled. This rule also applies to interest and royalty amounts under the new withholding system. *New section 26-25* of the ITAA 1997 achieves this outcome. *[Item 5]*

### ***Car expenses and substantiation***

1.161 Division 28 of the ITAA 1997 provides rules for working out deductions for car expenses and refer to a PAYE earner and PAYE earnings as defined in section 995-1 of the ITAA 1997. The definitions in turn rely on the definitions of ***employee*** and ***salary or wages*** as defined in section 221A of the ITAA 1936.

1.162 Division 900 of the ITAA 1997 contains provisions for substantiating deductions. Section 900-12 of the ITAA 1997 utilises the expressions PAYE earner and PAYE earnings. The meanings of these terms define the scope of the provisions.

1.163 Amendments are required as the concepts currently used will not support the introduction of the new PAYG withholding system from 1 July 2000. The amendments will ensure that the substantiation and car expense rules in the ITAA 1997 apply to payments which are covered by ***new sections 12-35, 12-40, 12-45 and 12-50*** (payments for work or services), ***new Subdivision 12-C*** (retirement payments, eligible termination payments and annuities) and ***new Subdivision 12-D*** (benefit and compensation payments) of ***Part 2-5*** of the TAA 1953. These are the same types of payments in Part VI of the ITAA 1936 that these ITAA 1997 rules cover. ***[Items 6 and 8]***

### ***Guide material about collection rules***

1.164 ***Item 7*** repeals Parts 4-5 and 4-10 of the ITAA 1997 as these Parts are no longer required with the introduction of the new PAYG instalment and withholding provisions into the TAA 1953. The Parts contain Guide material about the collection of income tax instalments (Part 4-5) and the collection of withholding taxes (Part 4-10).

## ***Income Tax Assessment Act 1936***

### ***Closing down current withholding and reporting systems***

1.165 The following paragraphs refer to the consequential amendments which are necessary to close down the various withholding systems from 1 July 2000.

#### ***Reportable payments system***

1.166 ***Items 11 and 12*** will amend the current RPS provisions in the ITAA 1936 to ensure that the RPS will not apply to reportable payments made after 30 June 2000 and that annual reports under the RPS will not be required for financial years ending after 30 June 2000.

1.167 ***Items 13 and 14*** amend the payer obligations where TFN or pensioner exemption forms are provided. These rules will only apply where

reportable payments were made (paragraph 220AQ(1)(b)) and (paragraph 220AQ(2)(c)) on or before 30 June 2000.

*Pay as you earn system*

1.168 **Item 22** ceases the operation of the current PAYE system. The item amends subsection 221C(1A) of the ITAA 1936, which is the obligation to deduct, to apply only where payments of salary or wages are made to an employee before 1 July 2000.

1.169 Tax vouchers are not an element of the new withholding system. **Item 23** amends section 221K of the ITAA 1936 to provide that tax vouchers may only be purchased before 1 July 2000.

1.170 **Item 24** amends section 221S of the ITAA 1936 to limit the operation of the provisions for arrangements with authorities of other countries for deductions to be made from salary or wages by providing that authorisations apply before 1 July 2000. **Item 25** supplements this by inserting *new subsection 221S(2A)* which provides that arrangements or authorisations made do not apply to payments of salary or wages made after 30 June 2000.

*Prescribed payments system*

1.171 **Item 30** inserts new section 221YHAAA into the ITAA 1936 which provides that the PPS system does not apply to a prescribed payment made after 30 June 2000.

1.172 **Item 31** amends section 221YHDD of the ITAA 1936 to ensure the householder reporting rules for construction projects will only apply where the contract is entered into before 1 July 2000. **Item 32** provides a transitional rule for projects that commence before and are not completed by 30 June 2000. Householders must report payments made to 30 June 2000 for these projects, but not payments made after this date. **Items 33 and 34** apply the current record keeping and offence provisions to the new transitional rule.

*Withholding from natural resource payments and TFN withholding*

1.173 **Item 35** ceases the operation of the current rules for withholding from NRP, by limiting the obligation to provide a statement to the Commissioner about natural resource payments made to a non-resident, to payments before 1 July 2000.

1.174 **Item 36** ceases the operation of the rules for withholding where no TFN has been provided in relation to investment income. This is achieved by inserting *new subsection 221YHZC(1A AAA)* into the ITAA 1936 which provides that the deduction rule does not apply to payments made after 30 June 2000.

1.175 **Items 37 and 38** limit the rule that an investment body shall not pay non-money unattributed income until an amount has been paid to the Commissioner, to phasing-in periods ending before 1 July 2000.

1.176 **Item 39** inserts into subsection 221YHZQ(1), the rule for undeducted TFN amounts in relation to an eligible deferred interest investment, references to the new withholding provisions. Subsection 221YHZQ(1) remains operative in the ITAA 1936 for the new withholding system.

*Withholding tax – dividends, interest and royalties*

1.177 The current system for withholding from payments of dividends, interest and royalties to non-residents will cease to apply to payments after 30 June 2000. **Item 40** achieves this by inserting **new subsection 221YL(1A)** into the ITAA 1936 which provides that the deduction provisions of the current DIR system do not apply to payments of these amounts after 30 June 2000.

1.178 **Item 41** inserts new subsection 221YL(2DA) into the ITAA 1936 to limit the obligation in current subsection 221YL(2E), for payers who are lenders to notify borrowers that subsection 221YL(2E) applies, to transactions before 1 July 2000. This notification rule is included in **new section 12-260** and applies where the transaction is on or after 1 July 2000.

1.179 **Items 42 to 44** limit the operation of the rules which prohibit non-cash dividend payments unless an amount has been paid to the Commissioner, to payments made before 1 July 2000. Similar rules for non-cash dividend payments on or after 1 July 2000 are provided by **new Division 14 of Schedule 1** to the TAA 1953.

*Mining withholding tax*

1.180 **Item 45** ceases the operation of the mining withholding provisions of the ITAA 1936. Subsection 221ZB(1) of the ITAA 1936 will be amended to provide that the obligation to deduct from mining payments will apply to payments made before 1 July 2000. Payments on or after this date are covered by the new withholding system.

*Australian Film Industry Trust Accounts*

1.181 **Item 46** formally ceases the application of the provisions underlying this withholding system. In practice, there have been no such accounts for several years. The item inserts **new section 221ZMA** into the ITAA 1936 which provides that the rules do not apply to a withdrawal from a film account made after 30 June 2000.

*Farm management deposits*

1.182 **Item 47** ceases the operation of the FMD withholding provisions by amending subsection 221ZXB(1) of the ITAA 1936 to provide that the obligation to deduct under the current system applies only where the repayment occurs before 1 July 2000. Repayments made on or after this date are covered by the instalment part of the new PAYG system.

**Record keeping**

1.183 **Items 48 and 49** make consequential amendments to the record keeping provisions in section 262A of the ITAA 1936. **Item 48** inserts **new subsection 262A(2A)** into the ITAA 1936 so that entities required to withhold amounts under the new PAYG withholding system will need to keep the appropriate records for the statutory 5 year period in subsection 262A(4). **Item 49** introduces **new subsection 262A(4AAA)** which will exclude the operation of subsection 262A(4) in relation to records which are required to be kept by a provision in Schedule 1 to the TAA 1953. For example, the new withholding event – *voluntary agreement to withhold* in **new section 12-55** has its own record keeping requirements in relation to the voluntary agreement in **new subsection 12-55(2)**.

**A New Tax System (Goods and Services Tax) Act 1999**

1.184 The GSTA 1999 will generally apply to transactions involving enterprises. The concept of enterprise as defined in section 9-20 of the GSTA 1999 refers to an activity or series of activities other than as an employee or other PAYE earner.

**Terminology (enterprise, PAYE earner, voluntary agreements)**

1.185 **Items 50 to 52** make the necessary amendments to the GSTA 1999 so that, in addition to withholding payments to employees, the concept of enterprise for GST purposes will now refer to withholding payments to company directors [**new section 12-40**], office holders [**new section 12-45**] and under labour hire arrangements [**new section 12-60**] in the new PAYG withholding system rather than the term other PAYE earner.

1.186 **Items 55 to 63** will amend Division 111 (Reimbursement of employees etc.) in the GSTA 1999 which deals with entitlements to input tax credits for reimbursing employees and others. The amendments will remove the current references to PAYE earner and result in the Division applying where withholding payments are made to employees, company directors, office holders, under labour hire arrangements and under voluntary agreements. This outcome is achieved by applying the Division and treating those payees as if they were employees and their activities in earning the withholding payments were activities as employees.

### ***Voluntary agreements – new section 12-55 – interaction with GSTA-1999***

1.187 ***Items 53, 54, 64 and 67*** make the necessary amendments to support the introduction of ***new Division 113*** – PAYG voluntary agreements into the GSTA 1999. The amendments will generally result in the provision of work or services under ***new section 12-55*** not being a taxable supply for GST purposes. However, where the payer is input taxed, the work or services will be a taxable supply even if the transaction is covered by ***new section 12-55***. This outcome will prevent the avoidance of GST in input taxed industries through the use of voluntary agreements.

### ***A New Tax System (Australian Business Number) Act 1999***

1.188 The consequential amendments to the ABNA 1999 are similar in nature to the amendments to the GSTA 1999 as both laws use the same definition of enterprise. ***Enterprise*** is defined in section 38 of the ABNA 1999.

1.189 ***Items 72 to 74 and 76*** make the necessary changes to replace the current reference to PAYE earner. ***Items 75, 77 and 78*** introduce new definitions into the ABNA 1999 covering the terms non-cash benefit and withholding payment.

### ***Fringe Benefits Tax Assessment Act 1986***

1.190 The FBT law refers to, and relies for its operation on, a number of interrelated concepts in Part VI of the ITAA 1936, namely employee, employer and salary or wages. The relationship between the application of the FBT law and the withholding collection system is defined primarily through the operation of the definition of salary or wages. Section 137 of the FBTAA 1986 extends the concept of salary or wages to include employer-employee relationships where remuneration is provided only as fringe benefits and/or by another party. [***Items 82 and 83***]

1.191 FBT will only apply to circumstances to which the withholding events that correspond to the old PAYE provisions apply and where payments of fringe benefits may arise. Therefore the FBT law will apply to circumstances covered by ***new sections 12-35, 12-40, 12-45, 12-115 and 12-120*** in the new PAYG withholding system. [***Item 81***]

1.192 These consequential amendments apply to benefits provided on or after 1 July 2000. [***Item 84***]

### ***Taxation Administration Act 1953***

1.193 Subsection 8AAB(5) of the TAA 1953 provides an index of provisions of Acts other than the ITAA 1936 that deal with liability to the

GIC. **Item 85** amends this index to include references to those provisions of the new PAYG system which address liability to the GIC.

1.194 **Items 86 to 88** amend section 8AAJ of the TAA 1953 which lists those provisions which give rise to the failure to notify penalty. **Item 86** amends subsection 8AAJ(1) to reflect the insertion of **new subsection 8AAJ(5)**. **Item 87** removes from subsection 8AAJ(4) references to sales tax provisions which are now listed in the new table in subsection 8AAJ(5). **Item 88** inserts **new subsection 8AAJ(5)** which includes a table listing those provisions of Acts other than the ITAA 1936, including those of the new PAYG system, that deal with liability to the failure to notify penalty.

### **Consequential amendments to other Commonwealth legislation**

1.195 The consequential amendments explained above are necessary to ensure the new PAYG withholding system will interact with other laws and apply as intended from 1 July 2000. Further consequential amendments are required to update references to provisions in taxation and other Commonwealth legislation which will not be relevant after 1 July 2000. These consequential amendments will be introduced in a later Bill.

### **Application provisions**

1.196 The new PAYG withholding system will apply from 1 July 2000. **Item 3 of Part 1 of Schedule 1** to this Bill provides application provisions for particular elements of the new PAYG withholding system.

1.197 **New Division 12** in Schedule 1 to the TAA 1953 contains the provisions of the new withholding system which specify the payments from which amounts must be withheld. **Subitem 3(1)** provides that **new Division 12** applies to a payment made on or after 1 July 2000.

1.198 **New sections 12-215, 12-250 and 12-285** address dividends, interest and royalties received in Australia for foreign residents. The provisions derive their application from the receipt of the payment by the payee, rather than the making of the payment by the payer. **Subitem 3(2)** provides that the rules apply to an amount received on or after 1 July 2000.

1.199 **New section 12-255** covers situations involving withholding from interest derived by a lender in carrying on business through an overseas permanent establishment and **new section 12-260** requires notification by a lender to a borrower that interest has been derived through an overseas permanent establishment.

1.200 **New section 12-255** will apply to payments on or after 1 July 2000, regardless of when the relevant notification was given. The



rule will apply where there has been a notification under *new section 12 260* or under section 221YL(2E) of the ITAA 1936.

1.201 *Subitem 3(3)* provides that the notification provision in *new section 12-260* will apply if an amount is payable on or after 1 July 2000. Therefore subsection 221YL(2E) is limited to amounts payable before 1 July 2000.

1.202 *New Division 14* of Schedule 1 to the TAA 1953 applies to the provision of a non-cash benefit, rather than the making of a payment. *Subitem 3(4)* provides a specific application rule for the Division, so that it applies to non-cash benefits provided on or after 1 July 2000.

1.203 *New Subdivision 16-C* imposes obligations to provide information to the Commissioner and to the recipient of a payment. These obligations relate to financial years. *Subitem 3(5)* states that these rules apply to financial years starting on 1 July 2000 and to later financial years.

## SECTION 4 FINDING TABLES

1.204 The finding tables below relate the provisions in the current withholding arrangements which will form part of the PAYG withholding system to the new standardised provisions contained in the PAYG law. The tables have been provided as a guide and are intended to show where the concepts in the current arrangement are now located in the new PAYG law.

1.205 The existing withholding provisions fall into five broad categories:

- provisions which have been replaced with a generic equivalent as set out in the table;
- provisions which will continue to operate but which have not been translated across into the new PAYG withholding law. An example of this category is section 221YMA of the ITAA 1936. This category of provisions is denoted in the table by the term 'no change';
- provisions which have become redundant because of the way in which the new law will operate. For example, the definition of 'books closing time' contained in subsection 221YHZA(5) of the ITAA 1936 has been built into *new section 12-140*, thereby removing the need for a separate explanation of that term. This category of provisions is denoted in the table by the term 'Redundant';
- provisions for which no equivalent is included in this Bill but for which generic equivalents will be included in a later Bill. These

provisions are denoted by the terms ‘Registration’, ‘Reporting’ and ‘Recovery’ indicating what type of element they will form in the later Bill.

