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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (TRANSFER OF PROVISIONS) BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon Wayne Swan MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	*Definition*
ADIs	authorised deposit-taking institutions
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BAS	business activity statement
CGT	capital gains tax
Commissioner	Commissioner of Taxation
FMD	farm management deposit
GST	goods and services tax
IT(TP)A 1997	*Income Tax (Transitional Provisions) Act 1997*
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
PAYE	pay as you earn
PAYG	pay as you go
R&D	research and development
TAA 1953	*Taxation Administration Act 1953*
TLIP	Tax Law Improvement Project

General outline and financial impact

This Bill rewrites provisions from the *Income Tax Assessment Act 1936* into the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*. This is a significant step towards achieving a single income tax assessment Act for Australia.

The rewritten provisions are:

- Part VI (collection and recovery provisions);
- Schedule 2C (commercial debt forgiveness);
- Schedule 2E (luxury car leases);
- Schedule 2G (farm management deposits); and
- Schedule 2J (general insurance).

The rewritten provisions generally make no policy changes. However, they include the drafting changes needed to conform to the legislative approach used in the *Income Tax Assessment Act 1997*, to simplify expression, and to remove any ambiguity.

Date of effect: The rewrites generally apply to the 2010-11 and later income years.

Proposal announced: This measure was announced in the then Assistant Treasurer's speech to the Taxation Institute of Australia Annual Conference on 13 March 2009.

Financial impact: Nil to minimal.

Compliance cost impact: Low.

Chapter 1
Background to the rewrites

Outline of chapter

1.1 This chapter explains the historical background to the *Income Tax Assessment Act 1997* (ITAA 1997) and the steps that have been taken to complete the rewrite of the *Income Tax Assessment Act 1936* (ITAA 1936). It also summarises the changes the Bill makes to the provisions it rewrites. The later chapters discuss the specific changes in more detail.

Creating the 1997 Act

1.2 In November 1993, the Joint Committee of Public Accounts recommended that the income tax law be rewritten.[1] The Keating government accepted the recommendation and created the Tax Law Improvement Project (TLIP) to implement it.

1.3 In April 1995, the TLIP team published a discussion paper proposing to rewrite the law progressively. It proposed that approach for several reasons, including:

- rewriting the law in tranches would be less disruptive for the Parliament and other users of the law;
- the benefits of the rewrite would be available sooner; and
- waiting to deliver the whole rewrite at once would almost certainly involve having to rewrite some things twice, as the law changed in the interim.

1.4 The team's proposal was adopted. This led to the ITAA 1997 (introduced into Parliament in 1996 and enacted in 1997) and two further Acts: the *Tax Law Improvement Act 1997* and the *Tax Law Improvement Act (No. 1) 1998*. Each Act included rewrites of tranches of the income tax law.

1 Joint Committee of Public Accounts, Report No. 326, *An Assessment of Tax*, p. 84.

Further stages of rewriting the income tax law

1.5 In August 1998, the Howard government announced, in its *Tax Reform: Not a New Tax, A New Tax System* paper, that the TLIP team would be subsumed into the taskforce being assembled to implement the substantive reforms that paper proposed.[2]

1.6 Since that time, no formal work has been done on a pure rewrite of the remaining provisions of the previous Act, the ITAA 1936. However, rewriting has continued as part of substantive reforms. The reform of the imputation system in 2002, for example, included a rewrite of the imputation provisions from the ITAA 1936 into the ITAA 1997.

1.7 The ITAA 1936 has not been repealed. However, in 2006, the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* repealed all the provisions of the ITAA 1936 that had so far been rewritten, as well as other provisions of the Act that had become inoperative.

What does the Bill do?

1.8 TLIP had no mandate to make significant policy changes, but it did have a wide brief to improve the legislation it was rewriting. TLIP introduced many of the drafting features we now take for granted in the income tax and goods and services tax (GST) laws (such as a top-down structure, aids to navigation, asterisking of defined terms, and non-operative guide material). It also used plain English drafting for its rewrites.

1.9 The rewrites in this Bill involve no significant policy changes but do conform to the drafting approach used in the ITAA 1997 and in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). However, they involve much less rewriting of provisions than did the TLIP rewrites. In part, that is to minimise the possibility of substantive changes occurring unintentionally but, more importantly, it is because the provisions chosen for rewriting already used a fairly plain-English style.

What sorts of changes have been made to the material?

1.10 In general, the rewrites aim to reproduce the ITAA 1936 material, in language as little changed as possible, and in the same order as the original material.

2 *Tax Reform: Not a New Tax, A New Tax System*, August 1998, p. 149.

Structural changes

1.11 In some cases, material has been consolidated or reordered to better conform to the structure of the current law. These cases are itemised in the relevant chapters.

Inoperative and transitional material

1.12 Material that is clearly inoperative has been removed, and some material of a transitional nature has been moved from the principal rules into the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997). These cases too are itemised in the relevant chapters.

Numbering

1.13 In some cases, the numbering of provisions has changed to reflect the location in the ITAA 1997 or the TAA 1953 into which the provisions have been rewritten. Structural changes and removal of inoperative provisions have also affected the numbering in some areas. The specific changes for each of the rewrites are explained in the relevant chapter.

General wording changes

1.14 In a few instances, wording has been changed where it produced a clearly simpler result without changing the meaning. These cases are itemised in the relevant chapters.

Guide material

1.15 Guide material has been added where none exists in the current law and, where it does exist, has often been substantially rewritten. The added material includes both formal guides to Divisions and Subdivisions, and notes that point readers to related provisions or other relevant information.

Definitional changes

1.16 The most significant changes were to make the material conform to the definitional approaches used in the ITAA 1997. The most important of these is the 'one-term, one-meaning' protocol that requires a defined term to have the same meaning across the ITAA 1997. By contrast, it is quite common in the ITAA 1936 for definitions to apply only to a Division, or even to a section, and for the same term to be defined in many different ways throughout that Act.

1.17 In some cases, the current law defines a term inconsistently with its definition or use in the ITAA 1997, and in others a term may be defined in the ITAA 1997 but take its ordinary meaning in the current law. The changes made in the rewrites to accommodate the definitional rules have aimed to preserve the meaning of the current law. Individual changes are discussed in the relevant chapters.

Will the rewrite affect interpretation of the law?

1.18 Whenever the wording of legislation changes, its meaning could change too. An important aim of the rewrites in this Bill is to minimise any changes in meaning and there are good reasons for believing that merely changing the structure, wording or location of provisions has not changed their meaning.

Statutory influences on interpretation

1.19 The main reason is that section 1-3 of the ITAA 1997 provides that an idea expressed in one form of words in the ITAA 1936 is not taken to be different when the same idea appears to be expressed in the ITAA 1997 but in a different form of words. Section 15AC of the *Acts Interpretation Act 1901* says the same thing.

1.20 Because 'this Act' is defined in the ITAA 1997 to include Schedule 1 to the TAA 1953, section 1-3 produces the same result for material rewritten into that Schedule.

1.21 In general, there is no intention in the rewrites in this Bill to change the ideas expressed in the original material, so section 1-3 should prevent any changes in meaning being inferred because different words have been used. In those few cases where a different meaning is intended, the relevant chapters say so expressly.

Effect on ATO rulings

1.22 The Australian Taxation Office (ATO) publishes rulings about the interpretation of taxation laws.[3] Those rulings are more than just the Commissioner of Taxation's (Commissioner) opinion about what the law means; they are statements to which the Commissioner is legally bound, even if they prove to be wrong (see Division 357 in Schedule 1 to the TAA 1953).

1.23 There might be doubt about the ongoing effect of a ruling about a provision that has been rewritten. To the extent that a rewritten

3 These can be found on the ATO's website: www.ato.gov.au

provision expresses the same idea as the original provision, section 357-85 of Schedule 1 to the TAA 1953 provides that the ruling applies equally to the rewritten provision. That means that taxpayers can rely on an existing ruling, and will get the same legal protection, as if the ruling were about the rewritten provision.

How is this explanatory memorandum arranged?

1.24 After this general chapter, the explanatory memorandum contains a separate chapter for each of the rewrites.

Specific chapter for each rewrite

1.25 Each of those chapters explains what, in broad terms, the rewritten material does. It also discusses particular issues relevant to that rewrite. For instance, the chapters explain such things as:

- the material that was not rewritten because it was inoperative;
- the changes made to conform to definitional requirements; and
- the reasons for the location and structure of the rewritten material.

1.26 The chapters do not discuss the detailed policy reasons for the original provisions. However, they do list the Act that introduced the original provisions and each of the Acts that amended them. That list will help those interested in the policy reasons for the provisions to track down the original explanatory memorandums and parliamentary debates that explain them.

1.27 The chapters do discuss the reasons for any substantive changes to the original provisions. They also explain the consequential amendments to other provisions that are needed as a result of enacting the rewrites.

Finding tables

1.28 Some finding tables follow the specific chapters. Those tables cross-reference the original provisions with their equivalents in the rewrites. The tables help taxpayers map the rewrites onto the existing provisions and vice versa.

Chapter 2
Collection and recovery of income tax rewrite — Part VI of the ITAA 1936

Outline of chapter

2.1 Schedule 1 to this Bill rewrites the remaining sections of Part VI of the *Income Tax Assessment Act 1936* (ITAA 1936) into the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA 1953).

Context of amendments

2.2 The context of the rewrite is explained in Chapter 1.

2.3 The remaining sections of Part VI of the ITAA 1936 are contained in Divisions 1 and 8 to 10. Those Divisions can be broken into three discrete topics, namely:

- Division 1 — general rules about collections and recovery of income tax;
- Divisions 8 and 10 — prompt recovery of certain income tax liabilities through estimates; and
- Divisions 9 and 10 — penalties for directors of non-complying companies.

Detailed explanation of new law

2.4 Part VI of the ITAA 1936 is repealed by this Bill ***[Schedule 1, item 2]***. The contents of Part VI have been rewritten and this Bill will include the rewritten rules in either the ITAA 1997 or Schedule 1 to the TAA 1953.

Division 1 of Part VI

2.5 Division 1 of Part VI of the ITAA 1936 now contains only three unrelated sections. The remainder of the Division has already been

rewritten or relocated into the TAA 1953. These sections were original sections from the enactment of the ITAA 1936.

2.6 Section 204 of the ITAA 1936 sets the time in which income tax for an income year becomes due and payable. It also imposes the general interest charge on overdue income tax debts and sets the time at which any shortfall interest charge must be paid to the Commissioner of Taxation (Commissioner). The effect of this section has been reproduced in the core provisions of the ITAA 1997.

2.7 Section 213 of the ITAA 1936 has been largely untouched since its enactment in 1936. It allows the Commissioner to seek security from a taxpayer for a future income tax liability. Refusal to provide security sought by the Commissioner is a criminal offence. The effect of this section has been reproduced in the TAA 1953. Consistent with current tax administration policy about having a single set of general collection and recovery rules for all taxes, the effect of the section has been expanded to cover all taxes administered by the Commissioner. Machinery provisions have also been incorporated into the security deposits rules to provide certainty for taxpayers about their rights and obligations.

2.8 Section 219 of the ITAA 1936 allows the Commissioner to consolidate the income tax assessments of a number of different agents if they are in respect of the same foreign resident or an Australia resident absent from Australia. The provision facilitates the issuing of assessments and the collection of income tax where there are several agents in receipt of income from the one foreign resident. The section has particular application to cases where there are several selling agents for the same foreign resident firm. As this provision relates to the making of income tax assessments by the Commissioner, it is being relocated to Part IV of the ITAA 1936 (about assessments of income tax). A rewrite of this provision cannot be undertaken before Part IV has been rewritten.

Divisions 8 and 10 of Part VI

2.9 Divisions 8 and 10 of Part VI of the ITAA 1936 introduced a new regime in 1993 to enable the Commissioner to recover certain tax debts earlier and more effectively. The regime provides the Commissioner with the ability to recover amounts based on reasonable estimates.

2.10 See the explanatory memorandum to the Insolvency (Tax Priorities) Legislation Amendment Bill 1993 for a more detailed explanation of the operation of Division 8 of Part VI.

2.11 The rewrite reproduces the effect of Divisions 8 and 10 of Part VI in the TAA 1953.

Divisions 9 and 10 of Part VI

2.12 Divisions 9 and 10 of Part VI of the ITAA 1936 introduced a new regime in 1993 to enable the Commissioner to recover certain tax debts earlier and more effectively. The regime imposes a duty on directors to cause the company to forward amounts withheld from payments to employees and some other creditors to the Commissioner. The duty is enforced by penalties equal to the unpaid amounts. The penalty is automatically remitted if the company meets its obligations, or promptly goes into voluntary administration or liquidation.

2.13 The penalty regime reflects the public duty on directors to ensure that amounts withheld from payments to third parties are promptly forwarded to the Commissioner. The public duty arises because withheld amounts are similar in nature to amounts held on trust. That is, the directors are in a position of trust and have a duty to protect those monies until they have been forwarded to the Commissioner.

