

1998-99

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

(As read a third time)

**A New Tax System (Pay As You Go) Bill
1999**

No. , 1999

**A Bill for an Act to implement A New Tax System
by amending the law about taxation, and for
related purposes**

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1 This Bill originated in the House of
2 Representatives; and, having this day passed,
3 is now ready for presentation to the Senate
4 for its concurrence.

5 I.C. HARRIS
6 *Clerk of the House of Representatives*
7 House of Representatives
8 1 September 1999

9 **A Bill for an Act to implement A New Tax System**
10 **by amending the law about taxation, and for**
11 **related purposes**

12 The Parliament of Australia enacts:

13 **1 Short title**

14 This Act may be cited as the *A New Tax System (Pay As You Go)*
15 *Act 1999*.

16 **2 Commencement**

- 17 (1) Subject to this section, this Act commences on the day on which it
18 receives the Royal Assent.
- 19 (2) Items 70 and 71 of Schedule 1 to this Act commence, or are taken
20 to have commenced, immediately before the commencement of

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Schedule 1 to the *A New Tax System (Goods and Services Tax Administration) Act 1999*.

3 **3 Schedule(s)**

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

8 **4 Amendment of assessments**

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

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2 **Schedule 1—Pay as you go (PAYG) system of**
3 **collecting income tax and other**
4 **liabilities**

5 **Part 1—Amendment of the Taxation Administration**
6 **Act 1953**

7 **1 After section 3**

8 Insert in Part I:

9 **3AA Schedule 1**

10 (1) Schedule 1 has effect.

11 *Application of interpretation provisions of Income Tax Assessment*
12 *Act 1997*

13 (2) An expression has the same meaning in Schedule 1 as in the
14 *Income Tax Assessment Act 1997*.

15 (3) Division 950 of the *Income Tax Assessment Act 1997* (which
16 contains rules for interpreting that Act) applies to Schedule 1 to
17 this Act as if the provisions in that Schedule were provisions of
18 that Act.

19 *Application of provisions of Income Tax Assessment Act 1936*

20 (4) Section 264B of the *Income Tax Assessment Act 1936* (about
21 signature or electronic signature for notices etc. given to the
22 Commissioner) applies to Schedule 1 to this Act as if the
23 provisions in that Schedule were provisions of that Act.

24 **2 At the end of the Act**

25 Add:

Section 6-1

1 **Schedule 1—Collection and recovery of**
2 **income tax and other liabilities**

3 Note: See section 3AA.

4 **Part 2-1—Introduction to the Pay as you go**
5 **(PAYG) system**

6 **Division 6—Guide to Parts 2-5 and 2-10**

7 **6-1 What Parts 2-5 and 2-10 are about**

8 To help taxpayers meet their annual income tax liability, they are
9 required to pay amounts of their income at regular intervals as it is
10 earned during the year. The system for collecting these amounts is
11 called “Pay as you go”.

12 Amounts collected under this system also go towards meeting
13 liability for Medicare levy and liability to repay contributions
14 under the Higher Education Contribution Scheme (HECS).

15 **Table of sections**

16	6-5	The Pay as you go (PAYG) system
17	6-10	How the amounts collected are dealt with

18 **6-5 The Pay as you go (PAYG) system**

- 19 (1) Parts 2-5 and 2-10 establish the PAYG system, which has 2
20 components:
- 21 • PAYG withholding (Part 2-5)
 - 22 • PAYG instalments (Part 2-10).

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 10 Guide to Part 2-5

Section 10-1

1

2

Part 2-5—Pay as you go (PAYG) withholding

3

Division 10—Guide to Part 2-5

4

10-1 What this Part is about

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Under PAYG withholding, amounts are collected in respect of particular kinds of payments or transactions. Usually, someone who makes a payment to you is required to *withhold* an amount from the payment, and then to pay the amount to the Commissioner.

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If a non-cash benefit is provided instead of a payment, the provider must first pay to the Commissioner the amount that would have been withheld from the payment.

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This Part also contains provisions about the obligations and rights of payers and recipients.

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10-5 Summary of withholding payments

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The payments and other transactions covered by PAYG withholding are called withholding payments. They are summarised in the table.

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Note: The obligation to pay an amount to the Commissioner is imposed on the entity making the withholding payment (except for items 17, 19 and 22).

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21

22

Summary of withholding payments

Item	Withholding payment	Section
1	A payment of salary etc. to an employee	12-35
2	A payment of remuneration to the director of a company	12-40
3	A payment of salary etc. to an office holder (e.g. a member of the Defence Force)	12-45

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

Section 10-5

Summary of withholding payments		
Item	Withholding payment	Section
4	A return to work payment to an individual	12-50
5	A payment that is covered by a voluntary agreement	12-55
6	A payment under a labour hire arrangement or a payment specified by regulations	12-60
7	A payment of pension or annuity	12-80
8	An eligible termination payment	12-85
9	A payment for unused leave on an individual's retirement or termination of employment	12-90
10	A social security or similar payment (e.g. old age pension)	12-110
11	A Commonwealth education or training payment	12-115
12	A compensation, sickness or accident payment	12-120
13	A payment arising from an investment where the recipient does not quote its tax file number, or in some cases, its ABN	12-140
14	Investor becoming presently entitled to income of a unit trust	12-145
15	A payment for a supply where the recipient of the payment does not quote its ABN	12-190
16	A dividend payment to an overseas person	12-210
17	A dividend payment received for a foreign resident	12-215
18	An interest payment to an overseas person	12-245
19	An interest payment received for a foreign resident	12-250
20	An interest payment derived by a lender in carrying on business through overseas permanent establishment	12-255
21	A royalty payment to an overseas person	12-280
22	A royalty payment received for a foreign resident	12-285
23	A mining payment	12-320
24	A natural resource payment	12-325

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

Section 11-1

1 **Division 11—Preliminary matters**

2 **Table of sections**

3	11-1	Object of this Part
4	11-5	Constructive payment

5 **11-1 Object of this Part**

- 6 The object of this Part is to ensure the efficient collection of:
- 7 (a) income tax; and
- 8 (b) Medicare levy; and
- 9 (c) amounts of liabilities to the Commonwealth under Chapter
- 10 5A of the *Higher Education Funding Act 1988*; and
- 11 (d) *withholding tax; and
- 12 (e) *mining withholding tax.

13 **11-5 Constructive payment**

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

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

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2 **Division 12—Payments from which amounts must be**
3 **withheld**

3

4 **Table of Subdivisions**

5

12-A General rules

6

12-B Payments for work and services

7

12-C Retirement payments, eligible termination payments and annuities

8

9

12-D Benefit and compensation payments

10

12-E Payments where TFN or ABN not quoted

11

12-F Dividend, interest and royalty payments

12

12-G Payments in respect of mining on Aboriginal land, and natural resources

13

14 **Subdivision 12-A—General rules**

15 **Table of sections**

16

12-1 General exceptions

17

12-5 What to do if more than one provision requires a withholding

18

12-10 Division does not apply to non-cash benefits

19

12-15 Amounts to be expressed in Australian currency

20 **12-1 General exceptions**

21

Exempt income of recipient

22

- (1) An entity need not withhold an amount under section 12-35, 12-40, 12-45, 12-50, 12-55, 12-60, 12-80, 12-90, 12-120 or 12-190 from a payment if the whole of the payment is *exempt income of the entity receiving the payment.

23

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 12 Payments from which amounts must be withheld

Section 12-5

1 *Living-away-from-home allowance benefit*

2 (2) In working out how much to withhold under section 12-35, 12-40,
3 12-45, 12-115 or 12-120 from a payment, disregard so much of the
4 payment as is a living-away-from-home allowance benefit as
5 defined by section 136 of the *Fringe Benefits Tax Assessment Act*
6 *1986*.

7 *Expense payment benefit*

8 (3) In working out how much to withhold under section 12-35, 12-40,
9 12-45, 12-115 or 12-120 from a payment, disregard so much of the
10 payment as:
11 (a) is an expense payment benefit as defined by section 136 of
12 the *Fringe Benefits Tax Assessment Act 1986*; and
13 (b) is *not* an exempt benefit under section 22 of that Act (about
14 reimbursement of car expenses on the basis of distance
15 travelled).

16 **12-5 What to do if more than one provision requires a withholding**

17 (1) If more than one provision in this Division covers a payment, only
18 one amount is to be withheld from the payment.
19 (2) The provision to apply is the one that is most specific to the
20 circumstances of the payment. However, this general rule is subject
21 to the specific rules in the table.
22

Specific rules for determining priority among withholding provisions

Item	Apply:	Which is about:	In priority to:
1	section 12-35, 12-40, 12-45 or 12-50	a payment for work or services	section 12-60 (payment under a labour hire arrangement or specified by regulations); or section 12-190 (payment for a supply where recipient does not quote its ABN)

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

Section 12-10

Specific rules for determining priority among withholding provisions

Item	Apply:	Which is about:	In priority to:
2	section 12-80, 12-85 or 12-90	a retirement payment, an eligible termination payment or an annuity	section 12-60 (payment under a labour hire arrangement or specified by regulations); or section 12-190 (payment for a supply where recipient does not quote its ABN)
3	section 12-110, 12-115 or 12-120	a payment of benefit or compensation	section 12-60 (payment under a labour hire arrangement or specified by regulations); or section 12-190 (payment for a supply where recipient does not quote its ABN)
4	section 12-60	a payment under a labour hire arrangement or specified by regulations	section 12-190 (payment for a supply where recipient does not quote its ABN)
5	section 12-140 or 12-145	a payment arising from investment where the recipient does not quote tax file number	section 12-210, 12-215, 12-245, 12-250 or 12-255 (payment of a dividend or interest)
6	section 12-280 or 12-285	a payment of royalty	section 12-325 (natural resource payment)

1 Note: Some provisions of this Division clearly do not cover a payment
 2 covered by some other provisions. For example:
 3 • Section 12-55 (about voluntary agreements) covers a payment
 4 only if no other provision requires the payer to withhold an
 5 amount from the payment.

6 **12-10 Division does not apply to non-cash benefits**

7 This Division does not apply to a payment in so far as it consists of
 8 providing a *non-cash benefit.

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

Section 12-45

- 1 (b) if the company is not incorporated—as a member of the
2 committee of management of the company, or as a person
3 who performs the duties of such a member.

4 For exceptions, see section 12-1.

5 **12-45 Payment to office holder**

- 6 (1) An entity must withhold an amount from salary, wages,
7 commission, bonuses or allowances it pays to an individual as:
8 (a) a member of an *Australian legislature; or
9 (b) a person who holds, or performs the duties of, an
10 appointment, office or position under the Constitution or an
11 *Australian law; or
12 (c) a member of the Defence Force, or of a police force of the
13 Commonwealth, a State or a Territory; or
14 (d) a person who is otherwise in the service of the
15 Commonwealth, a State or a Territory; or
16 (e) a member of a local governing body to which subsection (3)
17 applies.

18 For exceptions, see subsection (2) and section 12-1.

- 19 (2) This section does not require an amount to be withheld from a
20 payment to an individual as a member of a local governing body
21 established by or under a *State law or *Territory law unless
22 subsection (3) applies to the body.
- 23 (3) This subsection applies to a local governing body established by or
24 under a *State law or *Territory law if:
25 (a) the body has unanimously resolved that it be treated as an
26 eligible local governing body for the purposes of Division 2
27 of Part VI of the *Income Tax Assessment Act 1936*, or of this
28 Division; and
29 (b) that body has not unanimously resolved to cancel the
30 resolution.

31 For rules about such resolutions, see section 221B of
32 the *Income Tax Assessment Act 1936*.

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

1 **12-60 Payment under labour hire arrangement, or specified by**
2 **regulations**

3 An entity that carries on an *enterprise must withhold an amount
4 from a payment that it makes to an individual in the course or
5 furtherance of the enterprise if:

- 6 (a) the payment is made under an *arrangement the performance
7 of which, in whole or in part, involves the performance of
8 work or services by the individual for a client of the entity; or
9 (b) the payment is, in whole or in part, for work or services and
10 is of a kind prescribed by the regulations.

11 For exceptions, see section 12-1.

12 **Subdivision 12-C—Retirement payments, eligible termination**
13 **payments and annuities**

14 **Table of sections**

15	12-80	Payment of pension or annuity
16	12-85	Eligible termination payment
17	12-90	Payment for unused leave

18 **12-80 Payment of pension or annuity**

19 An entity must withhold an amount from a payment it makes to an
20 individual if the payment is:

- 21 (a) a pension within the meaning of the *Superannuation Industry*
22 *(Supervision) Act 1993* or the *Retirement Savings Account*
23 *Act 1997*; or
24 (b) an annuity within the meaning of the *Superannuation*
25 *Industry (Supervision) Act 1993*.

26 For exceptions, see section 12-1.

27 **12-85 Eligible termination payment**

28 An entity must withhold an amount from an *eligible termination
29 payment it makes to an individual.

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 12 Payments from which amounts must be withheld

Section 12-90

1 **12-90 Payment for unused leave**

2 An entity must withhold an amount from a payment it makes to an
3 individual if the payment is included in the individual's assessable
4 income under:

- 5 (a) section 26AC (payment for unused annual leave); or
6 (b) section 26AD (payment for unused long service leave);
7 of the *Income Tax Assessment Act 1936*.

8 For exceptions, see section 12-1.

9 **Subdivision 12-D—Benefit and compensation payments**

10 **Table of sections**

11	12-110	Social Security or other benefit payment
12	12-115	Commonwealth education or training payment
13	12-120	Compensation, sickness or accident payment

14 **12-110 Social Security or other benefit payment**

15 (1) An entity must withhold an amount from a payment it makes to an
16 individual if the payment is specified in:

- 17 (a) an item of the table in section 52-10 of the *Income Tax*
18 *Assessment Act 1997* (Social Security payments); or
19 (b) an item of the table in section 52-65 of that Act (Veterans'
20 Affairs payments); or
21 (c) section 52-105, 53-10, 55-5 or 55-10 of that Act.

22 Note: Payments specified in those provisions of the *Income Tax Assessment*
23 *Act 1997* are made under various Commonwealth laws.

24 (2) In working out the amount to be withheld, disregard so much of the
25 payment as is *exempt income of the individual.

26 **12-115 Commonwealth education or training payment**

27 (1) An entity must withhold an amount from a *Commonwealth
28 education or training payment it makes to an individual.

29 For exceptions, see subsection (2) and section 12-1.

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

- 1 (2) In working out the amount to be withheld, disregard so much of the
2 payment as is *exempt income of the individual.

3 **12-120 Compensation, sickness or accident payment**

4 An entity must withhold an amount from a payment of
5 compensation, or of sickness or accident pay, it makes to an
6 individual if the payment:

- 7 (a) is made because of that or another individual's incapacity for
8 work; and
9 (b) is calculated at a periodical rate; and
10 (c) is not a payment made under an insurance policy to the
11 policy owner.

12 For exceptions, see section 12-1.

13 **Subdivision 12-E—Payments where TFN or ABN not quoted**

14 **Table of sections**

15 **Payment in respect of investment**

16	12-140	Recipient does not quote tax file number
17	12-145	Investor becoming presently entitled to income of a unit trust
18	12-150	Limited application of section 12-140 to payment under eligible deferred 19 interest investment
20	12-155	When investor may quote ABN as alternative
21	12-160	Investment body unaware that exemption from quoting TFN has stopped 22 applying
23	12-165	Exception for fully franked dividend
24	12-170	Exception for payments below thresholds set by regulations

25 **Payment for a supply**

26	12-190	Recipient does not quote ABN
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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 12-140

1 **Payment in respect of investment**

2 **12-140 Recipient does not quote tax file number**

- 3 (1) An *investment body must withhold an amount from a payment it
4 makes to another entity in respect of a *Part VA investment if:
5 (a) all or some of the payment is *ordinary income or *statutory
6 income of the other entity; and
7 (b) if the investment is non-transferable—the other entity did not
8 *quote its *tax file number in connection with the investment
9 before the time when the payment became payable; and
10 (c) if the investment is transferable—the other entity did not
11 quote its tax file number in connection with the investment
12 before the time when the other entity had to be registered
13 with the investment body as the *investor to be entitled to the
14 payment.

15 *Payment in respect of units in a trust or investment-related betting*
16 *chance*

- 17 (2) If a *Part VA investment consists of:
18 (a) units in a unit trust (as defined in section 202A of the *Income*
19 *Tax Assessment Act 1936*); or
20 (b) an investment-related betting chance;
21 an entity (including the *investment body) must withhold an
22 amount from a payment it makes to another entity in respect of the
23 investment if the conditions in subsection (1) of this section are
24 met.

25 For exceptions to the rules in this section, see sections 12-155 to 12-170.

26 **12-145 Investor becoming presently entitled to income of a unit trust**

- 27 (1) This section applies if:
28 (a) a *Part VA investment consists of units in a unit trust (as
29 defined in section 202A of the *Income Tax Assessment Act*
30 *1936*); and

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

Section 12-150

- 1 (b) the *investor becomes presently entitled, for the purposes of
2 Division 6 of Part III of the *Income Tax Assessment Act*
3 *1936*, to a share of income of the trust at a time (the
4 **entitlement time**) before any of that share is paid to the
5 investor.
- 6 (2) The entity (including the *investment body) that would have to pay
7 that share to the *investor if the share were due and payable at the
8 entitlement time must withhold from the share, at that time, the
9 amount (if any) that subsection 12-140(2) would have required it to
10 withhold if it had paid the share to the investor at that time.
- 11 For exceptions to the rules in this section, see sections 12-155 to 12-170.
- 12 (3) This Part (except section 12-140 and this section) applies as if that
13 entity had paid that share to the *investor at the entitlement time.
- 14 (4) If that entity withholds an amount from that share as required by
15 subsection (2), subsection 12-140(2) does not require an amount to
16 be withheld from a payment of all or part of that share to the
17 *investor.

18 **12-150 Limited application of section 12-140 to payment under**
19 **eligible deferred interest investment**

- 20 Section 12-140 applies to a payment in respect of an eligible
21 deferred interest investment (as defined in subsection 221 YHZA(1)
22 of the *Income Tax Assessment Act 1936*) only to the extent that is
23 covered by one or both of these paragraphs:
- 24 (a) so much of the payment as consists of a periodic interest
25 payment (within the meaning of Division 16E of Part III of
26 that Act);
- 27 (b) if the payment became payable at the end of the term (within
28 the meaning of Division 16E of Part III of that Act) of the
29 investment—so much of the payment as does *not* exceed
30 what section 159GQ of that Act would include in the
31 *investor's assessable income for the income year in which
32 that term ended if the adoption (under section 18 of that Act)
33 of an accounting period ending on a day other than 30 June

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

Section 12-170

- 1 (b) the payment is a *dividend that has been franked in
2 accordance with section 160AQF of the *Income Tax*
3 *Assessment Act 1936*; and
4 (c) the franking percentage (within the meaning of section
5 160APA of that Act) for the dividend is 100%.

6 **12-170 Exception for payments below thresholds set by regulations**

- 7 (1) Section 12-140 or 12-145 does not require an amount to be
8 withheld if the payment is less than the amount worked out under
9 the regulations.
10 (2) Regulations made for the purposes of this section may deal
11 differently with different payments.

12 **Payment for a supply**

13 **12-190 Recipient does not quote ABN**

- 14 (1) An entity (the *payer*) must withhold an amount from a payment it
15 makes to another entity if:
16 (a) the payment is for a *supply that the other entity has made, or
17 proposes to make, to the payer in the course or furtherance of
18 an *enterprise *carried on in Australia by the other entity; and
19 (b) none of the exceptions in this section applies.
20 *ABN correctly quoted*
21 (2) The payer need not withhold an amount under this section if, when
22 the payment is made:
23 (a) the other entity has given the payer an *invoice that relates to
24 the supply and *quotes the other entity's *ABN; or
25 (b) the payer has some other document relating to the supply on
26 which the other entity's ABN is *quoted.

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 12 Payments from which amounts must be withheld

Section 12-190

1 *Payer has no reason to believe that ABN has been incorrectly*
2 *quoted*

- 3 (3) The payer also need not withhold an amount under this section if,
4 when the payment is made:
- 5 (a) the other entity has given the payer an *invoice that relates to
6 the supply and purports to *quote the other entity's *ABN, or
7 the payer has some other document that relates to the supply
8 and purports to *quote the other entity's ABN; and
 - 9 (b) the other entity does not have an ABN, or the invoice or
10 other document does not in fact quote the other entity's
11 ABN; and
 - 12 (c) the payer has no reasonable grounds to believe that the other
13 entity does not have an ABN, or that the invoice or other
14 document does not quote the other entity's ABN.

15 *No need to quote ABN*

- 16 (4) The payer need not withhold an amount under this section if:
- 17 (a) the payer is an individual and the payment is, for the payer,
18 wholly of a private or domestic nature; or
 - 19 (b) the payment does not exceed \$50 or such higher amount as is
20 specified in regulations in force for the purposes of
21 subsection 29-80(1) of the *GST Act; or
 - 22 (c) the supply is made in the course or furtherance of an activity,
23 or series of activities, done as a member of a local governing
24 body established by or under a *State law or *Territory law.
- 25 (5) The payer need not withhold an amount under this section if the
26 payment:
- 27 (a) is covered by section 12-140 or 12-145 (about not quoting
28 *tax file number in respect of an investment in respect of
29 which the payment is made); or
 - 30 (b) would be covered by section 12-140 or 12-145 if the other
31 entity had not quoted as mentioned in subsection 12-140(1)
32 or section 12-155; or

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

Section 12-190

- 1 (c) would be covered by section 12-140 or 12-145 apart from
2 section 12-160, 12-165 or 12-170 (which are exceptions to
3 sections 12-140 and 12-145).
- 4 (6) The payer need not withhold an amount under this section if, when
5 the payment is made:
- 6 (a) the other entity is an individual and has given the payer a
7 written statement to the effect that:
- 8 (i) the supply is made in the course or furtherance of an
9 activity, or series of activities, done as a private
10 recreational pursuit or hobby; or
- 11 (ii) the supply is, for the other entity, wholly of a private or
12 domestic nature; and
- 13 (b) the payer has no reasonable grounds to believe that the
14 statement is false or misleading in a material particular.

15 **Subdivision 12-F—Dividend, interest and royalty payments**

16 **Table of sections**

17 **Dividends**

- 18 12-210 Dividend payment to overseas person
19 12-215 Dividend payment received for foreign resident
20 12-220 Application to part of a dividend
21 12-225 Application to distribution by a liquidator or other person

22 **Interest**

- 23 12-245 Interest payment to overseas person
24 12-250 Interest payment received for foreign resident
25 12-255 Interest payment derived by lender in carrying on business through overseas
26 permanent establishment
27 12-260 Lender to notify borrower if interest derived through overseas permanent
28 establishment

29 **Royalties**

- 30 12-280 Royalty payment to overseas person
31 12-285 Royalty payment received for foreign resident

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

1 **12-220 Application to part of a dividend**

2 This Part applies to a part of a *dividend in the same way as to a
3 dividend.

4 **12-225 Application to distribution by a liquidator or other person**

5 This Part applies to a distribution that section 47 of the *Income Tax*
6 *Assessment Act 1936* treats as a *dividend paid by a company, in
7 the same way as this Part applies to a dividend paid by the
8 company, and as if the liquidator or other person making the
9 distribution were the company.

10 **Interest**

11 **12-245 Interest payment to overseas person**

12 An entity must withhold an amount from interest (within the
13 meaning of Division 11A of Part III of the *Income Tax Assessment*
14 *Act 1936*) it pays to an entity, or to entities jointly, if:

- 15 (a) the recipient or any of the recipients has an address outside
16 Australia according to any record that is in the payer's
17 possession, or is kept or maintained on the payer's behalf,
18 about the transaction to which the interest relates; or
19 (b) the payer is authorised to pay the interest at a place outside
20 Australia (whether to the recipient or any of the recipients or
21 to anyone else).

22 For limits on the amount to be withheld, see section 12-300.

23 **12-250 Interest payment received for foreign resident**

24 Immediately after receiving a payment of interest (within the
25 meaning of Division 11A of Part III of the *Income Tax Assessment*
26 *Act 1936*), an entity must withhold an amount from the payment if:

- 27 (a) the entity is a person in Australia or an *Australian
28 government agency; and
29 (b) a foreign resident is entitled:

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 12 Payments from which amounts must be withheld

Section 12-255

- 1 (i) to receive the interest or part of it from the entity, or to
2 receive the amount of the interest or of part of it from
3 the entity; or
4 (ii) to have the entity credit to the foreign resident, or
5 otherwise deal with on the foreign resident's behalf or
6 as the foreign resident directs, the interest or part of it,
7 or the amount of the interest or of part of it.

8 For limits on the amount to be withheld, see section 12-300.

9 **12-255 Interest payment derived by lender in carrying on business**
10 **through overseas permanent establishment**

11 An entity must withhold an amount from interest (within the
12 meaning of Division 11A of Part III of the *Income Tax Assessment*
13 *Act 1936*) it pays if it has been notified:

- 14 (a) under section 12-260 of this Act that this section applies to
15 the interest; or
16 (b) under subsection 221YL(2E) of the *Income Tax Assessment*
17 *Act 1936* that that subsection applies to the interest.

18 For limits on the amount to be withheld, see section 12-300.

19 **12-260 Lender to notify borrower if interest derived through**
20 **overseas permanent establishment**

- 21 (1) If:
22 (a) interest (within the meaning of Division 11A of Part III of
23 the *Income Tax Assessment Act 1936*) is payable to:
24 (i) an entity that is, or entities at least one of whom is, an
25 Australian resident; or
26 (ii) an *Australian government agency; and
27 (b) the entity liable to pay the interest is authorised to pay it at a
28 place in Australia (whether to any of those entities or the
29 agency, or to anyone else); and
30 (c) the interest is or will be *derived by any of those entities or
31 the agency in carrying on business in a country outside

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

Section 12-280

1 Australia at or through a *permanent establishment it has in
2 that country;
3 those entities, or the agency, must notify the entity liable to pay the
4 interest that section 12-255 applies to the interest.

5 (2) The notice must be given in writing, before the entities, or the
6 agency, enter into the transaction in relation to which the interest is
7 payable, or within one month afterwards.

8 (3) Immediately after giving the notice, those entities, or the agency,
9 must notify the Commissioner of:

10 (a) the particulars of the transaction (including the dates on
11 which interest is payable under it); and

12 (b) the day when the notice was given to the entity liable to pay
13 the interest.

14 Failure to comply with this section may contravene section 8C of this Act.

15 **Royalties**

16 **12-280 Royalty payment to overseas person**

17 An entity must withhold an amount from a *royalty it pays to an
18 entity, or to entities jointly, if:

19 (a) the recipient or any of the recipients has an address outside
20 Australia according to any record that is in the payer's
21 possession, or is kept or maintained on the payer's behalf,
22 about the transaction to which the royalty relates; or

23 (b) the payer is authorised to pay the royalty at a place outside
24 Australia (whether to the recipient or any of the recipients or
25 to anyone else).

26 For limits on the amount to be withheld, see section 12-300.

27 **12-285 Royalty payment received for foreign resident**

28 Immediately after receiving a payment of a *royalty, an entity must
29 withhold an amount from the royalty if:

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 12 Payments from which amounts must be withheld

Section 12-300

- 1 (a) the entity is a person in Australia or an *Australian
2 government agency; and
3 (b) a foreign resident is entitled:
4 (i) to receive the royalty or part of it from the entity, or to
5 receive the amount of the royalty or of part of it from
6 the entity; or
7 (ii) to have the entity credit to the foreign resident, or
8 otherwise deal with on the foreign resident's behalf or
9 as the foreign resident directs, the royalty or part of it,
10 or the amount of the royalty or of part of it.

11 For limits on the amount to be withheld, see section 12-300.

12 **General**

13 **12-300 Limits on amount withheld under this Subdivision**

14 This Subdivision does not require an entity:

- 15 (a) to withhold an amount from a *dividend, from interest
16 (within the meaning of Division 11A of Part III of the
17 *Income Tax Assessment Act 1936*) or from a *royalty if no
18 *withholding tax is payable in respect of the dividend,
19 interest or royalty; or
20 (b) to withhold from a dividend, from interest (within the
21 meaning of that Division) or from a royalty more than the
22 withholding tax payable in respect of the dividend, interest or
23 royalty (reduced by each amount already withheld from it
24 under this Subdivision).

25 Note: Section 128B of the *Income Tax Assessment Act 1936* deals with
26 withholding tax liability.

27 **Subdivision 12-G—Payments in respect of mining on**
28 **Aboriginal land, and natural resources**

29 **Table of sections**

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

Section 12-320

1 **Mining on Aboriginal land**

2 12-320 Mining payment

3 **Natural resources**

4 12-325 Natural resource payment

5 12-330 Payer must ask Commissioner how much to withhold

6 12-335 Commissioner may exempt from section 12-330, subject to conditions

7 **Mining on Aboriginal land**

8 **12-320 Mining payment**

9 (1) An entity must withhold an amount from a *mining payment that:

10 (a) it makes to another entity; or

11 (b) it applies for the benefit of another entity.