- provisions for which there is no equivalent in the PAYG law but which may be dealt with elsewhere in the tax law. These are denoted by the term ‘no equivalent’.

**Part VI of the *Income Tax Assessment Act 1936***

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 2 – PAYE</b>			
221A(1) – definitions of <i>salary or wages, eligible local governing body and eligible person</i>	Refer <i>new Subdivisions 12-B, 12-C &amp; 12-D</i>	221F(5E)	No equivalent
221A(2)	No equivalent	221F(5F)	No equivalent
221B	No change	221F(5G)	No equivalent
221C(1)	16-10(1)	221F(5GA))	16-155(1)(c)
221C(1AB)	16-10(2)	221F(5GB)	16-170
221C(1AC)	16-10(2)	221F(5GC)	No equivalent
221C(1AD)	16-10(2)	221F(5GD)	No equivalent
221C(1AE)	16-10(2)	221F(5H)	16-165
221C(1A)	16-10(1) & 16-25(1)	221F(5I))	16-170
221C(1B)	16-25(4)	221F(5J)	Reporting
221C(2)	No equivalent	221F(6)	Redundant
221C(2A)	No equivalent	221F(7)	16-170(4)
221C(2B)	No equivalent	221F(13)	No equivalent
221C(2C)	No equivalent	221F(15)	16-175
221C(3)	No equivalent	221F(16)	Redundant
221D(1)	16-15(1)	221F(17)	Redundant
221D(2)	16-15(3)	221H(1)	18-100
221D(3) – (7)	No equivalent	221H(1A)	No equivalent
221DA	No equivalent	221H(1B)	No equivalent
221E	No equivalent	221H(1C)	No equivalent
221EAA(1)	16-30(1)	221H(2)	18-15
221EAA(2)	16-30(2)	221H(3)	No equivalent
221EAA(3)	16-50	221H(4B)	No equivalent
221EAA(4)	16-35, 16-40 & 16-50	221H(5)	No equivalent
221F(1)	Registration	221H(5A)	18-75
221F(2)	Registration	221K	No equivalent
221F(2A)	Registration	221N(1)	16-45(1)
221F(3)	Registration	221N(2)	16-45(2)

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 2 – PAYE</b>			
221F(4)	Registration	221N(4)	20-80, item 15
221F(5A)	16-155(1)	221R	Recovery
221F(5B)	16-155(2) & 16-170	221S	No equivalent
221F(5C)	16-160(1)	221V	20-35
221F(5CA)	16-160(1)	221W	20-40
221F(5CAA)	16-160(2)	221X	No equivalent
221F(5CB)	16-155(1)	221YAA	20-60
221F(5D)	16-170		

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 3B – NRP and TFN withholding</b>			
<b>Subdivision A</b>		221YHZD(1B)	14-5
221YHZA(1)	Redundant	221YHZD(1C)	14-15
221YHZA(2)	11-5	221YHZD(2)	16-80
221YHZA(2A)	12-145	221YHZD(3)	No change
221YHZA(2B)	12-150	221YHZD(4)	No change
221YHZA(3)	12-325(1)	221YHZD(5)	No change
221YHZA(4)	12-140(2)	221YHZDA(1)	18-65(1)
221YHZA(5)	Redundant	221YHZDA(1A)	18-65(3)
		221YHZDA (1B)	18-65(4)
<b>Subdivision B</b>		221YHZDA(2)	18-5
221YHZA(1)	12-330(1)	221YHZDA(3)	18-65(2)
221YHZA(2)	12-330(1)	221YHZDAA (1)	18-70(1)
221YHZA(3)	Redundant	221YHZDAA (2)	18-70(2)
221YHZA(4)	12-335(1)	221YHZDAA (3)	18-5
221YHZA(5)	12-335(2)	221YHZDAB	No change
221YHZA(6)	12-335(3)	221YHZDAC	No change
221YHZA(7)	12-335(3)	221YHZDB	18-80
221YHZA(8)	12-330(2)	221YHZE(2)	16-45(1)
221YHZA(1)	12-325, 16-15 & 16-25	221YHZE(3)	16-45(2)
221YHZA(1A)	12-140(1), 12-145, 12-160, 12-170, 16-5, 16-155, 16-25 & 16-10	221YHZH	16-20
221YHZA (1AA)	Redundant	221YHZA	Recovery
221YHZA (1AAA)	Redundant	221YHZA(1)	18-15
221YHZA (1B)	12-165	221YHZA(2)	18-20
221YHZA(1C)	16-10	221YHZA(3)	18-25
221YHZA(1D)	To be included in the Regulations	221YHZA(4)	Redundant
221YHZA(1E)	12-10	221YHZA(1)	No equivalent

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 3B – NRP and TFN withholding</b>			
221YHZC(2)	16-25(4)	221YHZL(6)	No equivalent
221YHZC(3)	16-30(1)	221YHZL(7)	No equivalent
221YHZC(4)	16-30(2)	221YHZM	20-80, Item 15
221YHZC(5)	16-50	221YHZN(1)	20-5(1)
221YHZC(6)	16-35	221YHZN(2)	20-5(2)
221YHZCA(1)	16-150(1)	221YHZN(3)	20-5(3)
221YHZCA(2)	16-150(2)	221YHZN(4)	20-5(4)
221YHZCA(3)	16-150(1)	221YHZN(5)	20-5(4)
221YHZD(1)	16-70	221YHZN(6)	No equivalent
221YHZD(1A)	16-70	221YHZO	20-60
221YHZD(1AA)	No equivalent		
221YHZD(1AB)	18-65(6)		
221YHZD(1AC)	18-65(7)	<b>Subdivision C</b>	No change.

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 4 – DIR withholding</b>			
221YJ	11-1	221YN(3)	Redundant
221YK (1)	Redundant	221YN(4)	16-80
221YK (2)	12-225	221YP(1)	14-5 & 14-10
221YK (3)	11-5	221YP(2)	14-5 & 14-10
221YK (4)	No equivalent	221YP(3)	No equivalent
221YK (5)	20-15	221YP(3A)	14-5 & 14-10
221YL(1)	12-210	221YP(4)	16-25(2)
221YL (2)	12-215	221YQ(1)	16-30 & 16-40
221YL (2A)	12-245	221YQ(1A)	16-30 & 16-40
221YL (2B)	12-250	221YQ(2)	16-195
221YL (2C)	12-260	221YQ(3)	18-35(1)
221YL (2D)	12-260	221YQ(4)	18-35(2) & (3)
221YL (2E)	12-260	221YQA(1)	16-200(1)
221YL (2F)	12-255	221YQA(2)	16-200(3)
221YL (2G)	12-280	221YQA(3)	18-40(1)
221YL (2H)	12-285	221YQA(4)	18-40(2)
221YL (3)	12-300	221YR	Recovery
221YL (3A)	12-300	221YRA(1)	26-25
221YL (4)	12-10	221YRA(1A)	26-25
221YL (4AA)	12-5(2)	221YRA(2)	26-25
221YL (4A)	16-25	221YRA(3)	No equivalent
221YL (4B)	16-25(4)	221YS(1)	18-30
221YL (5)	No equivalent	221YS(2)	18-30
221YM	16-15	221YSA	No change
221YMA	No change	221YT(1)	No equivalent
221YN(1)	16-70	221YT(3)	No equivalent
221YN(2)	16-150(1)	221YT(4)	No equivalent
221YN(2A)	16-150(2)	221YU	No change

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 4 – DIR withholding</b>			
221YN(2B)	16-150(1)	221YV	16-20
221YN(2C)	Redundant	221YY	20-40

<i>Old</i>	<i>New</i>	<i>Old</i>	<i>New</i>
<b>Division 5 – MWT</b>			
221Z	11-1	221ZD(1)	16-30(1)
221ZA (1)	Redundant	221ZD(1A)	16-30(2)
221ZA (2)	Redundant	221ZD(1B)	16-50
221ZB(1)	12-320	221ZD(2)	16-195
221ZB(2)	16-25(1) & (2)	221ZD(3)	18-45(2)
221ZB(3)	16-25(4)	221ZE	Recovery
221ZC(1)	16-70	221ZF	18-45(1)
221ZC(2)	16-150(1)	221ZG(1)	No equivalent
221ZC(2A)	16-150(2)	221ZG(3)	No equivalent
221ZC(2B)	16-150(1)	221ZG(4)	No equivalent
221ZC(2C)	Redundant	221ZH	16-20
221ZC(3)	Redundant	221ZL	20-40
221ZC(4)	16-80		



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# Chapter 2

## Pay as you go (PAYG) – Instalments

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### Overview

2.1 The amendments contained in *Part 1 of Schedule 1* will insert a new Schedule into the TAA 1953. The Schedule will contain new *Part 2-10* the new PAYG instalments system.

2.2 The amendments contained in *Part 2 of Schedule 1* are consequential and transitional amendments which will close off the operation of the provisional tax and company instalment systems which are being replaced by the PAYG instalments system.

### Summary of the amendments

#### Purpose of the amendments

2.3 *Schedule 1* to this Bill will insert in the TAA 1953 the new PAYG instalments system announced by the Government in its ANTS document. Broadly, the new system will ensure that taxpayers pay either income tax instalments that reflect their current trading and investment conditions or quarterly instalments based on last year's income tax and a GDP adjustment.

2.4 *Schedule 1* to this Bill will also make amendments to close down the company instalment and provisional tax systems in the ITAA 1936. Special rules will be inserted to help taxpayers currently in the company instalment system to make the transition to the new system.

#### Date of effect

2.5 The new PAYG instalments system will apply to the 2000-2001 and later income years.

2.6 Transitional measures will operate to require instalments to be paid under the company instalment and provisional tax systems for the last time for the 1999-2000 income year.

### Background to the legislation

2.7 Businesses and investors currently pay instalments of their expected tax liability through the company instalment or provisional tax

system. For example, companies, superannuation funds and some corporate unit trusts, public trading trusts and corporate limited partnerships pay income tax instalments under the company instalment system. Individuals and some trustees who are carrying on business or investing are required to pay income tax instalments under the provisional tax system.

2.8 Those in the company instalment system mostly pay their income tax instalments after the income year. Those in the provisional tax system pay instalments of tax based on last year's tax as increased by the provisional tax uplift factor within the income year.

2.9 The new PAYG instalments system will replace the existing company instalment and provisional tax systems. Under the new arrangements, all taxpayers will pay quarterly instalments after the end of a quarter or, in some cases, annually.

## **Explanation of the amendments – PAYG instalments system**

2.10 *Item 2 of Part 1 of Schedule 1* of this Bill will insert in the TAA 1953 a new Schedule 1 to that Act which contains *Part 2-10 PAYG instalments*. The following paragraphs summarise the effect of *Part 2-10 PAYG instalments* as contained in the new Schedule 1 to the TAA 1953.

### **Guide to PAYG instalments**

2.11 An entity with business or investment income must pay instalments towards its income tax (and other) liabilities. The instalments are usually payable within 21 days after the end of the each quarter of an income year. But some entities, who are neither registered nor required to be registered for GST, may choose to pay an annual instalment on 21 October after the end of the income year. In addition, eligible individuals will be able to choose to pay quarterly instalments which, broadly, are based on their last year's income tax (less net capital gains) and a GDP adjustment.

2.12 An entity is only liable to pay instalments if the Commissioner has given it an instalment rate.

2.13 The amount of a quarterly instalment is:

- worked out by multiplying the entity's instalment income for the quarter by the instalment rate the Commissioner gives it or the rate the entity chooses; or
- if an eligible individual so chooses, their *GDP adjusted notional tax*.



2.14 The amount of an annual instalment can be worked out using the entity's instalment income for the entire income year. But an entity may choose to pay an amount based on last year's tax as notified by the Commissioner or its own estimate of its expected tax liability for the year. *[Section 45-1]*

### **Object of PAYG instalments**

2.15 Section 45-5 explains that the object of Part 2-10 PAYG instalments is to ensure the efficient collection of income tax, the Medicare levy and HECS.

### **Application of Part 2-10**

2.16 New Part 2-10 will apply to individuals, companies and other entities that are required to pay income tax under the ITAA 1997. *[Section 45-10]* Primarily, the Part will affect investors and those in business.

2.17 However, a trustee that is only assessed and liable to tax on behalf of non-resident beneficiaries under subsection 98(3) or (4) of the ITAA 1936 will not be liable to PAYG instalments for those assessments. *[Note to section 45-10 and section 45-300]*

### **Liability for instalments**

2.18 The Commissioner may give an entity an instalment rate from time to time. The instalment rate is given by written notice. *[Subsection 45-15(1)]*

2.19 Generally, the Commissioner will work out an entity's instalment rate after it has lodged a return or, if an assessment is made on that return, after the assessment is made. However, the Commissioner may also work out an instalment rate after issuing an amended assessment. (The discussion of section 45-320 explains how the instalment rate is calculated.)

2.20 New subsection 45-15(2) provides that an entity will be liable to pay PAYG instalments if the Commissioner has given it an instalment rate. An entity that has not been notified of an instalment rate by the Commissioner will not be liable to pay PAYG instalments. Nor will an entity whose instalment rate has been withdrawn by the Commissioner. *[Note 4 to section 45-15 and section 45-90]*

2.21 All those entities that are currently in the company instalment and provisional tax systems (including annual payers) should expect to be notified of an instalment rate by the Commissioner.

2.22 However, those who pay provisional tax now only because of the operation of section 221YAB of the ITAA 1936 should not expect to be notified of an instalment rate by the Commissioner. (Broadly, section

221YAB operates when a person has only salary or wages income and the amounts deducted from that salary or wages income are at least \$3,000 less than the tax payable on that income.) This is because the PAYG instalments system will not apply to income to which the PAYG withholding system applies. [*Note 2 to section 45-15*]

2.23 Currently, some taxpayers are not required to pay provisional tax, eg. self-funded retirees whose income does not exceed the pensioner rebate threshold. Such taxpayers can expect that they will not be given an instalment rate by the Commissioner and, consequently, will not be required to pay PAYG instalments.

### **Liability to give information to the Commissioner**

2.24 An entity that is liable to pay a quarterly instalment – which is not based on an individual's GDP adjusted notional tax – or an entity that chooses to calculate its annual instalment using its instalment rate, will also be liable to give specified information to the Commissioner in the approved form. In particular, an entity will be liable to notify the Commissioner of the amount of its instalment income by the due date for the instalment. [*Section 45-20*]

2.25 The dictionary in Chapter 6 (the Dictionary) of the ITAA 1997 as amended by Schedule 3 to this Bill, defines when a notice, application or other document is in the *approved form*, ie. it must:

- be approved in writing by the Commissioner;
- be signed, as required, by person(s) giving the information;
- contain all the required information; and
- if required to be lodged with the Commissioner – be lodged at the place and in the manner the Commissioner requires.