2.14 In addition, because the pay as you go (PAYG) withholding rules often give a credit to the entity from which an amount has been withheld regardless of whether the withholder has paid the amount to the Commissioner, the Commonwealth is effectively guaranteeing such amounts. Such a guarantee necessitates the imposition of penalties on directors to ensure companies comply with their PAYG withholding obligations and to maintain the integrity of the tax system.

2.15 See the explanatory memorandum to the Insolvency (Tax Priorities) Legislation Amendment Bill 1993 for a more detailed explanation of the operation of Division 9 of Part VI.

2.16 The rewrite reproduces the effect of Divisions 9 and 10 of Part VI in the TAA 1953.

How the rewrite is different

2.17 References in this chapter are to Schedule 1 to the TAA 1953 unless otherwise stated.

Division 1 of Part VI

Guide material

2.18 The rewrite contains newly written guide material in respect of section 204 of the ITAA 1936. The guide material explains how the rewrite fits within the core provisions of the ITAA 1997 and when the provisions would apply to a particular taxpayer. ***[Schedule 1, item 3, section 5-1 of the ITAA 1997]***

Structural changes

2.19 The remaining sections in Part VI of the ITAA 1936 are unrelated to one another and are not co-located in the rewrite. Section 204 has been rewritten into the core provisions of the ITAA 1997 in a newly created Division. ***[Schedule 1, item 3, Division 5 of the ITAA 1997]***

2.20 Section 213 has been rewritten into Schedule 1 to the TAA 1953 with other rules about collection and recovery of tax-related liabilities. ***[Schedule 1, item 9, Subdivision 255-D]***

2.21 Section 219 has not been rewritten as part of this Bill. It has instead been relocated within the ITAA 1936 and will be rewritten with the other rules about income tax assessments. ***[Schedule 1, item 1, section 169AA of the ITAA 1936]***

2.22 The rewrites of sections 204 and 213, whilst expressed differently, do not involve a change in structure as the sections are relatively short and self-contained.

Differences in Division 5 of the ITAA 1997 (former section 204)

2.23 The rewrite is a simplified expression of section 204 but contains no substantive policy changes.

Income tax payability dependent on assessment

2.24 The Commissioner currently interprets the law as making income tax due and payable only once income tax has been assessed. That is, an assessment is required before any income tax can be due and payable. Whilst that conclusion is not clear from the law itself, the High Court of Australia agreed with this view in considering the application of the law to full self-assessment cases[4] (typically, companies, superannuation trustees and first home saver account providers). The

[4] *Federal Commissioner of Taxation v Futuris Corp Ltd* [2008] HCA 32 and *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd & Ors* [2008] HCA 41.

High Court has not considered the application of this law to non-full self-assessment cases.

2.25 The rewrite makes that result clear for both full self-assessment and non-full self-assessment cases. This change to the text of the tax law is consistent with the way the Commissioner already administers the tax law and the context in which the Act operates. ***[Schedule 1, item 3, subsections 5-5(2) and (3) of the ITAA 1997]***

2.26 Once an assessment has been made by the Commissioner, the income tax assessment is due and payable in accordance with the general rules. In order to ensure that the law applies equally to all taxpayers the due and payable date might be treated as having occurred before the assessment was made. Setting a fixed due and payable date (which might be before an assessment) facilitates the correct calculation of interest charges for taxpayers who fail to lodge income tax returns within the required timeframes. ***[Schedule 1, item 3, subsection 5-5(3)]***

Commissioner's ability to defer due dates for payment

2.27 The Commissioner's power to generally defer the date on which income tax for self-assessment taxpayers becomes due and payable has been omitted. The Commissioner can instead rely on his general power to defer the time at which a tax-related liability becomes due and payable, contained in Division 255 in Schedule 1 to the TAA 1953.

2.28 The Commissioner's ability to defer payment of income tax is generally set out in the TAA 1953. It gives the Commissioner a discretion to extend payment dates for taxes, to enter into payment arrangements and, in some cases, to write off debts. The provisions apply widely to all the taxes for which the Commissioner is responsible.

2.29 The older administrative provisions in the ITAA 1936 allow the Commissioner to grant a general extension to full self-assessment taxpayers by publishing a notice in the *Commonwealth of Australia Gazette*.

2.30 The Commissioner's powers under the TAA 1953 are sufficient to defer the due and payable date for either single taxpayers or classes of taxpayers. The Commissioner therefore does not use his powers under the ITAA 1936 but uses the wider TAA 1953 powers to achieve that outcome. Accordingly, the rewrite does not reproduce the ITAA 1936 powers.

2.31 However, there is a slight doubt about the breadth of the Commissioner's powers under the TAA 1953 as they apply to 'classes' of taxpayer. The rewrite therefore changes those powers to remove any

doubt that the Commissioner can grant extensions of due dates for single taxpayers as well as for classes.

2.32 Section 255-10 in Schedule 1 to the TAA 1953 has been modified to clarify its application to classes of taxpayers. Section 255-10 allows the Commissioner to defer the time at which an amount of a tax-related liability becomes due and payable. The section does not explain how the Commissioner defers the due date for classes of taxpayers as it only discusses how such a deferral occurs in relation to a particular taxpayer.

2.33 Schedule 1 to this Bill amends section 255-10 to provide a procedure for the Commissioner to defer a tax-related liability for a class of taxpayers. The Commissioner will be required to publish on the Australian Taxation Office (ATO) website a notice advising taxpayers of his or her decision to defer the due and payable date of a tax-related liability. ***[Schedule 1, item 7, subsections 255-10(2A) to (2C)]***

2.34 Situations in which the Commissioner may exercise this power include extensions for the lodgment of business activity statements (BASs) immediately following the Christmas break and extensions for the lodgment of BASs for taxpayers affected by a natural disaster.

2.35 The rewrite notes that a notice published on the ATO website is not a legislative instrument. This statement is included to merely assist readers. The notice is not a legislation instrument within the meaning of the *Legislative Instrument Act 2003* and therefore the provision has no substantive effect other than to assist readers. ***[Schedule 1, item 7, subsection 255-10(2C)]***

Differences in Subdivision 255-D in Schedule 1 to the TAA 1953 (former section 213)

Application of the rules to all taxes

2.36 Consistent with current tax administration policy about having a single set of general collection and recovery rules for all taxes, the effect of section 213 has been expanded to cover all taxes administered by the Commissioner. ***[Schedule 1, item 9, section 255-100]***

2.37 The rewrite applies to all existing and future tax-related liabilities. Section 213 was limited to existing and future *income tax* liabilities.

2.38 However, a number of provisions in the tax laws extended the operation of section 213 to cover particular taxes (for example, franking

deficit tax). These extensions are no longer necessary and are being repealed. ***[Schedule 1, item 28]***

2.39 The overall structure of the rewrite and the conditions it contains have not been amended. However, the rewrite is a simplified expression of section 213. Section 213 is currently a single block of text. The current conditions have been separated out with the intention of making clearer each of the conditions and powers it contains.

2.40 References to 'carrying on a business' in section 213 have been changed to 'carrying on an enterprise' to reflect the widened application of the provisions to other taxes, including the goods and services tax. ***[Schedule 1, item 9, paragraph 255-100(1)(a)]***

Operation of the security deposit rules

2.41 The security deposit rules allow the Commissioner to seek security from a taxpayer for an existing or future tax liability in certain situations. Refusal to provide security sought by the Commissioner is a criminal offence. ***[Schedule 1, item 9, Subdivision 255-D]***

2.42 The Commissioner may ask for security where he or she believes there is a serious risk of a tax-related liability not being paid. Examples of such situations include:

- where a taxpayer plans to temporarily carry on an enterprise in Australia and leave without returning;
- where the taxpayer has a history of non-compliance (including by defaulting on their tax liabilities);
- where the directors of a corporate taxpayer have a history of non-compliance;
- where the Commissioner is granting a taxpayer the benefit of a payment arrangement; and
- to protect the integrity of the tax system against schemes such as 'fraudulent phoenix activity', which broadly involves winding up a company (with significant unpaid debts) but continuing the same business through a newly 'risen' company.

2.43 The Commissioner must consider all relevant matters and act reasonably in deciding whether to request security, how much security to require a taxpayer to provide, what kind of security to accept and when, and how often to ask for security. ***[Schedule 1, item 9, section 255-100]***

2.44 The Commissioner's decisions are administrative in nature and reviewable by the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977*.

2.45 The Criminal Code defences apply to the criminal offence of refusing to provide security sought by the Commissioner. Of particular relevance is the defence of 'involuntariness'. A taxpayer who is unable to provide security as requested by the Commissioner can rely on the defence provided they are incapable of providing the security as required. However, a taxpayer would be expected to comply with the request as far as they are capable and/or refraining from the activity that will generate the tax liabilities for which the Commissioner has sought security.

2.46 A security deposit requirement is enforced by criminal sanctions for non-compliance. Security need not be provided by way of a cash deposit (for example, security can be provided by granting a mortgage over property). Such requirements are neither taxes nor withholding obligations. Therefore, collection of security deposits is not subject to the general collection and recovery rules that apply to tax-related liabilities. Requests for security deposits cannot be allocated to a running balance account and the general interest charge is not applied to taxpayers who fail to provide security within timeframes required.

2.47 Security can be provided by way of bond or deposit or by any other means the Commissioner believes appropriate. Such other means include a mortgage over property (real or personal), floating charges, liens and guarantees. The Commissioner may be required to register his or her security interests where required by law. ***[Schedule 1, item 9, subsection 255-100(2)]***

2.48 The Commissioner's ability to exercise his or her rights in relation to a security arrangement (to settle a tax-related liability) is governed by the general law applying to security arrangements and will often be situation specific and dependent upon the reason for the request for security and the nature of the liabilities to which the security relates. In general, the Commissioner would be able to exercise his or her rights under the security arrangement where the taxpayer has failed to meet his or her tax debt as and when it fell due, or where the taxpayer has breached the conditions of a payment arrangement. Further, a taxpayer may request the Commissioner use a security deposit to extinguish their tax-related liability.

2.49 Whether the Commissioner must relinquish his or her rights under a particular security arrangement is also governed by the general law applying to security arrangements. In general, the Commissioner would be required to relinquish his or her rights under a security arrangement (for example, by refunding a bond) when the underlying

tax-related liability is discharged. However, a further requirement to give security could sometimes be met by the Commissioner simply retaining the rights under an existing security arrangement.

Machinery provisions

2.50 Machinery provisions have been incorporated into the security deposits rules ***[Schedule 1, item 9, section 255-105]***. Incorporating these machinery provisions provides certainty for taxpayers about their rights and obligations. The machinery provisions incorporate the following features.

- The Commissioner is required to give written notice to a taxpayer required to give security.
- The notice must explain why the Commissioner has asked for security, describe the means by which security can be provided; set out by when security must be provided and advise of the procedures available to have the Commissioner's decision reviewed.
- In order to avoid taxpayers challenging or defeating the application of the provision on purely technical grounds, a failure to comply with specific technicalities of the notice requirements does not affect the validity of a request by the Commissioner for a security deposit.
- The Commissioner may accept a security deposit by instalments.

Penalty

2.51 Section 213 has been largely untouched since its enactment in 1936 including the amount of the penalty for breaching the security requirement. Although the penalty has not been updated since that time to reflect inflation or the current capital available to taxpayers, it was recently amended to change the penalty from a fixed monetary amount to an equivalent penalty unit amount.

2.52 The penalty therefore no longer provides an appropriate deterrent for those taxpayers who do not comply with a requirement to provide security. The penalty is therefore adjusted to reflect changed circumstances since 1936.

2.53 The penalty is increased to 100 penalty units (or $11,000) for individuals. This increase is broadly consistent with changes in the *Consumer Price Index* and average weekly earnings since 1936. As a result of the operation of section 4B of the *Crime Act 1914*, the penalty

applied to bodies corporate is therefore automatically raised to five times the new standard penalty for individuals (500 penalty units, or $55,000). ***[Schedule 1, item 9, section 255-110]***

Divisions 8 and 10 of Part VI

Guide material

2.54 The rewrite contains newly written guide material for the whole Division. ***[Schedule 1, item 10, section 268-1]***

2.55 The guide material gives a simple explanation of the intent and mechanics of the Division.

Structural changes

2.56 The rewrite follows the basic structure of Division 8 of Part VI. However, some related provisions have been merged so as to avoid unnecessary duplication. A few of the provisions have also been reordered to simplify and bring together a number of related matters.

2.57 The rewrite is split into six Subdivisions, namely rules about:

- the object of the Division;
- making estimates;
- liability to pay estimates;
- reducing and revoking estimates;
- late payment of estimates; and
- a number of miscellaneous matters about estimates.

Differences

Who can make declarations and affidavits

2.58 The Commissioner can make estimates of unreported PAYG withholding liabilities and can sue based on those estimates. The rules providing the Commissioner with the power to make estimates allow taxpayers to make a statutory declaration or an affidavit if they believe the Commissioner has wrongly estimated the liability.