12 (2) Subsection (1) does not require the entity:

13 (a) to withhold an amount if no *mining withholding tax is
14 payable in respect of the *mining payment; or

15 (b) to withhold more than the mining withholding tax payable in
16 respect of the mining payment.

17 Note: Section 128V of the *Income Tax Assessment Act 1936* deals with
18 mining withholding tax liability.

19 **Natural resources**

20 **12-325 Natural resource payment**

21 (1) An entity must withhold an amount from a payment it makes to a
22 foreign resident, or to 2 or more entities at least one of which is a
23 foreign resident, if the payment is worked out wholly or partly by
24 reference to the value or quantity of *natural resources produced or
25 recovered in Australia.

26 (2) The amount to be withheld is:

27 (a) the amount notified by the Commissioner under section
28 12-330; or

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 12 Payments from which amounts must be withheld

Section 12-330

- 1 (b) the amount worked out under a certificate in force under
2 section 12-335 that covers the payment;
3 as appropriate.

4 *Exception*

- 5 (3) Subsection (1) does not apply if:
6 (a) the Commissioner has notified the entity under section
7 12-330 that the entity does not need to withhold an amount
8 from the payment; or
9 (b) a certificate in force under section 12-335 covers the
10 payment and does not require the entity to withhold an
11 amount from it.

12 **12-330 Payer must ask Commissioner how much to withhold**

- 13 (1) An entity must not, intentionally or recklessly, make a payment
14 from which section 12-325 requires it to withhold an amount,
15 unless:
16 (a) the entity has notified the Commissioner in writing of the
17 amount of the proposed payment; and
18 (b) the Commissioner has later notified the entity in writing of
19 the amount (if any) that the entity must withhold from the
20 payment in respect of tax that is or may become payable by a
21 foreign resident to whom the payment is made;
22 or the payment is covered by a certificate in force under section
23 12-335.

24 Penalty: 20 penalty units.

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

27 *Failure to notify not an offence against section 8C*

- 28 (2) An entity that fails to notify the Commissioner as required by
29 subsection (1) does not commit an offence against section 8C.

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

1 **12-335 Commissioner may exempt from section 12-330, subject to**
2 **conditions**

- 3 (1) The Commissioner may give an entity a written certificate
4 exempting the entity from complying with section 12-330 for
5 specified payments.
- 6 (2) A certificate is subject to:
7 (a) a condition that the entity must withhold from a payment
8 covered by the certificate the amount (if any) worked out in
9 accordance with the certificate in respect of tax that is or may
10 become payable by a foreign resident to whom the payment
11 is made; and
12 (b) such other conditions as the certificate specifies.
- 13 However, the entity does not contravene subsection 12-330(1)
14 because it contravenes a condition.
- 15 (3) The Commissioner may, by written notice given to the entity:
16 (a) revoke a certificate, whether or not a condition of it has been
17 contravened; or
18 (b) vary a certificate by revoking, changing or adding to its
19 conditions.

20 Note: A person who is dissatisfied with a decision under this section may
21 object against the decision in the manner set out in Part IVC.

22 *[The next Division is Division 14.]*

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 14 Non-cash benefits for which amounts must be paid to the Commissioner

Section 14-1

1

2 **Division 14—Non-cash benefits for which amounts must be**
3 **paid to the Commissioner**

4 **Table of sections**

5	14-1	Object of this Division
6	14-5	Provider of non-cash benefit must pay amount to the Commissioner if
7		payment would be subject to withholding
8	14-10	Dividend, interest or royalty received, for a foreign resident, in the form of
9		a non-cash benefit
10	14-15	Payer can recover amount paid to the Commissioner

11 **14-1 Object of this Division**

12 The object of this Division is:

- 13 (a) to put entities that provide *non-cash benefits, and entities
14 that receive them, in a position similar to their position under
15 Division 12 if payments of money had been made instead of
16 the non-cash benefits being provided; and
17 (b) in that way, to prevent entities from avoiding their
18 obligations under Division 12 by providing non-cash
19 benefits.

20 **14-5 Provider of non-cash benefit must pay amount to the**
21 **Commissioner if payment would be subject to**
22 **withholding**

- 23 (1) An entity (the *payer*) must pay an amount to the Commissioner
24 before providing a *non-cash benefit to another entity (the
25 *recipient*) if Division 12 would require the payer to withhold an
26 amount (the *notionally withheld amount*) if, instead of providing
27 the benefit to the recipient, the payer made a payment to the
28 recipient in money equal to the *market value of the benefit when
29 the benefit is provided.
- 30 (2) The amount to be paid to the Commissioner is equal to the
31 notionally withheld amount.

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

Section 14-10

1 Example: Nick is a building contractor who has entered into a voluntary
2 agreement with Mike for the purposes of section 12-55. Nick proposes
3 to give Mike his old utility van (whose market value is \$1,000) as
4 payment for work Mike has done for him over a fortnight.

5 If Nick were instead to pay Mike \$1,000, Nick would have had to
6 withhold \$203 under Division 12 (in accordance with withholding
7 rates current at the time).

8 This section requires Nick to pay \$203 to the Commissioner before
9 giving the van to Mike.

- 10 (3) This section does not apply to providing:
- 11 (a) a *fringe benefit; or
 - 12 (b) a benefit that is an exempt benefit under the *Fringe Benefits*
13 *Tax Assessment Act 1986*; or
 - 14 (c) a benefit that would be an exempt benefit under that Act if
15 paragraphs (d) and (e) of the definition of *employer* in
16 subsection 136(1) of that Act were omitted; or
 - 17 (d) a benefit constituted by the acquisition of a share or right
18 under an employee share scheme (within the meaning of
19 Division 13A of Part III of the *Income Tax Assessment Act*
20 *1936*).

21 **14-10 Dividend, interest or royalty received, for a foreign resident,**
22 **in the form of a non-cash benefit**

23 If:

- 24 (a) an entity (the *payer*) receives in the form of a *non-cash
25 benefit:
 - 26 (i) a *dividend of a company; or
 - 27 (ii) interest (within the meaning of Division 11A of Part III
28 of the *Income Tax Assessment Act 1936*); or
 - 29 (iii) a *royalty; and
- 30 (b) section 12-215, 12-250 or 12-285 would have required the
31 payer to withhold an amount if the dividend, interest or
32 royalty had been a payment in money;

33 the payer must pay that amount to the Commissioner before
34 providing the benefit (or part of it) to another entity.

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 14 Non-cash benefits for which amounts must be paid to the Commissioner

Section 14-15

14-15 Payer can recover amount paid to the Commissioner

- (1) The payer may recover from the recipient as a debt an amount that the payer has paid to the Commissioner under section 14-5.
- (2) If the payer has paid an amount to the Commissioner under section 14-10, the payer may:
 - (a) if the payer has provided all of the benefit to another entity—recover the amount from that other entity as a debt; or
 - (b) if the payer has provided a part of the benefit to another entity—recover from that other entity as a debt the corresponding proportion of the amount paid to the Commissioner.
- (3) If the payer can recover an amount from another entity under this section, the payer is entitled to set the amount off against debts due by the payer to the other entity.

[The next Division is Division 16.]

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

1

2 **Division 16—Payer's obligations and rights**

2

3 **Table of Subdivisions**

3

4

Guide to Division 16

5

16-A To withhold

6

16-B To pay withheld amounts to the Commissioner

7

16-C To provide information

8

16-D Additional rights and obligations of entity that makes a

9

dividend, interest or royalty payment

10 **Guide to Division 16**

11 **16-1 What this Division is about**

11

12

This Division sets out the obligations and rights of an entity required to withhold an amount under Division 12, or to pay an amount to the Commissioner under Division 14.

13

14

15

Note: The entity may also have obligations under other legislation. See, for example, the obligation to keep records under section 262A of the *Income Tax Assessment Act 1936*.

16

17

18

19 **Subdivision 16-A—To withhold**

19

20 **Table of sections**

20

21

When and how much to withhold

22

16-5 When to withhold an amount

23

16-10 How much to withhold

24

16-15 Variation of amounts required to be withheld

25

16-20 Payer discharged from liability to recipient for amount withheld

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 16 Payer's obligations and rights

Section 16-5

1 **Penalties for not withholding**

2	16-25	Failure to withhold: offence
3	16-30	Failure to withhold: civil penalty for entity other than exempt Australian
4		government agency
5	16-35	Failure to withhold: civil penalty for exempt Australian government agency
6		in relation to payment other than dividend, interest or royalty
7	16-40	Failure to withhold: civil penalty for exempt Australian government agency
8		in relation to dividend, interest or royalty payment
9	16-45	Remission of penalty under section 16-30, 16-35 or 16-40
10	16-50	General interest charge on unpaid penalty

11 **When and how much to withhold**

12 **16-5 When to withhold an amount**

13 If Division 12 requires an entity to withhold an amount from a
14 payment, the entity must do so when making the payment.

15 Note 1: An entity is required to withhold an amount under section 12-145
16 when an investor becomes presently entitled to income of a unit trust.

17 Note 2: If section 12-215, 12-250 or 12-285 requires an entity to withhold an
18 amount from a payment received by the entity, the entity must do so
19 immediately after receiving the payment.

20 **16-10 How much to withhold**

21 (1) The amount that Division 12 requires to be withheld from a
22 payment (except one covered by section 12-325) is to be worked
23 out under the regulations.

24 (2) Regulations made for the purposes of this section may deal
25 differently with different payments.

26 Note: The Commissioner may vary an amount required to be withheld. See
27 section 16-15.

28 **16-15 Variation of amounts required to be withheld**

29 (1) The Commissioner may, for the purposes of meeting the special
30 circumstances of a particular case or class of cases, vary the
31 *amount required to be withheld by an entity from a *withholding

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

Section 16-20

1 payment (except a withholding payment covered by section 12-140
2 or 12-145). If the Commissioner does so, the amount is varied
3 accordingly.

4 Note: Section 12-140 is about a payment arising from an investment where
5 the recipient does not quote its tax file number (or, in some cases, its
6 ABN). Section 12-145 is about an investor becoming presently
7 entitled to income of a unit trust.

8 (2) The Commissioner's power to vary an amount includes the power
9 to reduce the amount to nil.

10 (3) A variation must be made by a written notice:

11 (a) if it applies to a particular entity— that is given to that entity;
12 or

13 (b) if it applies to a class of entities—that is given to each of the
14 entities, or a copy of which is published in the *Gazette*.

15 **16-20 Payer discharged from liability to recipient for amount**
16 **withheld**

17 An entity that:

18 (a) withholds an amount as required by Division 12; or

19 (b) pays to the Commissioner an amount as required by Division
20 14;

21 is discharged from all liability to pay or account for that amount to
22 any entity except the Commissioner.

23 Note: The entity may be required to refund the amount in some
24 circumstances. See Subdivision 18-B.

25 **Penalties for not withholding**

26 **16-25 Failure to withhold: offence**

27 (1) An entity must not fail to withhold an amount as required by
28 Division 12.

29 Penalty: 10 penalty units.

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 16 Payer's obligations and rights

Section 16-30

- 1 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
2 penalty unit.
- 3 Note 2: See sections 16-30, 16-35 and 16-40 for an alternative civil penalty.
- 4 (2) An entity must not fail to pay to the Commissioner an amount as
5 required by Division 14.
- 6 Penalty: 10 penalty units.
- 7 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
8 penalty unit.
- 9 Note 2: See sections 16-30, 16-35 and 16-40 for an alternative civil penalty.
- 10 (3) An offence against subsection (1) or (2) is a strict liability offence.
- 11 (4) If a person is convicted of an offence in relation to:
- 12 (a) a failure by that person or someone else to withhold an
13 amount as required by Division 12; or
- 14 (b) a failure by that person or someone else to pay to the
15 Commissioner an amount as required by Division 14;
- 16 the court may order the convicted person to pay to the
17 Commissioner an amount up to the *amount required to be
18 withheld. The court may so order in addition to imposing a penalty
19 on the convicted person.

20 **16-30 Failure to withhold: civil penalty for entity other than exempt**
21 **Australian government agency**

- 22 (1) An entity (except an *exempt Australian government agency) that:
- 23 (a) fails to withhold an amount as required by Division 12; or
- 24 (b) fails to pay an amount to the Commissioner as required by
25 Division 14;
- 26 is liable to pay to the Commissioner a penalty (the *penalty*
27 *amount*) equal to that amount.
- 28 (2) The penalty amount is due at the time when the entity would have
29 had to pay to the Commissioner the amount referred to in
30 subsection (1).

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

Section 16-35

1 Note: An entity may become liable under this section in respect of a
2 payment it made or received that is taken to have been subject to
3 withholding tax as a result of a Commissioner's determination under
4 subsection 177F(2A) of the *Income Tax Assessment Act 1936* (see also
5 subsection 177F(2F) of that Act).

6 **16-35 Failure to withhold: civil penalty for exempt Australian**
7 **government agency in relation to payment other than**
8 **dividend, interest or royalty**

- 9 (1) An *exempt Australian government agency that:
10 (a) fails to withhold an amount as required by Division 12; or
11 (b) fails to pay to the Commissioner an amount as required by
12 Division 14;
13 is liable to pay to the Commissioner a penalty of 20 penalty units.

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

- 16 (2) The Commissioner must give written notice to the agency about its
17 liability under this section. The notice may be included in any other
18 notice the Commissioner gives to the agency.
- 19 (3) The penalty becomes due for payment on the day specified in the
20 notice, which must be at least 14 days after the notice is given to
21 the agency.

22 *Exception*

- 23 (4) This section does not apply in relation to an *amount required to be
24 withheld from a *withholding payment covered by Subdivision
25 12-F (about dividend, interest or royalty payment).

26 **16-40 Failure to withhold: civil penalty for exempt Australian**
27 **government agency in relation to dividend, interest or**
28 **royalty payment**

- 29 (1) An *exempt Australian government agency that:

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 16 Payer's obligations and rights

Section 16-45

- 1 (a) fails to withhold an amount as required by Division 12 from
2 a *withholding payment covered by Subdivision 12-F (about
3 dividend, interest or royalty payment); or
4 (b) fails to pay to the Commissioner an amount as required by
5 Division 14 in respect of a withholding payment covered by
6 that Subdivision;
7 is liable to pay to the Commissioner a penalty (the *penalty*
8 *amount*) equal to that amount.

- 9 (2) The penalty amount is due at the time when the entity would have
10 had to pay to the Commissioner the *amount required to be
11 withheld.

12 Note: An entity may become liable under this section in respect of a
13 payment it made or received that is taken to have been subject to
14 withholding tax as a result of a Commissioner's determination under
15 subsection 177F(2A) of the *Income Tax Assessment Act 1936* (see also
16 subsection 177F(2F) of that Act).

17 **16-45 Remission of penalty under section 16-30, 16-35 or 16-40**

- 18 (1) The Commissioner may remit all or a part of a penalty under
19 section 16-30, 16-35 or 16-40.

- 20 (2) If the Commissioner decides:

21 (a) to remit only part of a penalty; or

22 (b) not to remit any part of a penalty;

23 the Commissioner must give written notice of the decision to the
24 entity liable to pay the penalty.

25 Note: A person who is dissatisfied with a decision under this section may
26 object against the decision in the manner set out in Part IVC.

27 **16-50 General interest charge on unpaid penalty**

28 If a penalty under section 16-30, 16-35 or 16-40 remains unpaid
29 after it is due, the entity liable to pay the penalty amount is liable to
30 pay *general interest charge on the unpaid amount for each day in
31 the period that:

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

- 1 (a) started at the beginning of the day by which the penalty
2 amount was due to be paid; and
3 (b) finishes at the end of the last day, at the end of which, any of
4 the following remains unpaid:
5 (i) the penalty amount;
6 (ii) general interest charge on any of the penalty amount.

7 **Subdivision 16-B—To pay withheld amounts to the**
8 **Commissioner**

9 **Table of sections**

10 **When and how to pay amounts to the Commissioner**

11	16-70	Entity to pay amounts to Commissioner
12	16-75	When amounts must be paid to Commissioner
13	16-80	Penalty for failure to pay within time
14	16-85	How amounts are to be paid
15	16-90	Large withholder—penalty for non-electronic payment

16 **Who is a large, medium or small withholder**

17	16-95	Meaning of <i>large withholder</i>
18	16-100	Meaning of <i>medium withholder</i>
19	16-105	Meaning of <i>small withholder</i>
20	16-110	Commissioner may vary withholder's status downwards
21	16-115	Commissioner may vary withholder's status upwards

22 **Special rules for 2000-01**

23	16-120	When certain amounts must be paid to the Commissioner
24	16-125	Meaning of <i>large withholder</i>
25	16-130	When and how some large withholders must pay amounts for July and 26 August 2000
27	16-135	Meaning of <i>medium withholder</i>

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

Section 16-70

1 **When and how to pay amounts to the Commissioner**

2 **16-70 Entity to pay amounts to Commissioner**

3 (1) An entity that withholds an amount under Division 12 must pay the
4 amount to the Commissioner in accordance with this Subdivision.

5 (2) An entity required to pay an amount to the Commissioner under
6 Division 14 must pay that amount to the Commissioner in
7 accordance with this Subdivision (except sections 16-75 and
8 16-80).

9 **16-75 When amounts must be paid to Commissioner**

10 *Large withholder*

11 (1) A *large withholder must pay to the Commissioner as shown in the
12 table an amount it withholds under Division 12 during a month.

13

Payments by large withholders

Item	If the amount is withheld on this day of week:	It must be paid to the Commissioner on or before:
1	Saturday or Sunday	The second Monday after that day
2	Monday or Tuesday	The first Monday after that day
3	Wednesday	The second Thursday after that day
4	Thursday or Friday	The first Thursday after that day

14 Note: A different rule applies for certain kinds of amounts withheld during
15 2000-01. See section 16-120.

16 *Medium withholders*

17 (2) A *medium withholder must pay to the Commissioner an amount
18 that it withholds during a month under Division 12 by the end of
19 the 21st day of the next month.

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

1 *Small withholders*

- 2 (3) If a *small withholder withholds an amount under Division 12
3 during a month in a *quarter, it must pay the amount to the
4 Commissioner by the end of the 21st day of the month after the end
5 of that quarter.

6 Note: A different rule applies for certain kinds of amounts withheld during
7 2000-01. See section 16-120.

8 **16-80 Penalty for failure to pay within time**

9 If an amount that an entity must pay to the Commissioner under
10 subsection 16-70(1) remains unpaid after the time by which it is
11 due to be paid, the entity is liable to pay *general interest charge on
12 the unpaid amount for each day in the period that:

- 13 (a) started at the beginning of the day by which the unpaid
14 amount was due to be paid; and
15 (b) finishes at the end of the last day, at the end of which, any of
16 the following remains unpaid:
17 (i) the unpaid amount;
18 (ii) general interest charge on any of the unpaid amount.

19 **16-85 How amounts are to be paid**

20 *Large withholder*

- 21 (1) A *large withholder must pay to the Commissioner by a means of
22 *electronic payment:
23 (a) an amount that it withholds under Division 12; and
24 (b) an amount that it pays to the Commissioner under Division
25 14.

26 Note: A different rule applies for some large withholders for July and
27 August 2000. See section 16-130.

28 *Medium or small withholder*

- 29 (2) A *medium withholder or *small withholder must pay to the
30 Commissioner:

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

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Section 16-90

- 1 (a) any amount that it withholds under Division 12; and
2 (b) any amount that it pays to the Commissioner under Division
3 14;
4 by a means of *electronic payment, or any other means approved in
5 writing by the Commissioner.

6 *Commissioner may vary payment method*

- 7 (3) The Commissioner may, with an entity's agreement, vary the
8 means by which the withholder pays amounts to the Commissioner
9 under this Subdivision. The variation must be by written notice
10 given to the entity.

11 **16-90 Large withholder: penalty for non-electronic payment**

- 12 (1) A *large withholder that pays an amount by a means that does not
13 comply with this Division is liable to a penalty of 5 penalty units.

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

16 *Remission*

- 17 (2) However, the Commissioner may remit all or a part of the penalty
18 amount.

- 19 (3) If the Commissioner decides:
20 (a) to remit only part of a penalty amount; or
21 (b) not to remit any part of a penalty amount;
22 the Commissioner must give written notice of the decision to the
23 entity liable to pay the penalty amount.

24 Note: A person who is dissatisfied with a decision under this section may
25 object against the decision in the manner set out in Part IVC.

- 26 (4) The Commissioner must give written notice to the *large
27 withholder about its liability under this section. The notice may be
28 included in any other notice the Commissioner gives to the large
29 withholder.

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

Section 16-95

- 1 (5) The penalty becomes due for payment on the day specified in the
2 notice, which must be at least 14 days after the notice is given to
3 the *large withholder.

4 *General interest charge*

- 5 (6) If any of the penalty remains unpaid after it is due, the *large
6 withholder is liable to pay the *general interest charge on the
7 unpaid penalty amount for each day in the period that:
8 (a) started at the beginning of the day by which the penalty
9 amount was due to be paid; and
10 (b) finishes at the end of the last day, at the end of which, any of
11 the following remains unpaid:
12 (i) the penalty amount;
13 (ii) general interest charge on any of the penalty amount.

14 *Exception*

- 15 (7) This section does not apply if:
16 (a) the *large withholder is an *exempt Australian government
17 agency; or
18 (b) the Commissioner has varied under section 16-85 the means
19 by which the large withholder pays amounts to the
20 Commissioner.

21 **Who is a large, medium or small withholder**

22 **16-95 Meaning of *large withholder***

- 23 (1) An entity is a ***large withholder*** for a particular month (the ***current***
24 ***month***) in a *financial year starting on or after 1 July 2001 if:
25 (a) it was a *large withholder for June 2001 because of section
26 16-125; or
27 (b) the *amounts withheld by the entity during a financial year
28 ending at least 2 months before the current month exceeded
29 \$1 million; or
30 (c) both of the following apply:

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

Section 16-100

- 1 (i) at the end of a financial year (the *threshold year*) ending
2 at least 2 months before the current month, the entity
3 was one of a number of companies that were at that time
4 all members of the same *wholly-owned group;
- 5 (ii) the amounts withheld by those companies during the
6 threshold year exceeded \$1 million; or
- 7 (d) the Commissioner determines under section 16-115 that the
8 entity is a large withholder for the current month.

9 Note: Different rules apply for working out who is a large withholder for a
10 month in 2000-01. See section 16-125.

11 *Exception*

- 12 (2) However, the entity is not a *large withholder if the Commissioner
13 determines under section 16-110 that it is a *medium withholder or
14 a *small withholder for the current month.

15 **16-100 Meaning of *medium withholder***

- 16 (1) An entity is a *medium withholder* for a particular month (the
17 *current month*) in a *financial year starting on or after 1 July 2001
18 if it is not a *large withholder for that month and:
- 19 (a) it was a *medium withholder for June 2001 because of
20 section 16-135; or
- 21 (b) the *amounts withheld by the entity during a financial year
22 ending before the current month exceeded \$25,000; or
- 23 (c) the Commissioner determines under section 16-110 or
24 16-115 that the entity is a medium withholder for the current
25 month.

26 Note: Different rules apply for working out who is a large withholder for a
27 month in 2000-01. See section 16-125.

- 28 (2) However, the entity is not a *medium withholder if the
29 Commissioner determines under section 16-110 or 16-115 that the
30 entity is a *large withholder or a *small withholder for the current
31 month.

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

1 **16-105 Meaning of *small withholder***

2 An entity is a *small withholder* for a particular month if:

- 3 (a) there is at least one *amount withheld by the entity during
4 that month; and
5 (b) the entity is neither a *large withholder nor a *medium
6 withholder for that month.

7 **16-110 Commissioner may vary withholder's status downwards**

8 (1) The Commissioner may, by giving written notice to a *withholder:

9 (a) make the following determinations:

- 10 (i) a determination that a *large withholder is a *medium
11 withholder or a *small withholder;
12 (ii) a determination that a medium withholder is a small
13 withholder; or

14 (b) revoke or vary any such determination.

15 (2) The notice must state that the determination applies:

- 16 (a) for specified months; or
17 (b) for all months from and including a specified month.

18 (3) The determination has no effect for a particular month unless the
19 notice is given before that month.

20 (4) An entity that would otherwise be a *large withholder or a
21 *medium withholder for a particular month may apply in writing to
22 the Commissioner for a determination under this section.

23 Note: A person who is dissatisfied with a decision under this section may
24 object against the decision in the manner set out in Part IVC.

25 **16-115 Commissioner may vary withholder's status upwards**

26 (1) The Commissioner may, by giving written notice to a *withholder:

27 (a) make the following determinations:

- 28 (i) a determination that a *small withholder is a *medium
29 withholder or a *large withholder;

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

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- 1 (ii) a determination that a medium withholder is a large
2 withholder; or
3 (b) revoke or vary any such determination.
- 4 (2) The notice must state that the determination applies:
5 (a) for specified months; or
6 (b) for all months from and including a specified month.
- 7 (3) A determination that a *small withholder is a *medium withholder
8 has no effect for a particular month unless the notice is given
9 before that month.
- 10 (4) Any other determination under this section has no effect for a
11 month that is earlier than the second month after the month in
12 which the notice is given.
- 13 (5) The Commissioner may, in making a determination under this
14 section, have regard to the following:
15 (a) the sum of the amounts that the Commissioner considers to
16 be likely to be the *amounts required to be withheld by the
17 entity in the following 12 months;
18 (b) the extent (if any) to which the entity makes or receives
19 *withholding payments that were previously made or
20 received by another entity;
21 (c) any failure by the entity to comply with its obligations under
22 this Part;
23 (d) any *arrangement that was entered into or carried out for the
24 purpose of lengthening the intervals at which the entity is
25 required to pay to the Commissioner amounts withheld from
26 withholding payments;
27 (e) such other matters as the Commissioner considers relevant.
- 28 Note: A person who is dissatisfied with a decision under this section may
29 object against the decision in the manner set out in Part IVC.

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

1 **Special rules for 2000-01**

2 **16-120 When certain amounts must be paid to the Commissioner**

3 If an entity withholds an amount under a provision listed in the
4 table during a month in the *financial year starting on 1 July 2000,
5 it must pay the amount to the Commissioner by the end of the 21st
6 day of the next month.

7 **Provisions under which amounts are withheld during 2000-01**

Item	Provision	Subject matter
1	Section 12-140	Payment arising from investment: recipient does not quote tax file number
2	Section 12-145	Investor becoming presently entitled to income of a unit trust
3	Section 12-210	Dividend payment to overseas person
4	Section 12-215	Dividend payment received for a foreign resident
5	Section 12-245	Interest payment to overseas person
6	Section 12-250	Interest payment received for a foreign resident
7	Section 12-255	Interest payment derived by lender in carrying on business through overseas permanent establishment
8	Section 12-280	Royalty payment to overseas person
9	Section 12-285	Royalty payment received for a foreign resident
10	Section 12-320	Mining payment
11	Section 12-325	Natural resource payment

8 **16-125 Meaning of large withholder**

9 (1) An entity is a **large withholder** for a particular month (the **current**
10 **month**) in the *financial year starting on 1 July 2000 if:

- 11 (a) the entity was a large remitter in relation to June 2000
12 because of section 220AAB of the *Income Tax Assessment*
13 *Act 1936*; or

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

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- 1 (b) the total of the deductions that the entity made under
2 Division 2 of Part VI of that Act for the financial year ending
3 on 30 June 2000 exceeded \$1 million; or
4 (c) the total of the entity's *labour hire notional withheld
5 amounts (see subsections (2) to (4)) exceed \$1 million; or
6 (d) at the end of 30 June 2000 the entity was included in a
7 company group as defined in section 220AAI of that Act,
8 and:
9 (i) the total of the deductions under Division 2 of Part VI
10 of that Act, for the financial year ending on that day,
11 made by the entities that were included in that company
12 group at the end of that day, exceeded \$1 million; or
13 (ii) the total of the labour hire notional withheld amounts
14 (see subsections (2) to (4)) of entities that were included
15 in that company group at the end of that day exceed \$1
16 million; or
17 (e) the Commissioner determines under section 16-115 that the
18 entity is a large withholder for the current month.

19 *Meaning of labour hire notional withheld amount*

- 20 (2) If during the *financial year ending on 30 June 2000 an entity made
21 a payment from which section 12-60 (about payments under labour
22 hire arrangements) would have required it to withhold an amount
23 (if that section had applied to payments made during that financial
24 year), that amount is a **labour hire notional withheld amount** of
25 the entity.
26 (3) If:
27 (a) during the *financial year ending on 30 June 2000 an entity
28 provided a *non-cash benefit to an individual; and
29 (b) section 12-60 (about payments under labour hire
30 arrangements) would have required the entity to withhold an
31 amount if:
32 (i) instead of providing the benefit, the entity had paid the
33 individual the *market value of the benefit; and

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

1 (ii) that section had applied to payments made during that
2 financial year;
3 that amount is a *labour hire notional withheld amount* of the
4 entity.