The Commissioner has the power to use one approved form for several purposes. From 1 July 2000, this form is likely to be the Business Activity Statement.

### **Penalty for failure to notify**

2.26 An entity that is required to notify the Commissioner of its instalment income and fails to notify the Commissioner of its instalment income for an instalment period, or fails to notify the correct amount of that instalment income, will be liable to pay the failure to notify penalty. The penalty is payable as a result of the failure to notify, or failure to notify the correct amount of, instalment income. The amount of the penalty will be 8% per annum in respect of the shortfall of the relevant instalment multiplied by the relevant instalment rate. The penalty will be calculated for the period starting on the due date for the relevant instalment and finishing

on the day the entity notifies the Commissioner of the correct amount, or the Commissioner otherwise becomes aware of the correct amount.  
*[Section 45-25]*

2.27 The failure to notify penalty is worked out under Division 2 of Part IIA of the TAA 1953. *[Note to section 45-25]*

### **Credit for instalments payable**

2.28 Each of the instalments payable under the PAYG instalments system will be debited to the RBA under section 8AAZD of the TAA 1953. Any payment made against that liability will be credited to the RBA under section 8AAZLA of that Act.

2.29 When the Commissioner makes an assessment of the tax payable (or determines that there is no tax payable) for an income year, an entity will be entitled to a credit against the assessment. The amount of that credit will be equal to the amount of any instalment liability under section 45-15 reduced by the amount of any credit claimed in respect of an instalment under section 45-215. *[Subsections 45-30(1) and (2)]*

2.30 The amount will be credited regardless of whether a particular instalment is paid. The making of an assessment (or determination) does not affect the liability to pay that instalment. *[Subsection 45-30(3)]* How the credit is applied is set out in Division 3 of Part IIB of the TAA 1953 which is also being inserted by this Bill. *[Note to subsection 45-30(3)]*

### **How many, and when, instalments are payable**

2.31 Generally, an entity will be liable to pay a PAYG instalment for each quarter of an income year. However, entities will be entitled to choose to pay an annual instalment in specified circumstances.

2.32 An entity's first instalment will be payable for the instalment quarter in which the Commissioner first gives it an instalment rate (even if it is not the first instalment quarter of that year). But if the entity is entitled to choose to pay an annual instalment, and makes that choice, its first instalment will be that annual instalment for the income year in which the Commissioner first gives it an instalment rate. *[Subsection 45-50(1)]*

2.33 New Subdivision 45-E provides that an entity may choose to pay a single annual instalment if:

- it is neither registered, nor required to be registered, for GST;
- it is not a partner in a partnership that is registered, or required to be registered, for GST;
- the most recent *notional tax* amount notified by the Commissioner is less than \$8,000; and

- if it is a company – it is not part of an *instalment group* or a participant in a *GST joint venture* under Division 51 of the GSTA 1999.

*[Subsection 45-140(1)]*

2.34 An ***instalment group*** is a group of companies that are related to each other according to a *majority control* test. The group consists of:

- a controlling company that has the majority control of at least one other company but which is not itself under the majority control of any other company; and
- each other company of which the controlling company has majority control.

*[Subsection 45-145(1)]*

2.35 A company has ***majority control*** of another company if:

- it can cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company;
- it has the power to appoint or remove the majority of the directors of the other company; or
- the other company is, or a majority of its directors are, accustomed or under an obligation, to act according to the directions, instructions or wishes of the first company.

*[Subsection 45-145(2)]*

2.36 Once an entity is liable to pay its first instalment, it is liable to pay an instalment for each subsequent quarter unless:

- it becomes entitled, under Subdivision 45-E to pay its instalments annually and chooses to do so; or
- the Commissioner withdraws the instalment rate.

*[Section 45-55]*

2.37 Similarly, once an entity is liable to pay an annual instalment for an income year, it is liable to pay an annual instalment for each subsequent income year unless:

- it ceases to be entitled to pay an annual instalment;
- it chooses to pay its instalments quarterly; or

- the Commissioner withdraws the entity's instalment rate from the entity.

*[Section 45-65]*

## **Entities that stop being annual payers and become quarterly payers**

2.38 There are some special rules to deal with annual payers who cease to be entitled to pay annually in an instalment quarter.

### ***Circumstances in which an annual payer becomes a quarterly payer immediately***

2.39 If, during an instalment quarter, an entity:

- becomes registered, or is required to be registered, for GST;
- becomes a partner in a partnership that is registered, or required to be registered, for GST;
- being a partner in a partnership – the partnership becomes registered, or required to be registered, for GST; or
- being a company – becomes part of an *instalment group* or a participant in a GST joint venture under Division 51 of the GSTA 1999;

the entity immediately becomes a quarterly payer and must pay an instalment for that instalment quarter and each subsequent quarter. But it must also pay an annual instalment for the income year that includes that instalment quarter. The amount of the annual instalment is reduced by the amount of each of the quarterly instalments payable for the income year.

*[Sections 45-150 and 45-65]*

2.40 There is a special rule that applies when an annual payer becomes, for any of the reasons set out in section 45-150, a quarterly payer before its first annual instalment is payable. It ensures that the entity's first instalment is the quarterly instalment required to be paid under section 45-150, rather than its first annual instalment payable under paragraph 45-50(1)(b). *[Subsection 45-50(2)]*

### ***Circumstances in which an annual payer becomes a quarterly payer in the year following a specified event***

2.41 If, during an income year, an entity:

- is notified of a *notional tax* of \$8,000 or more; or
- chooses to pay instalments quarterly instead of annually;

the entity becomes a quarterly payer for the first instalment quarter of the *next* income year. In those circumstances, the annual instalment for the income year in which the relevant event occurs remains payable. [Sections 45-155 and 45-65]

Note: There is a special transitional rule that will ensure that an entity's first instalment cannot be payable before the 2000-2001 income year commences even though the Commissioner gives it a rate before that income year starts. [Item 4 of Part 1 of Schedule 1 to this Bill]

## **When quarterly instalments are due**

2.42 Quarterly instalments are due 21 days after the end of each instalment quarter of the income year. [Subsections 45-60(1) and (3)]

2.43 The following table sets out the due dates for an entity that balances on 30 June:

<i>For the quarter ending on:</i>	<i>Pay the instalment on or before:</i>
30 September	21 October
31 December	21 January
31 March	21 April
30 June	21 July

[Subsection 45-60(1)]

2.44 For an entity that has a substituted accounting period, the quarterly instalments are due 21 days after the end of each of its quarters. For example, the following table sets out the due dates for an entity that has a substituted accounting period ending on 30 April:

<i>For the quarter ending on:</i>	<i>Pay the instalment on or before:</i>
31 July	21 August
31 October	21 November
31 January	21 February
30 April	21 May

[Subsections 45-60(2) and (3)]

## **When annual instalments are due**

### *General rule for 2002-2003 and later income years*

2.45 For the 2002-2003 and later income years, annual instalments must be paid on or before:

- 21 October after the end of the income year for an entity that balances on 30 June; and

- the 21<sup>st</sup> day of the fourth month after the end of the income year for an entity that has a substituted accounting period.

*[Section 45-70]*

### ***Special rule for 2000-2001 and 2001-2002 income years***

2.46 For the 2000-2001 and 2001-2002 income years, the annual instalments will be due at the same time as the existing dates for annual instalments under the company instalment and provisional tax systems.

*[Section 45-170]*

2.47 The annual instalment will be due on 15 December (or the 15<sup>th</sup> day of the sixth month after the end of the income year for an entity with a substituted accounting period) for an entity that is an ***instalment taxpayer*** as defined in subsection 221AZK(1) of the ITAA 1936. *[Subsection 45-170(3)]*

2.48 The annual instalments payable by any other entity (generally an individual) will be payable during the income year for which the instalment is being paid. However, the instalment will not be payable before 31 March and an entity must be given 30 days' notice of the due date for payment. *[Subsections 45-170(2)]*

## **Electronic payment**

2.49 An entity must pay its PAYG instalment electronically if it is required to pay electronically any other amount that is due on the same day as the instalment. For example, if the entity is required to pay its GST liability electronically on the same day as its PAYG instalment, it must also pay its PAYG instalment electronically. *[Section 45-72]*

## **PAYG instalments recoverable in same way as income tax**

2.50 PAYG instalments will be treated as income tax for the purposes of the following sections of the ITAA 1936:

- section 208, making it a debt due to the Commonwealth;
- section 209, making it capable of being sued for and recovered in any Court of competent jurisdiction;
- section 214, dealing with service of notice of proceedings for recovery;
- section 215, dealing with the responsibilities of liquidators, receivers and certain agents;
- section 254, dealing with the responsibilities of agents and trustees;

- section 255, dealing with the responsibilities of persons in receipt or control of money from non-residents;
- section 258, which allows a person who has paid tax on behalf of another to recover it from that person; and
- section 259, which allows a person who is jointly liable for tax with another person to seek a contribution from the other person for any tax it has paid.

*[Section 45-75]*

### **GIC is payable if an instalment is paid late**

2.51 An entity that does not pay its instalment by the due date will be liable to the GIC payable under Division 1 of Part IIA of the TAA 1953.

2.52 The GIC is payable on the unpaid amount for each day in the period that starts on the due date for the instalment and finishes at the end of the last day on which either the instalment or the GIC on any of the instalment remains unpaid. *[Section 45-80]*

### **Extension of time to pay an instalment**

2.53 The Commissioner may extend the time for payment of an instalment as he or she considers the circumstances warrant. If an extension of time is granted, the instalment is due on the day or days specified by the Commissioner. *[Section 45-85]*

### **Commissioner may withdraw instalment rate**

2.54 An entity is no longer liable to pay instalments if the Commissioner withdraws its instalment rate. He or she may withdraw an instalment rate in either of 2 ways, ie. by written notice to an entity; or by publishing a notice in the *Gazette* in respect of a class of entities. *[Subsection 45-90(1)]*

2.55 If the Commissioner gives an entity an instalment rate after having withdrawn its instalment rate, the entity again becomes liable to pay instalments. The first instalment will be payable under section 45-50. *[Subsection 45-90(2)]*

### **Amount of a quarterly instalment**

*Quarterly instalments worked out by multiplying an entity's instalment income by the Commissioner's rate*

2.56 The amount payable as a quarterly instalment is worked out under new subsection 45-110(1) as follows:



$$\text{Applicable instalment rate} \times \frac{\text{Entity's * instalment income}}{\text{for the quarter}}$$

unless an eligible individual chooses to pay quarterly instalments based on their *GDP adjusted notional tax*. [Section 45-125, subsection 45-110(1)]

### ***Applicable instalment rate***

2.57 In most cases, the *applicable instalment rate* will be the latest instalment rate notified by the Commissioner (provided the Commissioner notified that rate before the end of the instalment quarter for which the instalment is calculated). [Paragraph 45-110(2)(a)]

2.58 However the *applicable instalment rate* may instead be the instalment rate that an entity chooses, under Subdivision 45-F, for the current, or an earlier, instalment quarter of the same income year. [Paragraphs 45-110(2)(b) and (c)] An entity may choose an instalment rate if it considers that the instalment rate notified by the Commissioner, or the rate it has previously chosen, is not appropriate to the current income year.

2.59 The Commissioner works out the instalment rate under Subdivision 45-J which is discussed later in this Chapter. Subdivision 45-F explains when and how an entity chooses an instalment rate. That Subdivision is also discussed later in this Chapter.

### ***Instalment income***

2.60 The general rule is that *instalment income* for the instalment quarter is so much of an entity's *ordinary income* derived in that quarter as will be assessable income of the income year that includes that quarter. [Subsection 45-120(1)]

2.61 For the purposes of subsection 45-120(1), an entity's ordinary income will generally be its **gross** ordinary income. However, in those exceptional circumstances where the Courts have ruled that only the profit made in relation to a profit making scheme or undertaking should be treated as ordinary income, only that profit will be *instalment income*.

2.62 Some examples of ordinary income are:

- gross sales;
- fees for services;
- interest paid or credited to a bank account;
- gross rent;
- dividends paid or applied on your behalf, but not any imputation credit recorded on the dividend statement, nor any amount that is

only deemed to be a dividend under a specific provision of the income tax laws;

- royalties.

2.63 The requirement that the ordinary income be **assessable income** ensures that instalments are not payable on amounts that are exempt from tax or otherwise not assessable. In addition, the requirement that the ordinary income also be assessable income **of the year** in which it is derived ensures that the instalments are not paid on too high an amount.

2.64 For example, a primary producer may be forced to dispose of livestock in circumstances that entitle that primary producer to choose to return the profit on sale over 5 income years under section 385-105 of the ITAA 1997. If the total profit on sale is \$500,000, and the amount to be included in assessable income in the year of the disposal is \$100,000, the primary producer's *instalment income* would include only \$100,000 from the profit on sale of the livestock.

2.65 An amount of statutory income is not instalment income unless it is specifically included in instalment income by one of the following special rules or the rules for partnership and trust income in Subdivisions 45-H and 45-I which are discussed below. [*Notes 1 and 2 to subsection 45-120(1)*]

#### *Instalment income – special inclusion rules*

2.66 For some entities, there are special rules which include other amounts in *instalment income*.

2.67 One special rule applies only to eligible approved deposit funds, eligible superannuation funds and pooled superannuation trusts (as defined in section 267 of the ITAA 1936). For those entities, *instalment income* is their total assessable income. This is because the special rule in subsection 45-120(2) adds so much of their assessable statutory income as is reasonably attributable to an *instalment quarter* to the ordinary income included under subsection 45-120(1).

Note: It may be that an amount of statutory income is not reasonably attributable to a particular instalment quarter. If that is so, it may be disregarded in working out the instalment income of a fund for a particular instalment quarter. [*Paragraph 45-120(2)(d)*]

2.68 Another special rule applies to a primary producer who makes a withdrawal from a farm management deposit. The *instalment income* of an owner of a farm management deposit will include the unrecouped farm management deposit deduction (ie. the amount included in assessable income under section 393-15 in Schedule 2G to the ITAA 1936) in respect of a farm management deposit that has been withdrawn during the instalment period. [*Subsection 45-120(5)*]

2.69 There are further special rules that apply to working out the *instalment income* of:

- partners in a partnership [*Subdivision 45-H*]; and
- beneficiaries and trustees of trusts [*Subdivision 45-I*].

They are discussed below.