2.59 The law sets out who is eligible to make such a declaration or affidavit. The current list does not cover all types of taxpayer. That

deficiency is the result of the passage of time and the number of *ad hoc* changes that have been made to the law over the years. The rewrite updates the list to cover every type of taxpayer. ***[Schedule 1, item 10, section 268-90]***

Removing special payment arrangement rules

2.60 The rules providing the Commissioner with the power to make estimates also allow the Commissioner to enter into payment arrangements for collecting those estimated debts. These rules are narrower than the Commissioner's general TAA 1953 powers to enter into payment arrangements, which also apply to these debts.

2.61 The provisions in the estimates rules allowing for payment arrangements are superfluous because of the TAA 1953 powers and are seldom used. The rewrite therefore seeks to simplify and shorten the rules by not reproducing the estimates payment arrangement provisions.

2.62 The Commissioner's general power to enter into payment arrangements in the TAA 1953 will now be the only rules that apply to estimates.

Changes to reflect the introduction of the running balance account system

2.63 Division 8 was not amended to reflect the introduction of the running balance account system in 1999. That system provides a bank account style credit/debit arrangement for a taxpayer's interaction with the Commissioner.

2.64 Under the system, a number of credits and debits are offset at various stages (for example, the BAS would offset a fuel tax credit against a PAYG withholding liability and only the net balance of the BAS is payable or refundable). With regard to payments made, the Commissioner has an unfettered discretion to allocate payments as he or she sees fit. That is, a taxpayer might intend to make a payment against a particular tax liability, but the Commissioner can ignore such wishes and apply the payment (credit) against any debt he or she so chooses.

2.65 The same rules apply in respect of other credits of the taxpayer. So, even on a BAS, the Commissioner can choose how he or she will apply any offsetting (or even whether to apply offsetting within the statement — for example, the statement credits might be applied to other outstanding liabilities which would leave the statement debts still owing). A more common example will be where the taxpayer makes a part payment towards an undisclosed statement liability. The Commissioner may exercise the discretion so that the payment reduces non-PAYG liabilities thereby opening up the possibility of the Commissioner making an estimate.

2.66 The introduction of the running balance account means that the estimate rules requiring the taxpayer to supply information on 'amounts paid or applied' do not practically work because they ask taxpayers to supply information to the Commissioner that they cannot possibly know without asking the Commissioner.

2.67 It is therefore inappropriate to ask taxpayers to supply this information in a statutory declaration or affidavit. The content of a statutory declaration or affidavit should be limited to taxpayers providing information on amounts of debts (underlying liabilities). Therefore, the requirement to supply amounts paid or applied has been removed. ***[Schedule 1, item 10, section 268-90]***

Rules about service

2.68 The rules about service have been clarified taking account of a number of court decisions, particularly with regard to the application of similar rules in Division 9. Where appropriate, the outcomes of those decisions are reflected in the rewrite. See paragraphs 2.78 to 2.82. ***[Schedule 1, item 10, section 268-15]***

Divisions 9 and 10 of Part VI

Guide material

2.69 The rewrite contains newly written guide material for the whole Division. ***[Schedule 1, item 10, section 269-1]***

2.70 The guide material gives a simple explanation of the intent and mechanics of the Division.

Structural changes

2.71 The rewrite basically follows the structure of Division 9 of Part VI.

2.72 However, a few provisions have been merged or moved to different Subdivisions. For example, the existing separately specified directors' obligations have been combined into one section.

2.73 The rewrite is broken up into four Subdivisions, namely rules about:

- the object and application of penalties for directors of non-complying companies;

- obligations of directors and penalties for breaching those obligations;
- discharging liabilities for penalties; and
- miscellaneous rules about directors' penalties.

2.74 The rewrite has sought to standardise the various directors' obligations. A small number of minor differences that existed between the various obligations have been removed.

Differences

2.75 Some of the material previously included in the object and outline has been included as guide material. The wording of the objects clause has also been adjusted to reflect current drafting practice.

2.76 The Division has been rationalised and standardised. There have been a number of changes made to the Division over the years as additional obligations have been placed on directors to ensure compliance with the income tax laws. However, there have been subtle changes to the wording of new obligations which have resulted in unnecessary complexity being imposed on directors. The rewrite has sought to simplify the expression of the directors' obligations and to list each obligation in a standardised way.

2.77 The rewrite provides directors with a clear set of rights and obligations in respect to duties to ensure a company complies with its taxation obligations.

Directors' penalty notices

2.78 The rewrite has been drafted taking account of a number of court decisions on the application of Division 9. Where appropriate, the outcome of those decisions has been reflected in the rewrite.

2.79 For example, the *Meredith* case[5] concerned *when* the Commissioner has given a director penalty notice. The court decided that section 29 of the *Acts Interpretation Act 1901* did not apply, so that a notice was given when it is *posted* (rather than when it is *received*).

2.80 That result was the intended result under the current law but, to remove any possibility of a future misunderstanding, the rewrite clearly excludes the operation of section 29 of the *Acts Interpretation Act 1901*. This has not resulted in a policy change as it simply reflected the current

[5] *Deputy Commissioner of Taxation v Meredith* [2007] NSWCA 354.

state of the law as set out in the *Meredith* decision. ***[Schedule 1, item 10, section 269-25]***

2.81 However, an implication of the *Meredith* decision is that directors could have less than 14 days to comply with a notice, because of the time taken to deliver the post (especially to remote areas). To address this issue, the rewrite extends the 14-day period to 21 days, so that all directors will at least have as much time as they would under the Commissioner's administrative practice (which counts the 14-day period, not from when it posted the notice, but from when the notice would normally have been delivered). ***[Schedule 1, item 10, section 269-25]***

2.82 The general rules about the service of documents will continue to be governed by section 28 of the *Acts Interpretation Act 1901* and the *Taxation Administration Regulation 1976*. Amongst other methods, those rules permit the Commissioner to give a notice by posting it either to the place of residence or business of the taxpayer last known to the Commissioner, or to the taxpayer's 'preferred address for service'.

Addresses from Australian Securities and Investments Commission documents

2.83 When issuing director penalty notices, the ATO is entitled to also rely on certain Australian Securities and Investments Commission (ASIC) records to ascertain directors' addresses. In practice, the ATO relies on the ASIC database to obtain the addresses rather than the original forms because it is not practical for the ATO to get the addresses from the source documents.

2.84 The rewrite makes clear that the ATO does not have to use ASIC source documents but can search appropriate ASIC computing records to find directors' addresses (that is, the ATO can rely on information held by ASIC). ***[Schedule 1, item 10, section 269-50]***

2.85 The law permits the use of ASIC records because directors have a legal duty under the *Corporations Act 2001* to keep their address with ASIC current. Therefore, it is appropriate to allow the Commissioner to use that address for the purposes of service.

2.86 Information held by ASIC includes information ASIC has obtained from source documents and audit activity and transferred onto their computing systems. The information held by ASIC operates effectively as conclusive evidence of a director's address and can be relied upon by the Commissioner.

Defences for directors' penalties

2.87 The director penalty regime imposes a duty on directors to cause their company to forward to the Commissioner all amounts it withholds from payments it makes to its employees and some other creditors. The duty is enforced by a penalty equal to any unpaid amount. The penalty is automatically remitted if the company meets its obligations, or promptly goes into liquidation or voluntary administration.

2.88 The automatic remission of the penalty when the company promptly goes into liquidation or voluntary administration reflects the additional obligation on directors, in the event that they cannot cause their company to forward all amounts it withholds to the Commissioner, to take all reasonable steps necessary to promptly place the company into liquidation or administration. ***[Schedule 1, item 10, subsection 269-15(2)]***

2.89 The regime excuses directors if, because of illness or some other good reason, they did not take part in the management of the company.

2.90 Following some recent court judgments, there was a concern that the present wording of the defence provision can excuse directors on the basis of relatively minor ailments, including those suffered by others. The rewrite restores the original policy intent of the provision by qualifying the condition that the director 'did not take part' in the management of the company with the additional condition that it would have also been unreasonable to expect the director to take part. ***[Schedule 1, item 10, subsection 269-35(2)]***

2.91 The defence provisions now expressly state that section 1318 of the *Corporations Act 2001* does not apply as a possible defence to a directors' penalty. This follows a decision of the New South Wales Court of Appeal[6] which came to this conclusion after considering the contexts of both provisions and the interaction between the *Corporations Act 2001* and the ITAA 1936. ***[Schedule 1, item 10, subsection 269-35(5)]***

Application and transitional provisions

Division 1 of Part VI

Application and commencement

2.92 The rewrite of Division 1 of Part VI commences on 1 July 2010. ***[Clause 2]***

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6 *Deputy Commissioner of Taxation v Dick* [2007] NSWCA 190.

2.93 The rewrite of section 204 applies from the 2010-11 financial year and later financial years. ***[Schedule 1, item 54, section 5-5 of the Income Tax (Transitional Provisions) Act 1997 (IT(TP)A 1997)]***

Transitional rules

2.94 Despite its repeal, section 204 continues to apply to income tax and shortfall interest charge a taxpayer must pay in relation to the 2009-10 financial year and earlier financial years. ***[Schedule 1, item 56]***

2.95 Any general interest charge that is accruing under section 204 at the time the rewrite commences is transitioned into the rewritten provision. That is, any unpaid general interest charge under section 204 is taken to have been imposed under the rewritten provision. This will allow the interest to continue to accrue until it is paid. Effectively, this will mean that the rewrite will have no effect on outstanding liabilities and accruing interest. ***[Schedule 1, item 54, section 5-10 of the IT(TP)A 1997]***

2.96 If the Commissioner has required a taxpayer under section 213 to give security for a potential tax debt, or a taxpayer has given the Commissioner the required security, the security obligation is taken to have been made under the rewrite as opposed to section 213. This will allow for a smooth transition into the new arrangements. The rewrite will therefore not affect any past arrangements. The new notice requirements do not apply to existing security obligations transitioned into the new arrangements. ***[Schedule 1, item 57]***

2.97 Tax sharing agreements entered into by members of consolidated groups often contain references to sections that are rewritten or amended by this Bill. Where those agreements refer to those provisions, they are deemed to instead refer to the rewritten and amended provisions. ***[Schedule 1, items 54 and 55, sections 5-1 and 721-25 of the IT(TP)A 1997]***

Divisions 8 and 10 of Part VI

Application and commencement

2.98 The rewrite of Divisions 8 and 10 of Part VI commences on 1 July 2010. ***[Clause 2]***

2.99 From 1 July 2010, the Commissioner must make estimates under the new provisions regardless of when the underlying liability arose. That is, from 1 July 2010, the Commissioner may make estimates under the new law in relation to liabilities that arose before 1 July 2010 or that arise after 1 July 2010. The Commissioner cannot issue estimates under the current law once the new law commences. ***[Schedule 1, item 58]***

Transitional rules

2.100 The new law applies to estimates still in force made under the current law as if those estimates were made under the new law. ***[Schedule 1, items 58 to 60]***

2.101 Regulations made under the ITAA 1936 to support the current law continue in force to support the new law as if they had been made under the TAA 1953. These regulations will be formally remade under the TAA 1953 as soon as practicable after the commencement of the new law. ***[Schedule 1, item 63]***

2.102 The general interest charge continues to accrue on estimates made under the current law. ***[Schedule 1, item 61]***

2.103 Payment arrangements made before the commencement of the new law continue in effect. ***[Schedule 1, item 62]***

Divisions 9 and 10 of Part VI

Application and commencement

2.104 The rewrite of Divisions 9 and 10 of Part VI commences on 1 July 2010. ***[Clause 2]***

2.105 The rewrite applies to obligations arising both before and after 1 July 2010 subject to a number of transitional rules. For example, the Commissioner can issue a notice of a penalty that arose in relation to an unfulfilled obligation under the current law as if the new law had always applied. This approach will ensure a smooth transition between the old law and new law. ***[Schedule 1, item 64]***

Transitional rules

2.106 No penalties are imposed under the new law if a penalty was payable under the old law at anytime before 1 July 2010. This will prevent a taxpayer being subject to multiple penalties in relation to a breach of a single obligation. ***[Schedule 1, item 65]***

2.107 Penalties that remain unpaid as at 1 July 2010 under the old law are taken to have been payable under the new law for the purposes of the machinery provisions. This will ensure a smooth transition between the old and new law. ***[Schedule 1, item 65]***

2.108 Payment arrangements made before the commencement of the new law continue in effect afterwards. If a taxpayer defaults on a payment arrangement that resulted in a remission of a director penalty, the

penalty will be treated as having not been remitted and will be taken to be payable under the new law. ***[Schedule 1, item 65]***

Consequential amendments

2.109 As a result of the rewrite, a number of consequential amendments are required to ensure cross references to the old law are updated to refer to the new law. ***[Schedule 1, items 11 to 27, 29 to 32 and 34 to 52]***

Legislative history of Part VI

Division 1 of Part VI

2.110 Sections 204, 213 and 219 (Division 1) of the ITAA 1936 are original sections of that Act.

2.111 These Acts have amended those sections:

Act title	*Act No.*	*Effect of amendments*
Income Tax Assessment Act 1940	17 of 1940	The amendments provided a different due and payable date in respect of income tax that is 'further tax on undistributed company income'. This date was 30 days after a notice of assessment was served instead of the standard 60 days. This tax no longer exists.
Income Tax Assessment Act (No. 2) 1940	63 of 1940	These amendments repealed and replaced the general and specific due and payable dates that existed at that time with a single due and payable date that was the date specified by the Commissioner in the notice of assessment. However, the Commissioner could not specify a day earlier than 30 days after service of the notice.