5 (4) For the purposes of subsections (2) and (3), disregard paragraph
6 12-60(b) (which allows the scope of section 12-60 to be extended
7 by regulations).

8 *Exception*

9 (5) However, an entity is not a *large withholder for a month if the
10 Commissioner determines under section 16-110 that it is a
11 *medium withholder or a *small withholder for that month.

12 **16-130 When and how some large withholders must pay amounts**
13 **for July and August 2000**

14 (1) This section applies to an entity that is a *large withholder for July
15 or August 2000 (otherwise than because of paragraph
16 16-125(1)(a)).

17 (2) The entity must pay to the Commissioner an amount that it
18 withholds during that month under Division 12 by the end of the
19 21st day after the end of that month.

20 (3) The entity must pay to the Commissioner:

21 (a) any amount that it withholds under Division 12 during that
22 month; and

23 (b) any amount that it pays to the Commissioner under Division
24 14 during that month;

25 by a means of *electronic payment, or any other means approved in
26 writing by the Commissioner.

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

Section 16-135

1 **16-135 Meaning of *medium withholder***

2 (1) An entity is a *medium withholder* for a particular month (the
3 *current month*) in the *financial year starting on 1 July 2000 if the
4 entity is not a *large withholder for that month and:

5 (a) the entity:

6 (i) was a medium remitter in relation to June 2000 because
7 of section 220AAJ of the *Income Tax Assessment Act*
8 *1936*; and

9 (ii) would still have been a medium remitter in relation to
10 June 2000 because of that section if the only deductions
11 taken into account under that section were deductions
12 made under Division 2 of Part VI of that Act; or

13 (b) the total of the deductions that the entity made under
14 Division 2 of Part VI of that Act for the *financial year
15 ending on 30 June 2000 exceeded \$25,000; or

16 (c) the Commissioner determines under section 16-110 or
17 16-115 that the entity is a medium withholder for the current
18 month.

19 (2) However, the entity is not a *medium withholder if the
20 Commissioner determines under section 16-110 or 16-115 that the
21 entity is a *large withholder or a *small withholder for the current
22 month.

23 **Subdivision 16-C—To provide information**

24 **Table of sections**

25 **To the Commissioner**

26 16-150 Commissioner must be notified of amounts

27 **To recipients of withholding payments**

28 16-155 Annual payment summary

29 16-160 Part-year payment summary

30 16-165 Payment summary for eligible termination payment

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

- 1 16-170 Form and content of payment summary
2 16-175 Penalty for not providing payment summary

3 **To the Commissioner**

4 **16-150 Commissioner must be notified of amounts**

- 5 (1) An entity that must pay an amount to the Commissioner under:
6 (a) subsection 16-70(1) (about amounts withheld under Division
7 12); or
8 (b) Division 14 (about payments in respect of non-cash benefits);
9 must notify the Commissioner of the amount on or before the day
10 on which the amount is due to be paid (regardless of whether it is
11 paid). The notification must be in the *approved form and lodged
12 with the Commissioner.
- 13 (2) If the entity fails to do so, or notifies the Commissioner of an
14 amount that is less than the correct amount, the entity is liable to
15 pay the *failure to notify penalty on the amount, or on the amount
16 of the shortfall, for each day in the period that:
17 (a) started at the beginning of the day by which the amount was
18 due to be paid; and
19 (b) finishes at the end of the day before the Commissioner
20 receives notification from the entity, or otherwise becomes
21 aware, of the correct amount.

22 **To recipients of withholding payments**

23 **16-155 Annual payment summary**

- 24 (1) Within 14 days after the end of a *financial year, an entity (the
25 *payer*) must give a *payment summary (and a copy of it) to another
26 entity (the *recipient*) if:
27 (a) during the year the payer made one or more *withholding
28 payments (other than withholding payments covered by
29 section 12-85, 12-215, 12-250 or 12-285) to the recipient; or

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

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Section 16-160

- 1 (b) during the year the payer received one or more withholding
2 payments covered by section 12-215, 12-250 or 12-285 and,
3 in relation to each of them, the recipient is the foreign
4 resident mentioned in the section; or
- 5 (c) the recipient is an individual and has a *reportable fringe
6 benefits amount, for the income year ending at the end of that
7 financial year, in respect of his or her employment (within
8 the meaning of the *Fringe Benefits Tax Assessment Act 1986*)
9 by the payer.
- 10 (2) The *payment summary must cover:
- 11 (a) if paragraph (1)(a) or (b) applies—each of the *withholding
12 payments mentioned in that paragraph, except one covered
13 by a previous payment summary (and a copy of it) given by
14 the payer to the recipient under section 16-160; and
- 15 (b) if paragraph (1)(c) applies—the *reportable fringe benefits
16 amount, except so much of it as is covered by a previous
17 payment summary (and a copy of it) given by the payer to the
18 recipient under this section.

19 **16-160 Part-year payment summary**

- 20 (1) An entity (the *payer*) must give a *payment summary (and a copy
21 of it) to another entity (the *recipient*) if, not later than 21 days
22 before the end of a *financial year, the recipient asks in writing for
23 a payment summary covering:
- 24 (a) one or more *withholding payments (other than withholding
25 payments covered by section 12-85, 12-215, 12-250 or
26 12-285) that the payer made to the recipient during the year;
27 or
- 28 (b) one or more withholding payments covered by section
29 12-215, 12-250 or 12-285, or a part of each such payment,
30 that the payer received during the year for the recipient, if the
31 recipient is the foreign resident mentioned in the section;
32 other than a payment covered by a previous payment summary
33 (and a copy of it) given under this section.

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

- 1 (2) The payer must comply with the request within 14 days after
2 receiving it, unless the recipient is an individual and has a
3 *reportable fringe benefits amount, for the income year ending at
4 the end of that *financial year, in respect of his or her employment
5 (within the meaning of the *Fringe Benefits Tax Assessment Act*
6 *1986*) by the payer.

7 **16-165 Payment summary for eligible termination payment**

8 Within 14 days after an entity (the *payer*) makes a *withholding
9 payment covered by section 12-85 (about *eligible termination
10 payments) to another entity (the *recipient*), the payer must give the
11 recipient a *payment summary (and a copy of it) that covers that
12 payment. (The summary must cover only that payment.)

13 **16-170 Form and content of payment summary**

- 14 (1) A *payment summary* is a written statement that:
15 (a) names the payer and the recipient; and
16 (b) if the recipient has given the recipient's *tax file number or
17 *ABN to the payer—states the tax file number or ABN; and
18 (c) states the total of the *withholding payments (if any) that it
19 covers, and the total of the *amounts withheld by the payer
20 from those withholding payments; and
21 (d) specifies the *financial year in which the withholding
22 payments were made; and
23 (e) specifies the *reportable fringe benefits amount (if any) that it
24 covers and the income year to which that amount relates; and
25 (f) includes other information that the Commissioner requires to
26 be included in the payment summary.
- 27 (2) The Commissioner may, in writing, require particular information
28 to be included in a *payment summary or a class of payment
29 summaries.
- 30 (3) A *payment summary may consist of 2 or more statements that
31 each complies with subsection (1) and together cover what section

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

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1 16-155, 16-160 or 16-165 (as appropriate) requires the payment
2 summary to cover.

3 (4) The Commissioner may vary any requirements under subsection
4 (1), (2) or (3) by written notice given to an entity. The
5 Commissioner may do so in such instances and to such extent as
6 the Commissioner thinks fit.

7 **16-175 Penalty for not providing payment summary**

8 An entity must not fail to comply with any requirements under
9 section 16-155, 16-160 or 16-165, or subsection 16-170(1), (2) or
10 (3) (including any requirements varied by the Commissioner under
11 subsection 16-170(4)).

12 Penalty: 20 penalty units.

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

15 **Subdivision 16-D—Additional rights and obligations of entity**
16 **that makes a dividend, interest or royalty payment**

17 **Table of sections**

18	16-195	Payer's right to recover amounts of penalty: withholding tax and mining
19		withholding tax
20	16-200	Payer's liability and right: additional withholding tax

21 **16-195 Payer's right to recover amounts of penalty: withholding tax**
22 **and mining withholding tax**

23 An entity that has paid an amount of penalty under section 16-30,
24 16-35 or 16-40 for a *withholding payment covered by:

25 (a) Subdivision 12-F (about a dividend, interest or royalty
26 payment); or

27 (b) section 12-320 (about a mining payment);

28 may recover an amount equal to the amount of penalty from the
29 person liable to pay the *withholding tax, or *mining withholding
30 tax, for the withholding payment.

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

Section 16-200

1 Note Sections 16-30, 16-35 and 16-40 provide for a civil penalty for failing
2 to comply with Division 12 or 14.

3 **16-200 Payer's liability and right: additional withholding tax**

4 *Penalty*

5 (1) An entity that is required:

6 (a) to withhold an amount from a *withholding payment covered
7 by Subdivision 12-F (about dividend, interest or royalty
8 payment); or

9 (b) to pay to the Commissioner an amount under Division 14 for
10 a withholding payment covered by that Subdivision;

11 must pay to the Commissioner an amount of penalty equal to the
12 amount of penalty that a taxpayer is liable to pay under subsection
13 226(1A) of the *Income Tax Assessment Act 1936* in relation to that
14 withholding payment.

15 Note: Subsection 226(1A) of the *Income Tax Assessment Act 1936* requires a
16 taxpayer to pay additional withholding tax following a calculation of
17 the taxpayer's withholding tax liability that takes into account
18 determinations made under subsection 177F(2A) of that Act.

19 (2) The amount is due at the time when the taxpayer becomes liable to
20 pay the penalty.

21 (3) If the entity pays the amount to the Commissioner, it may recover
22 an amount equal to that amount from the taxpayer.

23 *General interest charge*

24 (4) If any of the amount payable by the entity under this section
25 remains unpaid after it is due, the entity is liable to pay *general
26 interest charge on the unpaid amount for each day in the period
27 that:

28 (a) started at the beginning of the day by which the amount was
29 due to be paid; and

30 (b) finishes at the end of the last day, at the end of which, any of
31 the following remains unpaid:

32 (i) the amount;

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

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1 (ii) general interest charge on any of the amount.

2 *[The next Division is Division 18.]*

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

1

2 **Division 18—Recipient's entitlements and obligations**

3 **Table of Subdivisions**

4 18-A Crediting withheld amounts against liability for income tax,
5 withholding tax or mining withholding tax

6 18-B Refund of certain withheld amounts

7 18-C Recipient's obligations

8 **Subdivision 18-A—Crediting withheld amounts against liability**
9 **for income tax, withholding tax or mining**
10 **withholding tax**

11 **Guide to Subdivision 18-A**

12 **18-1 What this Subdivision is about**

13

In general, an entity:

14

• that receives a withholding payment (except one covered by
15 section 12-215, 12-250 or 12-285); or

16

• that is the foreign resident for which a withholding payment
17 covered by section 12-215, 12-250 or 12-285 (or a part of it)
18 is received;

19

is entitled to a credit for the amount withheld from the withholding
20 payment.

21

However, if that entity is a partnership or trust, a partner,
22 beneficiary or trustee may be entitled to the credit.

23

This Subdivision tells you:

24

• who is entitled to a credit; and

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

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Division 18 Recipient's entitlements and obligations

Section 18-5

1

- how to work out the amount of the credit.

2

How a credit is applied is set out in Division 3 of Part IIB.

3

Table of sections

4

General exception

5

18-5 No credit for refunded amount

6

Entitlement to credits: income tax liability

7

18-10 Application of sections 18-15, 18-20 and 18-25

8

18-15 Tax credit for recipient of withholding payments

9

18-20 Tax credit where recipient is a partnership

10

18-25 Tax credit where recipient is a trust

11

Entitlement to credits: dividend, interest or royalty

12

18-30 Credit: dividend, interest or royalty

13

18-35 Credit: penalty under section 16-30 or 16-40 or related general interest charge

14

15

18-40 Credit: liability under section 16-200

16

Entitlement to credit: mining payment

17

18-45 Credit—mining payment

18

[This is the end of the Guide.]

19

General exception

20

18-5 No credit for refunded amount

21

A person is *not* entitled to a credit under this Subdivision for an

22

*amount withheld from a *withholding payment to the extent that

23

the amount must be refunded under Subdivision 18-B.

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

1 **Entitlement to credits: income tax liability**

2 **18-10 Application of sections 18-15, 18-20 and 18-25**

3 The rules set out in sections 18-15, 18-20 and 18-25 do *not* apply
4 to an *amount withheld from a *withholding payment that is
5 covered by Subdivision 12-F (about dividend, interest or royalties)
6 or section 12-320 (about mining payments).

7 **18-15 Tax credit for recipient of withholding payments**

8 A person is entitled to a credit equal to the total of the *amounts
9 withheld from *withholding payments made to the person during
10 an income year if:

- 11 (a) an assessment has been made of the income tax payable by
12 the person for the income year; or
13 (b) the Commissioner is satisfied that no income tax is payable
14 by the person for the income year.

15 **18-20 Tax credit where recipient is a partnership**

16 (1) A person is entitled to a credit in respect of *amounts withheld
17 from *withholding payments made to a partnership during an
18 income year if:

- 19 (a) the person has an individual interest in the net income or
20 partnership loss of the partnership for that income year that is
21 wholly or partly attributable to those withholding payments;
22 and
23 (b) the *income tax return of the partnership for the income year
24 has been lodged with the Commissioner; and
25 (c) either an assessment has been made of the tax payable by the
26 person for the income year, or the Commissioner is satisfied
27 that no tax is payable.

28 (2) The amount of the credit is worked out using the formula:

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

1 Amounts withheld $\times \frac{\text{Share of net income}}{\text{Net income}}$

2 where:

3 **net income** means so much of the net income as is attributable to
4 the *withholding payments.

5 **share of net income** means so much of that share of the net income
6 as is attributable to the *withholding payments.

7 *Trust—section 98*

8 (4) The trustee of the trust is entitled to a credit if:

9 (a) under section 98 of the *Income Tax Assessment Act 1936* the
10 trustee is liable to be assessed, and to pay tax, on an amount
11 in respect of a share of the net income of the trust to which a
12 beneficiary is presently entitled; and

13 (b) the share is wholly or partly attributable to the *withholding
14 payments; and

15 (c) either an assessment has been made of that tax, or the
16 Commissioner is satisfied that no tax is payable.

17 (5) The amount of the credit is worked out using the formula:

18 Amounts withheld $\times \frac{\text{Share of net income}}{\text{Net income}}$

19 where:

20 **net income** means so much of the net income as is attributable to
21 the *withholding payments.

22 **share of net income** means so much of that share of the net income
23 as is attributable to the *withholding payments.

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

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Section 18-30

1

Trust—section 99 or 99A

2

(6) The trustee of the trust is entitled to a credit under this subsection if:

3

4

(a) under section 99 or 99A of the *Income Tax Assessment Act 1936*, the trustee is liable to be assessed, and to pay tax, on the net income of the trust, or on part of it; and

5

6

7

(b) the net income or that part of it is wholly or partly attributable to the *withholding payments; and

8

9

(c) either an assessment has been made of that tax, or the Commissioner is satisfied that no tax is payable.

10

11

(7) The amount of the credit is worked out using the formula:

12

$$\text{Amounts withheld} \times \frac{\text{Part of net income}}{\text{Net income}}$$

13

where:

14

net income means so much of the net income as is attributable to the *withholding payments.

15

16

part of net income means so much of the net income, or of that part of it, as is attributable to the *withholding payments.

17

18

Trust—no net income

19

(8) If there is no net income of the trust for the income year, the trustee is entitled to a credit equal to the sum of the *amounts withheld from the *withholding payments.

20

21

22

Entitlement to credits: dividend, interest or royalty

23

18-30 Credit: dividend, interest or royalty

24

(1) A person is entitled to a credit if:

25

(a) the person's *ordinary income or *statutory income includes a *dividend (or a part of it), interest (within the meaning of

26

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

Section 18-35

1 Division 11A of Part III of the *Income Tax Assessment Act*
2 1936) or a *royalty; and

3 (b) the person has borne all or part of an *amount withheld from
4 the dividend, interest or royalty.

5 (2) The amount of the credit is that amount or part.

6 Note: A taxpayer may also be entitled to a credit in relation to payment of
7 interest under, or in relation to the transfer of, a qualifying security.
8 See section 221YSA of the *Income Tax Assessment Act 1936*.

9 **18-35 Credit: penalty under section 16-30 or 16-40 or related**
10 **general interest charge**

11 (1) If an entity has paid:

12 (a) an amount of penalty under section 16-30 or 16-40 to the
13 Commissioner for a *withholding payment covered by
14 Subdivision 12-F; or

15 (b) an amount of *general interest charge under section 16-50 for
16 the penalty;

17 the person liable to pay the *withholding tax for the withholding
18 payment is entitled to a credit equal to the amount of penalty, or
19 general interest charge, as appropriate.

20 *Remission*

21 (2) If:

22 (a) an entity has paid to the Commissioner an amount of penalty
23 mentioned in paragraph (1)(a); and

24 (b) the Commissioner remits the whole or a part of the amount of
25 the penalty under section 16-45;

26 then:

27 (c) any credit under subsection (1) relating to the amount paid to
28 the Commissioner is reduced by the amount that is remitted;
29 and

30 (d) the Commissioner must pay to the entity an amount equal to
31 the amount that is remitted.

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

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Section 18-40

- 1 (3) If:
- 2 (a) an entity has paid to the Commissioner an amount of *general
- 3 interest charge mentioned in paragraph (1)(b); and
- 4 (b) the Commissioner remits the whole or a part of the amount of
- 5 the charge under section 8AAG;
- 6 then:
- 7 (c) any credit under subsection (1) relating to the amount is
- 8 reduced by the amount that is remitted; and
- 9 (d) the Commissioner must pay to the entity an amount equal to
- 10 the amount that is remitted.

11 **18-40 Credit: liability under section 16-200**

- 12 (1) If an entity has paid to the Commissioner:
- 13 (a) an amount under subsection 16-200(1) in relation to a penalty
- 14 payable under subsection 226(1A) of the *Income Tax*
- 15 *Assessment Act 1936* for a *withholding payment; or
- 16 (b) an amount of *general interest charge under subsection
- 17 16-200(4) in relation to that amount;
- 18 the person liable to pay the *withholding tax for that withholding
- 19 payment is entitled to a credit equal to the amount paid by the
- 20 entity.

21 *Remission*

- 22 (2) If:
- 23 (a) an entity has paid an amount under subsection 16-200(1) in
- 24 relation to a penalty mentioned in paragraph(1)(a); and
- 25 (b) the Commissioner remits the whole or a part of the amount of
- 26 the penalty under subsection 227(3) of the *Income Tax*
- 27 *Assessment Act 1936*;
- 28 then:
- 29 (c) any credit under subsection (1) relating to the amount paid by
- 30 the entity is reduced by the amount that is remitted; and
- 31 (d) the Commissioner must pay to the entity an amount equal to
- 32 the amount that is remitted.

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

- 1 (3) If:
2 (a) an entity has paid to the Commissioner an amount of *general
3 interest charge mentioned in paragraph (1)(b); and
4 (b) the Commissioner remits the whole or a part of the amount of
5 the charge under section 8AAG;
6 then:
7 (c) any credit under subsection (1) relating to the amount is
8 reduced by the amount that is remitted; and
9 (d) the Commissioner must pay to the entity an amount equal to
10 the amount that is remitted.

11 **Entitlement to credit: mining payment**

12 **18-45 Credit—mining payment**

13 *Credit—amount withheld*

- 14 (1) If there is an *amount withheld from a *withholding payment that
15 is covered by section 12-320 (mining payment):
16 (a) if paragraph (b) does not apply—the person liable to pay
17 *mining withholding tax under section 128V of the *Income*
18 *Tax Assessment Act 1936* on the payment is entitled to a
19 credit of an amount equal to the amount withheld; or
20 (b) if, under subsection 128U(4) of that Act, separate mining
21 payments are taken to have been made to, or applied for the
22 benefit of, 2 or more persons because of that payment—each
23 of those persons is entitled to a credit equal to the amount
24 worked out using the formula:

25 The amount withheld $\times \frac{1}{\text{Number of those persons}}$

26 *Credit—penalty amount*

- 27 (2) If an entity has paid to the Commissioner a penalty amount under
28 section 16-30 or 16-35 in relation to an *amount required to be
29 withheld under section 12-320 (mining payment):

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

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Section 18-65

- 1 (a) if paragraph (1)(a) applies—the person mentioned in that
2 paragraph is entitled to a credit equal to the penalty amount;
3 or
4 (b) if paragraph (1)(b) applies—each of the persons mentioned in
5 that paragraph is entitled to a credit of an amount worked out
6 using the formula:

7
$$\text{The penalty amount} \times \frac{1}{\text{Number of those persons}}$$

8 *Remission*

- 9 (3) If the Commissioner remits the whole or a part of the amount of
10 penalty under section 16-45 that has been paid to the
11 Commissioner by the entity:
12 (a) any credit that relates to the amount is reduced by the amount
13 that is remitted; and
14 (b) the Commissioner must pay to the entity an amount equal to
15 the amount that is remitted.

16 **Subdivision 18-B—Refund of certain withheld amounts**

17 **Table of sections**

18	18-65	Refund of withheld amounts by the payer to the recipient
19	18-70	Refund of withheld amounts by the Commissioner to the recipient
20	18-75	Refund of withheld amounts relating to eligible termination payment
21	18-80	Refund by Commissioner of amount withheld from payment in respect of
22		investment

23 **18-65 Refund of withheld amounts by the payer to the recipient**

- 24 (1) An entity (the *payer*) must refund to another entity (the *recipient*)
25 an amount if:
26 (a) the payer:
27 (i) withheld the amount purportedly under Division 12
28 from a payment made to, or received for, the recipient

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

Section 18-65

- 1 (whether the amount has been paid to the Commissioner
2 or not); or
3 (ii) paid the amount to the Commissioner purportedly under
4 Division 14 for a *non-cash benefit provided to, or
5 received for, the recipient; and
6 (b) the amount was so withheld, or paid to the Commissioner, in
7 error; and
8 (c) either:
9 (i) the payer becomes aware of the error; or
10 (ii) the recipient applies to the payer for the refund;
11 before the end of 21 July in the financial year after the one in
12 which the amount was so withheld or paid to the
13 Commissioner; and
14 (d) any information requested by the payer under subsection (3)
15 has been given to the payer, or the time for making the
16 request (see subsection (4)) has passed without such a request
17 being made.
- 18 (2) The amount that must be refunded under subsection (1) is a debt
19 recoverable by the recipient from the payer.

20 *Request for tax file number (or in some cases, ABN)*

- 21 (3) The payer may request the recipient to give to the payer:
22 (a) in any case—the recipient's *tax file number; or
23 (b) in any case—evidence of the basis on which the recipient is
24 taken to have quoted its tax file number to the payer; or
25 (c) if the payment or *non-cash benefit was in respect of a *Part
26 VA investment made by the recipient in the course or
27 furtherance of an *enterprise carried on by it—the recipient's
28 *ABN;
29 if:
30 (d) the payment or non-cash benefit was in respect of
31 Subdivision 12-B (payments for work or services) or 12-C
32 (retirement payments and eligible termination payments) or
33 12-D (benefits and compensation payments) or section

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

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Section 18-65

- 1 12-140 or 12-145 (recipient does not quote tax file number or
2 ABN); and
3 (e) when the application for the refund is made, or when the
4 payer otherwise becomes aware of the error, the payer has a
5 record of none of the following:
6 (i) the recipient's tax file number;
7 (ii) the basis on which the recipient is taken to have quoted
8 the tax file number to the payer;
9 (iii) if paragraph (c) applies—the recipient's ABN.

10 *When must the request be made*

- 11 (4) The request must be made within 7 working days (of the payer)
12 after the payer receives the application for the refund or after the
13 payer otherwise becomes aware of the error (as appropriate).

14 *Recovery of refunded amount*

- 15 (5) If a payer refunds an amount under subsection (1), the payer may
16 recover from the Commissioner as a debt due to the payer so much
17 of the amount:
18 (a) which is withheld as mentioned in subparagraph (1)(a)(i) and
19 paid to the Commissioner, or which is paid to the
20 Commissioner as mentioned in subparagraph (1)(a)(ii); and
21 (b) which the payer has not recorded as being offset under
22 subsection (6).

23 *Offsetting a refunded amount*

- 24 (6) If:
25 (a) a payer refunds an amount (the *refunded amount*) under
26 subsection (1); and
27 (b) the amount withheld as mentioned in subparagraph (1)(a)(i)
28 that the payer has paid to the Commissioner, or the amount
29 paid to the Commissioner as mentioned in subparagraph
30 (1)(a)(ii), is equal to all or a part of the refunded amount; and

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

Section 18-70

- 1 (c) apart from this subsection, the payer would be required to
2 pay to the Commissioner another amount or amounts under
3 Division 14 or subsection 16-70(1) (the *payment to the*
4 *Commissioner*); and
5 (d) the payer records in writing that it offsets all or a part of the
6 amount paid to the Commissioner (as mentioned in paragraph
7 (b)) against the payment to the Commissioner;
8 the payment to the Commissioner is reduced by so much of the
9 amount as the payer so recorded as being offset.
- 10 (7) The payer must not record that it offsets any part of an amount
11 that:
12 (a) the payer has previously recorded under subsection (6); or
13 (b) the payer has sought to recover from the Commissioner
14 under subsection (5).

15 **18-70 Refund of withheld amounts by the Commissioner to the**
16 **recipient**

- 17 (1) An entity (the *recipient*) may apply in writing to the Commissioner
18 for the refund of an amount if:
19 (a) another entity (the *payer*):
20 (i) withheld an amount purportedly under Division 12 from
21 a payment made to, or received for, the recipient; or
22 (ii) paid to the Commissioner an amount purportedly under
23 Division 14 for a *non-cash benefit provided to, or
24 received for, the recipient; and
25 (b) the amount was so withheld, or paid to the Commissioner, in
26 error; and
27 (c) section 18-65 does not apply because the payer did not
28 become aware of the error, or the recipient did not apply for a
29 refund, as mentioned in subsection 18-65(1); and
30 (d) if subparagraph (a)(i) applies—the payer has already paid the
31 withheld amount to the Commissioner.
- 32 (2) The Commissioner must refund the amount if the application sets
33 out:

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

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Section 18-75

- 1 (a) if the recipient has a *tax file number—that tax file number;
2 or
3 (b) if the recipient does not have a tax file number but was taken
4 to have quoted a tax file number to the payer before the
5 amount was withheld or paid to the Commissioner—the basis
6 on which the recipient was taken to have quoted the tax file
7 number; or
8 (c) if the payment or *non-cash benefit was in respect of a *Part
9 VA investment made by the recipient in the course or
10 furtherance of an *enterprise carried on by it—the recipient's
11 *ABN;
- 12 and the Commissioner is satisfied that it would be fair and
13 reasonable to refund the amount, having regard to:
- 14 (d) the circumstances that gave rise to the withholding obligation
15 (if any); and
16 (e) the nature of the error; and
17 (f) any other matter the Commissioner considers relevant.

18 Note: A person who is dissatisfied with a decision under this section may
19 object against the decision in the manner set out in Part IVC.

20 **18-75 Refund of withheld amounts relating to eligible termination**
21 **payment**

- 22 (1) The Commissioner must refund all or part of an *amount withheld
23 from a *withholding payment covered by section 12-85 (about
24 eligible termination payment) if:
- 25 (a) the Commissioner is satisfied that an amount (the *applied*
26 *amount*) that is the whole or a part of the *eligible
27 termination payment:
- 28 (i) is taken to have been rolled-over for the purposes of
29 Subdivision AA of Division 2 of Part III of the *Income*
30 *Tax Assessment Act 1936*; or
31 (ii) will be taken to have been rolled-over because of an
32 amount or amounts being paid to a person or persons
33 (the *payee* or *payees*) as mentioned in subsection
34 27A(12) of that Act; and

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

Section 18-80

- 1 (b) if the applied amount is a part of the eligible termination
2 payment—the withheld amount exceeds the amount that
3 would have been the *amount required to be withheld if the
4 eligible termination payment had not included the applied
5 amount.
- 6 (3) The amount refundable is:
- 7 (a) if the applied amount is the whole of the *eligible termination
8 payment—the *amount withheld from the *withholding
9 payment; or
- 10 (b) if the applied amount is a part of the eligible termination
11 payment—the excess referred to in paragraph (2)(b).
- 12 (4) The Commissioner must refund that amount:
- 13 (a) by paying the refundable amount to the recipient of the
14 *eligible termination payment; or
- 15 (b) by paying to the recipient, and the payee or payees on behalf
16 of the recipient, amounts equal in the aggregate to the
17 refundable amount; or
- 18 (c) by paying to the payee or payees on behalf of the recipient
19 the refundable amount, or amounts equal in the aggregate to
20 the refundable amount;
- 21 as appropriate.