*Instalment income – special exclusion rules*

2.70 A taxpayer's *instalment income* does not include any amounts from which an amount is, or should be, withheld by the payer under the PAYG withholding system. But, if the amount is to be withheld because of the entity's failure to provide a TFN or ABN, that amount is not excluded from *instalment income*. [*Subsection 45-120(3)*]

2.71 Again there is a special rule for primary producers who are entitled to make farm management deposits. A primary producer may reduce its instalment income for an instalment quarter if it makes a farm management deposit during that quarter. Its *instalment income* will be reduced by the amount that the farm management deposit owner can reasonably expect to be able to deduct in that income year. However the primary producer cannot reduce its instalment income for the quarter below nil. [*Subsection 45-120(4)*]

***An entity can have instalment income even if it is not liable to pay instalments***

2.72 An entity can have instalment income even if it is not liable to pay an instalment. For example, a partnership can have instalment income even though it is the partners that are liable to pay instalments. This provision supports the rules in Subdivisions 45-H and 45-I. [*Subsection 45-120(6)*]

***Quarterly payers who pay instalments on the basis of GDP adjusted notional tax***

2.73 An eligible individual can choose, but only once each year, to pay quarterly instalments based on his or her *GDP adjusted notional tax*. This choice must be made by notifying the Commissioner, in the approved form, on or before the due date for payment of the instalment for the first instalment quarter in an income year for which the individual is liable to pay an instalment. [*Section 45-125*]

2.74 An individual is eligible to make the choice to pay instalments based on their *GDP adjusted notional tax* if:

- (a) they are neither registered, nor required to be registered, under Part 2-5 of the GSTA 1999; and

- (b) they are not a partner in a partnership that is registered, or required to be registered, under Part 2-5 of the GSTA 1999; and
- (c) their most recent notional tax notified by the Commissioner is \$8,000 or more.

2.75 This means that individuals cannot choose to pay quarterly instalments under this method if they are eligible to be an annual payer. *[Subsection 45-125(1)]*

2.76 An eligible individual who has chosen, in an income year, to pay quarterly instalments based on their *GDP adjusted notional tax*, can choose to pay the subsequent quarterly instalments for that income year worked out under section 45-110. This choice can only be made once in any income year. It takes effect for, and from, the instalment quarter in which it is notified to the Commissioner, in the approved form. *[Paragrpah 45-130(1)(a) and subsection 45-130(2)]*

2.77 An individual may again become a quarterly payer who pays on the basis of *GDP adjusted notional tax* in a subsequent income year if they again:

- satisfy the conditions in section 45-125; and
- choose under that section to pay quarterly instalments on the basis of their *GDP adjusted notional tax*.

*[Subsection 45-130(3)]*

2.78 The Commissioner must work out, in accordance with the following table, an amount that he or she notifies to the taxpayer under section 45-112 as the amount of their instalment for an instalment quarter in an income year (the current year). *[Section 45-400]*

<b>Amount of quarterly instalment worked out on basis of GDP adjusted notional tax</b>		
<b>Item</b>	<b>If the instalment quarter is:</b>	<b>The amount of the instalment is:</b>
1	the first in that income year for which an individual is liable to pay an instalment	25% of the *GDP adjusted notional tax
2	the second in that income year for which an individual is liable to pay an instalment	50% of the *GDP adjusted notional tax, reduced by the amount of your instalment for the earlier *instalment quarter in that income year
3	the third in that income year for which an individual is liable to pay an instalment	75% of the *GDP adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year

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**Amount of quarterly instalment worked out on basis of GDP adjusted notional tax**


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<b>Item</b>	<b>If the instalment quarter is:</b>	<b>The amount of the instalment is:</b>
4	the fourth in that income year for which an individual is liable to pay an instalment	100% of the *GDP adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year

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*Annual payer becoming quarterly payer because of notification that their notional tax is \$8,000 or more*

2.79 If an individual is an annual payer and the Commissioner notifies them of a *notional tax* of \$8,000 or more, they become a quarterly payer with effect for the first quarter in the subsequent income year. They also become eligible to choose (on or before the due date for payment of the first quarterly instalment for that next income year) to work out the amount of their quarterly instalments based on their *GDP adjusted notional tax*. This is subject to the proviso that they satisfy the other conditions in section 45-125. [Section 45-155]

*Effect of being notified of a notional tax of less than \$8000*

2.80 An individual, paying instalments based on their *GDP adjusted notional tax*, who is notified of a *notional tax* of less than \$8,000 continues to be liable to pay quarterly instalments based on the *GDP adjusted notional tax* for the balance of that income year. That individual is required to pay instalments worked out under section 45-110 for the first and subsequent quarters of the next income year. However, that individual can (on or before the due date for payment of the first instalment for that following income year) choose to pay annual instalments. [Paragraph 45-135(1)]

2.81 The individual may (in a subsequent year) become a quarterly payer who pays on the basis of *GDP adjusted notional tax* if they again:

- satisfy the conditions in section 45-125; and
- choose under that section to pay quarterly instalments on the basis of their *GDP adjusted notional tax*.

[Subsection 45-135(3)]

*Effect of becoming registered, or required to be registered, for GST*

2.82 If an individual who has chosen to pay instalments based on their *GDP adjusted notional tax*:

- becomes registered, or required to be registered, for GST under Part 2-5 of the GSTA 1999; or

- becomes a member of a partnership that is registered, or required to be registered, for GST under Part 2-5 of the GSTA 1999; or
- is a member of a partnership which becomes registered, or required to be registered for GST under Part 2-5 of the GSTAA 1999;

during an *instalment quarter*, that individual immediately ceases to be eligible to pay quarterly instalments based on their *GDP adjusted notional tax*.

2.83 Such individuals must work out the amount of their instalment for that, and following, *instalment quarters* under Section 45-110. They may (in a subsequent year) become quarterly payers who pay on the basis of *GDP adjusted notional tax* if they again:

- satisfy the conditions in section 45-125; and
- choose under that section, on or before the due date for payment of the first instalment in a succeeding income year, to pay quarterly instalments on the basis of their *GDP adjusted notional tax*.

*[Section 45-130]*

#### ***GDP adjusted notional tax***

2.84 The Commissioner works out an eligible individual's ***GDP adjusted notional tax*** and will notify that individual of the amount of the instalment. *[Section 45-112]*

2.85 The *GDP adjusted notional tax* is worked out in much the same way as *notional tax* is worked out under Subdivision 45-J. However, for the purposes of working out the *GDP adjusted notional tax*, the *adjusted taxable income* for the *base year* (worked out under section 45-330 and referred to as the "original amount") is increased by the *GDP adjustment* before the *adjusted tax* is worked out on that increased *adjusted taxable income* under section 45-340.

2.86 The *adjusted withholding income* for the *base year* (worked out under section 45-335 and also referred to as the "original amount") is also increased by the *GDP adjustment* before the *adjusted tax* is worked out on that increased *adjusted withholding income* under section 45-340.

2.87 The formula increasing the original amount(s) is:

$$\text{Original amount} \times (1 + \text{GDP adjustment})$$

*[Subsection 45-405(2)]*

2.88 The GDP adjustment is a percentage (rounded to the nearest whole number, rounding down a number ending in .5) that is worked out using the formula:

$$\left( 100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}} \right) - 100$$

2.89 If the percentage worked out according to the formula is a negative amount the GDP adjustment is 0%. [Subsection 45-405(3)]

2.90 The *GDP amount* for a quarter is the amount published by the Australian Statistician as the original gross domestic product at the current prices for the quarter. [Subsection 45-405(5)]

2.91 The sum of GDP amounts (current year) is the sum of *GDP amounts*, for the quarters in the last calendar year (the later calendar year) ending at least 3 months before the start of the current year, specified in the first document that is published by the Australian Statistician after the end of the later calendar year and that sets out the *GDP amounts* for all the quarters in both the later calendar year and the earlier calendar year.

2.92 The sum of GDP amounts (previous year) is the sum of the *GDP amounts* for the quarters in the calendar year (the earlier calendar year) before the later calendar year, specified in the first document that is published by the Australian Statistician after the end of the later calendar year and that sets out the *GDP amounts* for all the quarters in both the later calendar year and the earlier calendar year. [Subsections 45-405(4), (5) and (6)]

### Example

If the Commissioner notifies an individual of the amount of an instalment based on the *GDP adjusted notional tax* in July 2000, the Commissioner uses a GDP adjustment where the current year is the 2000-2001 income year. The sum of *GDP amounts* (current year) is the sum of *GDP amounts* for the quarters in the 1999 calendar year. The sum of *GDP amounts* (previous year) is the sum of the *GDP amounts* for the quarters in the 1998 calendar year.

### Amount of annual instalments

2.93 From the 2002-2003 income year, the amount payable as an annual PAYG instalment is worked out under paragraph 45-115(1)(a) as follows:

$$\text{Commissioner's instalment rate} \times \text{Entity's * instalment income for the income year}$$

2.94 The instalment rate used by an annual PAYG instalment payer must be the instalment rate notified by the Commissioner prior to the end

of the income year. [Subsection 45-115(2)] The entity is not entitled to choose its own instalment rate. [Note 1 to subsection 45-115(1)]

2.95 The instalment income for the income year is worked out in the same way as the instalment income for an *instalment quarter*. However, an annual PAYG instalment payer may instead choose to pay either of 2 other amounts:

- an amount based on the previous year's tax liability; or
- its own estimate of its current year's tax liability.

[Paragraphs 45-115(1)(b) and (c)]

2.96 The amount referred to in the first dot point of paragraph 2.95 is the amount notified by the Commissioner prior to the end of the income year as the *notional tax* worked out from the most recent assessment for the most recent income year. *Notional tax* is worked out under section 45-325.

2.97 The second dot point of paragraph 2.95 acknowledges that an annual instalment payer may vary the amount of its instalment by estimating its tax liability for the relevant income year. However, as Note 2 to subsection 45-115(1) states, the taxpayer may be liable to a penalty if its estimate is too low. That penalty is imposed under section 45-235 which is discussed later in this Chapter. An entity that chooses to estimate its tax liability for the income year must notify the Commissioner of the amount of the instalment in the approved form. [Subsection 45-115(3)]

2.98 The amount of an annual instalment payable for the 2000-2001 and 2001-2002 income years by an entity who is liable to pay its instalment during the income year will be whichever of the following the entity chooses:

- an amount based on the previous year's tax liability; or
- its own estimate of its current year's tax liability.

[Section 45-175]

2.99 That is, the annual payer who pays its instalment during the income year cannot choose to work out its instalment using its instalment rate and instalment income for the income year. Its instalment income for the year cannot be determined when the instalment is due.

## **How a quarterly PAYG instalment payer varies the instalment rate**

### ***Choosing your own instalment rate***

2.100 A quarterly PAYG instalment payer varies its rate under new Subdivision 45-F. [Section 45-200]



2.101 Individuals have no right to vary their *GDP adjusted notional tax* or to choose their own rate while their choice to pay quarterly instalments based on their *GDP adjusted notional tax* is still current. If such individuals consider that their *quarterly instalments* are not an adequate reflection of their expected tax liability for that income year, they can choose to stop being a quarterly payer who pays on the basis of *GDP adjusted notional tax*. [Paragraph 45-130(1)(a)]

2.102 That choice will take effect for, and from, the quarter in respect of which it is notified to the Commissioner in the *approved form*. The individual is then required to pay quarterly instalments worked out under section 45-110. The applicable instalment rate will be the most recent instalment rate given to him or her by the Commissioner before the end of that quarter. [Paragraph 45-110(2)(a)]

2.103 However, that individual may instead choose their own rate under Subdivision 45-E

2.104 An entity that pays quarterly PAYG instalments based on the Commissioner's rate and their instalment income, may choose to use its own instalment rate instead of the Commissioner's instalment rate when it works out the amount of its instalment for an instalment quarter. [Subsection 45-205(1)] For example, an entity that considers the instalments payable as a result of applying the Commissioner's instalment rate to its instalment income for the quarter will not be an adequate reflection of its expected tax liability for that income year may work out its own instalment rate.

2.105 The taxpayer can use its own instalment rate to calculate the instalment payable for a quarter but must then use that rate for each subsequent quarterly instalment unless the entity chooses to work out another rate. This is so even when the Commissioner notifies the entity of a further instalment rate calculated from a later assessment than the assessment from which the earlier Commissioner's instalment rate was calculated. This is because the instalment rate chosen by an entity should be a better reflection of the amount of tax payable for the income year than the Commissioner's instalment rate which can only be calculated on the basis of income from prior income years. [Subsections 45-205(2) and (3)]

2.106 However, the taxpayer's own instalment rate worked out for a particular income year does **not** carry over to a subsequent income year. The first instalment of the subsequent income year must be calculated using the latest rate notified by the Commissioner unless the entity again chooses to work out its own instalment rate for that subsequent year. [Subsection 45-205(4)]

2.107 When an entity uses its own instalment rate to calculate a quarterly PAYG instalment, it must notify the Commissioner of that instalment rate as well as its instalment income for the quarter on or before the due date for the instalment. [Sections 45-210 and 45-20]

2.108 An entity cannot revoke the instalment rate it has chosen once it has notified the Commissioner that it has chosen to use that varied instalment rate to calculate the instalment for that quarter. But it may choose a different instalment rate for a later instalment quarter. [Section 45-205(2)]

***Claiming a credit for earlier instalments***

2.109 An entity that has already paid one or more quarterly instalments before choosing an instalment rate under section 45-205 may claim a credit in respect of its previous instalments if either:

- the instalment rate chosen for the calculation of the current quarterly instalment is less than the instalment rate used to calculate the previous instalment(s); or
- the amount of their instalment for a previous instalment quarter in the same income year was an amount notified to them by the Commissioner under section 45-112 (because they were a quarterly payer whose instalments were based on *GDP adjusted notional tax*);

and the amount worked out using the Method Statement in paragraph 45-215(1)(c) is greater than nil. [Subsection 45-215(1)]

2.110 The following example illustrates how the amount of the credit that may be claimed is worked out under subsection 45-215(1) by an entity that is required to pay instalments worked out under section 45-110 for the income year:

**Example**

The Commissioner has notified Company A (a retailer) that its instalment rate is 15%. Company A uses that rate to calculate its first quarterly instalment for the income year. Its instalment income for that quarter is \$80,000 and, therefore, it is liable to pay \$12,000 (ie. 15% of \$80,000) as its first quarterly instalment.

Company A's instalment income for its second instalment quarter is \$100,000. It is concerned that the instalment rate notified by the Commissioner is too high because its July and Christmas sales have been significantly down compared with the corresponding periods of the previous year and its operating costs have increased slightly. It chooses to use 10% as its *varied instalment rate*. Using the method statement at subsection 45-215(1), Company A's variation credit is worked out as follows:

- Step 1 Company A's earlier instalments for the year add up to \$12,000.
- Step 2 Company A used the instalment rate notified by the Commissioner when calculating the first quarterly

instalment. It has no previous credits by which to reduce the \$12,000 from Step 1. Result is \$12,000.