Act title	***Act No.***	***Effect of amendments***
Income Tax and Social Services Contribution Assessment Act 1954	43 of 1954	The amendments were consequential upon the introduction of provisional tax and tax instalments. Prior to introduction of progressive payments of income tax, the Commissioner was required to specify the date on which an assessment of income tax was due and payable (subject to some limitations). With the introduction of progressive payments of income tax, many taxpayers were due a refund upon assessment. In those cases, it was no longer appropriate for the Commissioner to specify a date on which income tax was due and payable. To provide for the working of the provisions, limiting when an amended assessment can be made (which was linked to the date income tax became due and payable) the provision was amended to specify a deemed date when income tax became due and payable where a date was not specified by the Commissioner in an assessment.
Income Tax Assessment Act (No. 2) 1965	143 of 1965	These amendments were merely consequential upon the conversion to decimal currency.
Income Tax Laws Amendment Act 1981	108 of 1981	Amendments made were of a technical nature. They converted numbers expressed in words in the statute to numerals.
Taxation Laws Amendment Act 1984	123 of 1984	The amendments were consequential upon the introduction of Part VII penalties for income tax shortfalls. The amendments widened the application of section 204 to specify a date on which a penalty under Part VII became due and payable. The amendments also made a few technical amendments to section 213 to modernise the language.
Income Tax Assessment Amendment (Capital Gains) Act 1986	52 of 1986	Amendments were consequential upon the introduction of capital gains tax. The changes allow the Commissioner to consolidate assessments in relation to both agents in receipt of income and agents in receipt of gains or profits of a capital nature.

Act title	***Act No.***	***Effect of amendments***
Taxation Laws Amendment Act (No. 3) 1999	11 of 1999	The amendments were consequential upon the introduction of the general interest charge that applied to overdue tax-related liabilities. The amendments applied general interest charge to all income tax liabilities that remain unpaid after the day on which it became due and payable.
A New Tax System (Tax Administration) Act 1999	179 of 1999	These amendments introduced a fixed due and payable date for the income tax liabilities of full self-assessment taxpayers. As those taxpayers have a deemed assessment once they lodge their return, rules that require the service of a notice of assessment were inappropriate in order to set the due and payable date.
A New Tax System (Tax Administration) Act (No. 2) 2000	91 of 2000	Section 204 was amended to introduce a statutory due date for payment by taxpayers who are not full self-assessment taxpayers, for example, individuals. A statutory due date was necessary for the calculation of penalties under the new administrative penalty regime, for example, general interest charge.
Taxation Laws Amendment Act (No. 1) 2004	101 of 2004	The amendments were technical in nature and ensured that the general rules about when an original assessment of income tax is due and payable do not apply to amended assessments which are subject to other rules.
Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005	75 of 2005	These amendments were part of a package that introduced the shortfall interest charge. The amendments determined the date the shortfall interest charge becomes due and payable and the application of general interest charge to unpaid shortfall interest charge liabilities.
Tax Laws Amendment (2007 Measures No. 4) Act 2007	143 of 2007	The amendments converted the existing penalty expressed as a maximum dollar amount to a penalty expressed as a number of penalty units. The amendments merely brought the provision into line with current Commonwealth criminal penalty policy.

Divisions 8 and 10 of Part VI

2.112 Divisions 8 and 10 of Part VI of the ITAA 1936 were added by the *Insolvency (Tax Priorities) Legislation Amendment Act 1993* [Act No. 32 of 1993].

2.113 These Acts have amended Division 8 of Part VI:

Act title	***Act No.***	***Effect of amendments***
Taxation Laws Amendment Act (No. 3) 1994	138 of 1994	Consequential amendments on the introduction of the reportable payments system. The amendments widened the scope of Division 8 to allow estimates to be made of unremitted reportable payments system amounts. The reportable payments system was repealed when the PAYG withholding system was introduced.
Taxation Laws Amendment Act (No. 3) 1995	170 of 1995	Minor consequential amendments relating to the removal of the ability to acquire 'tax stamps' and adjustment to the pay as you earn (PAYE) provisions dealing with group certificates. The PAYE system was repealed when the PAYG withholding system was introduced.
Taxation Laws (Technical Amendments) Act 1998	41 of 1998	Very minor technical correction to adjust an incorrect internal reference.
Taxation Laws Amendment Act (No. 3) 1998	47 of 1998	Consequential amendments resulting from the introduction of new generic collection rules for the PAYE system, prescribed payments system and reportable payments system.
Taxation Laws Amendment Act (No. 3) 1999	11 of 1999	Amendments were made to remove the existing late payment penalty and to replace it with the standardised general interest charge.
A New Tax System (Tax Administration) Act 1999	179 of 1999	Changes were made to Division 8 as a result of the introduction of the PAYG withholding system which replaced a number of other withholding regimes to which Division 8 applied. The estimates made by the Commissioner are now also covered by the generic collection and recovery rules which were introduced by the Act.
A New Tax System (Tax Administration) Act (No. 1) 2000	44 of 2000	Minor amendments to correct incorrect internal references.

Act title	*Act No.*	*Effect of amendments*
New Business Tax System (Alienation of Personal Services Income) Act 2000	86 of 2000	The scope of Division 8 widened to cover the new alienated personal services payment withholding arrangements also introduced with this Act.
A New Tax System (Tax Administration) Act (No. 2) 2000	91 of 2000	Merely a minor technical correction.
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55 of 2001	Minor consequential changes from introduction of the *Corporations Act 2001*.
Taxation Laws Amendment Act (No. 5) 2002	119 of 2002	The amendments widened the scope of Division 8 to ensure that the Commissioner could make estimates of any amounts covered by the PAYG withholding system and not just amounts covered by the repealed system that were rolled into the PAYG withholding system. The amendments also provided rules that allowed estimates made to be amended or revoked if a statutory declaration has been made by the entity issued with the estimate.
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101 of 2006	Removal of inoperative provisions and consequential amendments.

Divisions 9 and 10 of Part VI

2.114 Divisions 9 and 10 of Part VI of the ITAA 1936 were added by the *Insolvency (Tax Priorities) Legislation Amendment Act 1993* [Act No. 32 of 1993].

2.115 These Acts have amended Division 9 of Part VI:

Act title	*Act No.*	*Effect of amendments*
Taxation Laws Amendment Act (No. 3) 1994	138 of 1994	Consequential amendments on the introduction of reportable payments systems. The amendments widened the scope of Division 9 to allow directors' penalties to be made in relation to unremitted reportable payments system amounts. The reportable payments system was repealed when the PAYG withholding system was introduced.

Act title	***Act No.***	***Effect of amendments***
Taxation Laws Amendment Act (No. 3) 1998	47 of 1998	Consequential amendments resulting from the introduction of new generic collection rules for the PAYE system, prescribed payments system and reportable payments system.
A New Tax System (Tax Administration) Act 1999	179 of 1999	Changes were made to Division 9 as a result of the introduction of the PAYG withholding system which replaced a number of other withholding regimes to which Division 9 applied. The penalties made by the Commissioner are now also covered by the generic collection and recovery rules which were introduced by the Act.
A New Tax System (Tax Administration) Act (No. 1) 2000	44 of 2000	Minor amendments to correct incorrect internal references.
New Business Tax System (Alienation of Personal Services Income) Act 2000	86 of 2000	The scope of Division 9 widened to cover the new alienated personal services payment withholding arrangements also introduced with this Act.
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55 of 2001	Minor consequential changes from introduction of the *Corporations Act 2001*.
Taxation Laws Amendment Act (No. 6) 2001	169 of 2001	A number of consequential changes resulting from refinements made to the personal services income rules.
Taxation Laws Amendment Act (No. 2) 2002	57 of 2002	Minor technical correction (renumbering of subsections).
Taxation Laws Amendment Act (No. 5) 2002	119 of 2002	The amendments widened the scope of Division 9 to ensure that the Commissioner could impose penalties for any amounts covered by the PAYG withholding system and not just amounts covered by the repealed system that was rolled into the PAYG withholding system.
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101 of 2006	Removal of inoperative provisions and consequential amendments.
Corporations Legislation Amendment (Simpler Regulatory System) Act 2007	101 of 2007	Minor consequential amendment.

Chapter 3
Debt forgiveness rewrite — Schedule 2C

Outline of chapter

3.1 Schedule 2 to this Bill rewrites Schedule 2C to the *Income Tax Assessment Act 1936* (ITAA 1936) into the *Income Tax Assessment Act 1997* (ITAA 1997).

Context of amendments

3.2 Schedule 2C to the ITAA 1936 provides a taxation treatment for the gain made when a taxpayer's debt is forgiven. The gain is not treated as assessable income. Instead, Schedule 2C works out an amount (the 'net forgiven amount'), which reduces the taxpayer's tax losses, net capital losses, capital allowances and the cost bases of capital gains tax (CGT) assets. These are things that would otherwise reduce the taxpayer's future income tax liability.

Detailed explanation of new law

3.3 The rewrite repeals Schedule 2C and reproduces its effect in the ITAA 1997. ***[Schedule 2, items 1 and 2, Schedule 2C to the ITAA 1936, Division 245 of the ITAA 1997]***

How the rewrite is different

Guide material

3.4 The rewrite contains newly written guide material for the whole Division and for most of its Subdivisions. ***[Schedule 2, item 2, sections 245-1, 245-5, 245-30, 245-48, 245-80, 245-95 and 245-200]***

3.5 The existing diagrams that map Schedule 2C and each of its Subdivisions have not been reproduced because they add little to the reader's understanding of the provisions.

Structural changes

3.6 The rewrite follows the structure of Schedule 2C: it has the same Subdivisions and they appear in the same order.

3.7 The main exception is that Subdivision G is not rewritten. Subdivision G provides special rules for forgiveness of a debt between companies in the same group. As a consequence of enacting provisions for consolidated groups in 2002 (see Part 3-90 of the ITAA 1997), Subdivision G is no longer necessary and is omitted from the rewrite.

3.8 A few provisions have been moved to different Subdivisions or to other places in the ITAA 1997. For example, the definition of 'moneylending debt' that was in Subdivision H has been moved into the Dictionary to the ITAA 1997. These differences are discussed in more detail later.

Differences in Subdivision A — Which debts are covered

3.9 Subdivision A of Schedule 2C explains which debts are subject to the debt forgiveness rules. The rewrite achieves the same outcome but with a slightly different approach.

3.10 Schedule 2C applies to 'commercial debts', a defined term based on another defined term, 'debt'. The ITAA 1997 avoids using terms inconsistently. Since it already uses 'debt' in its ordinary sense, it could not adopt the Schedule 2C definition of 'debt'. Therefore, the rewrite incorporates the content of that definition directly into operative application rules. It was convenient to do the same with the definition of 'commercial debt'. ***[Schedule 2, item 2, sections 245-10, 245-15 and 245-20]***

3.11 One aspect of the definition of 'debt' in Schedule 2C that is not reproduced is the requirement (in subsection 245-15(1) of Schedule 2C) that there be an obligation to pay an amount to another person. The ordinary meaning of 'debt' requires an obligation to do something, so that need not be expressly stated. To the extent that a debt might involve an obligation to do something other than pay an amount, the context (for example, references to 'paying' the debt, rather than to satisfying it) makes it clear that the rewrite is concerned with monetary debts. Therefore, the rewrite does not reproduce the reference to an amount.

3.12 A second aspect of the definition that is not reproduced is the requirement that the obligation be *enforceable*. There might be some unenforceable obligations that could be described as debts (for example, debts of honour). However, it is unlikely they could satisfy the further requirement that interest on the debt could be deducted. Therefore, the rewrite also does not include that requirement.

3.13 Another aspect of the definition of 'debt' in Schedule 2C that is not included in the rewrite is the rule that treats accrued but unpaid interest on the debt as being part of the principal debt rather than a separate debt (section 245-20 of Schedule 2C). This rule was originally included to reduce compliance costs but in practice has not achieved that result. Further, conflating the time at which the interest accrued and the time at which the original debt was incurred can actually distort the value of the forgiven debt (because, in valuing the debt, the provisions assume the debtor's capacity to pay is the same when it is forgiven as when it was incurred). For those reasons, the rule is not replicated. As a result, each amount of interest that accrues is a separate debt and, if it is forgiven, is subject to the debt forgiveness rules separately from any forgiveness of the principal amount.

3.14 Section 245-26 in Schedule 2C provides for the Schedule to apply to trustees when a trust estate's debt is forgiven. The ITAA 1997 already provides for a trust to be treated as an entity (see section 960-100), so this provision did not need to be rewritten.