22 **18-80 Refund by Commissioner of amount withheld from payment**
23 **in respect of investment**

- 24 The Commissioner must refund to an entity all or part of an
25 *amount withheld from a *withholding payment covered by section
26 12-140 or 12-145 that was made to that entity if:
- 27 (a) the entity applies in writing for the refund; and
- 28 (b) the Commissioner is satisfied that the entity was entitled to
29 give *the investment body a declaration under Division 5 of
30 Part VA of the *Income Tax Assessment Act 1936* in relation
31 to the *Part VA investment in respect of which the
32 withholding payment was made, but did not do so; and

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

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Section 18-100

1 (c) the Commissioner is also satisfied it is fair and reasonable to
2 make the refund, having regard to the purposes of this Part
3 and any other matters that the Commissioner considers
4 appropriate.

5 Note: A person who is dissatisfied with a decision under this section may
6 object against the decision in the manner set out in Part IVC.

7 **Subdivision 18-C—Recipient's obligations**

8 **18-100 Obligation to keep payment summary**

9 An entity that is given a *payment summary and a copy of it in any
10 financial year under this Part must retain that copy for 5 years after
11 the end of that year.

12 Penalty: 30 penalty units.

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

15 *[The next Division is Division 20.]*

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

1

2 **Division 20—Other matters**

3 **Table of Subdivisions**

4	20-A	How this Part applies to certain entities
5	20-B	Offences
6	20-C	Commissioner's power to obtain information and evidence
7	20-D	Review of decisions

8 **Subdivision 20-A—How this Part applies to certain entities**

9 **Table of sections**

10	20-5	Partnerships
11	20-10	Unincorporated companies
12	20-15	Superannuation funds

13 **20-5 Partnerships**

- 14 (1) This Part applies to a partnership as if the partnership were a
15 person, but with the changes set out in this section.
- 16 (2) An obligation that would otherwise be imposed on the partnership
17 under this Part:
18 (a) is imposed on each partner instead; but
19 (b) may be discharged by any of the partners.
- 20 (3) The partners are jointly and severally liable to pay an amount that
21 would otherwise be payable by the partnership under this Part.
- 22 (4) An offence against this Part that would otherwise be committed by
23 the partnership is taken to have been committed by each partner
24 who:
25 (a) aided, abetted, counselled or procured the relevant act or
26 omission; or

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

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Division 20 Other matters

Section 20-10

- 1 (b) was in any way knowingly concerned in, or party to the
2 relevant act or omission (whether directly or indirectly or
3 whether by any act or omission of the partner).

4 **20-10 Unincorporated companies**

- 5 (1) This Part applies to a company that is not incorporated as if the
6 company were a person, but with the changes set out in this
7 section.
- 8 (2) An obligation that would otherwise be imposed on the company
9 under this Part:
- 10 (a) is imposed on each member of the committee of management
11 of the company instead; but
12 (b) may be discharged by any of those members.
- 13 (3) An offence against this Part that would otherwise be committed by
14 the company is taken to have been committed by each member of
15 the committee of management of the company who:
- 16 (a) aided, abetted, counselled or procured the relevant act or
17 omission; or
18 (b) was in any way knowingly concerned in, or party to, the
19 relevant act or omission (whether directly or indirectly and
20 whether by any act or omission of the member).

21 **20-15 Superannuation funds**

22 If a *superannuation fund does not have a trustee of the fund, then,
23 for the purposes of this Part:

- 24 (a) the person who manages the fund is taken to be the trustee of
25 the fund; or
26 (b) each of the persons who manage the fund is taken to be a
27 trustee of the fund.

28 Note: The trustee of a superannuation fund is an entity. See subsection
29 960-100(2) of the *Income Tax Assessment Act 1997*.

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

1 **Subdivision 20-B—Offences**

2 **Table of sections**

3	20-35	Offences
4	20-40	Joining of charges

5 **20-35 Offences**

- 6 (1) A person must not:
- 7 (a) present a document issued by the Commissioner that
- 8 specifies a person (the *specified person*); and
- 9 (b) falsely pretend to be the specified person with the intention
- 10 of obtaining under this Part a credit for, or a payment of, an
- 11 *amount withheld from a *withholding payment.
- 12 (2) A person must not attempt to obtain for the person a credit under
- 13 this Part for an *amount withheld from a *withholding payment if:
- 14 (a) the payment is not covered by section 12-215, 12-250 or
- 15 12-285 and was made to another person; or
- 16 (b) the payment is covered by section 12-215, 12-250 or 12-285
- 17 and the person is not the foreign resident in respect of which
- 18 all or a part of the payment is received as mentioned in that
- 19 section.
- 20 (3) A person must not, with the intention of obtaining a credit, a
- 21 payment or any other benefit, present:
- 22 (a) a copy of a *payment summary; or
- 23 (b) a document purporting to be a copy of a payment summary;
- 24 which is not a copy duly given to the person.
- 25 **Penalty:** 60 penalty units, or imprisonment for 12 months, or both.
- 26 **Note:** See section 4AA of the *Crimes Act 1914* for the current value of a
- 27 penalty unit.

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

Section 20-40

1 **20-40 Joining of charges**

2 (1) Charges against the same person for a number of offences against
3 this Part may be joined in one complaint, information or summons
4 if those charges:

- 5 (a) are founded on the same facts; or
6 (b) form a series of offences of the same or a similar character;
7 or
8 (c) are part of a series of offences of the same or similar
9 character.

10 (2) Particulars of each offence charged must be set out in a separate
11 paragraph if 2 or more of the charges are included in the same
12 complaint, information or summons.

13 (3) If the charges are joined, the charges must be tried together unless
14 the court:

- 15 (a) considers it just that any of the charges should be tried
16 separately; and
17 (b) makes an order to that effect.

18 (4) If a person is convicted of 2 or more of the offences:

- 19 (a) the court may impose one penalty for both or all of those
20 offences; but
21 (b) the penalty must not exceed the sum of the maximum
22 penalties that could be imposed in respect of each offence
23 separately.

24 **Subdivision 20-C—Commissioner’s power to obtain**
25 **information and evidence**

26 **20-60 Commissioner’s power**

27 (1) The Commissioner may require any person:

- 28 (a) to give information to the Commissioner covering any
29 matters relevant to the administration or operation of this
30 Part; and

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

Section 20-80

- 1 (b) to attend and to give evidence before the Commissioner or an
2 officer authorised by the Commissioner covering any matters
3 relevant to the administration or operation of this Part; and
4 (c) to produce any documents in the person's custody or under
5 the person's control that relate to these matters.
- 6 (2) The Commissioner may require the information or evidence:
7 (a) to be given on oath; and
8 (b) to be given orally or in writing.
9 For that purpose, the Commissioner or the officer may administer
10 an oath.
- 11 (3) The regulations may prescribe scales of expenses to be allowed to
12 persons required to attend before the Commissioner or the officer.

13 **Subdivision 20-D—Review of decisions**

14 **20-80 Reviewable decisions**

15 A person who is dissatisfied with any of the following decisions of
16 the Commissioner may object against the decision in the manner
17 set out in Part IVC.
18

Reviewable decisions

Item Description

1	Decision not to give a certificate under subsection 12-335(1) exempting an entity from notifying the Commissioner about a natural resource payment
5	Decision to revoke a certificate under subsection 12-335(3)
10	Decision to vary a certificate under subsection 12-335(3)
15	Decision under section 16-45 (about the remission of all or a part of a penalty payable under section 16-30, 16-35 or 16-40)
20	Decision under section 16-90 (about the remission of all or a part of the penalty that a *large withholder is liable to pay because of subsection 16-90(1))

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-5 Pay as you go (PAYG) withholding

Division 20 Other matters

Section 20-80

Reviewable decisions

Item	Description
25	Refusal to determine under subsection 16-110(1) that a large withholder is a *medium withholder or a *small withholder for a particular month or particular months
30	Refusal to determine under subsection 16-110(1) that a medium withholder is a small withholder for a particular month or particular months
35	Decision to revoke a determination made under subsection 16-110(1)
40	Decision to vary a determination made under subsection 16-110(1) for a particular month or particular months
45	Determination under subsection 16-115(1) that a small withholder is a medium withholder or a large withholder for a particular month or particular months
50	Determination under subsection 16-115(1) that a medium withholder is a large withholder
55	Decision not to revoke a determination made under subsection 16-115(1)
60	Decision not to vary a determination made under subsection 16-115(1) for a particular month or particular months
65	Decision not to refund an amount under section 18-70
70	Decision not to refund an amount under section 18-80

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

1

2 **Part 2-10—Pay as you go (PAYG) instalments**

3 **Division 45—Instalment payments**

4 **Table of Subdivisions**

5	Guide to Division 45
6	45-A Basic rules
7	45-B When instalments are due
8	45-C Working out instalment amounts
9	45-D Quarterly payers who pay on the basis of GDP-adjusted
10	notional tax
11	45-E Annual payers
12	45-F Varying the instalment rate for quarterly instalments
13	45-G General interest charge payable in certain cases if instalments
14	are too low
15	45-H Partnership income
16	45-I Trust income
17	45-J How Commissioner works out your instalment rate and
18	notional tax
19	45-K How Commissioner works out your benchmark instalment
20	rate and benchmark tax
21	45-L How Commissioner works out amount of quarterly instalment
22	on basis of GDP-adjusted notional tax

23 **Guide to Division 45**

24 **45-1 What this Division is about**

25

26 If you have business or investment income, you must pay 27 instalments towards your income tax liability: usually within 21 days after the end of each quarter. If you are not registered for GST
--

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-5

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purposes, you may be able to choose to pay an annual instalment on 21 October after the end of the income year.

You do not have to pay instalments unless the Commissioner has given you an instalment rate.

The amount of a quarterly instalment is worked out by multiplying your instalment income for the quarter by the rate the Commissioner gave you, or by a rate you choose yourself. If you are an individual who is not registered for GST purposes, you may be able to choose to have the amount of your instalment worked out on the basis of your previous year's income tax liability and notified to you by the Commissioner.

The amount of an annual instalment can be your instalment income for the income year multiplied by the rate the Commissioner gave you; or an amount based on your previous year's income tax liability and notified to you by the Commissioner; or your own estimate of your income tax liability for the income year.

17

Subdivision 45-A—Basic rules

18

Table of sections

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45-5	Object of this Part
45-10	Application of Part
45-15	Liability for instalments
45-20	Information to be given to the Commissioner
45-25	Penalty for failure to notify Commissioner
45-30	Credit for instalments payable

25

45-5 Object of this Part

26
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The object of this Part is to ensure the efficient collection of:

- (a) income tax; and
- (b) Medicare levy; and
- (c) amounts of liabilities to the Commonwealth under Chapter 5A of the *Higher Education Funding Act 1988*.

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

1 **45-10 Application of Part**

2 This Part applies to individuals, companies, and the entities listed
3 in items 3 and 4, and 6 to 12, of the table in section 9-1 of the
4 *Income Tax Assessment Act 1997* (which lists the entities that must
5 pay income tax).

6 Note: This Part applies to a trustee covered by item 5 in that table only to the
7 extent set out in section 45-300.

8 **45-15 Liability for instalments**

9 (1) The Commissioner may give you an instalment rate from time to
10 time, by giving you written notice of the rate.

11 (2) You are liable to pay instalments under this Division if the
12 Commissioner has given you an instalment rate.

13 Note 1: The instalment rate that the Commissioner gives you is worked out
14 under section 45-320.

15 Note 2: If your assessable income has always consisted wholly of withholding
16 payments (other than non-quotation withholding payments), the
17 Commissioner will not give you an instalment rate.

18 Note 3: Work out the amount of your instalments under Subdivision 45-C.

19 Note 4: If the Commissioner withdraws the rate under section 45-90, you are
20 not liable to pay further instalments.

21 **45-20 Information to be given to the Commissioner**

22 (1) If you are liable to pay an instalment for a period (even if it is a nil
23 amount), you must notify the Commissioner of the amount of your
24 *instalment income for the period.

25 (2) You must notify the Commissioner in the *approved form and on
26 or before the day when the instalment is due (regardless of whether
27 it is paid).

28 *Exceptions*

29 (3) Subsection (1) does not apply to:

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-25

- 1 (a) a quarterly instalment worked out under section 45-112 (on
2 the basis of GDP-adjusted notional tax); or
3 (b) an annual instalment, unless it is worked out under paragraph
4 45-115(1)(a) (based on the Commissioner's rate and your
5 instalment income for the income year).

6 **45-25 Penalty for failure to notify Commissioner**

7 If you fail to notify the Commissioner of an amount as required by
8 section 45-20, or you notify an amount that is less than the correct
9 amount, you are liable to pay the *failure to notify penalty on the
10 amount, or on the shortfall, multiplied by the instalment rate that
11 you are required to use to work out the instalment for the period,
12 for each day in the period that:

- 13 (a) started at the beginning of the day by which the amount was
14 due to be paid; and
15 (b) finishes at the end of the day before you notify the
16 Commissioner of the correct amount, or he or she otherwise
17 becomes aware of it.

18 **45-30 Credit for instalments payable**

- 19 (1) You are entitled to a credit when the Commissioner:
20 (a) makes an assessment of the income tax you are liable to pay
21 for an income year; or
22 (b) determines that you do not have a taxable income for an
23 income year, or that no income tax is payable on it.
- 24 (2) The credit is equal to:
- 25 • the total of each instalment payable by you for the income
 - 26 year (even if you have not yet paid it);
- 27 reduced by:
- 28 • the total of each credit that you have claimed under section
 - 29 45-215 in respect of such an instalment.

30 Note: You can claim a credit under section 45-215 in certain cases where
31 you choose a rate for working out an instalment.

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

- 1 (3) The making of the assessment or determination, and the resulting
2 credit entitlement, do not affect the liability to pay an instalment.

3 Note: How the credit is applied is set out in Division 3 of Part IIB.

4 **Subdivision 45-B—When instalments are due**

5 **Table of sections**

6	45-50	Liability to pay first instalment
7	45-55	Subsequent quarterly instalments
8	45-60	When quarterly instalments are due
9	45-65	Subsequent annual instalments
10	45-70	When annual instalments are due
11	45-72	Electronic payment
12	45-75	Instalments recoverable in same way as income tax
13	45-80	General interest charge on late payment
14	45-85	Commissioner may extend time for payment
15	45-90	Commissioner may withdraw instalment rate

16 **45-50 Liability to pay first instalment**

- 17 (1) Your first instalment is payable:
- 18 (a) for the *instalment quarter in which the Commissioner first
19 gives you an instalment rate (even if it is not the first
20 instalment quarter in an income year); or
- 21 (b) if at the end of that quarter you become an *annual payer
22 under Subdivision 45-E—for the income year in which the
23 Commissioner first gives you an instalment rate;
- 24 unless the Commissioner withdraws your instalment rate under
25 section 45-90 during that quarter or income year.
- 26 (2) However, if paragraph (1)(b) applies but during a later *instalment
27 quarter in that income year you stop being an *annual payer under
28 section 45-150, your first instalment is payable for that later
29 instalment quarter, unless the Commissioner withdraws your
30 instalment rate under section 45-90 during it.

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

Section 45-55

1 **45-55 Subsequent quarterly instalments**

- 2 If you are liable to pay an instalment for an *instalment quarter,
3 you are liable to pay an instalment for the next one unless:
4 (a) at the end of that next instalment quarter you become an
5 *annual payer under Subdivision 45-E; or
6 (b) during that next quarter the Commissioner withdraws your
7 instalment rate under section 45-90.

8 **45-60 When quarterly instalments are due**

- 9 (1) If your income year ends on 30 June, the table sets out your
10 *instalment quarters* and the days on which the instalments for
11 those quarters are due:
12

Instalment quarters: entity with 1 July to 30 June income year		
Item	For the *quarter ending on:	The instalment is due on or before the next:
1	30 September	21 October
2	31 December	21 January
3	31 March	21 April
4	30 June	21 July

- 13 (2) If your income year ends on a day other than 30 June:
14 (a) your first *instalment quarter* consists of the first 3 months of
15 the income year; and
16 (b) your second *instalment quarter* consists of the fourth, fifth
17 and sixth months of the income year; and
18 (c) your third *instalment quarter* consists of the seventh, eighth
19 and ninth months of the income year; and
20 (d) your fourth *instalment quarter* consists of the tenth, 11th
21 and 12th months of the income year.
22 (3) If subsection (2) applies, an instalment for an *instalment quarter is
23 due on or before the 21st day of the month after the end of that
24 quarter.

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

1 **45-65 Subsequent annual instalments**

2 If you are liable to pay an instalment for an income year (the
3 ***previous year***), you must pay an instalment for the next income
4 year unless:

- 5 (a) during the previous year you stopped being an *annual payer
6 because of section 45-150, 45-155 or 45-180; or
7 (b) during that next income year the Commissioner withdraws
8 your instalment rate under section 45-90.

9 Note 1: Sections 45-150 and 45-180 cover cases where an annual payer
10 becomes registered for GST, becomes a partner in a partnership that is
11 registered for GST, is a partner in a partnership that becomes
12 registered for GST, becomes a participant in a GST joint venture, or
13 becomes a company group member.

14 Note 2: Section 45-155 covers cases where an annual payer's notional tax is
15 \$8,000 or more, or the entity chooses to pay quarterly.

16 **45-70 When annual instalments are due**

- 17 (1) This section applies if you are liable to pay an annual instalment
18 for the 2002-03 income year or a later income year.

19 For an instalment you are liable to pay for 2000-01 or 2001-02,
20 see section 45-170.

- 21 (2) If the income year ends on 30 June, the instalment is due on or
22 before the next 21 October.
23 (3) If the income year ends on a day other than 30 June, the instalment
24 is due on or before the 21st day of the fourth month after the end of
25 the income year.

26 **45-72 Electronic payment**

27 You must pay an instalment by *electronic payment if you are
28 required to pay by electronic payment the amount of any other
29 liability to the Commissioner that is due on the same day as the
30 instalment.

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

Section 45-75

1 **45-75 Instalments recoverable in same way as income tax**

2 Instalments are to be treated as income tax for the purposes of
3 sections 208, 209, 214, 254, 255, 258 and 259 of the *Income Tax*
4 *Assessment Act 1936*.

5 **45-80 General interest charge on late payment**

6 If you fail to pay some or all of an instalment by the time by which
7 the instalment is due to be paid, you are liable to pay the *general
8 interest charge on the unpaid amount for each day in the period
9 that:

- 10 (a) started at the beginning of the day by which the instalment
11 was due to be paid; and
12 (b) finishes at the end of the last day on which, at the end of the
13 day, any of the following remains unpaid:
14 (i) the instalment;
15 (ii) general interest charge on any of the instalment.

16 **45-85 Commissioner may extend time for payment**

- 17 (1) The Commissioner may, in a particular case, grant such extension
18 of time for payment of an instalment as he or she considers the
19 circumstances warrant.
20 (2) If the Commissioner grants an extension of time under subsection
21 (1), the instalment is due to be paid on or before the day or days
22 specified by the Commissioner.

23 **45-90 Commissioner may withdraw instalment rate**

- 24 (1) The Commissioner may:
25 (a) by giving you written notice, withdraw your instalment rate;
26 or
27 (b) by notice published in the *Gazette*, withdraw the instalment
28 rate of a class of entities that includes you.

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

Section 45-110

1 Note: If the Commissioner does so, you are not liable to pay further
2 instalments (even if you have chosen a rate under section 45-205). See
3 paragraphs 45-55(b) and 45-65(b).

4 (2) If the Commissioner withdraws your instalment rate and later gives
5 you another one, your first instalment after the withdrawal is
6 payable under section 45-50 as if it were your first instalment, and
7 as if that rate were your first instalment rate.

8 **Subdivision 45-C—Working out instalment amounts**

9 **Table of sections**

10	45-110	How to work out amount of quarterly instalment
11	45-112	Amount of instalment for quarterly payer who pays on basis of
12		GDP-adjusted notional tax
13	45-115	How to work out amount of annual instalment
14	45-120	Meaning of <i>instalment income</i>

15 **45-110 How to work out amount of quarterly instalment**

16 (1) Work out the amount of an instalment you are liable to pay for an
17 *instalment quarter as follows:

18 $\text{Applicable instalment rate} \times \text{Your *instalment income for that quarter}$

19 (2) For the purposes of the formula in subsection (1):

20 ***Applicable instalment rate*** means:

- 21 (a) unless paragraph (b) or (c) applies—the most recent
22 instalment rate given to you by the Commissioner under
23 section 45-15 before the end of that quarter; or
24 (b) if you have chosen an instalment rate for that quarter under
25 section 45-205—that rate; or
26 (c) if you have chosen an instalment rate under section 45-205
27 for an earlier *instalment quarter in that income year (and
28 paragraph (b) does not apply)—that rate.

29 Note: If you believe the Commissioner's rate is not appropriate for the
30 current income year, you may choose a different instalment rate under
31 Subdivision 45-F.

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

- 1 (2) **Commissioner's instalment rate** for an income year means the
2 most recent instalment rate given to you by the Commissioner
3 before the end of the income year.
- 4 (3) If you choose to work out your instalment under paragraph (1)(c),
5 you must notify the Commissioner, in the *approved form, of the
6 amount of the instalment on or before the day when it is due.

7 **45-120 Meaning of instalment income**

8 *General rule*

- 9 (1) Your **instalment income** for a period includes your *ordinary
10 income *derived during that period, but only to the extent that it is
11 assessable income of the income year that is or includes that
12 period.

13 Note 1: An amount of statutory income is not instalment income unless it is
14 covered by another provision of this section or by Subdivision 45-H or
15 45-I.

16 Note 2: If during that period you are a partner in a partnership, or a beneficiary
17 of a trust, your instalment income also includes some of the
18 partnership's or trust's instalment income for the period. See
19 Subdivision 45-H or 45-I.

20 *Statutory income included for some entities*

- 21 (2) The **instalment income** of:
22 (a) an eligible ADF (as defined in section 267 of the *Income Tax*
23 *Assessment Act 1936*); or
24 (b) an eligible superannuation fund (as defined in that section);
25 or
26 (c) a pooled superannuation trust (as defined in that section);
27 for a period also includes the entity's *statutory income, to the
28 extent that:
29 (d) it is reasonably attributable to that period; and
30 (e) it is assessable income of the income year that is or includes
31 that period.

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-120

1 *Exclusion: amounts in respect of withholding payments*

2 (3) Your *instalment income* for a period does *not* include amounts in
3 respect of *withholding payments (except *non-quotation
4 withholding payments) made to you during that period.

5 *Farm management deposits: effect of making and repayment*

6 (4) Your *instalment income* for a period is reduced (but not below nil)
7 by a *farm management deposit made during that period, but only
8 to the extent that, at the end of that period, you can reasonably
9 expect to be able to deduct the deposit under section 393-10 in
10 Schedule 2G to the *Income Tax Assessment Act 1936* for the
11 income year that is or includes that period.

12 (5) Your *instalment income* for a period also includes an amount that
13 section 393-15 in Schedule 2G to the *Income Tax Assessment Act*
14 *1936* includes in your assessable income, for the income year that
15 is or includes that period, because of a repayment during that
16 period of all or some of a *farm management deposit.

17 *Instalment income of entity that is not liable for instalments*

18 (6) An entity can have *instalment income for a period even if the
19 entity is not liable to pay an instalment for that period.

20 Note: For example, although a partnership does not pay instalments, it is
21 necessary to work out the partnership's instalment income in order to
22 work out instalments payable by the partners. See Subdivision 45-H.

23 **Subdivision 45-D—Quarterly payers who pay on the basis of**
24 **GDP-adjusted notional tax**

25 **Table of sections**

26	45-125	Choosing to pay quarterly instalments on basis of GDP-adjusted notional tax
27		
28	45-130	Individual stops paying on basis of GDP-adjusted notional tax if he or she chooses to stop, or becomes GST registered
29		
30	45-135	Individual stops paying on basis of GDP-adjusted notional tax if his or her notional tax is less than \$8,000
31		

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

1 **45-125 Choosing to pay quarterly instalments on basis of**
2 **GDP-adjusted notional tax**

- 3 (1) You may choose to pay quarterly instalments on the basis of your
4 *GDP-adjusted notional tax if you are an individual and, at the end
5 of the first *instalment quarter in an income year for which you are
6 liable to pay an instalment, you satisfy the following conditions:
7 (a) you are neither *registered, nor *required to be registered,
8 under Part 2-5 of the *GST Act; and
9 (b) you are not a partner in a partnership that is registered, or
10 required to be registered, under that Part; and
11 (c) your most recent *notional tax notified by the Commissioner
12 is \$8,000 or more.

13 Note: This means that you cannot choose to pay quarterly instalments on the
14 basis of your GDP-adjusted notional tax if you are eligible to pay
15 annual instalments.

- 16 (2) You must make the choice by notifying the Commissioner, in the
17 *approved form, on or before the day on which that instalment is
18 due.
- 19 (3) You are a *quarterly payer who pays on the basis of GDP-adjusted*
20 *notional tax* if you satisfy the conditions in subsection (1), and you
21 choose to pay quarterly instalments on the basis of your
22 *GDP-adjusted notional tax. You are taken to have become such a
23 payer just before the end of that *instalment quarter.

24 Note: You stop being such a payer if section 45-130 or 45-135 applies to
25 you.

26 **45-130 Individual stops paying on basis of GDP-adjusted notional**
27 **tax if he or she chooses to stop, or becomes GST**
28 **registered**

- 29 (1) You stop being a *quarterly payer who pays on the basis of
30 GDP-adjusted notional tax if, during an *instalment quarter in an
31 income year:
32 (a) you choose to stop being a *quarterly payer who pays on the
33 basis of GDP-adjusted notional tax; or

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-135

- 1 (b) you become *registered, or *required to be registered, under
2 Part 2-5 of the *GST Act; or
3 (c) you become a partner in a partnership that is registered, or
4 required to be registered, under that Part; or
5 (d) a partnership in which you are a partner becomes registered,
6 or required to be registered, under that Part.
- 7 (2) You must work out the amount of your instalment for that
8 *instalment quarter, and each later instalment quarter, under section
9 45-110 (on the basis of your instalment income and the applicable
10 instalment rate).
- 11 (3) You may again become a *quarterly payer who pays on the basis of
12 GDP-adjusted notional tax if:
13 (a) you again satisfy the conditions in section 45-125; and
14 (b) you again choose under that section to pay quarterly
15 instalments on the basis of your *GDP-adjusted notional tax.
- 16 Note: You cannot so choose until the next income year.

17 **45-135 Individual stops paying on basis of GDP-adjusted notional**
18 **tax if his or her notional tax is less than \$8,000**

- 19 (1) If, during an income year the Commissioner notifies you of your
20 *notional tax, and it is less than \$8,000, you stop being a *quarterly
21 payer who pays on the basis of GDP-adjusted notional tax at the
22 start of the *next* income year.
- 23 (2) You must work out the amount of your instalment for the first
24 *instalment quarter of that next income year, and each later
25 instalment quarter, under section 45-110 (on the basis of your
26 instalment income and the applicable instalment rate).
- 27 (3) You may again become a *quarterly payer who pays on the basis of
28 GDP-adjusted notional tax if:
29 (a) you again satisfy the conditions in section 45-125; and
30 (b) you again choose under that section to pay quarterly
31 instalments on the basis of your *GDP-adjusted notional tax.

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

1 Note: You can so choose on or before the day on which your first instalment
2 for that next income year is due.

3 **Subdivision 45-E—Annual payers**

4 **Table of sections**

5 **When you start and stop being an annual payer**

6	45-140	Choosing to pay annual instalments
7	45-145	Meaning of <i>instalment group</i>
8	45-150	Entity that becomes GST registered, participant in GST joint venture, or
9		company group member, stops being annual payer
10	45-155	Entity stops being annual payer if notional tax is \$8,000 or more, or entity
11		chooses to pay quarterly

12 **Special rules for 2000-01 and 2001-02**

13	45-170	Due date for annual instalment
14	45-175	Amount of annual instalment
15	45-180	Entity that becomes GST registered, participant in GST joint venture, or
16		company group member stops being annual payer

17 **When you start and stop being an annual payer**

18 **45-140 Choosing to pay annual instalments**

- 19 (1) You may choose to pay instalments annually instead of quarterly
20 if, at the end of the first *instalment quarter in an income year for
21 which you would otherwise be liable to pay a quarterly instalment,
22 you satisfy the following conditions:
- 23 (a) you are neither *registered, nor *required to be registered,
24 under Part 2-5 of the *GST Act; and
 - 25 (b) you are not a partner in a partnership that is registered, or
26 required to be registered, under that Part; and
 - 27 (c) your most recent *notional tax notified by the Commissioner
28 is less than \$8,000; and
 - 29 (d) in the case of a company—the company is not a *participant
30 in a *GST joint venture under Division 51 of that Act; and

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

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Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-145

- 1 (e) in the case of a company—the company is not part of an
2 *instalment group.
- 3 (2) You must make the choice by notifying the Commissioner, in the
4 *approved form, on or before the day on which that instalment
5 would otherwise be due.
- 6 (3) You are an **annual payer** if you satisfy the conditions in subsection
7 (1), and you choose to pay instalments annually. You are taken to
8 have become an **annual payer** at the end of that *instalment
9 quarter.
- 10 Note: You stop being an annual payer if section 45-150, 45-155 or 45-180
11 applies to you.