Step 3 Company A's \$80,000 instalment income from the first instalment quarter is multiplied by its varied instalment rate of 10%. The result is \$8,000.

Step 4  $\$12,000 - \$8,000 = \$4,000$

Step 5 The amount of Company A's credit is \$4,000.

The result is that Company A will have an instalment liability for the second *instalment quarter* of \$10,000 (ie. 10% of \$100,000) and may claim a credit of \$4,000.

In the third instalment quarter, Company A's instalment income of \$70,000 was also lower than the equivalent quarter of the previous year and its expenses were again higher. It chooses to use 8% as its instalment rate. It would be liable to an instalment of \$5,600 (being 8% of \$70,000) and may claim a credit of \$3,600 worked out as follows:

Step 1 Company A's earlier instalments for the year are \$12,000 and \$10,000. They add up to \$22,000.

Step 2 Company A claimed a credit of \$4,000 in the second instalment quarter. So \$22,000 is reduced by \$4,000. The result is \$18,000.

Step 3 Company A's \$180,000 instalment income from the first and second instalment quarters is multiplied by its chosen instalment rate of 8%. The result is \$14,400.

Step 4  $\$18,000 - \$14,400 = \$3,600$

Step 5 The amount of Company A's credit is \$3,600.

2.111 An entity is not required to make additional payments when it chooses an instalment rate higher than the instalment rate it used in the previous instalment quarter. But it may choose to make additional payments.

2.112 When an individual makes a claim for a credit arising from a variation they will need to know their instalment income for each of the instalment quarters in the income year. This is so even in the case of an individual whose instalment(s) were based on *GDP adjusted notional tax* for some quarters in the income year in respect of which they vary. This information is required by the Method Statement in subsection 45-215(1).

2.113 The individual may be required to provide to the Commissioner details of the amount of his or her *instalment income*, in the *approved form*, in respect of instalment quarters for which they were liable to instalments based on their *GDP adjusted notional tax*. This information

will enable the Commissioner to work out (under section 45-230) the GIC on a shortfall in quarterly instalments and on excess credit claimed, if the varied instalment rate was too low.

2.114 A claim for a credit arising from a variation (variation credit) must be made in the approved form. [Subsection 45-215(2)]

***What happens to the instalment credit claimed?***

2.115 As with the instalment liabilities payable under section 45-15, a variation credit claimed by an entity will be credited to its RBA. The Commissioner will apply that credit in accordance with section 8AAZLA or 8AAZLB which are being inserted in the TAA 1953 by Schedule 2 to this Bill.

***Liability to penalty***

2.116 An entity is liable to a penalty for each instalment quarter in which it chose to use an instalment rate under section 45-205 (varied instalment rate) that is less than 85% of the instalment rate that should have been used. The Commissioner works out that rate – the ***benchmark instalment rate*** – having regard to the entity's instalment income and assessed tax for that year. [Subsection 45-230(1)]

***Working out the benchmark instalment rate***

2.117 The Commissioner works out the benchmark instalment rate. An entity does not need to work it out, but an understanding of how it is worked out may help an entity to work out the instalment rate it chooses to use under section 45-205.

2.118 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:

$$\frac{\text{The entity's * benchmark tax}}{\text{Variation year instalment income}} \times 100$$

***[Subsection 45-360(1)]***

2.119 The ***variation year instalment income*** (the denominator in the formula contained in subsection 45-360(1)) is so much of the entity's assessable income for the variation year as the Commissioner determines is instalment income for the year. [Subsection 45-360(2)]

2.120 The entity's ***benchmark tax*** (the numerator in the formula contained in subsection 45-360(1)) is the entity's ***adjusted assessed tax*** (worked out under section 45-375) on the entity's ***adjusted assessed taxable income*** (worked out under section 45-370) for the variation year. [Subsection 45-365(1)]

2.121 But if the entity's assessable income included withholding payments, the **benchmark tax** is reduced (but not below nil) by any withholding credits (including credits for amounts withheld for a failure to quote an ABN or TFN). [Subsections 45-365(2) and (3)]

2.122 This ensures that the figure used to determine the amount of any variation penalty is reduced to reflect the entity's actual withholding credits for the income year.

2.123 An entity's **adjusted assessed taxable income** for the variation year is the entity's taxable income reduced by any net capital gain included in assessable income. [Subsection 45-370(1)] This ensures that an entity cannot be penalised for not paying instalments for any capital gains derived during the year. But this rule does not apply to eligible approved deposit funds, eligible superannuation funds and pooled superannuation trusts (as defined in section 267 of the ITAA 1936). [Subsection 45-370(2)]

2.124 The **adjusted assessed tax** on an entity's adjusted assessed taxable income for a variation year is worked out using the Method Statement in section 45-375.

2.125 Under **Step 1 of the Method Statement**, an entity's **adjusted assessed tax** is worked out by applying the *Income Tax Rates Act 1986* to its adjusted assessed taxable income. But the entity's entitlement to the low income earner offset and the offsets for a private health insurance policy and superannuation contributions made for a spouse are disregarded.

2.126 Then any liability an entity has for Medicare or HECS is worked out under **Steps 2 and 3 of the Method Statement**.

2.127 Under **Step 4** the amounts from Steps 1, 2 and 3 are added together if, for the variation year, a determination is made that the entity is entitled under Part 9 of the *A New Tax System (Family Assistance) (Administration) Act 1999* to the family tax benefit the Commissioner must work out the amount of family tax benefit that the entity would have been entitled to claim on the assumption that its adjusted assessed taxable income were its taxable income for the current year. That amount is subtracted from the result of the addition of the results from Steps 1, 2 and 3. [Section 45-375]

*Working out the amount on which penalty is imposed*

2.128 The entity will be liable to pay the GIC on the amount worked out using the formula in subsection 45-230(2), ie.:

$$\left( \text{Rate of discrepancy} \times \text{Entity's * instalment income for the variation quarter} \right) + \text{Credit adjustment}$$

2.129 The first part of the formula (the part in brackets) works out the difference between the amount that was payable and the amount that should have been payable for the quarter (the variation quarter). It multiplies the instalment income of the variation quarter by the rate discrepancy. The **rate discrepancy** is the difference between the entity's chosen instalment rate and the lesser of:

- the benchmark instalment rate; and
- the most recent Commissioner's instalment rate that was given to the entity before the end of the variation quarter.

2.130 The **credit adjustment** (the second part of the formula contained in subsection 45-230(2)) determines the part of the penalty attributable to any credit the entity claimed in the variation quarter. If no credit is claimed, the credit adjustment is nil. If a credit is claimed, the credit adjustment is the lesser of the following amounts:

- the amount of the credit actually claimed; or
- the amount worked out by multiplying the instalment income of the preceding instalment quarters of the income year by the rate discrepancy. [*Subsection 45-230(2), definition of credit adjustment*]

### **Example**

The instalments payable, and credits claimed, by Company A for the year were based on the following information:

	<i>Qtr 1</i>	<i>Qtr 2</i>	<i>Qtr 3</i>	<i>Qtr 4</i>	<i>Total</i>
Instalment income	\$80,000	\$100,000	\$70,000	\$50,000	\$300,000
Commissioner's rate	15%	15%	12%	12%	
Varied rate	N/A	10%	8%	8%	
Debit	\$12,000	\$10,000	\$5,600	\$4,000	\$31,600
Credit	N/A	\$4,000	\$3,600	N/A	\$7,600

The Commissioner determines Company A's benchmark instalment rate to be 10%.

Company A would not be penalised in the second instalment quarter. Its varied rate was equal to the benchmark instalment rate.

The amount on which Company A's penalty would be based for the third quarter would be worked out as follows:

$$[(10\% - 8\%) \times \$70,000] + [\$3,600 \text{ or } (10\% - 8\%) \times \$180,000]$$

$$\$1,400 + [\$3,600 \text{ or } \$3,600]$$

$$\$5,000$$

The amount on which Company A's penalty would be based for the fourth quarter would be worked out as follows:

$$[(10\% - 8\%) \times \$50,000] + \text{Nil}$$
$$\$1,000$$

*Working out the amount of the GIC penalty*

2.131 The amount worked out under subsection 45-230(2) is subject to the GIC for each day in the period that:

- started on the due date for the instalment that is the subject of the penalty; and
- finishes at the end of the due date for payment of the assessed tax for the variation year, or the date of payment of the assessed tax if that is earlier.

*[Subsection 45-230(3)]*

**Example**

Assuming the GIC rate is 12.75% for all of the relevant period and that the due date for assessment is 1 March after the end of the income year, Company A's penalty for the third instalment quarter would be calculated for the period starting on 21 April and ending on 1 March of the following year. The penalty for the third quarter would be worked out as follows:

$$\$5,000 \times 12.75\% \times \frac{315}{365} = \$550$$

*Commissioner must notify the entity of the penalty*

2.132 The Commissioner must give an entity written notice of the amount of penalty payable. The notice must give the entity 14 days to pay that penalty. *[Subsection 45-230(4)]*

2.133 If the penalty is not paid by the due date, the amount unpaid will be subject to the GIC for each day it remains unpaid. The GIC applies both to the unpaid amount and to any GIC on the unpaid amount. *[Subsection 45-230(5)]*

**How an annual PAYG instalment payer estimates its own tax**

2.134 As explained earlier, an annual PAYG instalment payer may work out its annual instalment by:

- multiplying its instalment income for the income year by the instalment rate notified by the Commissioner; or
- paying the notional tax notified by the Commissioner; or

- estimating its benchmark tax for the income year.

**[Subsection 45-115(1)]**

2.135 That is, an annual instalment payer varies by estimating its benchmark tax for the income year. The way in which the benchmark tax is worked out was explained above in relation to the Commissioner's calculation of the benchmark instalment rate.

***Liability to penalty***

2.136 A penalty is payable if the entity's instalment (ie. its estimated amount) is less than 85% of the benchmark tax as worked out by the Commissioner under Subdivision 45-K after the end of the income year.

**[Subsection 45-235(1)]**

2.137 The GIC is imposed on the difference between the instalment payable (ie. the estimated tax) and the lowest of the:

- amount of the instalment worked out using the most recent instalment rate given by the Commissioner before the end of the income year;
- most recent *notional tax* notified by the Commissioner (under subsection 45-320(5)) before the end of the income year;
- entity's benchmark tax for the income year.

**[Subsection 45-235(3)]**

2.138 In working out the amount on which the penalty is based for the 2000-2001 and 2001-2002 income years of an entity that pays its instalment during the income year, the GIC is imposed on the difference between the instalment payable (ie. the estimated tax) and the lowest of the:

- most recent *notional tax* notified by the Commissioner (under subsection 45-320(5)) before the end of the income year;
- entity's benchmark tax for the income year.

Such an entity is not entitled to calculate its instalment using its instalment rate and its instalment income for the year because its instalment is payable during the income year. **[Subsection 45-235(2)]** (Note: The way in which the benchmark tax is worked out was explained above in relation to the Commissioner's calculation of the benchmark instalment rate.)

2.139 The GIC is imposed for each day in the period:

- starting on the due date for the instalment for the income year;  
and



- finishing at the end of the due date for payment of the assessed tax for the income year, or the date of payment of the assessed tax if that is earlier.

*[Subsection 45-235(4)]*

2.140 The Commissioner must give an entity written notice of the amount of penalty payable. The notice must give the entity 14 days to pay the amount. *[Subsection 45-235(5)]*

2.141 If the penalty is not paid by the due date, the amount unpaid will be subject to the GIC for each day it remains unpaid. The GIC applies both to the unpaid amount and to any GIC on the unpaid amount. *[Subsection 45-235(6)]*

### **Commissioner may remit the variation penalty**

2.142 The Commissioner may remit the whole or part of the penalty imposed under section 45-230 or 45-235. He or she must be satisfied that it is fair and reasonable to do so, having regard to any special circumstances that exist. *[Section 45-240]*

### **Special rule for working out the instalment income of a partner**

2.143 New Subdivision 45-H sets out rules which require partners to include in their instalment income for an instalment quarter or income year, their share of the partnership income of that period. The rules recognise that partners derive partnership income throughout the income year and not just at the time when partnership accounts are struck.

2.144 The rules are only relevant to a partner who is liable to pay an instalment ie. a partner who is given an instalment rate by the Commissioner. The amount included under Subdivision 45-H is added to any other instalment income of the partner for the period.

2.145 A partner must include an amount in its instalment income for each partnership in which it is a partner at any time during the instalment quarter or income year. *[Subsection 45-260(1)]* The amount to be included is a share of so much of the partnership income as satisfies the definition of instalment income in section 45-120. The share required to be included is worked out as a proportion being:

- the amount included in the partner's assessable income for the last income year

divided by

- the partnership's instalment income for that last income year.

*[Subsection 45-260(1)]*

2.146 The amount included in the partner's assessable income for the last income year is defined to be so much of the partner's individual interest in the partnership's net income for an income year as was included in the partner's assessable income by section 92 of the ITAA 1936 for the most recent income year for which an assessment has been made.

*[Subsection 45-260(2)]*

2.147 The partnership's instalment income for that income year is so much of the partnership's assessable income as would satisfy the definition of instalment income in section 45-120.

2.148 But, if either of the components of that ratio does not exist (eg. because the partnership incurred a loss) or is a nil amount, the partner may still be required to include an amount in its instalment income. The partner is required to include a fair and reasonable amount in its instalment income. That amount is determined having regard to:

- the extent of the partner's interest in the partnership;
- the instalment income of the partnership for the relevant period; and
- any other relevant circumstances.

*[Subsection 45-260(3)]*

2.149 The fair and reasonable amount will also be included in the partner's instalment income in circumstances where the partner was not a partner in a partnership, or that particular partnership, in the earlier income year. *[Paragraph 45-260(2)(b)]*

### **Special rule for working out the instalment income of certain beneficiaries and trustees**

2.150 New Subdivision 45-I sets out rules which require beneficiaries to include in their instalment income for an instalment period a share of the trust income of that period. The rules ensure that beneficiaries include some proportion of their trust income in working out each instalment and that trustees pay instalments where in the past they have been assessed and liable to tax on some part of the net income of a trust estate.

2.151 The rules are only relevant to a beneficiary or trustee who is liable to pay a PAYG instalment ie. one who is given an instalment rate by the Commissioner. So far as a beneficiary is concerned, the amount included under Subdivision 45-I is added to any other instalment income of the beneficiary for the period.

2.152 A beneficiary must include an amount in its instalment income for each trust of which it is a beneficiary. *[Subsection 45-280(1)]* The amount to be included in the beneficiary's instalment income is a share of so much of

the trust income as satisfies the definition of instalment income in section 45-120. The share required to be included is worked out as a proportion being:

- the amount included in the beneficiary's assessable income for the last income year

divided by

- the trust's instalment income for that income year.