3.15 The provisions that stop the rewrite applying to forgivenesses that were in train when Schedule 2C was enacted in 1996 have been moved into the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) on the basis that they have only a limited future role. ***[Schedule 2, item 9, subsection 245-10(1) of the IT(TP)A 1997)]***

Differences in Subdivision B — What is debt forgiveness

3.16 Subdivision B of Schedule 2C explains what 'forgiveness' of a debt is. The rewrite does the same thing in much the same way, although it presents the material in separate shorter sections rather than in a single longer section. ***[Schedule 2, item 2, sections 245-35 to 245-37]***

3.17 Some exceptions included in the definitions of 'debt' and 'commercial debt' in Subdivision A of Schedule 2C have been moved into the section that lists the forgivenesses to which the provisions do not apply. This was necessary because the rewrite moves the content of those definitions directly into the operative provisions. Including them in the list of forgivenesses not covered is also more consistent with their true nature as exceptions. ***[Schedule 2, item 2, paragraphs 245-40(a), (b) and (f)]***

Differences in Subdivision C — What is the value of the forgiven debt

3.18 Subdivision C of Schedule 2C works out the gross benefit to the debtor of the debt being forgiven. In general, this is the value of the debt forgiven *less* what the debtor pays for the forgiveness. The rewrite reproduces the Subdivision in substantially similar terms.

3.19 One exception is the appearance of the provision about how much the value of the debt forgiven is reduced when the debtor provides consideration for the forgiveness. In Schedule 2C, section 245-65 is unusually difficult to understand. The rewrite simplifies the drafting of the provision by presenting the rules in a table. The result it achieves is unchanged. ***[Schedule 2, item 2, section 245-65]***

3.20 The rewrite omits section 245-70. For the purposes of working out the gross forgiven amount of a debt, section 245-70 treats money or property the debtor applies for the benefit of the creditor, or at the creditor's direction, as if it had been paid or given *to the creditor*. The section is redundant because the calculation of a gross forgiven amount does not depend on the debtor giving money or property to the creditor; it merely asks if the money or property was paid or given *in respect of the forgiveness*. Therefore, although the rewrite omits the section, it does not change the Subdivision's operation.

3.21 Another exception is that the rewrite splits section 245-75 of Schedule 2C into two sections, reflecting the fact that it deals with two separate ideas. ***[Schedule 2, item 2, sections 245-75 and 245-77]***

3.22 A minor change in outcome occurs because the rewrite adopts the ITAA 1997 definition of 'end user' of property (see section 250-50), while Schedule 2C defines the expression to have the meaning given by section 51AD of the ITAA 1936 (see subsection 245-60(3) of Schedule 2C). The two definitions are substantially the same (they both describe an entity who can use the property or control its use). However, unlike the definition in section 51AD, the ITAA 1997 definition explicitly disregards temporary control of the property for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service. The rewrite adopts the ITAA 1997 definition because the ITAA 1997 'end user' approach is consistent with the policy behind the section 51AD definition and the minor difference is likely to be relevant so infrequently that adopting the ITAA 1997 definition is not a significant change. ***[Schedule 2, item 2, paragraph 245-60(1)(c)]***

Differences in Subdivision D — Adjustments to the debt's value

3.23 Subdivision D of Schedule 2C reduces the value of a forgiven debt to produce a 'net forgiven amount'. That net forgiven amount is then applied by Subdivision E to reduce the taxpayer's tax losses, CGT cost bases, and so on. Subdivision D reduces the debt's value in two ways. The value of a forgiven debt is reduced first by any part of the value that is otherwise taken into account in working out the taxpayer's taxable income (see section 245-85 of Schedule 2C). That stops double counting. Second, the taxpayer is allowed to transfer some of the tax effect of the

forgiveness to the creditor if both are companies with a common ownership (see section 245-90 of Schedule 2C). The rewrite reproduces those provisions. ***[Schedule 2, item 2, sections 245-85 and 245-90]***

3.24 If the companies in that second case do wish to transfer some of the tax effect, Subdivision D requires them to agree in writing and to lodge the agreement with the Commissioner of Taxation (Commissioner) before the first of them lodges its tax return for the year. However, the Commissioner can determine a later day for lodging the agreement. The rewrite clarifies that such a determination must be in writing ***[Schedule 2, item 2, subparagraph 245-90(4)(b)(ii)]***. It also makes explicit the existing position that it is *not* a legislative instrument (because it does not meet the conditions for being such an instrument — see section 5 of the *Legislative Instruments Act 2003*) ***[Schedule 2, item 2, subsection 245-90(5)]***.

Differences in Subdivision E — Tax consequences of a forgiven debt

3.25 Subdivision E of Schedule 2C contains the provisions that apply the value of a forgiven debt to reduce the taxpayer's tax losses, net capital losses, capital allowances and the cost bases of CGT assets. The rewrite reproduces those provisions. ***[Schedule 2, item 2, Subdivision 245-E]***

3.26 The rewrite removes an ambiguity in the way section 245-155 of Schedule 2C works. That section reduces expenditure for the purposes of working out future deductions that are based on the expenditure and limits the total of those deductions to the amount of the expenditure after that reduction. The rewrite clarifies that the reduction cannot exceed the unused amount of the expenditure. ***[Schedule 2, item 2, subsection 245-155(2)]***

3.27 This Subdivision of Schedule 2C contains some repetition. For example, subsection 245-105(5) says much the same thing as section 245-115. The rewrite makes sure material only appears once. ***[Schedule 2, item 2, sections 245-115, 245-130 and 245-175 and subsection 245-145(1)]***

3.28 Subsection 245-105(2) of Schedule 2C is presented as an operative rule but is in fact only for guidance. In the rewrite it becomes a non-operative note. ***[Schedule 2, item 2, note to subsection 245-105(1)]***

3.29 The rules in Subdivision E of Schedule 2C that allocate the forgiven amount of a debt use a drafting approach that locates much of the operative material in defined terms. For example, section 245-130 allocates the amount to reducing 'deductible net capital losses', which is defined in section 245-125. Where those definitions do not already appear in the ITAA 1997, the rewrite instead moves their content directly into the allocation provisions. That prevents the unnecessary use of definitions. ***[Schedule 2, item 2, sections 245-115, 245-130, 245-145, 245-175, 245-180, 245-185 and 245-190]***

3.30 Some of the material in the definition of 'excluded expenditure' in section 245-140 of Schedule 2C relates to things occurring before the Schedule commenced (see subsections 245-140(3) and (4)). Because of its limited future operation, the rewrite moves that material into the IT(TP)A 1997. ***[Schedule 2, item 9, subsection 245-10(2) of the IT(TP)A 1997]***

3.31 Section 245-140 of Schedule 2C lists the capital allowance deductions that are subject to being reduced when a debt is forgiven. The rewrite reproduces that list but corrects a defect. Item 22 of the list refers to expenditure on Australian films under section 124ZAF of the ITAA 1936. That section covered expenditure under contracts entered into before 13 January 1983 and had been inoperative for many years before it was repealed in 2006. The equivalent provision for expenditure made under contracts entered into after that date is section 124ZAFA but that section is not listed in section 245-140. The rewrite replaces the reference to section 124ZAF with one to section 124ZAFA. ***[Schedule 2, item 2, item 22 in the table in subsection 245-145(1)]***

Differences in Subdivision F — Partnerships

3.32 Subdivision F of Schedule 2C provides for any part of the net forgiven amount that a partnership cannot use to be divided amongst the partners. It would then reduce the partners' personal tax losses, net capital losses, and so on.

3.33 The rewrite reproduces that result. However, section 245-205 of Schedule 2C is not reproduced. That section provides that the Subdivision's rules about partnerships do not apply to corporate limited partnerships. Since the corporate limited partnership rules in Division 5A of Part III of the ITAA 1936 already provide for that result, section 245-205 is redundant. To reinforce that message, notes are added to the definitions of 'partnership' and 'company' alerting readers that the income tax law treats a corporate limited partnership as a company and not as a partnership. ***[Schedule 2, items 42 to 45, definitions of 'company' and 'partnership' in subsection 995-1(1)]***

3.34 Section 245-210 of Schedule 2C is also not reproduced. That section provides for Subdivisions A to E to apply to partnerships. In the ITAA 1997, section 960-100 ensures that a partnership is an entity so that provisions that apply generally to entities also apply to partnerships. Coupled with the partnership provisions in Division 5 of Part III of the ITAA 1936, that makes section 245-210 unnecessary.

Differences in Subdivision G — Company groups

3.35 Subdivision G of Schedule 2C provides for the value of a company's forgiven debt to reduce the tax losses or net capital losses of other companies in the same group.

3.36 The rewrite does not reproduce Subdivision G. Since Part 3-90 of the ITAA 1997 was enacted in 2002, a consolidated corporate group has been treated as a single entity for tax purposes, so the separate entities within the group do not have their own income tax affairs.

3.37 It is still possible for a group of wholly-owned companies to decide not to consolidate. The policy for the treatment of grouping provisions for a group that chooses not to consolidate was set out by the Review of Business Taxation in its 1999 paper *A Platform for Consultation*:[7]

> The availability of a consolidation taxation regime removes the need to retain the current grouping provisions. In particular, the current tax treatment is unsound whereby, on the one hand, each group entity is treated as a separate taxpayer and, on the other, grouping provisions operate to break down that separation in a partial fashion.

3.38 This position led to the recommendation of the Review to repeal grouping provisions.[8] That recommendation was implemented when Part 3-90 was enacted. The explanatory memorandum to the New Business Tax System (Consolidation) Bill (No. 1) 2002 restated the policy expressed by the Review of Business Taxation:[9]

> The intention of the measures contained in this Bill is to allow wholly-owned groups to elect to be taxed in one of two ways — as a single consolidated taxpaying entity or on an individual entity basis for each member of the group. The existing hybrid and less than comprehensive arrangements as represented by the grouping provisions will be replaced by the consolidation regime.

3.39 It follows that removing Subdivision G is broadly consistent with the policy behind the consolidation provisions. The general

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7 Review of Business Taxation, *A Platform for Consultation*, Vol II, February 1999, p. 557.

8 Review of Business Taxation, *A Tax System Redesigned*, July 1999, Recommendation 15.1(iii), p. 517.

9 Explanatory memorandum to the New Business Tax System (Consolidation) Bill (No. 1) 2002, paragraph 13.2.

anti-avoidance rule in Part IVA of the ITAA 1936 is available to counter any schemes that removing the Subdivision might otherwise enable for unconsolidated company groups. Because Subdivision G only applies to companies, Part IVA is already relied on to counter such arrangements entered into by other entities, such as trusts.

Differences in Subdivision H — Definitions, record-keeping and timing

3.40 Subdivision H of Schedule 2C contains a rule about the timing of debts that result from drawing on a line of credit, some rules about keeping records of commercial debts and definitions of some terms used in the Schedule.

3.41 The rule about the time of incurring debts that arise from drawings on a line of credit (section 245-260 in Schedule 2C) is omitted. The current rule provides that the whole debt is taken to have been incurred when the first drawing was made after the most recent time that no amount was owed on the line of credit.

3.42 That rule was originally included to reduce compliance costs but in practice has not achieved that result. Further, merging the times of the drawings, can actually distort the value of the forgiven debt in ways that disadvantage taxpayers. For those reasons, the rule is not replicated.

3.43 Some of the definitions are not rewritten because:

- they are already defined in the ITAA 1997 (for example, the definition of 'associate' is the same in the ITAA 1997 as in Schedule 2C);
- the definition simply repeats the term's ordinary meaning (for example, 'pay' is defined to include 'repay' but, as repay simply means to pay back, the ordinary meaning of 'pay' already covers it); or
- the rewrite builds the content of the definition directly into an operative provision (for example, the definition of 'debt' as including a part of a debt appears in the rewrite as a rule that applies the provisions to parts of debts in the same way as they apply to a whole debt).

3.44 Other definitions are moved into the Dictionary to the ITAA 1997. ***[Schedule 2, items 3 to 8, definitions of 'forgiveness', 'forgiveness income year', 'moneylending debt', 'net forgiven amount' and 'total net forgiven amount' in subsection 995-1(1)]***

3.45 That leaves the Subdivision only with the rules about record-keeping. Accordingly, the Subdivision's heading is changed from 'General' to 'Record-keeping'. ***[Schedule 2, item 2, heading to Subdivision 245-G and section 245-265]***

3.46 The rewrite reproduces the current record-keeping rules except that it makes failing to keep the required records an offence of strict liability. That means that the offence does not require any fault element (see section 6.1 of the Criminal Code). Under the current law, establishing an offence would require proof of an intention not to keep the records (see subsection 5.6(1) of the Criminal Code). The change recognises the difficulty of proving an intention not to keep records that might not have been kept because of carelessness or oversight. It is also consistent with other record-keeping provisions in tax laws (for example, subsection 262A(5A) of the ITAA 1936 and subsection 382-5(10) of Schedule 1 to the TAA 1953). ***[Schedule 2, item 2, subsection 245-265(9)]***

3.47 The rewrite also removes the defence of reasonable excuse provided for in Schedule 2C's record-keeping rule (see subsection 245-265(8A)). That defence is open-ended, leaving it unclear what needs to be established to make it out, or to rebut it when raised. It also brings the provision into line with other record-keeping provisions in tax laws, which do not provide any such defence. The Criminal Code does provide defences that are relevant to this provision, such as involuntariness (see section 4.2), mental impairment (see section 7.3) and mistake of fact (see section 9.2).