12 **45-145 Meaning of instalment group**

- 13 (1) An **instalment group** consists of:
14 (a) a company:
15 (i) that has *majority control of at least one other company;
16 but
17 (ii) of which no other company has *majority control; and
18 (b) any other company of which the first-mentioned company
19 has *majority control.
- 20 (2) A company has **majority control** of another company if, and only
21 if:
22 (a) the first company is in a position to cast, or control the
23 casting of, more than 50% of the maximum number of votes
24 that might be cast at a general meeting of the other company;
25 or
26 (b) the first company has the power to appoint or remove the
27 majority of the directors of the other company; or
28 (c) the other company is, or a majority of its directors are,
29 accustomed or under an obligation, whether formal or
30 informal, to act according to the directions, instructions or
31 wishes of the first company.

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

1 **45-150 Entity that becomes GST registered, participant in GST joint**
2 **venture, or company group member, stops being annual**
3 **payer**

- 4 (1) You stop being an *annual payer if, during an *instalment quarter
5 in the 2002-03 income year or a later income year:
- 6 (a) you become *registered, or *required to be registered, under
7 Part 2-5 of the *GST Act; or
 - 8 (b) you become a partner in a partnership that is registered, or
9 required to be registered, under that Part; or
 - 10 (c) a partnership in which you are a partner becomes registered,
11 or required to be registered, under that Part; or
 - 12 (d) in the case of a company—the company becomes a
13 *participant in a *GST joint venture under Division 51 of that
14 Act; or
 - 15 (e) in the case of a company—the company becomes part of an
16 *instalment group.
- 17 Note: If one of those things happens in 2000-01 or 2001-02, see section
18 45-180.
- 19 (2) You must pay an instalment for that *instalment quarter, and later
20 instalment quarters, in accordance with Subdivision 45-B.
- 21 (3) If the *instalment quarter referred to in subsection (1) is not the
22 first one in the income year, you must also pay an annual
23 instalment for that income year. The amount of the annual
24 instalment is reduced (but not below nil) by the amount of each
25 instalment for an instalment quarter in that income year that you
26 must pay under subsection (2).
- 27 (4) You may again become an *annual payer if:
- 28 (a) you again satisfy the conditions in section 45-140; and
 - 29 (b) you again choose under that section to pay instalments
30 annually.

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

Section 45-155

1 **45-155 Entity stops being annual payer if notional tax is \$8,000 or**
2 **more, or entity chooses to pay quarterly**

- 3 (1) You stop being an *annual payer at the end of an income year if,
4 during that income year:
- 5 (a) the Commissioner notifies you of your *notional tax, and it is
6 \$8,000 or more; or
- 7 (b) you choose to pay instalments quarterly instead of annually.
- 8 (2) You must pay an instalment for the first *instalment quarter of the
9 *next* income year, and later instalment quarters, in accordance with
10 Subdivision 45-B.
- 11 (3) You must still pay an annual instalment for the income year
12 referred to in subsection (1).
- 13 (4) You may again become an *annual payer if:
- 14 (a) you again satisfy the conditions in section 45-140; and
15 (b) you again choose under that section to pay instalments
16 annually.

17 **Special rules for 2000-01 and 2001-02**

18 **45-170 Due date for annual instalment**

- 19 (1) This section applies if you are liable to pay an annual instalment
20 for the 2000-01 or 2001-02 income year.
- 21 (2) The instalment is due on or before a day that is notified to you in
22 writing by the Commissioner and is at least 30 days after the
23 Commissioner gives you the notice. If that day is earlier than 31
24 March in that income year, the instalment is due on or before that
25 31 March.
- 26 (3) However, in the case of an entity that is an instalment taxpayer for
27 that income year (as defined by subsection 221AZK(1) of the
28 *Income Tax Assessment Act 1936*), the instalment is due on or
29 before the 15th day of the 6th month after the end of that income
30 year.

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

1 **45-175 Amount of annual instalment**

- 2 (1) Unless subsection (2) applies, the amount of an annual instalment
3 you are liable to pay for the 2000-01 or 2001-02 income year is
4 whichever of the following you choose:
5 (a) your most recent *notional tax notified by the Commissioner
6 at least 30 days before the day on which the instalment is
7 due;
8 (b) the amount that you estimate will be your *benchmark tax for
9 the income year.

10 Note: You may be liable to general interest charge under section 45-235 if
11 working out your instalment under paragraph (b) leads you to pay an
12 instalment that is less than 85% of your benchmark tax for the income
13 year (worked out by the Commissioner under section 45-365).

- 14 (2) If an entity is an instalment taxpayer (as defined by subsection
15 221AZK(1) of the *Income Tax Assessment Act 1936*) for the
16 2000-01 or 2001-02 income year, the amount of an annual
17 instalment that the entity is liable to pay for that income year is
18 worked out under section 45-115, as if that section applied to that
19 income year.

20 **45-180 Entity that becomes GST registered, participant in GST joint**
21 **venture, or company group member stops being annual**
22 **payer**

- 23 (1) You stop being an *annual payer if, during an *instalment quarter
24 in the 2000-01 or 2001-02 income year:
25 (a) you become *registered, or *required to be registered, under
26 Part 2-5 of the *GST Act; or
27 (b) you become a partner in a partnership that is registered, or
28 required to be registered, under that Part; or
29 (c) a partnership in which you are a partner becomes registered,
30 or required to be registered, under that Part; or
31 (d) in the case of a company—the company becomes a
32 *participant in a *GST joint venture under Division 51 of that
33 Act; or

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

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- 1 (e) in the case of a company—the company becomes part of an
2 *instalment group.
- 3 (2) You must pay an instalment for the first *instalment quarter of the
4 *next* income year, and later instalment quarters, in accordance with
5 Subdivision 45-B.
- 6 (3) You must still pay an annual instalment for the income year
7 referred to in subsection (1).
- 8 (4) You may again become an *annual payer if:
9 (a) you again satisfy the conditions in section 45-140; and
10 (b) you again choose under that section to pay instalments
11 annually.

12 **Subdivision 45-F—Varying the instalment rate for quarterly**
13 **instalments**

14 **Table of sections**

15	45-200	Application
16	45-205	Choosing a varied instalment rate
17	45-210	Notifying Commissioner of varied instalment rate
18	45-215	Credit on using varied rate in certain cases

19 **45-200 Application**

20 This Subdivision applies if you are a *quarterly payer.

21 **45-205 Choosing a varied instalment rate**

- 22 (1) You may choose an instalment rate for working out under section
23 45-110 the amount of your instalment for an *instalment quarter in
24 an income year.
- 25 (2) If you do so, you must use that instalment rate to work out the
26 amount of that instalment. (You cannot later choose another
27 instalment rate for working out that amount.)

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

Section 45-210

1 Note 1: If choosing a rate leads you to pay an instalment that is too low, you
2 may be liable to general interest charge under section 45-230.

3 Note 2: If you choose a rate under this section, you must use it even if the
4 Commissioner later gives you a new instalment rate.

5 (3) You must also use that instalment rate to work out the amount of
6 the instalment that you are liable to pay for each later *instalment
7 quarter in that income year, unless you choose another instalment
8 rate under subsection (1) for working out that amount.

9 Note 1: If you choose a rate under this section, you must use it even if the
10 Commissioner later gives you a new instalment rate.

11 Note 2: If a rate you have chosen for an instalment quarter is not appropriate
12 for a later instalment quarter in the same income year, you should
13 choose another rate under subsection (1) for the later quarter. If the
14 earlier rate is too low, you may be liable to general interest charge
15 under section 45-230.

16 (4) However, for working out under section 45-110 the amount of your
17 instalment for an *instalment quarter in a later income year, you
18 must use the most recent instalment rate given to you by the
19 Commissioner before the end of that quarter, unless you again
20 choose another instalment rate under subsection (1).

21 **45-210 Notifying Commissioner of varied instalment rate**

22 If you work out the amount of an instalment using an instalment
23 rate you have chosen under section 45-205, you must specify that
24 rate in the notice about your instalment income that you must give
25 the Commissioner under section 45-20.

26 **45-215 Credit on using varied rate in certain cases**

- 27 (1) You are entitled to claim a credit if:
- 28 (a) the amount of your instalment for an *instalment quarter (the
29 **current quarter**) in an income year is to be worked out using
30 an instalment rate you chose under section 45-205; and
31 (b) either:

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

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- 1 (i) that rate is lower than the instalment rate you used to
2 work out the amount of your instalment for the previous
3 instalment quarter (if any) in the same income year; or
4 (ii) the amount of your instalment for a previous instalment
5 quarter in the same income year was the amount
6 notified to you by the Commissioner under section
7 45-112 (because you were a quarterly payer on the basis
8 of GDP-adjusted notional tax); and
9 (c) the amount worked out using the method statement is greater
10 than nil.

11 *Method statement*

12 *Step 1.* Add up the instalments you are liable to pay for the
13 earlier *instalment quarters in the income year (even if
14 you have not yet paid all of them).

15 *Step 2.* Subtract from the step 1 amount each earlier credit that
16 you have claimed under this section in respect of the
17 income year.

18 *Step 3.* Multiply the total of your *instalment income for those
19 earlier *instalment quarters by the instalment rate to be
20 used for the current quarter.

21 *Step 4.* Subtract the step 3 amount from the step 2 amount.

22 *Step 5.* If the result is a positive amount, it is the amount of the
23 credit you can claim.

- 24 (2) A claim for a credit must be made in the *approved form on or
25 before the day on which the instalment for the current quarter is
26 due.

27 Note: How the credit is applied is set out in Division 3 of Part IIB.

- 28 (3) The credit entitlement does not affect your liability to pay an
29 instalment.

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

Subdivision 45-G—General interest charge payable in certain cases if instalments are too low

Table of sections

45-230	Liability to GIC on shortfall in quarterly instalment and on any excess credit under section 45-215
45-235	Liability to GIC on shortfall in annual instalment
45-240	Commissioner may remit general interest charge

45-230 Liability to GIC on shortfall in quarterly instalment and on any excess credit under section 45-215

- (1) You are liable to pay the *general interest charge under this section if:
- (a) you use an instalment rate (the *varied rate*) under section 45-205 to work out the amount of your instalment for an *instalment quarter (the *variation quarter*) in an income year; and
 - (b) the varied rate is less than 85% of your *benchmark instalment rate for that income year that the Commissioner works out under Subdivision 45-K.

- (2) You are liable to pay the *general interest charge on the amount worked out as follows:

$$\left[\begin{array}{l} \text{Rate} \\ \text{discrepancy} \end{array} \times \begin{array}{l} \text{Your *instalment income} \\ \text{for the variation quarter} \end{array} \right] + \begin{array}{l} \text{Credit} \\ \text{Adjustment} \end{array}$$

where:

rate discrepancy means the difference between the varied rate and the lesser of:

- (a) the most recent instalment rate given to you by the Commissioner before the end of the variation quarter; and
- (b) your *benchmark instalment rate for that income year.

credit adjustment means:

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

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1 (a) if, as a result of using the varied rate for the variation quarter,
2 you claimed a credit under section 45-215—the amount
3 worked out as follows:

4
$$\text{Rate discrepancy} \times \text{Your * instalment income for the earlier}$$

5 or the amount of the credit, whichever is less; and
6

(b) otherwise—nil.

7 (3) You are liable to pay the charge for each day in the period that:

8 (a) started at the beginning of the day by which the instalment
9 for the variation quarter was due to be paid; and

10 (b) finishes at the end of the earlier of the following days:

11 (i) the day on which your assessed tax for the income year
12 is due to be paid;

13 (ii) the last day on which you pay any of that tax.

14 (4) The Commissioner must give you written notice of the *general
15 interest charge to which you are liable under subsection (2). You
16 must pay the charge within 14 days after the notice is given to you.

17 (5) If any of the *general interest charge to which you are liable under
18 subsection (2) remains unpaid at the end of the 14 days referred to
19 in subsection (4), you are also liable to pay the *general interest
20 charge on the unpaid amount for each day in the period that:

21 (a) starts at the end of those 14 days; and

22 (b) finishes at the end of the last day on which, at the end of the
23 day, any of the following remains unpaid:

24 (i) the unpaid amount;

25 (ii) general interest charge on the unpaid amount.

26 **45-235 Liability to GIC on shortfall in annual instalment**

27 (1) You are liable to pay the *general interest charge under this section
28 if:

29 (a) you choose to estimate the amount of your instalment (the
30 *estimated instalment amount*) for an income year under
31 paragraph 45-115(1)(c) or 45-175(1)(b); and

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

- 1 (b) that amount is less than 85% of your *benchmark tax for the
2 income year (which the Commissioner works out under
3 section 45-365).
- 4 (2) If you estimated the amount of the instalment under paragraph
5 45-175(1)(b), you are liable to pay the *general interest charge on
6 the difference between the estimated instalment amount and the
7 lower of the following amounts:
8 (a) your most recent *notional tax notified by the Commissioner
9 at least 30 days before the day on which the instalment was
10 due;
11 (b) your *benchmark tax for the income year.
- 12 (3) If you estimated the amount of the instalment under paragraph
13 45-115(1)(c), you are liable to pay the *general interest charge on
14 the difference between the estimated instalment amount and the
15 lowest of the following amounts:
16 (a) the amount of your instalment worked out using the most
17 recent instalment rate given to you by the Commissioner
18 before the end of the income year;
19 (b) your most recent *notional tax notified by the Commissioner
20 before the end of the income year under subsection
21 45-320(5);
22 (c) your *benchmark tax for the income year.
- 23 (4) You are liable to pay the charge for each day in the period that:
24 (a) started at the beginning of the day by which the instalment
25 for the income year was due to be paid; and
26 (b) finishes at the end of the earlier of the following days:
27 (i) the day on which your assessed tax for the income year
28 is due to be paid;
29 (ii) the last day on which you pay any of that tax.
- 30 (5) The Commissioner must give you written notice of the *general
31 interest charge to which you are liable under subsection (2) or (3).
32 You must pay the charge within 14 days after the notice is given to
33 you.

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

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- 1 (6) If any of the *general interest charge to which you are liable under
2 subsection (2) or (3) remains unpaid at the end of the 14 days
3 referred to in subsection (5), you are also liable to pay the *general
4 interest charge on the unpaid amount for each day in the period
5 that:
6 (a) starts at the end of those 14 days; and
7 (b) finishes at the end of the last day on which, at the end of the
8 day, any of the following remains unpaid:
9 (i) the unpaid amount;
10 (ii) general interest charge on the unpaid amount.

11 **45-240 Commissioner may remit general interest charge**

12 The Commissioner may, if he or she is satisfied that because
13 special circumstances exist it would be fair and reasonable to do
14 so, remit the whole or any part of any *general interest charge
15 payable under subsection 45-230(2) or subsection 45-235(2) or (3).

16 **Subdivision 45-H—Partnership income**

17 **45-260 Instalment income for a period in which you are in a**
18 **partnership**

- 19 (1) Your *instalment income* for a period (the *current period*) includes
20 an amount for each partnership in which you are a partner at any
21 time during the current period. The amount is worked out using the
22 formula:

23
$$\frac{\text{Your assessable income from the partnership for the last income year}}{\text{Partnership's *instalment income for that income year}} \times \frac{\text{Partnership's *instalment income for the current period}}$$

- 24 (2) For the purposes of the formula in subsection (1):

25 *your assessable income from the partnership for the last income*
26 *year* means so much of your individual interest in the partnership's
27 net income for an income year as was included by section 92 of the

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

- 1 *Income Tax Assessment Act 1936* in your assessable income for the
2 most recent income year:
- 3 (a) that ended before the start of the current period; and
4 (b) for which you have an assessment, or for which the
5 Commissioner has notified you that you do not have a
6 taxable income.
- 7 (3) However, if for any reason the component defined in subsection
8 (2) does not exist or is a nil amount, or the partnership had no
9 *instalment income for that income year, your *instalment income*
10 for the current period includes, for that partnership, an amount that
11 is fair and reasonable having regard to:
- 12 (a) the extent of your interest in the partnership during the
13 current period; and
14 (b) the partnership's *instalment income for the current period;
15 and
16 (c) any other relevant circumstances.

17 **Subdivision 45-I—Trust income**

18 **Table of sections**

19	Instalment income of trust beneficiary
20	45-280 Instalment income for a period in which you are a beneficiary of a trust
21	Application of Part to trustees
22	45-300 Trustees to whom this Part applies

23 **Instalment income of trust beneficiary**

24 **45-280 Instalment income for a period in which you are a** 25 **beneficiary of a trust**

- 26 (1) Your *instalment income* for a period (the *current period*) includes
27 an amount for each trust of which you are a beneficiary at any time

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

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1 during the current period. The amount is worked out using the
2 formula:

3
$$\frac{\text{Your assessable income from the trust for the last income year}}{\text{Trust's *instalment income for that income year}} \times \text{Trust's *instalment income for the current period}$$

4 (2) For the purposes of the formula in subsection (1):

5 *your assessable income from the trust for the last income year*
6 means so much of a share of the net income of the trust for an
7 income year as was included by Division 6 of Part III of the
8 *Income Tax Assessment Act 1936* in your assessable income for the
9 most recent income year:

- 10 (a) that ended before the start of the current period; and
11 (b) for which you have an assessment, or for which the
12 Commissioner has notified you that you do not have a
13 taxable income.

14 (3) However, if for any reason the component defined in subsection
15 (2) does not exist or is a nil amount, or the trust had no *instalment
16 income for that income year, your *instalment income* for the
17 current period includes, for that trust, an amount that is fair and
18 reasonable having regard to:

- 19 (a) the extent of your interest in the trust, and your interest in the
20 income of the trust, during the current period; and
21 (b) the trust's *instalment income for the current period; and
22 (c) any other relevant circumstances.

23 **Application of Part to trustees**

24 **45-300 Trustees to whom this Part applies**

25 (1) This Part applies to a trustee covered by any of items 6 to 12 in the
26 table in section 9-1 of the *Income Tax Assessment Act 1997*.

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

- 1 (2) This Part also applies for an income year to the trustee of a trust if
2 for the previous income year the trustee was liable to be assessed,
3 and to pay tax, under section 98 (except subsection 98(3) or (4)) or
4 section 99 or 99A of the *Income Tax Assessment Act 1936*.

5 **Subdivision 45-J—How Commissioner works out your**
6 **instalment rate and notional tax**

7 **Table of sections**

8	45-320	Working out instalment rate
9	45-325	Working out your <i>notional tax</i>
10	45-330	Working out your <i>adjusted taxable income</i>
11	45-335	Working out your <i>adjusted withholding income</i>
12	45-340	<i>Adjusted tax</i> on adjusted taxable income or on adjusted withholding income

13 **45-320 Working out instalment rate**

- 14 (1) An instalment rate that the Commissioner gives you must be the
15 percentage worked out to 2 decimal places (rounding up if the third
16 decimal place is 5 or more) using the formula:

17
$$\frac{\text{Your } * \text{ notional tax}}{\text{Base assessment instalment income}} \times 100$$

18 However, the instalment rate must be a nil rate if either component
19 of the formula is nil.

- 20 (2) For the purposes of the formula in subsection (1):

21 ***base assessment instalment income*** means so much of your
22 assessable income, as worked out for the purposes of the *base
23 assessment, as the Commissioner determines is *instalment income
24 for the *base year.

- 25 (3) The ***base assessment*** is the latest assessment for your most recent
26 income year for which an assessment has been made. However, if
27 the Commissioner is satisfied that there is a later income year for
28 which you do not have a taxable income, the ***base assessment*** is

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

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1 the latest return or other information from which an assessment for
2 that income year would have been made.

3 (4) The **base year** is the income year to which the *base assessment
4 relates.

5 (5) When the Commissioner gives you the instalment rate, he or she
6 must also notify you of the amount of your *notional tax, as
7 worked out for the purposes of working out the instalment rate.

8 (6) The Commissioner may incorporate notice of the instalment rate
9 and the amount of your *notional tax in notice of your assessment.

10 **45-325 Working out your notional tax**

11 *Notional tax if you have no withholding income*

12 (1) Your **notional tax** is your *adjusted tax (worked out under section
13 45-340) on your *adjusted taxable income (worked out under
14 section 45-330) for the *base year.

15 *Notional tax if you have withholding income*

16 (2) However, your **notional tax** (as worked out under subsection (1))
17 is reduced if your assessable income for the *base assessment
18 includes amounts in respect of *withholding payments (except
19 *non-quotation withholding payments).

20 (3) It is reduced (but not below nil) by your *adjusted tax (worked out
21 under section 45-340) on your *adjusted withholding income
22 (worked out under section 45-335) for the *base year.

23 *Commissioner may take into account effect of the law, as applying
24 to income years after base year*

25 (4) For the purposes of working out your *notional tax, the
26 Commissioner may work out an amount as if provisions of an Act
27 or regulations, as they may reasonably be expected to apply for the
28 purposes of your assessment for a later income year, had applied
29 for the purposes of the base assessment.

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

1 *Commissioner may take into account proposed changes to the law*
2 *so as to reduce instalment rate*

3 (5) For the purposes of working out your *notional tax, the
4 Commissioner may work out an amount as if provisions of an Act
5 or regulations that, in the Commissioner's opinion, are likely to be
6 enacted or made had applied for the purposes of the *base
7 assessment. But the Commissioner may do so only if, as a result,
8 the instalment rate given to you is reduced.

9 **45-330 Working out your *adjusted taxable income***

10 (1) Your *adjusted taxable income* for the *base year is your total
11 assessable income for the *base assessment, reduced by:
12 (a) any *net capital gain included in that assessable income; and
13 (b) your deductions for the base year (except *tax losses), as used
14 in making that assessment; and
15 (c) the amount of any tax loss, to the extent that you can carry it
16 forward to the next income year.

17 *Exception: superannuation entities and net capital gains*

18 (2) Paragraph (1)(a) does not apply in the case of:
19 (a) an eligible ADF (as defined in section 267 of the *Income Tax*
20 *Assessment Act 1936*) for the *base year; or
21 (b) an eligible superannuation fund (as defined in that section)
22 for that year; or
23 (c) a pooled superannuation trust (as defined in that section) for
24 that year.

25 **45-335 Working out your *adjusted withholding income***

26 Your *adjusted withholding income* for the *base year is:
27 • the total of the amounts included in your assessable income
28 for the *base assessment in respect of *withholding payments
29 (except *non-quotation withholding payments);
30 reduced by:

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

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- 1 • your deductions for that year, as used in making that
2 assessment, to the extent that they reasonably relate to those
3 amounts.

4 **45-340 Adjusted tax on adjusted taxable income or on adjusted**
5 **withholding income**

6 Your *adjusted tax* on your *adjusted taxable income, or on your
7 *adjusted withholding income, for the *base year is worked out as
8 follows:

9 *Method statement*

10 *Step 1.* The income tax payable on your *adjusted taxable
11 income, or on your *adjusted withholding income, for the
12 *base year is worked out disregarding any *tax offset
13 under:

14 (a) Subdivision 61-H of the *Income Tax Assessment*
15 Act 1997 (for a premium under a private health
16 insurance policy); or

17 (b) section 159N of the *Income Tax Assessment Act*
18 1936 (for certain low income individuals); or

19 (c) section 159T of the *Income Tax Assessment Act*
20 1936 (for individuals who make superannuation
21 contributions for a spouse).

22 *Step 2.* The Medicare levy payable on your *adjusted taxable
23 income, or on your *adjusted withholding income, for the
24 *base year is worked out disregarding sections 8B, 8C,
25 8D, 8E, 8F and 8G of the *Medicare Levy Act 1986*
26 (which increase Medicare levy in certain cases).

27 *Step 3.* The amount (if any) that you would have been liable to
28 pay for the *base year in respect of an accumulated HEC
29 debt under the *Higher Education Funding Act 1988* if

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

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your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

Step 4. The results of steps 1, 2 and 3 are added together, and reduced by what would have been your *FTB amount (if any) for the *base year if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year. The result is your *adjusted tax* on your *adjusted taxable income, or on your *adjusted withholding income.

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Subdivision 45-K—How Commissioner works out your benchmark instalment rate and benchmark tax

13

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45-355	When Commissioner works out benchmark instalment rate and benchmark tax
45-360	How Commissioner works out <i>benchmark instalment rate</i>
45-365	Working out your <i>benchmark tax</i>
45-370	Working out your <i>adjusted assessed taxable income</i> for the variation year
45-375	<i>Adjusted assessed tax</i> on adjusted assessed taxable income

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45-355 When Commissioner works out benchmark instalment rate and benchmark tax

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- (1) The Commissioner may work out your *benchmark instalment rate for an income year (the *variation year*) if, under section 45-205, you choose an instalment rate to work out the amount of your instalment for an *instalment quarter in that year.
- (2) The Commissioner may work out your *benchmark tax for an income year (the *variation year*) if, under paragraph 45-115(1)(c) or 45-175(1)(b), you estimate the amount of your annual instalment for that year.

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

Section 45-360

1 **45-360 How Commissioner works out *benchmark instalment rate***

- 2 (1) Your *benchmark instalment rate* for the variation year is the
3 percentage worked out to 2 decimal places (rounding up if the third
4 decimal place is 5 or more) using the formula:

5
$$\frac{\text{Your * benchmark tax}}{\text{Variation year instalment income}} \times 100$$

6 However, your *benchmark instalment rate* is a nil rate if either
7 component of the formula is nil.

- 8 (2) For the purposes of the formula in subsection (1):

9 *variation year instalment income* means so much of your
10 assessable income for the variation year as the Commissioner
11 determines is *instalment income for that year.

12 **45-365 Working out your *benchmark tax***

13 *Benchmark tax if you had no withholding income*

- 14 (1) Your *benchmark tax* is your *adjusted assessed tax (worked out
15 under section 45-375) on your *adjusted assessed taxable income
16 (worked out under section 45-370) for the variation year.

17 *Benchmark tax if you had withholding income*

- 18 (2) However, your *benchmark tax* (as worked out under subsection
19 (1)) is reduced if your assessable income for the variation year
20 includes amounts in respect of *withholding payments.
- 21 (3) It is reduced (but not below nil) by the total amount of the credits
22 to which you are entitled for the variation year under section 18-15
23 (for amounts withheld from withholding payments made to you
24 during the variation year).

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

1 **45-370 Working out your *adjusted assessed taxable income* for the**
2 **variation year**

- 3 (1) Your *adjusted assessed taxable income* for the variation year is
4 your taxable income for the year, reduced by any *net capital gain
5 included in your assessable income for the year.

6 *Exception: superannuation entities and net capital gains*

- 7 (2) In working out the *adjusted assessed taxable income*, taxable
8 income is not reduced by any *net capital gain in the case of:
9 (a) an eligible ADF (as defined in section 267 of the *Income Tax*
10 *Assessment Act 1936*) for the variation year; or
11 (b) an eligible superannuation fund (as defined in that section)
12 for the variation year; or
13 (c) a pooled superannuation trust (as defined in that section) for
14 the variation year.

15 **45-375 *Adjusted assessed tax on adjusted assessed taxable income***

16 Your *adjusted assessed tax* on your *adjusted assessed taxable
17 income for the variation year is worked out as follows:

18 *Method statement*

19 *Step 1.* The income tax payable on your *adjusted assessed
20 taxable income for the variation year is worked out
21 disregarding any *tax offset under:

- 22 (a) Subdivision 61-H of the *Income Tax Assessment*
23 *Act 1997* (for a premium under a private health
24 insurance policy); or
25 (b) section 159N of the *Income Tax Assessment Act*
26 *1936* (for certain low income individuals); or

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-400

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(c) section 159T of the *Income Tax Assessment Act 1936* (for individuals who make superannuation contributions for a spouse).

Step 2. The Medicare levy payable on your *adjusted assessed taxable income for the variation year is worked out disregarding sections 8B, 8C, 8D, 8E, 8F and 8G of the *Medicare Levy Act 1986* (which increase Medicare levy in certain cases).

Step 3. The amount (if any) that you would have been liable to pay for the variation year in respect of an accumulated HEC debt under the *Higher Education Funding Act 1988* if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.

Step 4. The results of steps 1, 2 and 3 are added together, and reduced by what would have been your *FTB amount (if any) for the variation year if your taxable income for that year had been your *adjusted assessed taxable income for that year. The result is your **adjusted tax** on your *adjusted assessed taxable income for the variation year.