*[Subsection 45-280(1)]*

2.153 The amount included in the beneficiary's assessable income for the last income year is defined to be the amount the beneficiary was required to include in its assessable income under Division 6 of Part III of the ITAA 1936 for the most recent income year for which an assessment has been made. *[Subsection 45-280(2)]*

2.154 The trust's instalment income for that income year is so much of the trust's assessable income as would satisfy the definition of instalment income in section 45-120.

2.155 But, if either of the components of that ratio does not exist (eg. because the trust incurred a loss) or is a nil amount, the beneficiary may still be required to include an amount in its instalment income. The beneficiary is required to include a fair and reasonable amount in its instalment income. That amount is determined having regard to:

- the extent of the beneficiary's interest in the trust; and
- the extent of the beneficiary's interest in the income of the trust; and
- the trust's instalment income for the relevant period; and
- any other relevant circumstances. *[Subsection 45-280(3)]*

2.156 The fair and reasonable amount will also be included in the beneficiary's *instalment income* in circumstances where the beneficiary was not a beneficiary of the trust in the earlier income year.

2.157 Section 45-300 explains how Part 2-10 applies to trustees of trusts. Subsection 45-300(1) specifically acknowledges that the trustees who are assessed and liable to tax for entities that are taxed as companies are liable to pay PAYG instalments under Part 2-10.

2.158 Subsection 45-300(2) specifically acknowledges that trustees who are assessed and liable to tax under section 98, 99 or 99A of the ITAA 1936 are liable to pay instalments under Part 2-10. But, if a trustee is assessed and liable to tax only under subsection 98(3) or (4) on a

non-resident's share of the net income of a trust, it will not be liable to pay PAYG instalments.

2.159 More specific rules as to how to calculate the instalment rate for trustees will be introduced later in a separate Bill – see the *List of Issues to be Addressed Later* at the end of this Chapter.

## **How the Commissioner works out the instalment rate**

2.160 New Subdivision 45-J contains rules about how the Commissioner works out the instalment rate.

2.161 As stated in paragraph 2.18 above, the Commissioner may notify an entity of its instalment rate at any time by giving written notice of it. [Subsection 45-15(1)] Entities will generally receive a new instalment rate each year as their assessment is made or their income tax return for the year processed. Notice of the rate may be incorporated in a notice of assessment. [Subsection 45-320(6)] The Commissioner must also notify an entity of its notional tax when it notifies it of its instalment rate. [Subsection 45-320(5)]

2.162 The instalment rate will be calculated as a percentage to 2 decimal places, with the third decimal place rounded up if it is 5 or more. [Subsection 45-320(1)] For example, a figure calculated as 12.495% would be rounded up to 12.50%.

2.163 The formula used to calculate the percentage itself is:

$$\frac{\text{Entity's * notional tax}}{\text{Base assessment instalment income}} \times 100$$

The terms used in both the numerator and denominator are separately defined. [Subsection 45-320(1)]

2.164 The *base assessment instalment income* (the denominator) is so much of the assessable income as worked out for the *base assessment* as the Commissioner determines is instalment income for the *base year*. [Subsection 45-320(2)]

2.165 The *base assessment* is defined to be the latest assessment for an entity's most recent income year. But if there is a later income year for which the entity does not have a taxable income (eg. it made a loss or the tax losses exceeded what would otherwise have been its taxable income) the base assessment is the latest return or other information from which an assessment for that income year would have been made. [Subsection 45-325(3)]

2.166 The *base year* is the income year to which the base assessment relates. [Subsection 45-320(4)]

2.167 The entity's **notional tax** (the numerator) is worked out under **section 45-325**. There are several steps involved in working it out. These steps ensure that notional tax is calculated taking into account only the instalment income of the entity and not, eg., income from which a payer withheld, or should have withheld, amounts under the PAYG withholding system.

2.168 Subsection 45-325(1) sets out the first step for calculating an entity's notional tax. It is the entity's **adjusted tax** (worked out under subsection 45-340) on its **adjusted taxable income** (worked out under subsection 45-330) for the income year to which the base assessment relates.

2.169 Subsections 45-325(2) and (3) set out the second step for calculating an entity's notional tax. That step only applies if the entity has income which is the subject of the PAYG withholding system in the income year which is the subject of the base assessment. In that case, the notional tax calculated under subsection 45-325(1) is reduced (but not below nil) by the adjusted tax for the income year to which the base assessment relates (worked out under section 45-340) on its adjusted withholding income (as worked out under section 45-335).

2.170 When the Commissioner works out an entity's notional tax, 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. This means that the Commissioner can take account of any changes to the law that did not apply for the purposes of the base assessment but may reasonably be expected to apply for the income year in which he or she is working out the instalment rate. [**Subsection 45-325(4)**]

2.171 Further the Commissioner may, when calculating the instalment rate, take into account any provisions of an Act or regulations that, in the Commissioner's opinion, are likely to be enacted or made. But the Commissioner may do so only if doing so will result in a reduced instalment rate. [**Subsection 45-325(5)**]

#### *Working out the adjusted taxable income of an entity*

2.172 The **adjusted taxable income** of an entity is worked out by the Commissioner in much the same way as taxable income is worked out under section 4-15 of the ITAA 1997. However, 2 adjustments must be made.

2.173 The first adjustment is to exclude any net capital gain included in the assessable income for the base assessment of an entity that is not an eligible approved deposit fund, eligible superannuation fund or pooled superannuation trust (as defined in section 267 of the ITAA 1936). [**Paragraph 45-330(1)(a) and subsection 45-330(2)**]

2.174 The second adjustment relates to any tax losses (as defined in the ITAA 1997) claimed in the base assessment. The adjustment requires the Commissioner to replace the deduction actually allowed for tax losses in the *base assessment* with the tax losses still available for deduction in subsequent income years. [Paragraphs 45-330(1)(b) and (c)] This will ensure that the Commissioner calculates an instalment rate for loss entities in the income year in which they are likely to become taxable.

*Working out adjusted withholding income of an entity*

2.175 The **adjusted withholding income** of an entity is the total assessable income of the entity from which there were, or should have been, amounts withheld under the PAYG withholding system. That amount is then reduced by so much of the entity's deductions that reasonably relate to the withholding income. However, assessable income from which an amount has been withheld only because of the entity's failure to provide its TFN or ABN is not included in adjusted withholding income. [Section 45-335]

*Working out adjusted tax under section 45-340*

2.176 The method for working out an entity's **adjusted tax** as discussed in the following paragraphs applies whether the Commissioner is working it out for that entity's *adjusted taxable income* or *adjusted withholding income* for the base assessment. [opening words of section 45-340]

Method Statement in section 45-340

2.177 **Step 1 of the Method Statement** requires the Commissioner to work out the amount of income tax that would have been payable if the *adjusted taxable income* or *adjusted withholding income* had been the entity's taxable income for the purposes of applying the *Income Tax Rates Act 1986* to the current year. However, an entity's entitlement to specified offsets is disregarded. This approach replicates what happens under the current provisional tax system. As a matter of policy, these offsets are only taken into account on actual assessments and cannot currently be claimed through lower deductions from withholding payments or as a reduction in provisional tax.

2.178 **Step 2** requires the Commissioner to work out the amount that would be payable by the entity under the *Medicare Levy Act 1986* on the assumption that its adjusted taxable income or adjusted withholding income were its taxable income for the current year, but disregarding sections 8B to 8G of that Act, which increase the levy in certain cases.

2.179 **Step 3** requires the Commissioner to work out the amount that would be payable by the entity under either the *Higher Education Funding Act 1988* in respect of its accumulated HEC debt for the base year on the assumption that its adjusted taxable income or adjusted withholding income were its taxable income for the current year.

2.180 **Step 4** requires the Commissioner to add up the amounts from Steps 1, 2 and 3. Then if, for the base year, a determination is made that the entity is entitled under Part 9 of the *A New Tax System (Family Assistance) (Administration) Act 1999* to the family tax benefit, the Commissioner must work out the amount of family tax benefit that the entity would have been entitled to claim on the assumption that its adjusted taxable income or adjusted withholding income were its taxable income for the current year. That amount is subtracted from the result of the addition of the results from Steps 1, 2 and 3.

### **Explanation of the amendments (Closure of company instalment system)**

2.181 **Item 16 of Part 2 of Schedule 1** to this Bill will insert new section 221AZJA in the ITAA 1936. New section 221AZJA will ensure that an entity cannot be liable to pay an instalment under Division 1C of Part VI of the ITAA 1936 in respect of its income tax liability for the 2000-2001 income year. That Division applies to:

- companies;
- the trustees of trusts that are corporate unit trusts and public trading trusts within the meanings of Divisions 6B and 6C of Part III of the ITAA 1936 respectively;
- the trustees of funds that are eligible approved deposit funds, eligible superannuation funds and pooled superannuation trusts within the meaning of section 267 of the ITAA 1936; and
- corporate limited partnerships.

2.182 **Item 15 of Part 2 of Schedule 1** will make a complementary amendment to Division 1B of Part VI of the ITAA 1936 that will ensure that an instalment does not become payable under that Division because instalments will no longer be payable under Division 1C of Part VI of the ITAA 1936.

### **Special transitional rules for company instalment taxpayers**

2.183 The new PAYG instalments system will bring forward the timing of the income tax instalments payable by those entities who are in the company instalments system in the 1999-2000 income year. In their 2000-2001 income years, those taxpayers would be liable to pay instalments of income tax for both the 1999-2000 and 2000-2001 income years unless special arrangements are made.

2.184 The ANTS document outlined various transitional measures designed to overcome the cash-flow burden imposed on these taxpayers by

the move to the PAYG instalments system. The following paragraphs explain the provisions needed to give effect to those measures.

***Certain instalments will not be payable***

2.185 ***Item 18 of Part 2 of Schedule 1*** will insert in Division 1C of Part VI of the ITAA 1936 new ***section 221AZKB***. This section provides that:

- an entity, classified as medium for the purposes of applying Division 1C in the 1999-2000 income year, is not liable to pay its third instalment (ie. the instalment that would otherwise be due on 1 December, or the 1<sup>st</sup> day of month 18 for an entity with a substituted accounting period); [*Subsection 221AZKB(1)*]
- an entity, classified as small for the purposes of applying Division 1C in the 1999-2000 income year, is not liable to pay its first instalment (ie. the instalment that would otherwise be due on 15 December, or the 15<sup>th</sup> day of month 18 for an entity with a substituted accounting period). [*Subsection 221AZKB(2)*]

2.186 However the liability to pay those respective instalments is only removed for an entity that is liable to pay a PAYG instalment for the first instalment quarter of the 2000-2001 income year. [*Subsection 221AZKB(3)*]

2.187 Further, subsection 221AZKB(2) does not apply to an entity classified as small which is liable to pay only a final instalment for the 1999-2000 income year under subsection 221AZK(3A). These are entities whose assessed tax for the 1999-2000 income year exceeds \$300,000. [*Note to subsection 221AZKB(2)*]

2.188 As a result of removing the liability to pay these instalments, the amount payable by these entities as the final instalment for the 1999-2000 income year will be determined disregarding any amount that will not be payable as a result of new section 221AZKB. [*Subsection 221AZKB(4)*]

***Some or all of the final instalment will be deferred***

2.189 ***Item 18 of Part 2 of Schedule 1*** will also insert in Division 1C of Part VI of the ITAA 1936 new section 221AZKC. This section gives effect to the proposal to defer some or all of the final instalment of each entity within the company instalment system for the 1999-2000 income year. [*Subsection 221AZKC(1)*]

2.190 However, as with new section 221AZKB, an entity is only entitled to the deferral of some or all of the final instalment for the 1999-2000 income year if it is liable to pay a PAYG instalment for the first instalment quarter of the 2000-2001 income year. That is, an entity who has not been notified of an instalment rate by the Commissioner or an entity who is eligible to choose to pay PAYG instalments annually and has made that choice is not entitled to the deferral. [*Subsection 221AZKC(2)*]



2.191 The amount that an entity can defer is set out in subsection 221AZKC(3):

- an entity whose assessed tax for the 1999-2000 income year is less than \$8,000 can defer a maximum of 100% of its assessed tax;
- an entity whose assessed tax for the 1999-2000 income year is between \$8,000 and \$300,000 (inclusive) can defer a maximum of 42% of its assessed tax;
- an entity whose assessed tax for the 1999-2000 income year is more than \$300,000 can defer a maximum of 20% of its assessed tax.

2.192 If only some of the final instalment is deferred, the rest remains payable on the due date for the final instalment. [*Subsection 221AZKC(4)*]

***Repayment of the deferred amount***

2.193 For entities whose assessed tax for the 1999-2000 income year is \$300,000 or less, the deferred amount is repayable in 21 equal quarterly payments. That is,  $\frac{1}{21}$  of the deferred amount will be repayable each quarter. For entities whose assessed tax for the 1999-2000 income year is more than \$300,000, the deferred amount is repayable in 10 equal quarterly payments. That is  $\frac{1}{10}$  of the deferred amount will be repayable each quarter. [*Subsection 221AZKC(3)*]

2.194 The time when the first quarterly repayment will be payable depends on when the entity's final instalment liability for the 1999-2000 income year is due.

- If the final instalment is due on 1 December 2000 (or the 1<sup>st</sup> day of month 18 for an entity with a substituted accounting period), the first repayment is due with the PAYG instalment due on 21 January (or the 21<sup>st</sup> day of month 19 for an entity with a substituted accounting period).
- If the final instalment is due on 1 or 15 March 2000 (or the 1<sup>st</sup> or 15<sup>th</sup> day of month 21 for an entity with a substituted accounting period), the first repayment is due with the PAYG instalment due on 21 April (or the 21<sup>st</sup> day of month 22 for an entity with a substituted accounting period).

2.195 The granting, under section 206 of the ITAA 1936, of an extension of time to pay the final instalment for 1999-2000 will not affect the date on which the first repayment of the deferred amount is due. [*Subsection 221AZKC(5)*]

2.196 Each of the remaining quarterly payments is due 3 months after the day on which the previous quarterly payment is due. [*Subsection 221AZKC(6)*] That date will generally coincide with the due date for a PAYG instalment. But if no PAYG instalment is due that day, the quarterly repayment is still due. [*Subsection 221AZKC(7)*]

***Late payment & other links***

2.197 The quarterly payments are to be treated as tax or income tax for the purposes of sections 206, 208, 209, 214, 254, 255, 258 and 259 in the same way as the instalments payable under Division 1C. [*Subsection 221AZKC(8)*]

2.198 A quarterly payment that is paid late will be subject to the GIC imposed under Division 1 of Part IIA of the TAA 1953. The amendments in ***Items 19, 20 and 21 of Part 2 of Schedule 1*** ensure that the liability to the GIC applying to Division 1C instalments also applies to the quarterly repayments.