Application and transitional provisions

Application

3.48 The rewrite applies to debts forgiven in the 2010-11 income year and later income years. For most taxpayers, the 2010-11 income year starts on 1 July 2010. For taxpayers with a substituted accounting period, their 2010-11 income year will start on a different day. ***[Schedule 2, item 9, subsection 245-5(1) of the IT(TP)A 1997]***

Transitional

3.49 Debts forgiven before the rewrite applies (that is, debts forgiven in the 2009-10 income year or in an earlier income year) are still subject to the operation of Schedule 2C, even though it is repealed ***[Schedule 2, item 9, subsection 245-5(2) of the IT(TP)A 1997]***. That does not affect the operation of section 8 of the *Acts Interpretation Act 1901* (which provides for the continuation of rights, obligations and penalties created under

repealed provisions, and of legal proceedings relating to those rights, obligations and penalties) ***[Schedule 2, item 9, subsection 245-5(3) of the IT(TP)A 1997]***.

3.50 A number of rules in Schedule 2C provide treatments for things that occurred, or were in train, before 27 June 1996, when Schedule 2C commenced (see subsections 245-10(2) and 245-140(3) and (4)). Those provisions are of little ongoing relevance now but the rewrite preserves any residual operation they may have by moving them into the IT(TP)A 1997. ***[Schedule 2, item 9, section 245-10 of the IT(TP)A 1997]***

Consequential amendments

3.51 References to Schedule 2C are replaced by references to the equivalent provisions in the rewrite. Some of those consequential amendments also change wording, or add asterisks, to reflect the transfer of Schedule 2C defined terms into the ITAA 1997 Dictionary. ***[Schedule 2, items 10 to 22 and 24 to 41, paragraphs 82KZMA(6)(b) and 82KZMF(2)(b), subsections 73A(1A), 82KZM(2) and 109F(3) and sections 124KAA and 124ZAFAA to the ITAA 1936 and paragraphs 165-115ZA(2)(b), 204-30(2)(c) and 243-75(2)(a) and (b), subsections 25-25(1) (note), 25-35(5) (item 3 in the table), 36-15(7), 36-17(9) (note), 40-90(1), 40-645(3) (note 1), 43-50(7), 104-25(5) (note 2), 243-75(1), 707-140(3), and 707-415(2) (item 1 in the table) and (4), and sections 12-5, 112-97 (item 19 in the table), and 230-470 of the ITAA 1997]***

3.52 Note 1 to subsection 40-645(3) is amended to remove the words 'of this Act', which exist to provide a contrast between references to provisions of the ITAA 1997 and references to provisions of Schedule 2C. The contrast is no longer necessary because all references in the note are now to provisions of the ITAA 1997. ***[Schedule 2, item 23, subsection 40-645(3) (note 1)]***

Legislative history of Schedule 2C

3.53 Schedule 2C to the ITAA 1936 was added by the *Taxation Laws Amendment Act (No. 2) 1996* [Act No. 76 of 1996].

3.54 These Acts have amended Schedule 2C:

Act title	***Act No.***	***Effect of amendments***
Taxation Laws Amendment Act (No. 2) 1997	95 of 1997	Minor amendments consequential on amendments to CGT provisions.

Act title	*Act No.*	*Effect of amendments*
Tax Law Improvement Act 1997	121 of 1997	Minor amendments consequential on the Tax Law Improvement Project (TLIP) rewrites of other provisions.
Taxation Laws Amendment Act (No. 1) 1997	122 of 1997	Added subsection 245-25(4A) to prevent Schedule 2C applying to Commonwealth tax debts. Amended subsection 245-55(4), and added subsection 245-65(2A), to stop market value rules applying in relation to foreign debts. Added subsection 245-75(3) to divide effect of forgiveness among joint debtors instead of applying it fully to each of them. Table of deductible expenditures in section 245-140 expanded to include expenditure on research and development (R&D) activities and horticultural plants. Technical amendment to subsection 245-190(3) to make it possible to work out balancing adjustments for notional disposal of assets. Technical amendment to subsection 245-225(3) to ensure group company provisions apply in all intended cases. Technical amendment to section 245-230 to correct an interaction anomaly with company loss rules.
Taxation Laws Amendment Act (No. 1) 1998	16 of 1998	Minor amendment consequential on TLIP rewrite of other provisions.
Tax Law Improvement Act (No. 1) 1998	46 of 1998	Minor amendments consequential on TLIP rewrites of other provisions.
Taxation Laws Amendment (Software Depreciation) Act 1999	39 of 1999	Minor amendment to section 245-140 consequential on introduction of capital allowance for software.
Taxation Laws Amendment Act (No. 6) 1999	54 of 1999	Minor amendment to section 245-140 consequential on introduction of capital allowance for spectrum licences.
Taxation Laws Amendment Act (No. 2) 1999	93 of 1999	Technical correction to section 245-105 to allow total net forgiven amounts to reduce net capital losses of all earlier income years, not just the preceding year.
Taxation Laws Amendment Act (No. 4) 1999	94 of 1999	Minor amendment to section 245-250 consequential on rewrite of value shifting provisions.

Act title	***Act No.***	***Effect of amendments***
New Business Tax System (Integrity and Other Measures) Act 1999	169 of 1999	Amendments to section 245-85 consequential on new regime for preventing value shifting via debt forgiveness and to section 245-140 because of changes to prepayments rules.
A New Tax System (Tax Administration) Act (No. 2) 2000	91 of 2000	Minor amendment consequential on introduction of uniform administrative penalties regime.
New Business Tax System (Capital Allowances — Transitional and Consequential) Act 2001	77 of 2001	Minor amendments to sections 245-140 and 245-155 consequential on introduction of uniform capital allowance regime.
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001	146 of 2001	Amendments to section 245-265 consequential on reform of the criminal code.
New Business Tax System (Debt and Equity) Act 2001	163 of 2001	Amendment to section 245-25 replacing extension of Schedule 2C to debt dividends with an extension to non-equity shares, consequential on introduction of debt and equity regime.
Taxation Laws Amendment (Research and Development) Act 2001	170 of 2001	Minor amendment to section 245-140 consequential on changes to the R&D tax concession.
Taxation Laws Amendment Act (No. 2) 2002	57 of 2002	Technical amendment to section 245-170 correcting a numbering error.
New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002	90 of 2002	Amendments to sections 245-85 and 245-250 consequential on introduction of the general value shifting regime.
Taxation Laws Amendment Act (No. 5) 2003	142 of 2003	Minor amendment to section 245-110 consequential on new rules for tax losses of corporate tax entities.
Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005	161 of 2005	Minor amendments to section 245-265 consequential on Review of Self-Assessment amendments.
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101 of 2006	Removal of inoperative provisions and consequential amendments.
Tax Laws Amendment (2006 Measures No. 4) Act 2006	168 of 2006	Minor amendments to sections 245-55 and 245-65 consequential on CGT changes for foreign residents.
Tax Laws Amendment (2007 Measures No. 4) Act 2007	143 of 2007	Minor amendment to section 245-110 consequential on introduction of foreign tax offset regime.

Act title	***Act No.***	***Effect of amendments***
Tax Laws Amendment (2007 Measures No. 5) Act 2007	164 of 2007	Minor amendment to section 245-140 consequential on changes to the R&D concession.

Chapter 4
Luxury car leases rewrite — Schedule 2E

Outline of chapter

4.1 Schedule 3 to this Bill rewrites Schedule 2E to the *Income Tax Assessment Act 1936* (ITAA 1936) into the *Income Tax Assessment Act 1997* (ITAA 1997).

Context of amendments

4.2 Schedule 2E to the ITAA 1936 ensures that a lease of a luxury car cannot be used to provide greater tax benefits than those that would be available if the lessee had bought the car. Schedule 2E does that by putting the lessee and the lessor in the same positions they would have been in had the lessee bought the car from the lessor.

Detailed explanation of new law

4.3 The rewrite repeals Schedule 2E and reproduces its effect in the ITAA 1997. ***[Schedule 3, items 1 and 2, Schedule 2E to the ITAA 1936, Division 242 of the ITAA 1997]***

How the rewrite is different

Guide material

4.4 The rewrite contains newly written guide material for the Division and for each of its Subdivisions. ***[Schedule 3, item 2, sections 242-1, 242-5, 242-30, 242-45, 242-60 and 242-75]***

Structural changes

4.5 The rewrite follows the structure of Schedule 2E: it has the same Subdivisions and they appear in the same order.

4.6 The main exceptions are that Subdivisions 42A-E (what happens when a lease expires) and F (what happens when a lease is terminated) have been merged and Subdivision 42A-G (definitions) has been deleted.

4.7 A few provisions have been moved to different Subdivisions or to other places in the ITAA 1997. For example, many of the definitions in Subdivision 42A-G have been moved into the Dictionary to the ITAA 1997. These differences are discussed in more detail later.

Differences in Subdivision A — Notional sale and loan

4.8 Subdivision 42A-A of Schedule 2E provides the rules that treat a lease of a luxury car as a notional sale of the car by the lessor to the lessee and a notional loan by the lessor of the purchase price. It also details what the consideration is for the notional sale.

4.9 Subsection 42A-20(1) defines the consideration for the notional sale of the car by the lessor (and the cost of the car to the lessee) as the amount the parties stated in an arm's-length agreement, or the amount that would reasonably have been expected to have been paid had the agreement been an arm's-length agreement for the sale of the car. The rewrite simplifies those rules by making the consideration the car's market value. Because there is little or no difference between the arm's-length sale price used by the existing provision and a market value sale price, there should be little or no difference in the substantive effect of the provisions. ***[Schedule 3, item 2, subsection 242-20(1)]***

4.10 An exception to the rule about consideration applies to subleases between associates. In that case, Schedule 2E makes the consideration the sum of the car's depreciated value and any balancing charge arising from the notional sale. The rewrite changes 'depreciated value' to 'adjustable value', the equivalent expression used in the ITAA 1997. ***[Schedule 3, item 2, subsection 242-20(2)]***

4.11 The references to the 'cost' of the car (in Subdivision 42A-A and elsewhere) are changed to 'the first element of the cost' to reflect a change in terminology made with the introduction of the uniform capital allowance provisions in 2001. This change ensures that lessees can deduct the decline in the value of any improvements they make to the car. ***[Schedule 3, item 2, paragraph 242-25(1)(b) and subsections 242-20(1) and (2) and 242-90(3) and (4)]***

4.12 The rewrite also changes the reference to the balancing charge provision so that it refers to the *current* balancing charge provision in the ITAA 1997 ***[Schedule 3, item 2, paragraph 242-20(2)(d)]***. The existing reference to just the ITAA 1936 provision appears to have been an oversight made when the ITAA 1936 depreciation provisions were rewritten in 1997. The reference was also not adjusted when the 1997 rewrite was itself rewritten in 2001 as part of the uniform capital allowance regime. The rewrite adds references to the ITAA 1936 provision and to the original 1997 rewrite provision. Those references are included in the *Income Tax (Transitional*

Provisions) Act 1997 (IT(TP)A 1997) because of their limited future relevance ***[Schedule 3, item 74, section 242-20 of the IT(TP)A 1997]***.

4.13 Some elements of the definitions of 'associate', 'lease', 'luxury car' and 'motor car' in Schedule 2E have been moved out of those definitions into operative provisions. That allows 'lease' to take its ordinary meaning without definition, simplifies the definition of 'luxury car', and allows the existing ITAA 1997 definitions of 'associate' and 'car' to apply without amendment. ***[Schedule 3, item 2, paragraph 242-15(2)(b) and subsections 242-10(1) and (3) and 242-20(2)]***

4.14 The provisions that stop the rewrite applying to leases granted before 7:30 pm on 20 August 1996 are moved into the IT(TP)A 1997 on the basis that they have only a limited future role. ***[Schedule 3, item 74, subsection 242-10(2) of the IT(TP)A 1997]***

Differences in Subdivision B — Lessor's assessable income

4.15 Subdivision B of Schedule 2E explains the taxation treatment for the lessor of both the actual lease payments and the notional payments arising from the notional sale and loan.

4.16 To avoid having to define the expressions, 'accrual amount', 'implicit interest rate' and 'outstanding notional loan principal', the rewrite incorporates those concepts directly into the operative provision that works out how much is included in the lessor's assessable income. There are some slight differences in wording, which are discussed later. ***[Schedule 3, item 2, subsection 242-35(2)]***

4.17 Subsections 42A-35(2) and (3) provide balancing charges for the notional sale of the car to the lessee and for any actual sale the lessor makes after reacquiring it from the lessee when the lease ends. Since a car is a depreciating asset (see section 40-30 of the ITAA 1997), the same work is done by the balancing adjustment rules in Subdivision 40-D (which apply when a taxpayer stops holding a depreciating asset). This is the case even when there is only a notional sale from the lessor to the lessee because subsection 42A-15(1) treats the lessor as having sold the car for *all* income tax purposes, not just for the purposes of Schedule 2E.