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Subdivision 45-L—How Commissioner works out amount of quarterly instalment on basis of GDP-adjusted notional tax

24

Table of sections

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45-400	Working out amount of instalment
45-405	Working out your <i>GDP-adjusted notional tax</i>

27

45-400 Working out amount of instalment

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The Commissioner must work out in accordance with the table an amount that he or she notifies to you under section 45-112 as the

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

1 amount of your instalment for an *instalment quarter in an income
 2 year (the *current year*).
 3

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

Item	If the instalment quarter is:	The amount of the instalment is:
1	the first in that income year for which you are liable to pay an instalment	25% of your *GDP-adjusted notional tax
2	the second in that income year for which you are liable to pay an instalment	50% of your *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 you are liable to pay an instalment	75% of your *GDP-adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year
4	the fourth in that income year for which you are liable to pay an instalment	100% of your *GDP-adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year

4 **45-405 Working out your *GDP-adjusted notional tax***

- 5 (1) Your *GDP-adjusted notional tax* is worked out in the same way as
 6 your *notional tax would be worked out under Subdivision 45-J for
 7 the purposes of working out an instalment rate if that instalment
 8 rate were to be given to you at the same time as notice of the
 9 amount of the instalment referred to in section 45-400.
- 10 (2) However, in applying Subdivision 45-J for the purposes of
 11 subsection (1):
 12 (a) your *adjusted taxable income for the *base year; and
 13 (b) your *adjusted withholding income (if any) for the *base
 14 year;
 15 are each increased in accordance with the formula:

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

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities

Part 2-10 Pay as you go (PAYG) instalments

Division 45 Instalment payments

Section 45-405

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

2 (3) For the purposes of the formula in subsection (2):

3 **original amount** means the amount that, apart from subsection (2),
4 would be your *adjusted taxable income for the *base year, or your
5 *adjusted withholding income for the *base year, as appropriate.

6 **GDP adjustment** means the percentage (rounded to the nearest
7 whole number, rounding down a number ending in .5) worked out
8 using the formula:

9
$$\left(100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}} \right) - 100$$

10 or 0% if the percentage worked out using the formula is negative.

11 (4) For the purposes of the formula in subsection (3):

12 **sum of GDP amounts (current year)** means the sum of the *GDP
13 amounts, for the *quarters in the last calendar year (the *later*
14 *calendar year*) ending at least 3 months before the start of the
15 current year, specified in the document referred to in subsection
16 (6).

17 **sum of GDP amounts (previous year)** means the sum of the *GDP
18 amounts, for the *quarters in the calendar year (the *earlier*
19 *calendar year*) before the later calendar year, specified in the
20 document referred to in subsection (6).

21 (5) The **GDP amount** for a *quarter is the amount published by the
22 Australian Statistician as the original gross domestic product at
23 current prices for that quarter.

24 (6) The **GDP adjustment** must be worked out on the basis of the first
25 document that:

26 (a) is published by the Australian Statistician after the end of the
27 later calendar year; and

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

Section 45-405

- 1 (b) sets out the *GDP amounts for all the *quarters in both the
2 later calendar year and the earlier calendar year.
- 3 (7) To avoid doubt, subsections 45-325(4) and (5) also have effect for
4 the purposes of working out your *GDP-adjusted notional tax.

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

1 **3 Application of Part 2-5 in Schedule 1 to the *Taxation***
2 ***Administration Act 1953***

- 3 (1) Division 12 in Schedule 1 to the *Taxation Administration Act 1953*
4 applies to a payment made on or after 1 July 2000.
- 5 (2) Section 12-215, 12-250 or 12-285 in Schedule 1 to the *Taxation*
6 *Administration Act 1953* applies to an amount received on or after 1
7 July 2000.
- 8 (3) Section 12-260 in Schedule 1 to the *Taxation Administration Act 1953*
9 applies to interest (within the meaning of Division 11A of Part III of the
10 *Income Tax Assessment Act 1936*) if the transaction in relation to which
11 the interest is payable is entered into on or after 1 July 2000, unless
12 paragraph 221YL(2E)(a) of the *Income Tax Assessment Act 1936* has
13 been complied with in relation to the interest before the transaction is
14 entered into.
- 15 (4) Division 14 in Schedule 1 to the *Taxation Administration Act 1953*
16 applies to a non-cash benefit provided on or after 1 July 2000.
- 17 (5) Subdivision 16-C in Schedule 1 to the *Taxation Administration Act*
18 *1953* applies to the financial year starting on 1 July 2000 and to later
19 financial years.

20 **4 Application of Part 2-10 in Schedule 1 to the *Taxation***
21 ***Administration Act 1953***

- 22 (1) Part 2-10 in Schedule 1 to the *Taxation Administration Act 1953* applies
23 to the 2000-2001 income year and later income years.
- 24 (2) However, the Commissioner may give an entity an instalment rate
25 before the start of the 2000-2001 income year. In that case, section
26 45-50 in that Schedule applies as if the rate had been given on the first
27 day of that income year.

1

2 **Part 2—Consequential amendment of Acts**

3 ***Income Tax Assessment Act 1997***

4 **5 After section 26-20**

5 Insert:

6 **26-25 Interest or royalty**

7 (1) You cannot deduct under this Act a payment of interest (within the
8 meaning of Division 11A of Part III of the *Income Tax Assessment*
9 *Act 1936*) or a *royalty if:

10 (a) you are required to withhold an amount from the interest or
11 royalty under Division 12 in Schedule 1 to the *Taxation*
12 *Administration Act 1953*; and

13 (b) either:

14 (i) you fail to withhold the amount; or

15 (ii) after withholding the amount, you fail to comply with
16 section 16-70 in that Schedule in relation to that
17 amount.

18 (2) You cannot deduct under this Act a payment of interest (within the
19 meaning of Division 11A of Part III of the *Income Tax Assessment*
20 *Act 1936*), or a *royalty, that is in the form of a *non-cash benefit
21 if:

22 (a) you are required to pay to the Commissioner an amount
23 under section 14-5 or 14-10 in Schedule 1 to the *Taxation*
24 *Administration Act 1953* for that payment; and

25 (b) you fail to do so.

26 (3) If:

27 (a) apart from subsection (1) or (2), you can deduct a payment of
28 interest (within the meaning of Division 11A of Part III of
29 the *Income Tax Assessment Act 1936*) or a *royalty, for an
30 income year; and

31 (b) the *withholding tax payable for the interest or the royalty is
32 paid;

33 you can deduct the interest or royalty for that income year.

1 **6 Section 28-185**

2 Repeal the section, substitute:

3 **28-185 Application of Subdivision 28-J to recipients and payers of**
4 **certain withholding payments**

5 *Application to recipients*

- 6 (1) If an individual receives, or is entitled to receive, *withholding
7 payments covered by subsection (3), this Subdivision applies to
8 him or her:
9 (a) in the same way as it applies to an employee; and
10 (b) as if an entity (a *notional employer*) that makes (or is liable
11 to make) such payments to him or her were his or her
12 employer; and
13 (c) as if any other individual who receives, or is entitled to
14 receive, such payments from a notional employer were also
15 an employee of the notional employer.

16 *Application to payers*

- 17 (2) This Division applies to an entity that makes, or is liable to make,
18 *withholding payments covered by subsection (3):
19 (a) in the same way as it applies to an employer; and
20 (b) as if an individual to whom the entity makes (or is liable to
21 make) such payments were the entity's employee.

22 *Withholding payments covered*

- 23 (3) This subsection covers a *withholding payment covered by any of
24 the provisions in Schedule 1 to the *Taxation Administration Act*
25 *1953* listed in the table.

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-50	Return to work payment

Withholding payments covered

Item	Provision	Subject matter
5	Subdivision 12-C	Retirement payments, eligible termination payments and annuities
6	Subdivision 12-D	Benefit and compensation payments

1 **7 Parts 4-5 and 4-10**

2 Repeal the Parts.

3 **8 Section 900-12**

4 Repeal the section, substitute:

5 **900-12 Application to recipients and payers of certain withholding**
6 **payments**

7 *Application to recipients*

- 8 (1) If an individual receives, or is entitled to receive, *withholding
9 payments covered by subsection (3), this Division applies to him or
10 her:
11 (a) in the same way as it applies to an employee; and
12 (b) as if an entity that makes (or is liable to make) such payments
13 to him or her were his or her employer; and
14 (c) as if the withholding payments covered by subsection (3) that
15 he or she receives (or is entitled to receive) were salary or
16 wages.

17 *Application to payers*

- 18 (2) This Division applies to an entity that makes, or is liable to make,
19 *withholding payments covered by subsection (3):
20 (a) in the same way as it applies to an employer; and
21 (b) as if an individual to whom the entity makes (or is liable to
22 make) such payments were the entity's employee.

Withholding payments covered

- (3) This subsection covers a *withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-50	Return to work payment
5	Subdivision 12-C	Retirement payments, eligible termination payments and annuities
6	Subdivision 12-D	Benefit and compensation payments

Income Tax Assessment Act 1936

9 Subsection 6(1AA)

Omit all the words after “(the *1997 Act*)”, substitute “, or for the purposes of Schedule 1 to the *Taxation Administration Act 1953*, except as provided in the *1997 Act* or in that Schedule”.

10 Subsection 6(1) (at the end of the definition of *this Act*)

Add:

; and (c) Schedule 1 to the *Taxation Administration Act 1953*.

11 Paragraph 220AF(1)(c)

After “1994”, insert “and before 1 July 2000”.

12 Subsection 220AJ(1)

After “financial year”, insert “ending on or before 30 June 2000”.

13 Paragraph 220AQ(1)(b)

After “first person”, insert “on or before 30 June 2000”.

14 Paragraph 220AQ(2)(c)

1 After “form”, insert “, and on or before 30 June 2000”.

2 **15 At the end of section 221AKA**

3 Add:

4 (3) This Division does not apply to a taxpayer for the 2000-01 income
5 year or a later income year.

6 Note: For the 2000-01 income year a taxpayer may be liable to pay PAYG
7 instalments: see Division 45 in Schedule 1 to the *Taxation*
8 *Administration Act 1953*.

9 **16 Before section 221AZJ**

10 Insert in Subdivision B of Division 1C of Part VI:

11 **221AZJA Application of this Division**

12 A taxpayer is not liable to pay instalments under this Division for
13 the 2000-01 income year or a later income year.

14 Note: For the 2000-01 income year a taxpayer may be liable to pay PAYG
15 instalments: see Division 45 in Schedule 1 to the *Taxation*
16 *Administration Act 1953*.

17 **17 Subsection 221AZK(2)**

18 After “subsection (3A)”, insert “of this section and to sections
19 221AZJA, 221AZKB, 221AZKC and 221AZKE”.

20 **18 After section 221AZKA**

21 Insert:

22 **221AZKB For 1999-2000, some medium and small taxpayers need**
23 **not pay instalment due in month 18**

24 (1) For the 1999-2000 year of income, a medium taxpayer is not liable
25 to pay the instalment that would otherwise be due on the 1st day of
26 month 18.

27 (2) For the 1999-2000 year of income, a small taxpayer is not liable to
28 pay the instalment that would otherwise be due on the 15th day of
29 month 18.

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities
Part 2 Consequential amendment of Acts

1 Note: This subsection does not cover a small taxpayer whose assessed tax
2 for the 1999-2000 is more than \$300,000. See subsection
3 221AZK(3A).

4 *To qualify, taxpayer must be quarterly instalment payer*

5 (3) However, subsection (1) or (2) applies only if the taxpayer is liable
6 to pay an instalment for the first instalment quarter of the 2000-01
7 year of income under Division 45 in Schedule 1 to the *Taxation*
8 *Administration Act 1953* (even if the amount of that instalment is
9 nil).

10 Note: This means that an entity that becomes an annual payer at the end of
11 that instalment quarter under Subdivision 45-E in Schedule 1 to the
12 *Taxation Administration Act 1953* does not qualify.

13 *Effect on amount of final instalment*

14 (4) In working out the amount of the final instalment of a small or
15 medium taxpayer for the 1999-2000 year of income, disregard a
16 previous instalment that the taxpayer is not liable to pay because of
17 this section.

18 **221AZKC Deferring payment of the final instalment for 1999-2000**

19 (1) Depending on the amount of its assessed tax for the 1999-2000
20 year of income, an instalment taxpayer may defer payment of all or
21 some of its final instalment for that year.

22 (2) However, subsection (1) applies only if the taxpayer is liable to pay
23 a quarterly instalment for the first instalment quarter of the
24 2000-01 year of income under Division 45 in Schedule 1 to the
25 *Taxation Administration Act 1953* (even if the amount of that
26 instalment is nil).

27 Note: This means that an entity that becomes an annual payer at the end of
28 that instalment quarter under Subdivision 45-E in Schedule 1 to the
29 *Taxation Administration Act 1953* does not qualify.

30 *How much can be deferred, and for how long?*

31 (3) The table shows:
32 (a) how much of the final instalment can be deferred (the
33 *deferred amount*); and

1 (b) the number of equal quarterly payments by which the
2 taxpayer must pay off the deferred amount.

3 However, the deferred amount cannot be more than the whole of
4 the instalment (reduced by any credits or offsets specified in
5 paragraph 221AZP(1)(b)).
6

Paying off final instalment for 1999-2000

Item	Amount of assessed tax for 1999-2000	Maximum amount deferred	Number of equal quarterly payments
1	less than \$8,000	100% of the assessed tax	21
2	\$8,000 to \$300,000	42% of the assessed tax	21
3	more than \$300,000	20% of the assessed tax	10

7 Note: The amount of each quarterly payment is the deferred amount divided
8 by the number of payments.

9 (4) If only some of the final instalment can be deferred, the rest is still
10 due on the day on which the whole of the instalment would
11 otherwise be due. Section 221AZMAA (which applies the general
12 interest charge to unpaid amounts) applies as if the rest of the final
13 instalment were the whole of the final instalment.

14 *When the quarterly payments are due*

- 15 (5) The first of the quarterly payments is due:
- 16 (a) if (disregarding anything the Commissioner does under
17 section 206) the final instalment would otherwise be due on
18 the 1st day of month 18 for the 1999-2000 year of income—
19 on the 21st day of month 19 for that year; and
- 20 (b) if (disregarding anything the Commissioner does under
21 section 206) the final instalment would otherwise be due on
22 the 1st or 15th day of month 21 for the 1999-2000 year of
23 income—on the 21st day of month 22 for that year.

24 Note: The due date for the first quarterly payment is the same as for the
25 taxpayer's next quarterly instalment for the 2000-01 year of income
26 under Division 45 in Schedule 1 to the *Taxation Administration Act*
27 *1953*. If the taxpayer's year of income ends on 30 June 2000, the due
28 date will be 21 January or 21 April 2001.

29 (6) Each of the remaining quarterly payments is due 3 months after the
30 day on which the previous quarterly payment is due (or would be

1 due apart from anything the Commissioner does under section
2 206).

3 (7) A quarterly payment is due on a particular day even if no quarterly
4 instalment of the taxpayer is due on that day under Division 45 in
5 Schedule 1 to the *Taxation Administration Act 1953*.

6 Note: If some or all of a quarterly payment is not paid on time, the taxpayer
7 is liable to pay the general interest charge on the unpaid amount: see
8 section 221AZMAA.

9 (8) Quarterly payments are to be treated as tax for the purposes of
10 sections 206, 208, 209, 214, 254, 255, 258 and 259.

11 **221AZKE Modified application of sections 221AZKB and 221AZKC**
12 **to entity adopting a substituted accounting period**

13 Sections 221AZKB and 221AZKC apply to an entity with
14 modifications that the Commissioner determines in writing if the
15 Commissioner has granted the entity leave under section 18 to
16 adopt an accounting period ending on a day other than 30 June and,
17 as a result:

18 (a) the entity's 1999-2000 year of income will end on a day of a
19 calendar year that does not correspond to the last day of the
20 entity's 1998-99 year of income; or

21 (b) the entity's 2000-01 year of income will end on a day of a
22 calendar year that does not correspond to the last day of the
23 entity's 1999-2000 year of income.

24 **19 Subsection 221AZMAA(1)**

25 After "instalment" (second occurring), insert "or quarterly payment".

26 **20 Subsection 221AZMAA(1)**

27 After "the instalment" (wherever occurring), insert "or quarterly
28 payment".

29 **21 Subsection 221AZMAA(1)**

30 After "221AZK", insert "or 221AZKC".

31 **22 Subsection 221C(1A)**

32 After "salary or wages" (first occurring), insert "before 1 July 2000".

1 **23 Section 221K**

2 After “at any time”, insert “before 1 July 2000”.

3 **24 Subsection 221S(2)**

4 After “times”, insert “before 1 July 2000”.

5 **25 After subsection 221S(2)**

6 Insert:

7 (2A) An arrangement under subsection (1), or an authorisation under
8 subsection (2), does not apply to a payment of salary or wages
9 made after 30 June 2000.

10 **26 At the end of subsection 221YB(2)**

11 Add “(except the 2000-01 year of income and later income years)”.

12 **27 At the end of subsection 221YB(2)**

13 Add:

14 Note: For the 2000-01 income year you may be liable to pay PAYG
15 instalments: see Division 45 in Schedule 1 to the *Taxation*
16 *Administration Act 1953*.

17 **28 At the end of subsection 221YBA(1)**

18 Add “(except the 2000-01 year of income and later income years)”.

19 **29 At the end of subsection 221YBA(1)**

20 Add:

21 Note: For the 2000-01 income year you may be liable to pay PAYG
22 instalments: see Division 45 in Schedule 1 to the *Taxation*
23 *Administration Act 1953*.

24 **30 Before section 221YHA**

25 Insert:

26 **221YHAAA Division does not apply to payments made after 30 June**
27 **2000**

28 This Division does not apply to a prescribed payment made after
29 30 June 2000.

1 **31 Paragraph 221YHDD(1)(a)**

2 Before “a person”, insert “before 1 July 2000.”.

3 **32 After subsection 221YHDD(4)**

4 Insert:

5 (4A) If:

6 (a) this section applies; and

7 (b) the project or part is not completed by the end of 30 June
8 2000;

9 the householder must, within 6 weeks after that day:

10 (c) in accordance with subsection (5), complete and sign, in
11 respect of the project, the part of a householder payment
12 summary form relating to the householder; and

13 (d) make a copy of the form; and

14 (e) send the form to the Commissioner.

15 (The completed form does not need to cover prescribed payments
16 made after 30 June 2000.)

17 **33 After subsection 221YHDD(6)**

18 Insert:

19 (6A) Subject to subsection (7), the householder must keep the copy that
20 paragraph (4A)(d) requires to be made for 6 months after it is
21 made.

22 **34 Subsection 221YHDD(8)**

23 After “(6)”, insert “, (6A)”.

24 **35 Subsection 221YHZB(1)**

25 After “non-resident” (second occurring), insert “before 1 July 2000”.

26 **36 After subsection 221YHZC(1)**

27 Insert:

28 (1AAAA) Subsection (1A) does not apply to a payment made after 30 June
29 2000.

1 Note: Instead, the investment body must withhold an amount under section
2 12-140 or 12-145 in Schedule 1 to the *Taxation Administration Act*
3 1953.

4 **37 Subsection 221YHZD(1B)**

5 After “202DA”, insert “and before 1 July 2000”.

6 **38 Subsection 221YHZD(1B)**

7 Omit “until”, substitute “unless”.

8 **39 Paragraph 221YHZQ(1)(b)**

9 Repeal the paragraph, substitute:

10 (b) if the investment body had paid the deemed payment amount
11 to the investor in money, and section 12-150 in Schedule 1 to
12 the *Taxation Administration Act 1953* had not been enacted,
13 section 12-140 in that Schedule would have required the
14 investment body to withhold an amount (the *notional*
15 *deduction*) from the payment; and

16 **40 Before subsection 221YL(1)**

17 Insert:

18 (1A) This section (except subsections (2D), (2DA) and (2E)) does not
19 apply to a dividend, interest or a royalty paid after 30 June 2000.

20 Note: Instead, see Subdivision 12-F in Schedule 1 to the *Taxation*
21 *Administration Act 1953*.

22 **41 After subsection 221YL(2D)**

23 Insert:

24 (2DA) However, subsection (2E) does not apply in relation to the interest
25 if the transaction in relation to which it is payable is entered into on
26 or after 1 July 2000, unless the lender complied with paragraph
27 (2E)(a) in relation to the interest before the transaction is entered
28 into.

29 Note: Instead, the lender must notify the borrower under section 12-260 in
30 Schedule 1 to the *Taxation Administration Act 1953*.

31 **42 Subsection 221YP(1)**

32 Omit “until”, substitute “before 1 July 2000 unless”.

1 **43 Subsection 221YP(2)**

2 Omit “until”, substitute “before 1 July 2000 unless”.

3 **44 Subsection 221YP(3A)**

4 Omit “until”, substitute “before 1 July 2000 unless”.

5 **45 Subsection 221ZB(1)**

6 After “shall not”, insert “before 1 July 2000”.

7 **46 Before section 221ZM**

8 Insert in Division 6 of Part VI:

9 **221ZMA Division does not apply to withdrawals made after 30 June**
10 **2000**

11 This Division does not apply to a withdrawal from a film account
12 made after 30 June 2000.

13 **47 Subsection 221ZXB(1)**

14 After “if”, insert “, before 1 July 2000,”.

15 **48 After subsection 262A(2)**

16 Insert:

17 (2A) If an entity is required to withhold an amount under Division 12 in
18 Schedule 1 to the *Taxation Administration Act 1953*, or to pay an
19 amount to the Commissioner under Division 14 of that Schedule,
20 the entity must keep records that record and explain all transactions
21 and other acts engaged in by the entity that are relevant for the
22 purposes of that Schedule.

23 **49 After subsection 262A(4)**

24 Insert:

25 (4AAA) Subsection (4) does not apply to any record required to be kept by
26 a provision in Schedule 1 to the *Taxation Administration Act 1953*.

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

28 **50 Paragraph 9-20(2)(a)**

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Repeal the paragraph, substitute:

- (a) by a person as an employee or in connection with earning *withholding payments covered by subsection (3) (unless the activity or series is done in supplying services as the holder of an office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1)); or

Note: Acts done as mentioned in paragraph (a) will still form part of the activities of the enterprise to which the person provides work or services.

51 Paragraph 9-20(2)(d)

Repeal the paragraph, substitute:

- (d) as a member of a local governing body established by or under a *State law or *Territory law (except a local governing body to which subsection 12-45(3) in Schedule 1 to the *Taxation Administration Act 1953* applies).

52 At the end of section 9-20

Add:

- (3) This subsection covers a *withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-60	Payment under labour hire arrangement, or specified by regulations

53 Section 9-39 (at the end of the table)

Add:

- 11 Supply under arrangement covered by Division 113
PAYG voluntary agreement

54 Section 37-1 (after table item 33)

Schedule 1 Pay as you go (PAYG) system of collecting income tax and other liabilities
Part 2 Consequential amendment of Acts

1 Insert:
23A Supply under arrangement covered by PAYG voluntary Division 113
 agreement

2 **55 Paragraph 111-5(1)(a)**
3 Omit “, other *PAYE earner”.

4 **56 Paragraph 111-5(1)(a)**
5 Omit “, PAYE earner”.

6 **57 Subsection 111-5(1)**
7 Omit “, PAYE earner” (last occurring).

8 **58 At the end of subsection 111-5(1)**
9 Add:

10 Note: This section also applies if you reimburse the recipient of certain
11 withholding payments: see section 111-20.

12 **59 Paragraph 111-5(3)(a)**
13 Omit “, *PAYE earner”.

14 **60 Paragraph 111-5(3)(b)**
15 Omit “, PAYE earner”.

16 **61 Paragraph 111-10(2)(a)**
17 Omit “, *PAYE earner”.

18 **62 Paragraph 111-10(2)(a)**
19 Omit “, PAYE earner”.

20 **63 After section 111-15**
21 Insert:

22 **111-20 Application of Division to recipients of certain withholding**
23 **payments**

24 (1) If you make, or are liable to make, *withholding payments covered
25 by subsection (2), this Division applies to you as if:

- 1 (a) an individual to whom you make (or are liable to make) such
2 payments were your employee; and
3 (b) his or her activities in connection with earning such
4 payments were activities as your employee.
- 5 (2) This subsection covers a *withholding payment covered by any of
6 the provisions in Schedule 1 to the *Taxation Administration Act*
7 *1953* listed in the table.
- 8

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-55	Voluntary agreement to withhold
5	Section 12-60	Payment under labour hire arrangement, or specified by regulations

9 **64 At the end of Part 4-2**

10 Add:

11 **Division 113—PAYG voluntary agreements**

12 **113-1 What this Division is about**

13 A supply is *not* a taxable supply if:

- 14 (a) an amount must be withheld from payment for the
15 supply because of section 12-55 in Schedule 1 to
16 the *Taxation Administration Act 1953* (about
17 voluntary agreements to withhold); and
- 18 (b) the acquisition of the thing supplied would be a
19 creditable acquisition if the supply *were* a taxable
20 supply.

1 **113-5 Supply of work or services not a taxable supply**

- 2 (1) A supply that you make is not a *taxable supply to the extent that
3 you make it under an arrangement (within the meaning of the
4 *Income Tax Assessment Act 1997*) if:
5 (a) the arrangement the performance of which, in whole or in
6 part, involves the performance of work or services (whether
7 or not by you); and
8 (b) an agreement is in force that:
9 (i) complies with section 12-55 in Schedule 1 to the
10 *Taxation Administration Act 1953* (about voluntary
11 agreements to withhold); and
12 (ii) states that the section covers payments under the
13 arrangement, or payments under a series of
14 arrangements that includes the arrangement; and
15 (c) you, and the entity acquiring what you supply under the
16 arrangement, are parties to that agreement; and
17 (d) you have an *ABN that is in force and is quoted in the
18 agreement; and
19 (e) the acquisition, by that entity, of what you supply under the
20 arrangement would be a *creditable acquisition (and not
21 *partly creditable) if the supply were a *taxable supply.
22 (2) This section has effect despite section 9-5 (about what is a taxable
23 supply.)

24 **65 Section 195-1**

25 Insert:

26 *non-cash benefit* has the meaning given by subsection 995-1(1) of
27 the *Income Tax Assessment Act 1997*.

28 **66 Section 195-1 (definition of PAYE earner)**

29 Repeal the definition.

30 **67 Section 195-1 (note at the end of the definition of taxable
31 supply)**

32 Omit “and 90-5”, substitute “, 90-5 and 113-1”.

33 **68 Section 195-1**

1 Insert:

2 *withholding payment* has the meaning given by subsection
3 995-1(1) of the *Income Tax Assessment Act 1997*.

4 **69 Section 195-1**

5 Insert:

6 *withholding payment* covered by a particular provision in
7 Schedule 1 to the *Taxation Administration Act 1953* has the
8 meaning given by subsection 995-1(1) of the *Income Tax*
9 *Assessment Act 1997*.

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

12 **70 Item 7 of Schedule 1**

13 Omit “At the end of the Act”, substitute “After Part V”.

14 **71 Item 7 of Schedule 1**

15 Omit “Add:”, substitute “Insert:”.

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

17 **72 Paragraph 38(2)(a)**

18 Repeal the paragraph, substitute:

19 (a) by a person as an employee or in connection with earning
20 *withholding payments covered by subsection (3) (unless the
21 activity or series is done in supplying services as the holder
22 of an office that the person has accepted in the course of or in
23 connection with an activity or series of activities of a kind
24 mentioned in subsection (1)); or

25 Note: Acts done as mentioned in paragraph (a) will still form part of
26 the activities of the enterprise to which the person provides work
27 or services.

28 **73 Paragraph 38(2)(d)**

29 Repeal the paragraph, substitute:

1 (d) as a member of a local governing body established by or
2 under a *State law or *Territory law (except a local governing
3 body to which subsection 12-45(3) in Schedule 1 to the
4 *Taxation Administration Act 1953* applies).

5 **74 At the end of section 38**

6 Add:

7 (3) This subsection covers a *withholding payment covered by any of
8 the provisions in Schedule 1 to the *Taxation Administration Act*
9 *1953* listed in the table.

10

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-60	Payment under labour hire arrangement, or specified by regulations

11 **75 Section 41**

12 Insert:

13 *non-cash benefit* has the meaning given by subsection 995-1(1) of
14 the *Income Tax Assessment Act 1997*.

15 **76 Section 41 (definition of PAYE earner)**

16 Repeal the definition.

17 **77 Section 41**

18 Insert:

19 *withholding payment* has the meaning given by subsection
20 995-1(1) of the *Income Tax Assessment Act 1997*.

21 **78 Section 41**

22 Insert:

1 *withholding payment* covered by a particular provision in
2 Schedule 1 to the *Taxation Administration Act 1953* has the
3 meaning given by subsection 995-1(1) of the *Income Tax*
4 *Assessment Act 1997*.