***Special rule for changed accounting periods***

2.199 The Commissioner will have a broad power to determine the:

- instalments which are the subject of deferral;
- amount to be deferred; and
- period over which the deferred amount will be repaid;

if an entity adopts a different accounting period for its 1999-2000 income year. [*Paragraph 221AZKE(a)*]

2.200 Similarly, the Commissioner will have a power to determine when the first repayment must occur if an entity adopts a different accounting period for its 2000-2001 income year. [*Paragraph 221AZKE(b)*]

2.201 Section 221AZKE is also being inserted in the ITAA 1936 by ***Item 18 of Part 2 of Schedule 1***. ***Item 17 of Part 2 of Schedule 1*** is a minor amendment to ensure that the new sections 221AZKB, 221AZKC and 221AZKE interact correctly with the rest of Division 1C of the ITAA 1936.

## **Explanation of the amendments (Closure of provisional tax system)**

2.202 ***Items 26 and 27 of Part 2 of Schedule 1*** amend subsection 221YB(2) of the ITAA 1936 to ensure that the Commissioner cannot require an entity to pay provisional tax for the 2000-2001 or later income years.

2.203 *Items 28 and 29 of Schedule 1* amend subsection 221YBA(1) of the ITAA 1936 to ensure that the Commissioner cannot require an entity to pay an instalment of provisional tax for the 2000-2001 or later income years.

2.204 There are no special transitional rules regarding the closure of the provisional tax system.

## List of Issues to be Addressed Later

2.205 The provisions in *Schedule 1* comprise the first instalment of the PAYG instalments system.

2.206 A further instalment of provisions will be introduced. It will cover issues such as:

- special rules for determining the instalment rate and instalment income of trustees;
- a penalty for false statements made in relation to information required to be given to the Commissioner;
- anti-avoidance provisions (whether general or specific) to support the PAYG instalments system;
- special rules to make the transition to PAYG instalments eg. in calculating the first instalment rate to be given to taxpayers;
- the effect of an amendment of the 1999-2000 income year assessment on the transitional deferral arrangements for an entity that is a company instalment payer; and
- consequential amendments to taxation and other legislation.



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## Chapter 3

# ***Running balance accounts, general interest charge and related matters***

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### Overview

3.1 *Schedule 2* to this Bill will amend the TAA 1953 and other Acts, for which the Commissioner has administrative responsibility, to give effect to the aligned business tax obligations of ‘one return and one payment’ outlined in ANTS. The measures covered by the amendments will:

- enable taxpayers to provide a single activity statement and corresponding net payment or refund claim (ANTS at page 146);
- extend the application of the current RBA arrangements so that the Commissioner can establish RBAs to record business tax debts and payments in a more accurate and efficient manner;
- allow payments and credits to be allocated to an RBA to reflect the Commissioner’s accounting practices. This is an alternative to the current legislative rule which requires the Commissioner to allocate payments and credits to primary tax debts;
- align the payment dates for FBT instalments with the quarterly remittance dates of other business taxes by changing the current instalment arrangement to a system of 4 equal instalments followed by a year end reconciliation upon assessment (ANTS at page 146);
- allow the Commissioner to accept voluntary payments from taxpayers on account of future taxation debts (ANTS at page 135);
- vary some existing penalty arrangements so that they can be managed within an RBA framework; and
- make technical amendments to the RBA and GIC provisions in TLAA3 1999. These amendments ensure the provisions apply as intended to PAYE, PPS, RPS and sales tax. The amendments are also necessary to support the expansion of the RBA system to other debts in the tax reform environment from 1 July 2000.

3.2 The measures are explained in the following Sections:

- Section 1**     Extending RBA arrangements and the treatment of payments and credits
- Section 2**     Payment and notification of FBT instalment and assessment debts
- Section 3**     Voluntary payments
- Section 4**     GIC on unpaid tax
- Section 5**     GIC on unpaid non-electronic payment penalty
- Section 6**     Technical improvements

## **SECTION 1     EXTENDING RBA ARRANGEMENTS AND THE TREATMENT OF PAYMENTS AND CREDITS**

### **Summary of the amendments**

#### **Purpose of the amendments**

3.3     To allow the Commissioner to establish RBAs to account for tax obligations under the Government's Tax Reform proposals.

#### **Date of effect**

3.4     The amendments will apply to RBAs established on or after 1 July 2000 in respect of all tax debts. *[Item 35]*

### **Background**

3.5     The current RBA arrangements are contained in Part IIB of the TAA 1953 and apply to establish separate RBAs from 1 July 1999 to account for PAYE, PPS, RPS and sales tax debts. The arrangements represented the first step towards the establishment of an integrated account to record the taxation obligations of a taxpayer.

3.6     With the introduction of a range of new business tax obligations under the Government's Tax Reform proposals, there is a need to expand the scope of RBAs. All debts notified on a business activity statement (BAS) and any associated payments and credit entitlements will be recorded on a single account for that business.

3.7     The separate RBAs established under the existing provisions for the 4 classes of tax debts will continue after 1 July 2000, but only for the

purpose of recording any unpaid amounts which arose before that time.  
*[Item 36]*

## **Explanation of the amendments**

### **Extending RBA arrangements**

3.8 The amendments to the TAA 1953 will extend the current RBA arrangements to allow the Commissioner to establish an RBA to account for any primary tax debt. A primary tax debt is any liability under a taxation law, including amounts that are not yet due for payment. This amendment will enable the Commissioner to establish an RBA for taxpayers with obligations under the Government's Tax Reform proposals.  
*[Items 8 to 10, amended section 8AAZC]*

3.9 A taxpayer will be required to notify the Commissioner of all liabilities under the new tax system. The BAS will be the approved form for notifying most business tax liabilities so that those debts and any credit entitlements can be recorded on an RBA. From 1 July 2000 the following obligations will be notified on a BAS:

- Goods and services tax;
- Wine equalisation tax;
- Luxury car tax;
- Pay as you go: income tax withholding;
- Pay as you go: income tax instalments;
- Fringe benefits tax instalments; and
- Deferred company instalments.

3.10 Existing systems will continue to account for other tax debts such as assessed income tax, assessed FBT and superannuation liabilities. These non-RBA debts may come into the RBA framework at some future stage.

### ***Credits for instalment payments***

3.11 There is also a need to ensure the RBA system, which records the income tax instalment and fringe benefits tax instalment debts, interacts correctly with the income tax and FBT assessment systems.

3.12 The law imposes tax by making an assessment of income tax or FBT payable for the year. The instalment obligations are mechanisms for collecting that assessed tax. By having these collection obligations the law establishes a liability for instalments in addition to the liability for the full

amount of assessed tax payable for a year. It is therefore necessary to have a provision that limits a taxpayer's overall income tax and FBT debt to the annual assessed amount.

3.13 *New section 45-30 in Schedule 1* of the TAA 1953 and *new subsection 105(1)* of the FBTA 1986 will achieve this by giving a taxpayer credit for each instalment payable for the year of income. The credit will exist regardless of whether an instalment is paid. The entitlement to the credit will arise upon assessment or a determination that no tax is payable for the year. (This timing qualification is necessary to avoid the credit operating to immediately eliminate the instalment liability.) A taxpayer can make an estimate of tax payable to vary an instalment debt. The instalment liability is reduced or increased accordingly and the credit entitlement is adjusted so that it applies to the varied liability. *[Item 121]*

3.14 An amendment will clarify that a taxpayer's liability for an instalment is not affected by an assessment of tax payable for the year or the entitlement to the credit. *New sections 8AAZLA and 8AAZLB* allow the Commissioner to apply the credit against any tax debt. *[Item 121, new subsections 105(2) and 45-30(3) in Schedule 1 of the TAA 1953]*

3.15 A taxpayer's instalment debt will be recorded on an RBA and any unpaid amount will be reflected as part of the deficit balance on the RBA. As mentioned above, a taxpayer's assessed liability may be recorded on an RBA at some future stage. There will be a separate account recording the assessed tax payable, if any, and a credit for any instalment debt raised. Where the tax payable is less than the instalment debt raised, there will be a credit. This could give rise to a refund if there are no other outstanding tax debts including instalment debts.

### *The treatment of payments and credits*

3.16 Under the RBA system introduced by TLAA3 1999, the Commissioner can allocate certain classes of primary tax debts to an RBA. *Amended section 8AAZD* will allow the Commissioner to allocate any primary tax debt to an RBA.

3.17 The Commissioner can establish more than one RBA for a tax debt of an entity. Where this is the case, the Commissioner will be able to allocate a primary tax debt to one of those RBAs or between any of those RBAs. This could occur if separate RBAs are established to account for the tax debts of several operational branches of a large company. For example, section 54-5 of the GSTA 1999 allows an entity to register GST branches. Although the tax debt for a particular period is the liability of the entity, the Commissioner can allocate each branch's debt to a separate RBA established for that branch. *[Items 3, 8 to 11, 81 and 82, new subsection 8AAZD(1A)]*

3.18 The allocation of a primary tax debt to an RBA establishes a parallel liability ie. an amount on an RBA that relates to the underlying



primary tax debt. Where the primary tax debt remains unpaid, the amount is a debt owing to the Commonwealth and payable to the Commissioner. As such, it can be sued for and recovered in the Courts. Similarly, any unpaid balance on an RBA is a debt for which a taxpayer can be sued. This parallel system has been established to give the Commissioner the flexibility to pursue unpaid tax in proceedings for either a primary tax debt or the balance on an RBA which reflects that debt – but not both.

3.19 Where the total amount of primary tax debts allocated to an RBA is greater than the payments and credits applied to the RBA, the account will have a deficit balance. If a primary debt allocated to the RBA is currently due and payable there will be an **RBA deficit debt**. On the other hand, if the payments and credits applied to the RBA are greater than the primary tax debts allocated to the account there will be an **RBA surplus**. Consequential amendments are also being made throughout the RBA framework to achieve consistency in relation to the concept of an RBA deficit debt. *[Items 1, 4, 5, 6 and 16 to 20, amended section 8AAZA]*

3.20 Unpaid primary tax debts are subject to the imposition of the GIC calculated daily on a compounding basis under Division 1 of Part IIA of the TAA 1953. If there is an RBA deficit debt on an RBA to which the primary tax debt was allocated then GIC is also payable on that deficit under section 8AAZF of the TAA 1953. The balance on the RBA is increased to reflect the GIC payable at the end of the day. *[Items 13 to 15]*

3.21 To ensure liabilities in respect of debts allocated to an RBA and the corresponding RBA deficit debts remain parallel, special rules are needed for the treatment of payments and credits. In the current law this is achieved by first applying amounts against the primary tax debt and then offsetting the RBA by the same amount. However, in practice, when a taxpayer makes a payment in respect of a tax debt notified on a BAS, the Commissioner will apply the payment to the RBA that records the debt. The payment will not be recorded as a payment against the primary tax debt.

3.22 The rules allowing the Commissioner to account for payments and credits on an RBA in section 8AAZL of Division 3 of Part IIB will be repealed and replaced with provisions to support the new administrative arrangements. The current arrangements allow amounts to be applied first against a non-RBA tax debt. The new arrangements go further by allowing the Commissioner an alternative approach of allocating amounts against an RBA. *[Items 12, 21 and 22, new Division 3 of Part IIB]*

3.23 The new arrangements reflect the proposed credit card type approach of reducing an outstanding balance consisting of several individual primary or non-RBA tax debts. Applying an amount to an RBA will reduce the RBA deficit debt as well as the primary tax debts allocated to the RBA, and GIC that has accrued on those primary tax debts. *[Item 22, new section 8AAZLA]*

3.24 ***New section 8AAZLB*** maintains the existing payment and crediting rule, currently in section 8AAZL, by allowing the Commissioner to apply an amount to reduce non-RBA tax debts or any GIC on those debts. This provision is necessary to provide a statutory rule for the elimination of a primary tax debt by a payment or credit (eg. a payment made by a taxpayer in respect of assessed income tax). However, if the non-RBA tax debt has been allocated to an RBA, ***new subsection 8AAZLB(2)*** requires the Commissioner to also allocate that payment or credit to the RBA to eliminate the parallel liability. *[Item 22]*

#### ***Allocation of surpluses and related credits to tax debts***

3.25 Where the amount of payment or credit applied to an RBA is greater than the deficit balance on the account there will be an RBA surplus. Similarly, where the payment or credit is greater than the non-RBA tax debt to which it is applied there will be an ***excess non-RBA credit***. *[Item 2, amended section 8AAZA]*

3.26 The RBA surplus and excess non-RBA credit can be related amounts. If one of these amounts is applied to reduce a tax debt, being another RBA deficit or non-RBA tax debt of the entity, then the Commissioner must adjust the related surplus or credit by the same amount. *[Item 22, new section 8AAZLC]*

#### ***Refunds***

3.27 ***New subsection 8AAZLF(1)*** will require the Commissioner to refund any RBA surplus or excess non-RBA credit where there are no other tax debts to which they can be applied. Under ***new subsection 8AAZLF(4)***, where an RBA surplus is refunded the parallel excess non-RBA credit is reduced accordingly. Similarly, under ***new subsection 8AAZLF(5)***, if an excess non-RBA credit is refunded, then any related RBA is adjusted by the same amount.

3.28 There are 2 new rules relating to refunds of amounts from an RBA established to account for the new business tax obligations notified on a BAS from 1 July 2000. Firstly, ***new section 8AAZLG*** provides that the Commissioner will be able to retain a refund where an entity has an outstanding BAS. Secondly, ***new section 8AAZLH*** provides that any refund in respect of these BAS obligations must be paid into a financial institution account nominated by the entity (this can be an account of a person other than the entity).

3.29 Under ***new section 8AAZLH***, the Commissioner will be able to withhold a refund until the entity nominates an account. However, the Commissioner will have the discretion to pay refunds to the entity in a different way (eg. by cheque). These rules, which are similar to provisions in the GSTA 1999, will now apply to all BAS obligations. This is necessary because refunds from an RBA are made in respect of the RBA surplus which is an aggregated amount.

## **SECTION 2 PAYMENT AND NOTIFICATION OF FBT INSTALMENT AND ASSESSMENT DEBTS**

### **Summary of the amendments**

#### **Purpose of the amendments**

3.30 To align FBT instalment payment dates with the other relevant remittance dates in order to ensure a unified approach to notification and payment of obligations on a BAS.