4.18 Accordingly, since 1999 (when the depreciation provisions were amended to assess profits made on the disposal of assets for which no depreciation had been deducted), subsections 42A-35(2) and (3) have been redundant. For that reason, subsections 42A-35(2) and (3) are not rewritten.

4.19 That change could make a difference in the case where the lessor has some private use of the car either before the notional sale to the lessee or before any later real sale. Subsections 42A-35(2) and (3) make no

allowance for any private use; they assess the full profit. The balancing adjustment rules in Subdivision 40-D of the ITAA 1997 only assess the non-private portion of the profit. In the unusual case where a luxury car is leased out by someone who has used it privately, this change produces a small benefit for the taxpayer.

4.20 Subsection 42A-40(2) explains that, although the actual lease payments are neither assessable income nor exempt income of the lessor, they are taken into account in working out the notional payments that are included in the lessor's assessable income. Since the calculation of the notional payments is done by a different provision, the subsection is inoperative. Reflecting that, the rewrite converts it into an inoperative note. ***[Schedule 3, item 2, subsection 242-40(1) (note)]***

4.21 As Schedule 2E stops the actual lease payments from being assessable income (because it assesses the interest on the notional loan instead), the lease payments become exempt income. Subsection 42A-40(3) is necessary to ensure that the amounts the lessor incurs to earn those lease payments are still deductible (because deductions are not usually available for earning exempt income). Since subsection 42A-40(3) was enacted, the income tax law has recognised a new category of exempt income, called 'non-assessable, non-exempt income', which covers the lease payments. The rewrite updates the subsection so that it also ensures that deductions are not denied because the lessor incurred the amounts in earning non-assessable, non-exempt income. ***[Schedule 3, item 2, subsection 242-40(2)]***

Differences in Subdivision C — Lessee's deductions

4.22 Subdivision 42A-C of Schedule 2E explains what deductions are available to the lessee of a luxury car.

4.23 Section 42A-55 provides that the lessee cannot deduct the lease payments but points out that they are taken into account in working out the amounts that are deductible in relation to the notional loan. That second part of the section is non-operative (because section 42A-140 calculates the deductible amount), so the rewrite converts it into a note. ***[Schedule 3, item 2, section 242-55 (note)]***

Differences in Subdivision D — Adjustments if the lessor's income differs from the amount of interest

4.24 Subdivision 42A-D of Schedule 2E provides for balancing adjustments for the lessor and lessee if the amount of the notional payments differs from the actual payments made under the lease.

4.25 Paragraph 42A-65(1)(a) applies the balancing adjustment rules to the lessor when a lease term expires and paragraph 42A-65(1)(b) applies them when a lease is terminated beforehand. The rewrite merges those two cases into a single paragraph that applies the balancing adjustment rules whenever the lease ends. ***[Schedule 3, item 2, paragraph 242-65(1)(a)]***

4.26 The adjustments for the lessor are worked out by comparing the total of the amounts payable to the lessor under the lease with the notional payments under the notional loan. If the former exceeds the latter, the difference is the lessor's assessable income; if the reverse is the case, the lessor can deduct the difference. The current provisions make that hard to follow by expressing the two cases in different terms. The rewrite expresses them in the same terms, so the comparison and the results are easier to follow. ***[Schedule 3, item 2, subsections 242-65(2) and (3)]***

Differences in Subdivisions E and F — What happens when the lease ends

4.27 Subdivisions 42A-E and 42A-F of Schedule 2E respectively explain what happens if a luxury car lease expires and if it is terminated before the end of the term. In broad terms, those Subdivisions do the same thing in both cases, so the rewrite merges them into a single Subdivision that explains what happens whenever the lease ends. ***[Schedule 3, item 2, Subdivision 242-E]***

4.28 Schedule 2E frequently mentions the 'end of the lease'. By this, Schedule 2E generally means the end of the whole transaction (that is, after all extensions or renewals of the lease have ended). There are some cases, however, where it means the end of the *current* lease period (whether the original lease period or a period for which the lease was extended or renewed). The rewrite makes clearer which is meant in those cases. ***[Schedule 3, item 2, paragraph 242-90(5)(a) and subsections 242-80(1), (4), (7) and (8)]***

4.29 Paragraph 42A-80(3)(a) refers to an arrangement 'of a kind mentioned in paragraph (b) of the definition of ***lease***'. Those arrangements are subleases. Because the ordinary meaning of 'lease' is already used extensively in the ITAA 1997, the rewrite is not able to replicate the current definition. Therefore, the rewrite replaces the reference to paragraph (b) of the definition with the term 'sublease'. ***[Schedule 3, item 2, subsection 242-80(3)]***

4.30 Subsection 42A-80(4) provides that the notional loan is taken to have been repaid when a lease is extended or renewed. It also provides that Subdivision 42A-D (about balancing adjustments) applies at that time. As Subdivision 42A-D is self-applying, the second part of the

subsection is purely advisory. Therefore, the rewrite converts it into an inoperative note. ***[Schedule 3, item 2, subsection 242-80(4) (note)]***

4.31 Subsection 42A-80(5) refers to an amount worked out under subsection 42A-80(7). That subsection makes the cost or value of the car for purposes of the extension or renewal, the value stated in an arm's-length lease, or the amount that would reasonably have been expected to have been paid had the agreement been an arm's-length agreement for the sale of the car. The rewrite simplifies those rules by making the consideration the car's market value. Because there is no difference between the arm's-length sale price used by the existing provision and a market value sale price, there should be no difference in the substantive effect of the provisions. ***[Schedule 3, item 2, subsection 242-80(5)]***

4.32 Subsections 42A-90(1) and 42A-105(1) specify the conditions for sections 42A-90 and 42A-105 to apply. The rewrite combines those conditions into a single provision. ***[Schedule 3, item 2, subsection 242-90(1)]***

4.33 Subsections 42A-90(3) and (6) and 42A-105(3) and (5) provide formulas for working out the consideration for the sale of the car by the lessee back to the lessor that is taken to have occurred when the lease comes to an end. The formulas are complex and take into account variables that might not always be known, so paragraphs 42A-90(3)(b) and 42A-105(3)(b) allow market value to be used if it is not practicable to apply the full formula. The rewrite simplifies the provisions by using the market value as the consideration in all cases. ***[Schedule 3, item 2, subsection 242-90(3)]***

4.34 There should be little difference from that change because the existing formulas aim to achieve the same broad outcome by adopting particular figures specified in the lease agreement. Division 240 applies a similar 'sale and loan' approach to hire purchase arrangements and always treats the consideration as being the market value, so, for that reason too, it is reasonable to conclude that the results are similar.

4.35 Subsections 42A-90(4) and 42A-105(4) determine the cost of the car for capital allowance purposes for an associate of the lessee who later acquires the car. In describing the capital allowance purposes, the subsection refers to the current capital allowance provision and to the provisions under the two previous capital allowance regimes. The rewrite moves the references to the two previous regimes into the IT(TP)A 1997 because of their limited future relevance. ***[Schedule 3, items 2 and 74, subsection 242-90(4) and section 242-20 of the IT(TP)A 1997]***

Differences in Subdivision G — Interpretation

4.36 Subdivision 42A-G defines many of the terms used in Schedule 2E. Consistent with the approach used in the ITAA 1997 to not define terms for only a part of the Act, the Subdivision is not rewritten. The definitions in the Subdivision are instead dealt with in other ways.

Incorporating the content directly into operative provisions

4.37 For some definitions, the content is incorporated directly into the operative provisions ***[Schedule 3, item 2, paragraphs 242-10(1)(a), (b) and (d), 242-15(2)(b), 242-20(2)(a) and (b), subsections 242-10(3), 242-35(2) and (3), 242-80(3) and 242-90(4)]***. For example, the definition of 'associate' starts with the same meaning as in the ITAA 1997 but is expanded to include employees and employers, so the rewrite replaces all references to associates with references to associates, employees and employers.

Relying on existing definitions in the ITAA 1997

4.38 For some definitions, existing definitions in the ITAA 1997 cover the same ground. These include the definitions of 'hire purchase agreement', 'motor car or car', 'right to use' and 'short-term hire agreement'.

4.39 The existing ITAA 1997 definition of 'hire purchase agreement' is slightly different from that in Schedule 2E. Schedule 2E requires that amounts paid under an agreement for hiring property are taken into account in working out how much the lessee has to pay to exercise the option to acquire the property. The existing ITAA 1997 definition instead requires that the hire charge plus the amount payable to exercise the option total more than the price of the property. This difference is largely one of form, not substance, so the ITAA 1997 definition can be used without affecting the result.

4.40 The Schedule 2E definition of 'motor car or car' is based on the ITAA 1997 definition of 'car' but excludes certain cars modified to carry the disabled. The rewrite incorporates that exclusion directly into the operative provisions. ***[Schedule 3, item 2, paragraph 242-10(1)(d)]***

4.41 The Schedule 2E definition of 'short-term hire agreement' relies, in part, on the rule in section 42A-125 about treating consecutive short-term hiring agreements as leases. The existing definition of 'short-term hire agreement' in the ITAA 1997 already broadly captures that idea, so section 42A-125 is omitted. A small difference is that section 42A-125 applies to consecutive periods totalling over six months, while the ITAA 1997 definition refers to agreements that add up to 'longer than a short-term basis'. The explanatory memorandum that added that definition referred to that period as being 'longer than a few

months' (see paragraph 5.26 of the explanatory memorandum to the New Business Tax System (Simplified Tax System) Bill 2000), so the two ideas are substantially the same.

Relying on the ordinary meaning of the term

4.42 Some definitions (for example, the definition of 'lessee' of a leased car) simply restate the term's ordinary meaning and are omitted for that reason. The definitions omitted for this reason are: 'extension', 'finance charge', most of the definition of 'lease', 'leased car', 'lease term', 'lessee', 'lessor', and part of the definition of 'implicit interest rate'.

4.43 The definition of 'lease' describes the ordinary meaning of lease but then adds that hire-purchase agreements and short-term hire agreements are not leases. The rewrite omits the definition of 'lease', thus relying on its ordinary meaning, but incorporates the restriction on hire-purchase agreements and short-term hire agreements directly into the operative rules. ***[Schedule 3, item 2, paragraph 242-10(1)(a)]***

4.44 'Implicit interest rate' is defined to mean the rate of compound interest for the accrual period at which the present values of actual payments equal the notional loan principal. In the rewrite, this content is incorporated (in slightly different words) in the formula for working out the lessor's accrual amounts ***[Schedule 3, item 2, subsection 242-35(2)]***. The current definition then provides rules that require a reasonable estimate to be made when the present values of the actual payments are not known at the start of the lease. The rewrite omits those rules on the basis that this is the course that would be taken anyway when applying the definition in such circumstances.

Not using the term in a defined way

4.45 For some defined terms, the provisions are rewritten to avoid having to use the terms in a defined way at all (for example, the rewrite continues the current use of 'notional loan' as a label for the loan the lessor is taken to have made to the lessee but no longer makes it into a definition). The definitions omitted for this reason are: 'accrual period', 'notional loan' and 'notional loan principal'.

Adding definitions to the ITAA 1997 Dictionary

4.46 The remaining definitions are moved into the ITAA 1997 Dictionary to apply across the Act. The definitions moved in this way are: 'lease payment', part of the definition of 'lease payment period', part of the definition of 'luxury car', and 'termination amount'. In some cases, the labels are altered. ***[Schedule 3, items 51 to 53 and 59, 'luxury car lease***

payment', 'luxury car lease payment period', 'luxury car' and 'termination amount' in subsection 995-1(1)]

4.47 The core definition of 'lease payment period' is moved into the Dictionary (as the term 'luxury car lease payment period') but the special rules that ensure payment periods can be no longer than six months are incorporated directly into the operative rules. ***[Schedule 3, items 2 and 52, subsection 242-35(3) and 'luxury car lease payment period' in subsection 995-1(1)]***

4.48 The core definition of 'luxury car' (which looks to whether the capital allowance provisions would reduce depreciation deductions) is moved into the Dictionary. It is written by reference to the time at which it is necessary to know whether the car is a luxury car, while the Schedule 2E definition asks whether the car was a luxury car when the current owner first leased it. That allows the definition to be used for purposes other than the leasing provisions. The timing rule in the Schedule 2E definition is instead located in the operative rules. ***[Schedule 3, items 2 and 53, paragraph 242-10(1)(b) and 'luxury car' in subsection 995-1(1)]***

4.49 The Schedule 2E definition of 'luxury car' asks whether the capital allowance deductions for the car would be reduced by Division 40 but also asks whether it would have been reduced by the predecessors of Division 40. The rewrite moves the references to those earlier provisions into the IT(TP)A 1997 because of their limited future relevance. ***[Schedule 3, item 60, subsection 242-10(3) of the IT(TP)A 1997]***