5 ***Fringe Benefits Tax Assessment Act 1986***

6 **79 Subsection 136(1) (definition of *current employee*)**

7 Repeal the definition, substitute:

8 *current employee* means a person who receives, or is entitled to
9 receive, salary or wages.

10 **80 Subsection 136(1) (definition of *current employer*)**

11 Repeal the definition, substitute:

12 *current employer* means a person (including a government body)
13 who pays, or is liable to pay, salary or wages, and includes:
14 (a) in the case of a partnership—each partner; and
15 (b) in the case of any other unincorporated association or body of
16 persons—its manager or other principal officer.

17 **81 Subsection 136(1) (definition of *salary or wages*)**

18 Repeal the definition, substitute:

19 *salary or wages* means a payment from which an amount must be
20 withheld (even if the amount is not withheld) under a provision in
21 Schedule 1 to the *Taxation Administration Act 1953* listed in the
22 table, to the extent that the payment is assessable income.

23

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-115	Commonwealth education or training payment
5	Section 12-120	Compensation, sickness or accident payment

24 Note: Section 137 extends the meaning of *salary or wages* for some
25 purposes.

1 **82 Subsection 137(1)**

2 Omit “section 221A of the *Income Tax Assessment Act 1936*”, substitute
3 “a definition in subsection 136(1)”.

4 **83 Subsection 137(2)**

5 Repeal the subsection.

6 **84 Application**

7 The amendments of the *Fringe Benefits Tax Assessment Act 1986* made
8 by this Part apply to a payment made, or a benefit provided, on or after
9 1 July 2000.

10 ***Taxation Administration Act 1953***

11 **85 Subsection 8AAB(5) (after table item 17)**

12 Insert:

13

17A 16-50 in Schedule 1 *Taxation Administration Act 1953*

17B 16-80 in Schedule 1 *Taxation Administration Act 1953*

17C 16-90 in Schedule 1 *Taxation Administration Act 1953*

17D 16-200 in Schedule 1 *Taxation Administration Act 1953*

17E 45-80 in Schedule 1 *Taxation Administration Act 1953*

17F 45-230 in Schedule 1 *Taxation Administration Act 1953*

17G 45-235 in Schedule 1 *Taxation Administration Act 1953*

14 **86 Subsection 8AAJ(1)**

15 Repeal the subsection, substitute:

16 (1) There are certain provisions of Acts that make persons liable to pay
17 the failure to notify penalty. Subsections (4) and (5) list the
18 provisions.

19 **87 Subsection 8AAJ(4)**

20 Omit “Sections 91Z and 95A of the *Sales Tax Assessment Act 1992* also
21 deal with liability to the penalty.”.

22 **88 At the end of section 8AAJ**

1 Add:

2 (5) The following table is an index of the provisions of Acts other than
3 the *Income Tax Assessment Act 1936* that deal with liability to the
4 penalty.

5

Liability to the penalty under other Acts		
Item	Section	Act
1	91Z	<i>Sales Tax Assessment Act 1992</i>
2	95A	<i>Sales Tax Assessment Act 1992</i>
3	16-150 in Schedule 1	<i>Taxation Administration Act 1953</i>
4	45-25 in Schedule 1	<i>Taxation Administration Act 1953</i>

1
2 **Schedule 2—Running balance accounts,**
3 **general interest charge and related**
4 **matters**

5 **Part 1—Running balance accounts**

6 **Division 1—Amendment of Part IIB of the Taxation**
7 **Administration Act 1953**

8 **1 Section 8AAZA (definition of *deficit*)**

9 Repeal the definition.

10 **2 Section 8AAZA**

11 Insert:

12 *excess non-RBA credit* means a credit that arises under section
13 8AAZLA or 8AAZLB.

14 **3 Section 8AAZA (definition of *RBA class*)**

15 Repeal the definition.

16 **4 Section 8AAZA (definition of *RBA deficit*)**

17 Repeal the definition.

18 **5 Section 8AAZA (definition of *RBA deficit debt*)**

19 Repeal the definition, substitute:

20 *RBA deficit debt*, in relation to an RBA of an entity, means a
21 balance in favour of the Commissioner, based on:

- 22 (a) primary tax debts that have been allocated to the RBA and
23 that are currently payable; and
24 (b) payments made in respect of current or anticipated primary
25 tax debts of the entity, and credits to which the entity is
26 entitled under a taxation law, that have been allocated to the
27 RBA.

28 **6 Section 8AAZA**

29 Insert:

1 **RBA surplus**, in relation to an RBA of an entity, means a balance
2 in favour of the entity, based on:
3 (a) primary tax debts that have been allocated to the RBA; and
4 (b) payments made in respect of current or anticipated primary
5 tax debts of the entity, and credits to which the entity is
6 entitled under a taxation law, that have been allocated to the
7 RBA.

8 **7 Section 8AAZA (definition of *special priority credit*)**

9 Repeal the definition.

10 **8 Subsection 8AAZC(1)**

11 Repeal the subsection, substitute:

12 (1) The Commissioner may establish one or more systems of accounts
13 for primary tax debts.

14 Note: This section does not prevent the Commissioner from establishing
15 other accounts that are not RBAs.

16 **9 Subsection 8AAZC(4)**

17 Omit “Within an RBA class,”.

18 **10 After subsection 8AAZC(4)**

19 Insert:

20 (4A) Without limiting subsection (4), separate RBAs may be established
21 for different types of primary tax debts.

22 **11 Subsection 8AAZD(1)**

23 Repeal the subsection, substitute:

24 (1) The Commissioner may allocate a primary tax debt to an RBA that
25 has been established for that type of tax debt.

26 Note: General interest charge on an RBA deficit debt is not allocated to the
27 RBA: it accrues automatically under section 8AAZF.

28 *Separate RBAs for one entity*

29 (1A) If 2 or more RBAs for an entity have been established for that kind
30 of tax debt, the Commissioner may allocate the debt to any one of

1 those RBAs, or between any 2 or more of those RBAs, in the
2 manner the Commissioner determines.

3 Note: Separate RBAs may be established for different businesses or
4 undertakings conducted by the same entity, for different parts of the
5 same business or undertaking or for different periods: see subsection
6 8AAZC(5).

7 Note: The following heading to subsection 8AAZD(2) is inserted “*Definition*”.

8 **12 Section 8AAZE**

9 Repeal the section.

10 **13 Subsection 8AAZF(1)**

11 Omit “a deficit on an RBA”, substitute “an RBA deficit debt”.

12 Note: The heading to section 8AAZF is altered by adding at the end “**debt**”.

13 **14 Subsection 8AAZF(1)**

14 Omit “that deficit”, substitute “that RBA deficit debt”.

15 **15 Subsection 8AAZF(2)**

16 Repeal the subsection, substitute:

17 (2) The balance of the RBA is altered in the Commissioner’s favour by
18 the amount of the general interest charge payable.

19 **16 Subsection 8AAZH(1)**

20 After “deficit”, insert “debt”.

21 Note: The heading to section 8AAZH is altered by adding at the end “**debt**”.

22 **17 Subsection 8AAZH(2) (example)**

23 Omit “deficit on the RBA”, substitute “RBA deficit debt”.

24 **18 Paragraph 8AAZJ(1)(a)**

25 After “deficit”, insert “debt”.

26 **19 Paragraph 8AAZJ(1)(b)**

27 Omit “was allocated to the RBA”, substitute “is payable on the RBA
28 deficit debt”.

29 **20 Paragraph 8AAZJ(1)(d)**

1 After “deficit”, insert “debt”.

2 **21 Section 8AAZK**

3 Repeal the section.

4 **22 Division 3 of Part IIB**

5 Repeal the Division, substitute:

6 **Division 3—Treatment of payments, credits and RBA**
7 **surpluses**

8 **8AAZL Amounts covered by this Division**

- 9 (1) This Division sets out how the Commissioner must treat the
10 following kinds of amount:
- 11 (a) a payment the Commissioner receives in respect of a current
12 or anticipated tax debt or tax debts of an entity;
 - 13 (b) a credit (including an excess non-RBA credit) that an entity
14 is entitled to under a taxation law;
 - 15 (c) an RBA surplus of an entity.

- 16 (2) The Commissioner must treat each such amount using the method
17 set out in section 8AAZLA or 8AAZLB (but not both).

18 Note: In either case, section 8AAZLC has some additional rules that apply
19 to RBA surpluses and to certain excess non-RBA credits.

20 **8AAZLA Method 1—allocating the amount first to an RBA**

- 21 (1) The Commissioner may, in the manner he or she determines,
22 allocate the amount to an RBA of the entity.
- 23 (2) The Commissioner must then also apply the amount against the
24 following kinds of debts (if there are any):
- 25 (a) tax debts that have been allocated to that RBA;
 - 26 (b) general interest charge on such tax debts.
- 27 (3) To the extent that the amount is not applied under subsection (2), it
28 gives rise to an *excess non-RBA credit* in favour of the entity that:
- 29 (a) is equal to the part of the amount that is not applied; and
 - 30 (b) relates to the RBA to which the amount was allocated.

1 **8AAZLB Method 2—applying the amount first against a non-RBA**
2 **tax debt**

- 3 (1) The Commissioner may, in the manner he or she determines, apply
4 the amount against a non-RBA tax debt of the entity.
- 5 (2) If the non-RBA tax debt is:
6 (a) a tax debt that has been allocated to an RBA; or
7 (b) general interest charge on such a tax debt;
8 the Commissioner must then also allocate the amount to that RBA.
- 9 (3) To the extent that the amount is not applied under subsection (1), it
10 gives rise to an *excess non-RBA credit* in favour of the entity that
11 is equal to the part of the amount that is not applied.
- 12 (4) The excess non-RBA credit relates to the RBA (if any) that the
13 Commissioner determines and the balance of that RBA is adjusted
14 in the entity's favour by the amount of that credit.

15 *Separate RBAs for one entity*

- 16 (5) If the non-RBA tax debt mentioned in subsection (1) has been
17 allocated to 2 or more RBAs, the Commissioner must allocate the
18 amount applied between those RBAs in the proportions in which
19 the tax debt was allocated.

20 Note: Separate RBAs may be established for different businesses or
21 undertakings conducted by the same entity, for different parts of the
22 same business or undertaking or for different periods: see subsection
23 8AAZC(5).

24 **8AAZLC RBA surplus and related credits must remain equivalent if**
25 **one or the other is applied**

26 *RBA surpluses*

- 27 (1) If an RBA surplus is allocated or applied under this Division, the
28 Commissioner must reduce by the same amount excess non-RBA
29 credits that relate to the RBA.

30 *Excess non-RBA credits*

- 31 (2) If, under this Division, an excess non-RBA credit that relates to an
32 RBA (the *related RBA*) is:
-

- 1 (a) allocated to an RBA; or
2 (b) applied against a non-RBA tax debt;
3 the related RBA is adjusted in the Commissioner's favour by the
4 same amount.

5 **8AAZLD Special priority credits: HEC and FS assessment debts**

6 If, under this Division, the Commissioner is to apply a credit that
7 arises under Schedule 1 to this Act (the PAYG system), the
8 Commissioner must apply it, whether under section 8AAZLA or
9 8AAZLB:

- 10 (a) first, against any HEC assessment debt of the entity; and
11 (b) then against any FS assessment debt of the entity;
12 before applying it against other non-RBA tax debts of the entity.

13 **8AAZLE Instructions to Commissioner not binding**

14 In doing anything under this Division, the Commissioner is not
15 required to take account of any instructions of any entity.

16 **Division 3A—Refunds of RBA surpluses and credits**

17 **8AAZLF Commissioner must refund RBA surpluses and credits**

- 18 (1) The Commissioner must refund to an entity so much of:
19 (a) an RBA surplus of the entity; or
20 (b) a credit (including an excess non-RBA credit) in the entity's
21 favour;
22 as the Commissioner does not allocate or apply under Division 3.

23 *Voluntary payments only to be refunded on request*

- 24 (2) However, the Commissioner is not required to refund an RBA
25 surplus or excess non-RBA credit that arises because a payment is
26 made in respect of an anticipated tax debt of an entity unless the
27 entity later requests, in the approved manner, that the
28 Commissioner do so.
29 (3) On receiving such a request, the Commissioner must refund so
30 much of the amount as the Commissioner does not allocate or
31 apply under Division 3.

1 *Effect of refunding RBA surplus*

- 2 (4) If the Commissioner refunds an RBA surplus under this section,
3 the Commissioner must reduce by the same amount excess
4 non-RBA credits that relate to the RBA.

5 *Effect of refunding credit that relates to an RBA*

- 6 (5) If, under this section, the Commissioner refunds an excess
7 non-RBA credit that relates to an RBA, the RBA is adjusted in the
8 Commissioner's favour by the same amount.

9 **8AAZLG Retaining refunds until information or notification given**

- 10 (1) The Commissioner may retain an amount that he or she otherwise
11 would have to refund to an entity under section 8AAZLF, if the
12 entity has not given the Commissioner a notification:
13 (a) that affects or may affect the amount that the Commissioner
14 refunds to the entity; and
15 (b) that the entity is required to give the Commissioner under
16 any of the following provisions:
17

Provisions under which notification required

Item	These provisions:	which deal with:
1	Part VII of the <i>Fringe Benefits Tax Assessment Act 1986</i>	collection and recovery of fringe benefits tax
2	the indirect tax law (within the meaning of Part VI of this Act)	goods and services tax, luxury car tax and wine equalisation tax
3	Schedule 1 to this Act	the PAYG system—withholding and instalments

- 18 (2) The Commissioner may retain the amount until the entity has given
19 the Commissioner that notification.

20 **8AAZLH How refunds are made**

- 21 (1) This section applies to refunds payable to an entity of RBA
22 surpluses, or excess non-RBA credits that relate to an RBA, if
23 primary tax debts arising under any of the provisions set out in
24 paragraph 8AAZLG(1)(b) have been allocated to that RBA.

- 1 (2) The Commissioner must pay those refunds to the credit of a
2 financial institution account nominated by the entity.
- 3 (3) However, the Commissioner may direct that any such refunds be
4 paid to the entity in a different way.
- 5 (4) If an entity has not nominated a financial institution account for the
6 purposes of this section and the Commissioner has not directed that
7 any such refunds be paid in a different way, the Commissioner is
8 not obliged to refund any amount to the entity until the entity does
9 so.

10 **Division 2—Consequential amendments**

11 **23 Multiple amendments**

12 The specified provisions of the Acts listed in this Division are amended
13 by omitting “section 8AAZL” and substituting “Division 3 of Part IIB”.

14 *Income Tax Assessment Act 1936*

15 **24 Subsection 160AN(3)**

16 **25 Subsection 160AN(4)**

17 **26 Paragraph 160APYBB(b)**

18 **27 Subsection 163B(10) (definition of *income tax crediting*** 19 ***amount*)**

20 **28 Subsection 220AZC(6)**

21 **29 Subsection 221YHG(5)**

22 **30 Subsection 221YHZL(6)**

23 **31 Subsection 221YT(3)**

24 **32 Subsection 221ZG(3)**

25 *Sales Tax Assessment Act 1992*

1 **33 Section 56**

2 ***Taxation (Interest on Overpayments and Early Payments) Act***
3 ***1983***

4 **34 Subsection 3(1) (paragraph (a) of the definition of *income***
5 ***tax crediting amount*)**

6 **Division 3—Application and transitional**

7 **35 Application**

8 (1) The amendments made by this Part, so far as they relate to the
9 establishment, operation and effect of RBAs, apply to all tax debts
10 owing on or after 1 July 2000, regardless of when the debts arose.

11 (2) The amendments made by this Part, so far as they relate to the treatment
12 of payments and credits by the Commissioner, apply to the treatment of
13 payments or credits by the Commissioner on or after 1 July 2000,
14 regardless of when the payments were made or when the credits arose.

15 **36 Transitional—existing RBAs**

16 Although item 8 repeals and substitutes subsection 8AAZC(1) of the
17 *Taxation Administration Act 1953*, an RBA system established under
18 the old version of that subsection continues in existence after the
19 commencement of that item as if it had been established under the new
20 version of that subsection.

1

2 **Part 2—General interest charge**

3 ***Crimes (Taxation Offences) Act 1980***

4 **37 Subsection 3(1) (paragraph (b) of the definition of *income***
5 ***tax*)**

6 Omit “section 207, 221AG, 221AY, 221AZE or”, substitute “section
7 163AA, section 170AA, subsection 204(3), subsection 221AZMAA(1),
8 subsection 221AZP(1), subsection 221YD(3), section”.

9 **38 Subsection 3(1) (paragraph (d) of the definition of *income***
10 ***tax*)**

11 Omit “221EAA(1), section 220AAE, 220AAM or 220AAR or
12 subsection 220AAV(3)”, substitute “221EAA(1) or section 220AAE,
13 220AAM or 220AAR”.

14 **39 Subsection 3(1) (paragraph (g) of the definition of *income***
15 ***tax*)**

16 Omit “220AS(2)”, substitute “220AS(1)”.

17 ***Income Tax Assessment Act 1936***

18 **40 At the end of section 102UO**

19 Add:

20 (3) Any unpaid ultimate beneficiary non-disclosure tax may be sued
21 for and recovered in a court of competent jurisdiction by the
22 Commissioner suing in his or her official name.

23 **41 Sections 102UP and 102UQ**

24 Repeal the sections, substitute:

25 **102UP Late payment of ultimate beneficiary non-disclosure tax**

26 If any of the ultimate beneficiary non-disclosure tax which a
27 person is liable to pay remains unpaid 60 days after the day by
28 which it is due to be paid, the person is liable to pay the general

- 1 interest charge on the unpaid amount for each day in the period
2 that:
- 3 (a) started at the beginning of the 60th day after the day by
4 which the ultimate beneficiary non-disclosure tax was due to
5 be paid; and
- 6 (b) finishes at the end of the last day on which, at the end of the
7 day, any of the following remains unpaid:
- 8 (i) the ultimate beneficiary non-disclosure tax;
- 9 (ii) general interest charge on any of the ultimate
10 beneficiary non-disclosure tax.

11 Note: The general interest charge is worked out under Division 1 of Part IIA
12 of the *Taxation Administration Act 1953*.

13 **42 Subsections 163B(5) and (6)**

14 Repeal the subsections.

15 **43 Subsection 163B(8)**

16 Omit “170, 172, 174”, substitute “204”.

17 **44 Paragraph 214A(2)(e)**

18 After “section 8C, 8I,”, insert “8P, 8T, 8X, 8ZB,”.

19 **45 Paragraphs 214A(2)(f), (fa) and (g)**

20 Repeal the paragraphs.

21 **46 Section 220AAF**

22 Omit “the general interest charge”, substitute “a penalty”.

23 **47 Section 220AAF (note)**

24 Repeal the note.

25 **48 Section 220AAW**

26 Repeal the section, substitute:

27 **220AAW Large remitters—non-electronic payment**

- 28 (1) A large remitter that pays an amount other than by electronic
29 transfer is liable to a penalty of the greater of:
- 30 (a) \$500; or

- 1 (b) assuming that the general interest charge applied to the
2 amount that was paid other than by electronic transfer—an
3 amount equal to the general interest charge that would be
4 payable for each day in a period of 7 days starting at the
5 beginning of the day on which the payment became due.

6 Note: The general interest charge is worked out under Division 1 of Part IIA
7 of the *Taxation Administration Act 1953*.

- 8 (2) However, the Commissioner may remit some or all of the penalty.
- 9 (3) The penalty becomes due for payment on the day the payment was
10 made.
- 11 (4) If any of the penalty remains unpaid after the time by which it is
12 due to be paid, the large remitter is liable to pay the general interest
13 charge on the unpaid penalty amount for each day in the period
14 that:
- 15 (a) started at the beginning of the day by which the penalty
16 amount was due to be paid; and
- 17 (b) finishes at the end of the last day on which, at the end of the
18 day, any of the following remains unpaid:
- 19 (i) the penalty amount;
- 20 (ii) general interest charge on any of the penalty amount.
- 21 (5) This section does not apply to an exempt Australian government
22 agency (as defined in subsection 995-1(1) of the *Income Tax*
23 *Assessment Act 1997*).

24 **49 Paragraph 220AAZF(g)**

25 Omit “220AAX(5)”, substitute “220AAW(2)”.

26 **50 At the end of section 221AZM**

27 Add “The credit arises when the Commissioner makes an assessment of
28 the income tax payable by the taxpayer or determines that no income
29 tax is payable.”

30 **51 At the end of section 221N**

31 Add:

- 32 (3) A person who is dissatisfied with a decision of the Commissioner
33 under subsection (1) in relation to the person may object against it

1 in the manner set out in Part IVC of the *Taxation Administration*
2 *Act 1953*.

3 **52 At the end of section 221YDB**

4 Add:

- 5 (3) If any of the additional tax payable under this section remains
6 unpaid after the last day for which it is payable, the taxpayer is
7 liable to pay the general interest charge on the unpaid additional
8 tax for each day in the period that:
- 9 (a) started at the beginning of the next day; and
 - 10 (b) finishes at the end of the last day on which, at the end of the
11 day, any of the following remains unpaid:
 - 12 (i) the additional tax;
 - 13 (ii) general interest charge on any of the additional tax.

14 Note: The general interest charge is worked out under Division 1 of Part IIA
15 of the *Taxation Administration Act 1953*.

16 **53 Before subsection 221YHZD(1)**

17 Insert:

- 18 (1AAA) A person who deducts, or purports to deduct, under subsection
19 221YHZC(1), an amount from a payment to a non-resident must
20 pay the amount to the Commissioner within 14 days after the end
21 of the month in which the person makes the payment to the
22 non-resident.

23 **54 Paragraph 221YHZD(1) (penalty)**

24 After “Penalty”, insert “for a contravention of this subsection”.

25 **55 Subsection 221YHZD(2)**

26 Omit “subsection (1)”, substitute “subsection (1AAA)”.

27 **56 Subsection 254(2)**

28 Omit “a provision of this Act”, substitute “section 163AA, section
29 170AA, subsection 204(3), subsection 221AZMAA(1), subsection
30 221AZP(1), subsection 221YD(3) or section 221YDB”.

31 **57 Subsection 255(4)**

1 Omit “a provision of this Act”, substitute “section 163AA, section
2 170AA, subsection 204(3), subsection 221AZMAA(1), subsection
3 221AZP(1), subsection 221YD(3) or section 221YDB”.

4 **58 Subsection 258(2)**

5 Omit “a provision of this Act”, substitute “section 163AA, section
6 170AA, subsection 204(3), subsection 221AZMAA(1), subsection
7 221AZP(1), subsection 221YD(3) or section 221YDB”.

8 **59 Subsection 259(2)**

9 Omit “a provision of this Act”, substitute “section 163AA, section
10 170AA, subsection 204(3), subsection 221AZMAA(1), subsection
11 221AZP(1), subsection 221YD(3) or section 221YDB”.

12 **60 Subsection 265(12)**

13 Omit “a provision of this Act”, substitute “section 163AA, section
14 170AA, subsection 204(3), subsection 221AZMAA(1), subsection
15 221AZP(1), subsection 221YD(3) or section 221YDB”.

16 **61 Section 271-80 of Schedule 2F**

17 Repeal the section, substitute:

18 **271-80 Late payment of family trust distribution tax**

19 If any of the family trust distribution tax which a person is liable to
20 pay remains unpaid 60 days after the day by which it is due to be
21 paid, the person is liable to pay the general interest charge on the
22 unpaid amount for each day in the period that:

- 23 (a) started at the beginning of the 60th day after the day by
24 which the family trust distribution tax was due to be paid;
25 and
26 (b) finishes at the end of the last day on which, at the end of the
27 day, any of the following remains unpaid:
28 (i) the family trust distribution tax;
29 (ii) general interest charge on any of the family trust
30 distribution tax.

31 Note: The general interest charge is worked out under Division 1 of Part IIA
32 of the *Taxation Administration Act 1953*.

33 **62 Section 271-85 of Schedule 2F**

1 Omit “, and any unpaid additional tax is payable under section
2 271-80.”.

3 ***Income Tax Assessment Act 1997***

4 **63 Paragraph 20-25(2A)(a)**

5 Omit “general interest charge”, substitute “*general interest charge”.

6 **64 Paragraph 25-5(1)(c)**

7 Omit “general interest charge”, substitute “*general interest charge”.

8 **65 At the end of section 25-5**

9 Add:

10 *No double deduction for general interest charge on a running*
11 *balance account*

12 (7) If you deduct *general interest charge that applies to an RBA
13 deficit debt, you can’t also deduct the corresponding general
14 interest charge on tax debts that have been allocated to the RBA.

15 Note: RBAs (running balance accounts) are dealt with in Part IIB of the
16 *Taxation Administration Act 1953*.

17 ***Sales Tax Assessment Act 1992***

18 **66 Section 56**

19 Omit “*Taxation Administration Act 1955*”, substitute “*Taxation*
20 *Administration Act 1953*”.

21 **67 Subsection 95A(1)**

22 After “fails to notify”, insert “the amount of tax payable on”.

23 Note: The heading to section 95A is altered by omitting “of” and substituting “**amount of tax**
24 **payable on**”.

25 **68 Subsection 95A(1)**

26 Omit “the assessable dealing”, substitute “the tax payable”.

27 **69 Subsection 95A(2)**

28 Omit “an amount of”, substitute “the amount of tax payable on”.

1 **70 Subsection 95A(2)**

2 Omit “the assessable dealing”, substitute “the tax payable”.

3 **71 At the end of subsection 99(1)**

4 Add “(other than failure to notify penalty under section 95A)”.

5 **72 Subsection 99(3)**

6 After “this Part”, insert “(other than section 95A)”.

7 **73 Section 100**

8 After “this Part”, insert “(other than failure to notify penalty under
9 section 95A)”.

10 **74 At the end of section 100**

11 Add:

12 Note: The Commissioner may remit failure to notify penalty under section
13 8AAM of the *Taxation Administration Act 1953*.

14 ***Taxation Administration Act 1953***

15 **75 Subsection 8AAB(4) (before table item 1)**

16 Insert:

17

1AA	102UP	payment of ultimate beneficiary non-disclosure tax
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18 **76 Subsection 8AAB(4) (at the end of the table)**

19 Add:

20

31	271-80 of Schedule 2F	payment of family trust distribution tax
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21 **77 Subsection 8AAF(2)**

22 Repeal the subsection.

23 **78 After section 8AAG**

24 Insert:

1 **8AAGA Rounding of the charge**

2 If the amount of the charge payable for any period is not a multiple
3 of 5 cents, the Commissioner may round it down to the nearest
4 multiple of 5 cents.

5 **79 Subsection 8AAP(4) (table item 3, entry headed "Topic")**

6 Omit "PPS payment summary", substitute "PPS payment reconciliation
7 statement form".

8 **80 Subsection 8AAQ(2)**

9 Omit "reconciliation statement", substitute "statement, report or form".

10 **81 Paragraph 8AAZD(2)(b)**

11 Omit "debt; or", substitute "debt."

12 **82 Paragraph 8AAZD(2)(c)**

13 Repeal the paragraph.

14 ***Taxation (Interest on Overpayments and Early Payments) Act***
15 ***1983***

16 **83 Subsection 3(1) (paragraphs (baa), (ba) and (bb) of the**
17 **definition of *relevant tax*)**

18 Repeal the paragraphs, substitute:

19 (baa) an amount payable to the Commissioner under subsection
20 220AS(1) of the Tax Act;

21 (ba) an amount payable to the Commissioner under subsection
22 221EAA(1) of the Tax Act;

23 (bb) an amount payable to the Commissioner under subsection
24 221YHH(1) of the Tax Act;

25 **84 Subsection 3(1) (paragraph (caa) of the definition of**
26 ***relevant tax*)**

27 Repeal the paragraph.

28 **85 Subparagraph 12A(1)(a)(i)**

29 After "under", insert "section 163AA, section 170AA,".

1 **86 Subparagraph 12A(1)(a)(i)**

2 Omit “subsection 221AZP(1)”, substitute “subsection 204(3),
3 subsection 221AZMAA(1), subsection 221AZP(1), subsection
4 221YD(3)”.

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

6 **87 Items 84 and 85 of Schedule 1**

7 Repeal the items.

8 Note: These items contained misdescribed amendments. The correct amendments are in items
9 44 and 45 of this Schedule.

10 **88 Items 355, 356 and 357 of Schedule 1**

11 Repeal the items.

12 Note: These items contained misdescribed amendments. The correct amendment is in item 83
13 of this Schedule.

14 **89 Subitems 398(3), (4) and (5) of Schedule 1**

15 Repeal the subitems.

16 **90 Subitem 399(2) of Schedule 1**

17 Omit “where”, substitute “to the extent that”.

18 **91 Subitem 399(2) of Schedule 1**

19 Omit “starts”, substitute “occurs”.

20 **92 Application of amendments**

21 The amendments made by this Part apply in relation to amounts that are
22 due to be paid on or after 1 July 1999.

23 **93 Transitional—pre-1 July 1999 debts**

24 (1) This item applies to an amount (including an amount of penalty or
25 interest) that a person owes to the Commonwealth directly under a
26 taxation law (including a law that has been repealed or amended) and
27 that became payable at any time before 1 July 1999, if all or some of the
28 amount (the *unpaid debt*) remains unpaid at the beginning of 1 July
29 1999.