#### **Date of effect**

3.31 The amendments will apply to the FBT year starting on 1 April 2000 and also apply to later years. *[Item 140]*

#### **Background**

3.32 A BAS will provide for the notification of different tax information on one form. In order for it to aggregate tax information effectively, the due dates for notification and payment need to be aligned. Currently, this is not the case as there is inconsistency across the tax laws. This is especially apparent between FBT and income tax instalments.

3.33 The FBT year of tax is currently from 1 April to 31 March and employers are required to lodge an annual return no later than 28 April. Upon lodgment of the return the Commissioner is deemed to make an assessment of the FBT payable. The assessed tax becomes due and payable on the 28 April. Where the tax payable for the year is \$3,000 or more, employers are required to pay 3 instalments; on 28 July, 28 October and 28 January in the year of tax. Each instalment is based on the tax payable for the previous year.

3.34 From 1 July 2000, the Commissioner will provide taxpayers with a BAS to assist in the notification and payment of their business tax obligations. Notification and payment using a BAS will be made on a quarterly or monthly basis, depending on the nature of the obligation. The proposed new arrangements, announced in ANTS, will require all quarterly payments to be aligned so that they are due no later than 21 July, 21 October, 21 January and 21 April.

#### **Explanation of the amendments**

##### *Alignment of instalment dates*

3.35 *New section 102* of the FBTA 1986 requires employers to pay 4 instalments rather than 3 instalments under the current law. *New*

**section 103** sets the due dates for payment of the instalments on 21 July, 21 October, 21 January in the year of tax and 21 April in the following year. These new payment dates have generated consequential amendments. *[Items 120, 121, 126, 127, 130 and 132]*

***Due date for lodgment of FBT return and payment of assessed tax***

3.36 Lodgment of the FBT return and payment of the assessed tax are currently due on 28 April following the FBT year. As the new date for payment of the 4<sup>th</sup> instalment and lodgment of the BAS notification is 21 April, the lodgment date of the annual return and the due date for payment will be changed to allow further time for business to meet their obligations. Amendments will defer the due date for these requirements from 28 April to 21 May following the FBT year. *[Items 118 and 119]*

***Notification of instalment liabilities***

3.37 **New section 104** will require an employer to notify the Commissioner of an instalment liability in an approved form. This will enable the Commissioner to have the instalment notified in a BAS together with other business tax obligations. Where an employer wants to vary an instalment, by estimating the amount of tax payable for the year, that estimate must also be in an approved form. *[Items 121, 135 and 136]*

***Transitional year amendments***

3.38 The instalment provisions in the current FBTAA 1986 include references which deal with the transitional year of tax (1 July 1986 to 31 March 1987) when that Act was introduced. This transitional year is not relevant to the new instalment dates so amendments will remove such references. As the transitional year is no longer relevant to other parts of the FBTAA 1986 those provisions not in use are being removed. *[Items 94 to 117, 122 to 125, 128, 129, 131, 133, 134, 137 to 139]*

## **SECTION 3 VOLUNTARY PAYMENTS**

### **Summary of the amendments**

#### **Purpose of the amendments**

3.39 To allow taxpayers to make voluntary payments in respect of anticipated tax debts.

#### **Date of effect**

3.40 The amendment will apply to payments received on or after 1 July 2000. *[Item 35]*

## Background

3.41 There is no statutory recognition in the taxation laws of voluntary payments made by taxpayers on account of anticipated tax debts. The Commissioner can accept these payments and hold them on trust for a taxpayer to be applied to tax debts owed to the Commonwealth when they crystallise. ANTS foreshadowed the concept of voluntary payments under the new PAYG arrangements by indicating that taxpayers will be able to make additional payments as it suits them.

## Explanation of the amendments

3.42 *New subsection 8AAZLF(1)* of the TAA 1953 requires the Commissioner to refund to the taxpayer an RBA surplus or a credit in favour of the taxpayer. A voluntary payment will give rise to a credit on an RBA which will put the account into surplus and create a requirement to refund. Therefore a provision is needed to allow the Commissioner to retain voluntary payments. The amendments will provide that the Commissioner is not required to refund an excess credit or RBA surplus that arises from a voluntary payment. However, the amendments will require the Commissioner to refund an RBA surplus or an excess credit when the taxpayer requests the Commissioner to do so. *[Item 22, new subsections 8AAZLF(2) and (3)]*

## SECTION 4 GIC ON UNPAID TAX

### Summary of the amendments

#### Purpose of the amendments

3.43 To replace several late payment penalties with the GIC. These penalties were not included in the amendments to introduce the GIC in TLAA3 1999.

#### Date of effect

3.44 The amendments will apply from 1 July 1999 which is the commencement date for the GIC provisions. *[Item 92]*

## Background

3.45 Section 271-80 in Schedule 2F to the ITAA 1936 imposes a penalty of 16% per annum on family trust distribution tax that remains unpaid at the end of 60 days after it becomes due and payable. Section 102UP, which is being inserted into the ITAA 1936 by *A New Tax*

*System (Closely Held Trusts) Act 1999*, also imposes a penalty of 16% per annum on ultimate beneficiary non-disclosure tax that remains unpaid at the end of 60 days after it becomes due and payable.

3.46 The method of calculating penalty under sections 102UP and 271-80 is inconsistent with the method used to calculate penalty interest for all other amounts of unpaid tax under laws administered by the Commissioner. The penalty applying under these two penalty provisions should be based on the new GIC. These amendments will give effect to that policy.

## **Explanation of the amendments**

3.47 ***New section 102UP*** replaces the current late payment penalty provision and makes the person liable to pay the GIC on any unpaid ultimate beneficiary non-disclosure tax. ***New section 271-80*** replaces the current late payment penalty provision with liability to pay the GIC on any unpaid family trust distribution tax. [*Items 40, 41, 61, 62, 75 and 76*]

3.48 The GIC is calculated under section 8AAC of the TAA 1953 at the rate provided in section 8AAD. The GIC is calculated daily on a compounding basis. The GIC rate applying from 1 July 1999 is 12.72% which is a lower rate than the 16% interest that currently applies to unpaid amounts under the provisions being amended. Any retrospective application of the GIC will result in a reduced penalty because of the lower interest rate.

## **SECTION 5 GIC ON UNPAID NON-ELECTRONIC PAYMENT PENALTY**

### **Summary of the amendments**

#### **Purpose of the amendments**

3.49 To vary the penalty for which a large remitter is liable so that it can be managed on an RBA.

#### **Date of effect**

3.50 The amendment will apply from 1 July 1999 which is the commencement date for the GIC provisions. [*Item 92*]

## Background

3.51 Section 220AAW of the ITAA 1936 imposes a penalty where amounts payable under Division 1AAA of Part VI (remittance of RPS, PAYE and PPS deductions) by a large remitter are not paid electronically. This penalty is a defined amount being the greater of \$500 or the GIC rate for 7 days on the amount of the non-electronic payment. Where this penalty remains unpaid it does not attract a late payment penalty in the form of GIC like most other penalties.

3.52 The RBA system has been built to facilitate the recording and recovery of these remittances and any relevant penalties. One of the operating principles of the RBA system is that interest will apply from the due date of payment to all amounts recorded on an RBA. As there is no GIC payable on the unpaid non-electronic payment penalty, the debt does not fit in to the RBA framework.

## Explanation of the amendments

3.53 *New section 220AAW* will impose the GIC on the unpaid penalty. This will enable the Commissioner to record the debt on an RBA. The penalty will be due for payment on the day the large remitter pays an amount to the Commissioner other than by electronic transfer. No change is being made to the amount of the non-electronic payment penalty.  
*[Item 48]*

## SECTION 6 TECHNICAL IMPROVEMENTS

### Summary of the amendments

#### Purpose of the amendments

3.54 To make technical improvements to the RBA and GIC provisions introduced in the TLAA3 1999.

#### Date of effect

3.55 The amendments will apply from 1 July 1999 which is the commencement date for the GIC and RBA provisions. *[Item 92]*

## Background

3.56 Technical amendments are required to the recently enacted RBA and GIC arrangements. These are necessary to:

- facilitate the application of RBAs to all tax debts;

- clarify the application of certain GIC provisions; and
- reinstate review rights inadvertently omitted by the earlier amendments.

## **Explanation of the amendments**

### ***Taxation Laws Amendment Act (No. 3) 1999***

3.57 A transitional provision is being inserted into the TLAA3 1999 to allow GIC to apply to all primary tax debts, in relation to periods prior to 1 July 1999, that remain outstanding on that date. These debts include penalties and interest that accrued prior to 1 July 1999. This approach is necessary to enable earlier debts to be calculated and carried over to the new RBA system. An example of such a debt is an outstanding amount of unremitted PAYE deductions under the former subsection 221F(5) of the ITAA 1936. This provision was repealed in 1998 but debts under this statute are still being pursued by the Commissioner and, as such, need to be recorded on an RBA. *[Item 89 and 93]*

3.58 The GIC rate that applies to any part of the period before 1 July 1999 will be 12.72% which is the GIC rate that applies to unpaid amounts on 1 July 1999. The approach will generally favour taxpayers as the GIC is less than the current late payment penalties which apply to outstanding debts. *[Subitem 93(4)]*

3.59 *New subitem 93(5)* will ensure that where a person is liable to both a penalty and the GIC in respect of an obligation, the Commissioner will be required to remit either amount. This double liability was created by the TLAA3 1999 and may occur as a result of the application of the transitional provision explained above.

3.60 Subsection 399(2) of the TLAA3 1999 is being amended to clarify that the GIC is payable from 1 July 1999 in respect of amended assessment interest and underestimation interest to the extent that the interest period spans 1 July 1999. *[Items 90 and 91]*

### ***Income Tax Assessment Act 1936***

3.61 Non-payment of late lodgment penalty and interest under sections 163B and 163C of the ITAA 1936 currently attract late payment penalty. Similarly, non-payment of provisional tax underestimation penalty under section 221YDB also attracts late payment penalty. When the TLAA3 1999 replaced late payment penalties with the GIC, these two penalties were omitted and not replaced with the GIC. These amendments will rectify this error and impose the GIC as intended. *[Items 43 and 52]*

3.62 Subsection 221N(4) was repealed by the TLAA3 1999. This removed the objection right that a taxpayer had against remission decisions concerning the 100% penalty for undeducted PAYE amounts. The



objection provision should not have been repealed. ***New subsection 221N(3)*** restores a taxpayer's right to object to a remission decision under subsection 221N(1). *[Item 51]*

3.63 A large remitter also had a right of review against a decision of the Commissioner not to remit the non-electronic payment penalty imposed under section 220AAW. This right was also inadvertently removed. It is being restored by an amendment to paragraph 220AAZF(g). *[Item 49]*

3.64 There were certain references to late payment penalties under the former sections 207 and 207A which were removed by TLAA3 1999. In place of these late payment provisions a reference to the GIC was inserted. As the GIC has much broader application, amendments are being made to restrict reference to the GIC to those amounts covered by the former sections 207 and 207A. *[Items 56 to 60]*

### ***Income Tax Assessment Act 1997***

3.65 The parallel liability that exists for GIC on any unpaid primary tax debt that has been allocated to an RBA can notionally give rise to a tax deduction for both that GIC and the GIC that accrues on the RBA deficit debt. ***New subsection 25-5(7)*** ensures that there is no double deduction for GIC on an RBA debt where GIC is deductible in respect of a corresponding non-RBA debt. *[Item 65]*

### ***Sales Tax Assessment Act 1992***

3.66 A failure to notify (FTN) penalty was introduced by TLAA3 1999 to impose a penalty on a person that does not advise the Commissioner of certain payment obligations. Section 95A is the sales tax FTN penalty provision. It is based on the taxpayer not notifying the Commissioner of an assessable dealing with goods in a sales tax return. The Commissioner does not require a taxpayer to disclose the amount of an assessable dealing in the sales tax return. The approved sales tax return form only requires the taxpayer to disclose the amount of tax payable. An amendment to section 95A is necessary to clarify that the FTN penalty is payable when a taxpayer fails to notify the Commissioner of an amount of tax payable on an assessable dealing in a return. *[Items 67 to 70]*

3.67 Section 99 is being amended to remove the requirement for the sales tax FTN penalty to be assessed. An assessment of the penalty is not necessary as all FTN penalties are required to be notified by the Commissioner under section 8AAL of the TAA 1953. Section 100 is also being amended to remove the FTN provision from this sales tax penalty remission provision. The remission of all FTN penalties is provided for by section 8AAM of the TAA 1953. *[Items 71 to 74]*

### ***Taxation (Interest on Overpayments and Early Payments) Act 1983***

3.68 The definition of **relevant tax** in subsection 3(1) includes reference to GIC amounts in subsections 220AAE(3), 220AAM(3), 220AAR(3) and 222AJA(3). GIC amounts are not reviewable decisions and therefore should not trigger the payment of interest under the Act. An amendment is being made to remove these provisions from the definition of **relevant tax**. [Items 83 and 84]

3.69 Subparagraph 12A(1)(a)(i) previously allowed for the payment of interest on refunds of remitted late payment penalty and interest under sections 207 and 207A. Refunds arising from the remission of the GIC imposed on unpaid amounts, that were previously subject to late payment penalty and interest, also need to attract interest under Part IIIA of the Act. An amendment is being made to subparagraph 12A(1)(a)(i) to include the GIC payable under sections 163AA and 170AA and subsections 204(3), 221AZMAA(1) and 221YD(3). [Items 85 and 86]

### ***Taxation Administration Act 1953***

3.70 Subsection 8AAF(2) provides that if the amount of the GIC specified in a notice is not a multiple of 5 cents, the Commissioner may round it down to the nearest multiple of 5 cents. The RBA arrangements will generally round down the GIC at the end of each calculation period irrespective of whether a notice is given. **New section 8AAGA** will reflect this practice and allow the Commissioner to round down the GIC calculated for any period. This makes subsection 8AAF(2) redundant so it is being repealed. [Items 77 and 78]

### ***Other technical corrections***

3.71 There are other minor technical amendments which have not been specifically explained, but which are consequential to the RBA and GIC changes. Examples of those amendments include:

- changing the reference to section 8AAZL of the TAA 1953 [items 23 to 34];
- making catch up amendments to the definition of **relevant tax** in subsection 3(1) of the *Crimes (Taxation Offences) Act 1980* [items 37 to 39];
- restoring the obligation to remit amounts deducted from natural resource payments which was inadvertently omitted in amending section 221YHZD [items 53 to 55];
- correcting the reference to the TAA 1953 in [item 66]; and

- correcting references to the late reconciliation statement penalty in subsections 8AAP(4) and 8AAQ(2) of the TAA 1953 *[items 79 and 80]*.