Schedule 2 Running balance accounts, general interest charge and related matters
Part 2 General interest charge

- 1 (2) The person is liable, and is taken to have been liable, to pay general
2 interest charge on the unpaid debt for each day in the period that:
3 (a) started at the beginning of the day by which the amount was
4 due to be paid; and
5 (b) finishes at the end of the last day on which, at the end of the
6 day, any of the following remains unpaid:
7 (i) the unpaid debt;
8 (ii) general interest charge on any of the unpaid debt.
- 9 (3) The general interest charge is worked out under Division 1 of Part IIA
10 of the *Taxation Administration Act 1953*.
- 11 (4) For the purposes of this item, the **general interest charge rate** for a day
12 before 1 July 1999 is taken to have been 12.72% divided by the number
13 of days in the calendar year that the day was in.
- 14 (5) If this item results in a person being liable, or being taken to have been
15 liable, to pay both general interest charge and some other penalty or
16 interest in respect of the same debt, the Commissioner must remit either
17 that general interest charge or that other penalty or interest (the
18 Commissioner chooses which).

1

2 **Part 3—Fringe benefits tax**

3 ***Fringe Benefits Tax Assessment Act 1986***

4 **94 Subparagraphs 9(2)(c)(i) and (ii)**

5 Repeal the subparagraphs, substitute:

- 6 (i) if the annualised number of whole kilometres the car
7 travelled during the year of tax was more than 40,000—
8 0.07; or
9 (ii) if the annualised number of whole kilometres the car
10 travelled during the year of tax was not less than 25,000
11 and not more than 40,000—0.11; or
12 (iii) if the annualised number of whole kilometres the car
13 travelled during the year of tax was not less than 15,000
14 and not more than 24,999—0.20; or
15 (iv) in any other case—0.26;

16 **95 Subsection 11(1) (definition of *D*)**

17 Repeal the definition, substitute:

18 *D* is the number of days in the year of tax.

19 **96 Subsection 11(2) (definition of *D*)**

20 Repeal the definition, substitute:

21 *D* is the number of days in the year of tax.

22 **97 Section 12**

23 Repeal the section, substitute:

24 **12 Depreciated value**

25 (1) In this Subdivision, the *depreciated value* of a car at a particular
26 time (the *relevant time*) is the amount worked out using the
27 formula:

28 $A - B$

29 where:

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A is:

- (a) if the car was owned by the person at the start of 1 July 1986—the depreciated value worked out under subsection (2); or
- (b) in any other case—the cost price of the car to the person.

B is the total amount of depreciation (if any) that would have been taken to have been incurred by the person in respect of the car for the period after the start of 1 July 1986 and before the relevant time when the person owned the car, if the depreciation taken to have been incurred for that period were calculated in accordance with subsection 11(1).

- (2) The *depreciated value* of a car owned by a person at the start of 1 July 1986 is the cost price of the car to that person, reduced by the total amount of depreciation that would have been taken to have been incurred by the person in respect of the car for the period before that time when it was owned by the person if:
 - (a) the depreciation taken to have been incurred for that period were calculated in accordance with subsection 11(1); and
 - (b) each year starting on 1 July were a year of tax.

98 Paragraph 19(1)(b)

Omit all the words from and including “both”, substitute “a once-only deduction (in this subsection called the *gross deduction*), other than a foreign income deduction, would, or would if not for section 82A, and Subdivisions F, GA and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross interest”.

99 Subparagraph 19(1)(ba)(ii)

Omit all the words from and including “allowable”, substitute “allowable as a once-only deduction other than a foreign income deduction to the recipient under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* in respect of that interest if that interest had been incurred and paid by the recipient on the last day of the loan period”.

100 Subparagraph 19(1)(ca)(i)

1 Repeal the subparagraph.

2 **101 Subparagraph 19(1)(ca)(ii)**

3 Omit “in the case of the second standard year of tax or a subsequent
4 year of tax—”.

5 **102 Paragraph 19(1)(d)**

6 Omit all the words and subparagraphs after “apply” to and including
7 “recipient gives”, substitute “and the loan fringe benefit is a car loan
8 benefit in respect of a car held by the recipient during a period (in this
9 subsection also called the *holding period*) in the year of tax, the
10 recipient gives”.

11 **103 Paragraphs 19(2)(a) and (b)**

12 Repeal the paragraphs, substitute:

- 13 (a) purchase a particular car; or
14 (b) pay a Division 28 car expense;

15 **104 Paragraph 24(1)(b)**

16 Omit all the words and subparagraphs from and including “both”,
17 substitute “a once-only deduction (in this subsection called the *gross*
18 *deduction*), other than a foreign income deduction, would, or would if
19 not for section 82A, and Subdivisions F, GA and G of Division 3 of
20 Part III, of the *Income Tax Assessment Act 1936*, and Divisions 28 and
21 900 of the *Income Tax Assessment Act 1997*, have been allowable to the
22 recipient under either of those Acts in respect of the gross expenditure”.

23 **105 Subparagraph 24(1)(ba)(ii)**

24 Omit all the words and sub-subparagraphs from and including
25 “allowable” to and including “recipient under”, substitute “allowable as
26 a once-only deduction other than a foreign income deduction to the
27 recipient under”.

28 **106 Paragraph 26(1)(c) (definition of C)**

29 Repeal the definition, substitute:

30 *C* is the number of days in the year of tax;

31 **107 Paragraph 26(2)(a) (definition of B)**

1 Repeal the definition, substitute:

2 *B* is the number of days in the current year of tax; and

3 **108 Paragraph 26(3)(a)**

4 Repeal the paragraph.

5 **109 Paragraph 29(1)(a) (definition of *DYT*)**

6 Repeal the definition, substitute:

7 *DYT* is the number of days in the current year of tax;

8 **110 Subsection 29(3A)**

9 Repeal the subsection, substitute:

10 (3A) For the purposes of this section:

11 (a) the *single quarters statutory amount* in relation to a year of
12 tax is the amount calculated:

13 (i) by multiplying the indexation factor for that year of tax
14 by the single quarters statutory amount in relation to the
15 immediately preceding year of tax; or

16 (ii) if the amount ascertained that way is not an amount of
17 whole dollars—by rounding the amount to the nearest
18 dollar (rounding 50 cents upwards); and

19 (b) the *standard statutory amount* in relation to a year of tax is
20 the amount calculated:

21 (i) by multiplying the indexation factor for that year of tax
22 by the standard statutory amount in relation to the
23 immediately preceding year of tax; or

24 (ii) if the amount ascertained that way is not an amount of
25 whole dollars—by rounding the amount to the nearest
26 dollar (rounding 50 cents upwards).

27 **111 Paragraph 44(1)(b)**

1 Omit all the words and subparagraphs from and including “both”,
2 substitute “a once-only deduction (in this subsection called the **gross**
3 **deduction**), other than a foreign income deduction, would, or would if
4 not for section 82A, and Subdivisions F, GA and G of Division 3 of
5 Part III, of the *Income Tax Assessment Act 1936*, and Divisions 28 and
6 900 of the *Income Tax Assessment Act 1997*, have been allowable to the
7 recipient under either of those Acts in respect of the gross expenditure”.

8 **112 Subparagraph 44(1)(ba)(ii)**

9 Omit all the words and subparagraphs from and including “allowable”,
10 substitute “allowable as a once-only deduction other than a foreign
11 income deduction to the recipient under either of those Acts in respect
12 of that consideration if that consideration had been incurred and paid by
13 the recipient at the provision time”.

14 **113 Paragraph 47(6)(aa)**

15 Omit “in the case of a standard year of tax—”.

16 **114 Paragraph 52(1)(b)**

17 Omit all the words and subparagraphs from and including “both”,
18 substitute “a once-only deduction (in this subsection called the **gross**
19 **deduction**), other than a foreign income deduction, would, or would if
20 not for section 82A, and Subdivisions F, GA and G of Division 3 of
21 Part III, of the *Income Tax Assessment Act 1936*, and Divisions 28 and
22 900 of the *Income Tax Assessment Act 1997*, have been allowable to the
23 recipient under either of those Acts in respect of the gross expenditure”.

24 **115 Subparagraph 52(1)(ba)(ii)**

25 Omit all the words and sub-subparagraphs from and including
26 “allowable”, substitute “allowable as a once-only deduction other than a
27 foreign income deduction to the recipient under either of those Acts in
28 respect of so much of that consideration as was taken into account for
29 the purposes of section 48, 49, 50 or 51 of the *Income Tax Assessment*
30 *Act 1936*, or section 4-15 or 8-1 of the *Income Tax Assessment Act*
31 *1997*, if that consideration had been incurred and paid by the recipient
32 at the comparison time”.

33 **116 Subparagraph 61C(3)(b)(i)**

34 Repeal the subparagraph.

1 **117 Paragraphs 62(1)(a) and (b)**

2 Repeal the paragraphs, substitute:

- 3 (a) if the taxable value or the sum of the taxable values does not
4 exceed \$500—an amount equal to the taxable value or the
5 sum of the taxable values; or
6 (b) in any other case—\$500.

7 **118 Section 68**

8 Omit “28 days after the end of the year”, substitute “21 May in the next
9 year of tax”.

10 **119 Subsection 90(1)**

11 Omit “the twenty-eighth day after the end of the”, substitute “21 May in
12 the next”.

13 **120 Section 102**

14 Omit all the words and paragraphs after “pay”, substitute “, in
15 accordance with this Division, 4 instalments of tax in respect of each
16 year of tax.”.

17 **121 Sections 103, 104 and 105**

18 Repeal the sections, substitute:

19 **103 When instalment of tax payable**

20 Subject to this Division, the 4 instalments of tax payable in respect
21 of a year of tax are due and payable as follows:
22

When instalments of tax are due and payable		
Item	This instalment ...	is due and payable on:
1	first instalment	21 July in that year of tax
2	second instalment	21 October in that year of tax
3	third instalment	21 January in that year of tax
4	fourth instalment	21 April in the next year of tax

1 **104 Notice of the amount of an instalment**

2 An employer must notify the Commissioner, in the approved form,
3 of the amount of an instalment on or before the day on which the
4 instalment is due and payable.

5 **105 Entitlement to instalment credit**

6 (1) If:

7 (a) an employer is or was liable to pay an instalment of tax in
8 respect of a year of tax; and

9 (b) the Commissioner makes an assessment of the tax payable, or
10 determines that no tax is payable, by the employer in respect
11 of that year of tax;

12 the employer is entitled to a credit equal to the amount of the
13 instalment when the assessment or determination is made.

14 Note: How the credit is applied is set out in Division 3 of Part IIB of the
15 *Taxation Administration Act 1953*.

16 (2) The making of the assessment or determination, and the resulting
17 credit entitlement, do not affect the liability to pay the instalment.

18 **122 Subdivision B of Division 2 of Part VII**

19 Repeal the Subdivision.

20 **123 Subdivision C of Division 2 of Part VII (heading)**

21 Repeal the heading, substitute:

22 **Subdivision C—Working out the amount of instalments**

23 **124 Section 109 (definition of *employer's estimate*)**

24 Omit "standard".

25 **125 Section 109 (definition of *estimated tax*)**

26 Omit "standard".

27 **126 Section 109 (definition of *GIC period*)**

28 Repeal the definition, substitute:

1 **GIC period**, in relation to an instalment in relation to a year of tax,
2 means:

- 3 (a) for a first instalment—the period starting at the beginning of
4 21 July, and finishing at the end of 20 October, in the year of
5 tax; or
6 (b) for a second instalment—the period starting at the beginning
7 of 21 October, and finishing at the end of 20 January, in the
8 year of tax; or
9 (c) for a third instalment—the period starting at the beginning of
10 21 January in the year of tax and finishing at the end of 20
11 April in the next year of tax; or
12 (d) for a fourth instalment—the period starting at the beginning
13 of 21 April, and finishing at the end of 20 May, in the next
14 year of tax.

15 **127 Section 109 (definition of *relevant fraction*)**

16 Repeal the definition, substitute:

17 ***relevant fraction***, in relation to an instalment, means:

- 18 (a) 0.25 for a first instalment; or
19 (b) 0.50 for a second instalment; or
20 (c) 0.75 for a third instalment; or
21 (d) 1.00 for a fourth instalment.

22 **128 Subsection 110(1)**

23 Repeal the subsection, substitute:

- 24 (1) Subject to this section, the notional tax amount of an employer in
25 respect of a year of tax is the amount of the tax that was assessed in
26 respect of the employer in respect of the immediately preceding
27 year of tax.

28 **129 Paragraph 110(2)(a)**

29 Omit “standard”.

30 **130 Subsection 110(5)**

31 Omit “standard year of tax, being an instalment that becomes due and
32 payable on the twenty-eighth”, substitute “year of tax, being an
33 instalment that becomes due and payable on the 21st”.

1 **131 Subsection 111(1)**

2 Omit “standard”.

3 **132 Subsection 111(1)**

4 Omit “twenty-eighth”, substitute “21st”.

5 **133 Subsection 111(2)**

6 Omit “standard”.

7 **134 Subsection 112(1)**

8 Omit “standard”.

9 **135 Subsection 112(1)(b)**

10 Omit “statement in writing”, substitute “written statement, in the
11 approved form,”.

12 **136 Subsection 136(1)**

13 Insert:

14 *approved form* has the meaning given by subsection 995-1(1) of
15 the *Income Tax Assessment Act 1997*.

16 **137 Subsection 136(1) (definition of *standard year of tax*)**

17 Repeal the definition.

18 **138 Subsection 136(1) (definition of *transitional year of tax*)**

19 Repeal the definition.

20 **139 Subsection 136(1) (definition of *year of tax*)**

21 Repeal the definition, substitute:

22 *year of tax* means the year starting on 1 April 1987, and each later
23 year starting on 1 April.

24 **140 Application of amendments**

25 The amendments made by this Part apply in relation to the year of tax
26 starting on 1 April 2000 and all later years of tax.

1
2 **Schedule 3—Consequential amendment of**
3 **Chapter 6 (the Dictionary) of the**
4 **Income Tax Assessment Act 1997**
5

6 **1 Subsection 995-1(1)**

7 Insert:

8 *ABN* has the meaning given by the *A New Tax System (Australian*
9 *Business Number) Act 1999*.

10 **2 Subsection 995-1(1)**

11 Insert:

12 *adjusted assessed tax* has the meaning given by section 45-375 in
13 Schedule 1 to the *Taxation Administration Act 1953*.

14 **3 Subsection 995-1(1)**

15 Insert:

16 *adjusted assessed taxable income* has the meaning given by
17 section 45-370 in Schedule 1 to the *Taxation Administration Act*
18 *1953*.

19 **4 Subsection 995-1(1)**

20 Insert:

21 *adjusted taxable income* has the meaning given by section 45-330
22 in Schedule 1 to the *Taxation Administration Act 1953*.

23 **5 Subsection 995-1(1)**

24 Insert:

25 *adjusted withholding income* has the meaning given by section
26 45-335 in Schedule 1 to the *Taxation Administration Act 1953*.

27 **6 Subsection 995-1(1)**

28 Insert:

1 **amount required to be withheld** by an entity from a *withholding
2 payment means:

- 3 (a) the amount that the entity must withhold from the payment
4 under Division 12 in Schedule 1 to the *Taxation*
5 *Administration Act 1953*; or
6 (b) the amount that Division 14 in that Schedule requires the
7 entity to pay to the Commissioner in respect of the *non-cash
8 benefit of which the withholding payment consists;
9 or that amount as varied by the Commissioner under section 16-15
10 in the Schedule.

11 **7 Subsection 995-1(1)**

12 Insert:

13 **amount withheld** by an entity from a *withholding payment
14 means:

- 15 (a) an amount that the entity withheld from the payment under
16 Division 12 in Schedule 1 to the *Taxation Administration Act*
17 *1953*; or
18 (b) an amount that the entity paid to the Commissioner under
19 Division 14 in that Schedule in respect of the *non-cash
20 benefit of which the withholding payment consists.

21 **8 Subsection 995-1(1)**

22 Insert:

23 **annual payer** means an entity that has become an annual payer
24 under section 45-140 in Schedule 1 to the *Taxation Administration*
25 *Act 1953*, and has not since ceased to be an annual payer under
26 section 45-150, 45-155 or 45-180 in that Schedule.

27 **9 Subsection 995-1(1)**

28 Insert:

29 **approved form**: a notice, application or other document is in the
30 **approved form** if, and only if:

- 31 (a) it is in the form approved in writing by the Commissioner in
32 relation to that kind of notice, application or other document;
33 and
34 (b) it is signed by a person or persons as the form requires; and

- 1 (c) it contains the information that the form requires, and any
2 further information or statement as the Commissioner
3 requires; and
4 (d) for a notice, application or document that is required to be
5 lodged with the Commissioner—it is lodged at the place and
6 in the manner that the Commissioner requires.
7 The Commissioner may combine in the same approved form more
8 than one notice, application or other document.

9 **10 Subsection 995-1(1)**

10 Insert:

11 *Australian Business Register* means the Australian Business
12 Register established and maintained under the *A New Tax System*
13 (*Australian Business Number*) Act 1999.

14 **11 Subsection 995-1(1)**

15 Insert:

16 *Australian Business Registrar* means the Registrar of the
17 *Australian Business Register.

18 **12 Subsection 995-1(1)**

19 Insert:

20 *Australian legislature* means:

- 21 (a) the Parliament of the Commonwealth of Australia; or
22 (b) the Parliament of a State; or
23 (c) the Legislative Assembly for the Australian Capital
24 Territory; or
25 (d) the Legislative Assembly of the Northern Territory of
26 Australia.

27 **13 Subsection 995-1(1)**

28 Insert:

29 *base assessment* has the meaning given by section 45-320 in
30 Schedule 1 to the *Taxation Administration Act 1953*.

31 **14 Subsection 995-1(1)**

1 Insert:

2 *base year* has the meaning given by section 45-320 in Schedule 1
3 to the *Taxation Administration Act 1953*.

4 **15 Subsection 995-1(1)**

5 Insert:

6 *benchmark instalment rate* has the meaning given by section
7 45-360 in Schedule 1 to the *Taxation Administration Act 1953*.

8 **16 Subsection 995-1(1)**

9 Insert:

10 *benchmark tax* has the meaning given by section 45-365 in
11 Schedule 1 to the *Taxation Administration Act 1953*.

12 **17 Subsection 995-1(1)**

13 Insert:

14 *carried on in Australia*, in relation to an *enterprise, has the
15 meaning given by subsection 9-25(6) of the *GST Act.

16 **18 Subsection 995-1(1)**

17 Insert:

18 *carrying on* an *enterprise includes doing anything in the course of
19 the commencement or termination of the enterprise.

20 **19 Subsection 995-1(1)**

21 Insert:

22 *electronic payment* means a payment by way of electronic
23 transmission, in an electronic format approved by the
24 Commissioner.

25 **20 Subsection 995-1(1)**

26 Insert:

27 *electronic signature* of a person means a unique identification of
28 the person in electronic form that is approved by the Commissioner

1 for the purposes of the definition of *electronic signature* in section
2 6 of the *Income Tax Assessment Act 1936*.

3 **21 Subsection 995-1(1)**

4 Insert:

5 *enterprise* has the meaning given by section 9-20 of the *GST Act.

6 **22 Subsection 995-1(1)**

7 Insert:

8 *failure to notify penalty* means the penalty worked out under
9 Division 2 of Part IIA of the *Taxation Administration Act 1953*.

10 **23 Subsection 995-1(1)**

11 Insert:

12 *farm management deposit* has the same meaning as in Schedule
13 2G to the *Income Tax Assessment Act 1936*.

14 **24 Subsection 995-1(1)**

15 Insert:

16 *foreign resident* means a person who is not a resident of Australia
17 for the purposes of the *Income Tax Assessment Act 1936*.

18 Note: *Foreign resident* is not asterisked in this Act.

19 **25 Subsection 995-1(1)**

20 Insert:

21 *FTB amount* for an income year means an amount of family tax
22 benefit (within the meaning of the *A New Tax System (Family*
23 *Assistance) (Administration) Act 1999*) to which an individual is
24 entitled in respect of the income year.

25 **26 Subsection 995-1(1)**

26 Insert:

27 *GDP-adjusted notional tax* has the meaning given by section
28 45-405 in Schedule 1 to the *Taxation Administration Act 1953*.

1 **27 Subsection 995-1(1)**

2 Insert:

3 *GDP amount* for a *quarter has the meaning given by section
4 45-405 in Schedule 1 to the *Taxation Administration Act 1953*.

5 **28 Subsection 995-1(1)**

6 Insert:

7 *GST Act* means the *A New Tax System (Goods and Services Tax)*
8 *Act 1999*.

9 **29 Subsection 995-1(1)**

10 Insert:

11 *GST joint venture* has the meaning given by section 51-5 of the
12 *GST Act.

13 **30 Subsection 995-1(1)**

14 Insert:

15 *instalment group* has the meaning given by section 45-145 in
16 Schedule 1 to the *Taxation Administration Act 1953*.

17 **31 Subsection 995-1(1)**

18 Insert:

19 *instalment income* has the meaning given by sections 45-120,
20 45-260 and 45-280 in Schedule 1 to the *Taxation Administration*
21 *Act 1953*.

22 **32 Subsection 995-1(1)**

23 Insert:

24 *instalment quarter* has the meaning given by section 45-60 in
25 Schedule 1 to the *Taxation Administration Act 1953*.

26 **33 Subsection 995-1(1)**

27 Insert:

1 *investment body* for a *Part VA investment has the meaning given
2 by section 202D of the *Income Tax Assessment Act 1936*.

3 **34 Subsection 995-1(1)**

4 Insert:

5 *investor* for a *Part VA investment has the meaning given by
6 section 202D of the *Income Tax Assessment Act 1936*.

7 **35 Subsection 995-1(1)**

8 Insert:

9 *invoice* means a document notifying an obligation to make a
10 payment.

11 **36 Subsection 995-1(1)**

12 Insert:

13 *labour hire notional withheld amount* has the meaning given by
14 section 16-160 in Schedule 1 to the *Taxation Administration Act*
15 *1953*.

16 **37 Subsection 995-1(1)**

17 Insert:

18 *large withholder* has the meaning given by sections 16-95 and
19 16-125 in Schedule 1 to the *Taxation Administration Act 1953*.

20 **38 Subsection 995-1(1)**

21 Insert:

22 *market value* of a *non-cash benefit: in working out the market
23 value of a *non-cash benefit, disregard anything that would prevent
24 or restrict conversion of the benefit to money.

25 **39 Subsection 995-1(1)**

26 Insert:

27 *medium withholder* has the meaning given by section 16-100 and
28 16-135 in Schedule 1 to the *Taxation Administration Act 1953*.

1 **40 Subsection 995-1(1)**

2 Insert:

3 *mining withholding tax* means income tax payable under section
4 128V of the *Income Tax Assessment Act 1936*.

5 **41 Subsection 995-1(1)**

6 Insert:

7 *natural resource* has the meaning given by section 6 of the *Income*
8 *Tax Assessment Act 1936*.

9 **42 Subsection 995-1(1)**

10 Insert:

11 *non-cash benefit* is property or services in any form except money.
12 If a non-cash benefit is dealt with on behalf of an entity, or is
13 provided or dealt with as an entity directs, the benefit is taken to be
14 provided to the entity.

15 **43 Subsection 995-1(1)**

16 Insert:

17 *non-quotation withholding payment* means a *withholding
18 payment covered by Subdivision 12-E in Schedule 1 to the
19 *Taxation Administration Act 1953*.

20 Note: Subdivision 12-E and Division 14 in that Schedule deal with
21 collecting amounts on account of income tax payable by recipients of
22 certain payments or non-cash benefits who have not quoted their tax
23 file number or ABN, as appropriate.

24 **44 Subsection 995-1(1)**

25 Insert:

26 *notional tax* has the meaning given by section 45-325 in Schedule
27 1 to the *Taxation Administration Act 1953*.

28 **45 Subsection 995-1(1)**

29 Insert:

30 *Part VA investment* means an investment of a kind mentioned in
31 section 202D of the *Income Tax Assessment Act 1936*.

1 **46 Subsection 995-1(1)**

2 Insert:

3 *participant*, in relation to a *GST joint venture, has the meaning
4 given by section 51-5 or paragraph 51-70(1)(a) of the *GST Act.

5 **47 Subsection 995-1(1)**

6 Insert:

7 *PAYG instalment* means an instalment payable under Division 45
8 in Schedule 1 to the *Taxation Administration Act 1953*.

9 **48 Subsection 995-1(1)**

10 Insert:

11 *payment summary* has the meaning given by section 16-170 in
12 Schedule 1 to the *Taxation Administration Act 1953*.

13 **49 Subsection 995-1(1)**

14 Insert:

15 *quarter* means a period of 3 months ending on 31 March, 30 June,
16 30 September or 31 December.

17 **50 Subsection 995-1(1)**

18 Insert:

19 *quarterly payer* means an entity that is liable to pay *PAYG
20 instalments and is not an *annual payer.

21 **51 Subsection 995-1(1)**

22 Insert:

23 *quarterly payer who pays on the basis of GDP-adjusted notional*
24 *tax* means an individual who has become such a payer under
25 section 45-125 in Schedule 1 to the *Taxation Administration Act*
26 *1953*, and has not since ceased to be one under section 45-130 or
27 45-135 in that Schedule.

28 **52 Subsection 995-1(1)**

29 Insert:

1 *quote* an entity's *ABN means *quote* in a form and manner
2 approved by the Commissioner.

3 **53 Subsection 995-1(1)**

4 Insert:

5 *quoted*: an entity has *quoted* its *tax file number in connection with
6 a *Part VA investment if the entity is taken, for the purposes of
7 Part VA of the *Income Tax Assessment Act 1936*, to have *quoted* its
8 tax file number in connection with the investment.

9 **54 Subsection 995-1(1)**

10 Insert:

11 *reportable fringe benefits amount* for an income year in respect of
12 an employee's employment by an employer has the same meaning
13 as in the *Fringe Benefits Tax Assessment Act 1986* (as it applies of
14 its own force or because of the *Fringe Benefits Tax (Application to*
15 *the Commonwealth) Act 1986*).

16 **55 Subsection 995-1(1)**

17 Insert:

18 *required to be registered* has the meaning given by the *GST Act.

19 **56 Subsection 995-1(1)**

20 Insert:

21 *small withholder* has the meaning given by section 16-105.

22 **57 Subsection 995-1(1)**

23 Insert:

24 *supply* has the meaning given by section 9-10 of the *GST Act.

25 **58 Subsection 995-1(1)**

26 Insert:

27 *tax file number* means a tax file number as defined in section
28 202A of the *Income Tax Assessment Act 1936*.

1 **59 Subsection 995-1(1)**

2 Insert:

3 *withholder* means a *large withholder, a *medium withholder or a
4 *small withholder.

5 **60 Subsection 995-1(1)**

6 Insert:

7 *withholding payment* means:

8 (a) a payment from which an amount must be withheld under
9 Division 12 in Schedule 1 to the *Taxation Administration Act*
10 *1953* (even if the amount is not withheld); or

11 (b) a *non-cash benefit in respect of which Division 14 in that
12 Schedule requires an amount to be paid to the Commissioner.

13 (A withholding payment that consists of a non-cash benefit is made
14 when the benefit is provided. The amount of the withholding
15 payment is taken to be the *market value of the benefit at that
16 time.)

17 Note: Divisions 12 and 14 in Schedule 1 to the *Taxation Administration Act*
18 *1953* deal with collecting amounts on account of income tax payable
19 by the recipient of the payment or non-cash benefit.

20 **61 Subsection 995-1(1)**

21 Insert:

22 *withholding payment* covered by a particular provision in
23 Schedule 1 to the *Taxation Administration Act 1953* means a
24 *withholding payment consisting of:

25 (a) a payment from which an amount must be withheld under
26 that provision (even if the amount is not withheld); or

27 (b) a *non-cash benefit provided by an entity if that provision
28 would have required the entity to withhold an amount if,
29 instead of providing the benefit, the entity had paid the
30 *market value of the benefit; or

31 (c) a non-cash benefit provided to an entity if that provision
32 would have required the entity to withhold an amount if the
33 benefit had been a payment of an amount equal to the market
34 value of the benefit.

1 **62 Subsection 995-1(1)**

2 Insert:

3 *withholding tax* means income tax payable under section 128B of
4 the *Income Tax Assessment Act 1936*.

5 **63 Subsection 995-1(1) (after paragraph (b) of the definition**
6 **of *this Act*)**

7 Insert:

8 and (c) Schedule 1 to the *Taxation Administration Act 1953*;

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