4.50 The Schedule 2E definition of 'termination amount' is substantially the same as the existing definition in the ITAA 1997 (in section 240-78). The difference is that the ITAA 1997 definition expressly covers insurance payments on loss or destruction of property while the Schedule 2E definition uses the 'value of the car' as the default amount in all non-acquisition cases. Given the way insurance payments for loss or destruction are usually calculated, there is little or no difference in result. Therefore, the rewrite retains the ITAA 1997 definition but relocates it from section 240-78 to the Dictionary. ***[Schedule 3, items 30 and 59, section 240-78 and 'termination amount' in subsection 995-1(1)]***

Application and transitional provisions

Application

4.51 The rewrite applies to assessments for the 2010-11 income year and later income years. For most taxpayers, the 2010-11 income year starts on 1 July 2010. For taxpayers with a substituted accounting period,

their 2010-11 income year will start on a different day. ***[Schedule 3, item 60, subsection 242-10(1) of the IT(TP)A 1997]***

Consequential amendments

4.52 The amendments update references in the law to Schedule 2E provisions that are rewritten into the ITAA 1997. ***[Schedule 3, items 3 to 5, 7, 11 to 13, 15, 16, 19, 20, 38, 46 and 56, subparagraphs 118-12(2)(a)(vii), 118-12(2)(b)(viii), 118-12(2)(b)(ix) and 974-130(4)(a)(iii), paragraph 240-115(2)(b), subsections 25-35(4A), 28-12(1) (note 2), 28-45(1) (note 1), 28-90(6) (note 1), 40-185(1) (note), 40-305(1) (note) and 'special accrual amount' in subsection 995-1(1), and 'leases of luxury cars' in section 10-5, 'notional sale and loan' in section 11-55 and 'leases of luxury cars' in section 12-5]***

4.53 References to a 'finance charge' in Schedule 2E and in Division 240 of the ITAA 1997 (which uses a similar 'sale and loan' approach for hire purchase) are replaced with references to 'interest'. This adopts a more intuitive label; it does not change the substance of the provisions. Other provisions that refer to the Schedule 2E or Division 240 finance charge have been changed accordingly. ***[Schedule 3, items 8, 24 to 26, 35, 36 and 48, heading to Subdivision 240-G, paragraph 240-30(a), subsections 25-35(4B), 240-25(4), 240-25(6) and 'finance charge' in subsection 995-1(1), and section 240-100]***

4.54 Asterisks are used in the ITAA 1997 to help readers by marking defined terms. The amendments add some asterisks, and remove others, mostly because undefined terms are converted into defined terms and vice versa. ***[Schedule 3, items 6, 9, 17, 18, 23, 25, 27, 29, 31 to 34, 37, 39 to 42, 45, 47, 49 and 50, paragraphs 40-755(4)(b), 43-175(2)(a) and 240-90(4)(a), subsections 25-35(4A) and (4B), 240-25(6), 240-60(1) (steps 1 and 4 in the method statement), 240-80(4), 240-80(5), 240-105(4) (formula), 243-15(5), 243-20(4), 243-25(2), 243-30(2), 855-55(4) and 'depreciating asset', 'in-house software' and 'IRU' in subsection 995-1(1), and section 240-10]***

4.55 A number of amendments are made as a consequence of assimilating terms used in Schedule 2E into the definitional structure used in the ITAA 1997. ***[Schedule 3, items 10, 14, 30, 39 to 42, 54, 55 and 59, subsections 25-35(4C), 243-15(5), 243-20(4), 243-25(2), 243-30(2) and 'notional loan', 'notional loan principal' and 'termination amount' in subsection 995-1(1), and sections 40-40 (item 1 in the table) and 240-78]***

4.56 The expression 'subject to tax' is defined in the ITAA 1997 to mean subject to tax in certain foreign countries, but is used frequently within its (undefined) ordinary meaning. This is inconsistent with the ITAA 1997 approach to definitions, which requires that a defined expression not also be used in an undefined way. The amendments change the label for the definition to 'subject to foreign tax' and update the references in each case where it is intended to be used in the defined way. ***[Schedule 3, items 43 to 45, 57 and 58, heading to section 830-75, subsections 855-55(4) and 'subject to tax' and 'subject to foreign tax' in subsection 995-1(1), and section 83-75]***

Legislative history of Schedule 2E

4.57 Schedule 2E to the ITAA 1936 was added by the *Taxation Laws Amendment Act (No. 2) 1997* [Act No. 95 of 1997].

4.58 These Acts have amended Schedule 2E:

Act title	***Act No.***	***Effect of amendments***
Taxation Laws Amendment Act (No. 4) 1997	174 of 1997	Minor amendments consequential on the rewrite of the depreciation provisions into the ITAA 1997. Amended section 42A-40 to ensure that the lease payments were not treated as the lessor's exempt income. Amended section 42A-130 to ensure that the finance charge was worked out disregarding certain refunded lessee payments.
New Business Tax System (Capital Allowances — Transitional and Consequential) Act 2001	77 of 2001	Minor amendments consequential on the introduction of the uniform capital allowances provisions.
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101 of 2006	Minor amendments consequential on the repeal of other provisions.

Chapter 5
Farm management deposits rewrite — Schedule 2G

Outline of chapter

5.1 Schedule 4 to this Bill rewrites Schedule 2G to the *Income Tax Assessment Act 1936* (ITAA 1936) to the *Income Tax Assessment Act 1997* (ITAA 1997).

Context of amendments

5.2 The farm management deposit (FMD) scheme in Schedule 2G to the ITAA 1936 allows eligible primary producers to set aside pre-tax income in profitable years for subsequent withdrawal in low-income years. FMDs allow primary producers to claim a deduction when they make an FMD. When an FMD is withdrawn, the amount of the withdrawal is included in their assessable income in the tax year of withdrawal. This reduces the risk to eligible primary producers of income variability owing to factors such as drought.

5.3 The rewrite reproduces the effect of Schedule 2G to the ITAA 1936. ***[Schedule 4, item 2, Division 393]***

Detailed explanation of new law

5.4 The rewrite repeals Schedule 2G and reproduces its effect in the ITAA 1997. ***[Schedule 4, items 1 and 2, Division 393]***

How the rewrite is different

Guide material

5.5 The rewrite contains newly written guide material for the Division. ***[Schedule 4, Part 1, item 2, section 393-1]***

Structural changes

5.6 The rewrite of Schedule 2G has the same basic structure as Schedule 2G with some changes.

5.7 Subdivisions 393-A (tax consequences of FMDs) and 393-B (FMDs and related terms) in Schedule 2G have the same general effect in the rewrite.

5.8 Subdivision 393-C in Schedule 2G has not been rewritten. Subdivision 392-C (calculation of averaging adjustment for primary producers) of the ITAA 1997 already contains provisions that determine taxable primary production income and taxable non-primary production income. These provisions are the same as those in Schedule 2G except for one difference which is explained below.

5.9 Subdivision 393-D in Schedule 2G has been rewritten as Subdivision 393-C (special rules relating to financial claims scheme for account-holders with insolvent authorised deposit-taking institutions (ADIs)). The reporting obligations of FMD providers that were located in section 264AA of the ITAA 1936 have been relocated to the *Taxation Administration Act 1953* (TAA 1953). This centralises administration matters in the TAA 1953.

5.10 Some provisions have not been rewritten because they are no longer required or have been moved to more appropriate locations; for example, to the Dictionary in subsection 995-1(1) of the ITAA 1997 or the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997).

Differences in Subdivision 393-A — Tax consequences of farm management deposits

5.11 Subdivision 393-A in Schedule 2G explains the tax consequences of FMDs. The rewritten Subdivision 393-A achieves the same outcome with some minor changes.

5.12 The deduction for making FMDs is only available to individuals who carry on a primary production business in Australia. This key requirement is not located centrally in Schedule 2G; however, it has been made explicit in the rewrite in the rules that determine the entitlement to the deduction and specify the requirements for FMD agreements.
[Schedule 4, Part 1, item 2, paragraph 393-5(1)(b) and item 1 in the table in section 393-35]

5.13 The calculation of the amount to be included in assessable income on repayment of an FMD has been simplified in the rewrite. The rewritten provision contains a single formula for the calculation regardless

of whether the FMD is repaid in part or in full. A comprehensive example has also been included to illustrate the calculation. ***[Schedule 4, Part 1, item 2, subsection 393-10(1) and example]***

5.14 References to income equalisation deposits have been removed from the definition of 'unrecouped FMD deduction' in the rewrite because they are no longer relevant in the majority of cases (the *Loan (Income Equalization Deposits) Act 1976* was repealed on 22 February 2005) ***[Schedule 4, Part 1, item 2, subsection 393-10(2)]***. However, a provision has been inserted in the IT(TP)A 1997 to maintain the application where needed ***[Schedule 4, Part 3, item 50, section 393-10 of the IT(TP)A 1997]***.

5.15 Schedule 2G changes the ordinary meaning of some words, such as 'make' and 'repay', by defining or extending the terms for the purposes of the Schedule. Many of these terms have their ordinary meaning in the ITAA 1997 and cannot be used inconsistently. Therefore, the rewrite achieves the same effect by using operative application rules.

5.16 Schedule 2G modifies the meaning of 'repay' to include a transfer, reinvestment or other dealing on behalf of the depositor of the FMD. This is relevant for determining the assessable amount on repayment of an FMD. The rewrite provides an operative application rule to this effect. ***[Schedule 4, Part 1, item 2, subsection 393-10(3)]***

5.17 Schedule 2G also modifies the meaning of 'make' and 'repay' to exclude immediate reinvestment as an FMD, extension of the term of an FMD and transfer to another provider as an FMD. This modification affects the deduction and assessment provisions. This is achieved in the rewrite by an operative provision that modifies the deduction, assessment and 12-month rules. ***[Schedule 4, Part 1, item 2, section 393-15]***

Differences in Subdivision 393-B — Meaning of a farm management deposit and an owner

5.18 Subdivision 393-B in Schedule 2G explains what an FMD is and defines other related terms.

5.19 The definition of FMD in Schedule 2G takes its meaning from six operative provisions. The meaning of 'farm management deposit' has been clarified in the rewrite by restructuring the various elements of the definition ***[Schedule 4, Part 1, item 2, section 393-20]***. The rewrite is explicit in identifying what are the requirements of an FMD agreement and the effects of contravening those requirements ***[Schedule 4, Part 1, item 2, sections 393-30 and 393-35]***.

5.20 Not all of the definitions in Schedule 2G have been rewritten because some of the terms are already defined in the ITAA 1997; for

example, 'entity' and 'tax file number'. Other terms have not been rewritten because they have their ordinary meaning; such as, 'depositor', 'make' and 'repay'.

5.21 'Primary producer' is defined in Schedule 2G but has not been rewritten. Instead, references to 'primary producer' have been replaced with the defined term 'primary production business' and the concept of 'carrying on a primary production business' which are both used in the ITAA 1997.

5.22 The definition of 'owner' has been rewritten and replaced with 'owner of a *farm management deposit'. ***[Schedule 4, Part 1, item 2, subsection 393-25(1)]***

5.23 Schedule 2G refers to FMDs being made by a depositor with a 'financial institution'. Because 'financial institution' is defined more widely in the ITAA 1997 than in Schedule 2G, a new term — 'FMD provider' — has been inserted in the rewrite in its place. ***[Schedule 4, Part 1, item 2, subsection 393-20(3)]***

5.24 Schedule 2G provides for the treatment of deposits that are withdrawn within the first 12 months after the deposit was made (the 12-month rule). The concept of 'withdrawing' a deposit is only used in relation to the 12-month rule; elsewhere Schedule 2G refers to 'repayments'. For consistency throughout the provisions, the rewrite replaces the references to 'withdrawal' with 'repayment'. ***[Schedule 4, Part 1, item 2, section 393-40]***

5.25 The 12-month rule in Schedule 2G is determined by reference to the 'applicable depositing day'. This term has not been used in the rewrite. Instead the rewrite deals with the concept by an operative application rule and removes outdated references to income equalisation deposits ***[Schedule 4, Part 1, item 2, subsection 393-40(6)]***. However, a provision has been inserted in the IT(TP)A 1997 to maintain the application to income equalisation deposits where necessary ***[Schedule 4, Part 3, item 50, section 393-40 of the IT(TP)A 1997]***.

5.26 Schedule 2G contains inoperative provisions relating to certain deposits and transfers made prior to 1 July 2003. These provisions are not rewritten.

Taxable primary production income and taxable non-primary production income

5.27 Subdivision 393-C of Schedule 2G has not been rewritten because similar rules appear in Subdivision 392-C of the ITAA 1997 for calculating the averaging adjustment of long-term averaging of primary producers' tax liability. However, the provisions are not identical. The

difference arises in the definition of 'primary production deductions', which is relevant for determining 'taxable primary production income'. One of the eligibility criteria for the FMD scheme is that taxable non-primary production income must not be more than $65,000.

5.28 In Schedule 2G, apportionable deductions are excluded from primary production deductions and are allocated entirely to non-primary production deductions. In Division 392 of the ITAA 1997, apportionable deductions are spread across both primary production deductions and non-primary production deductions. The Schedule 2G approach is generally more concessional than Division 392. By aligning the definitions, a greater proportion of basic taxable income will be subject to averaging. The impact on the income averaging calculations will depend on the individual circumstances of the taxpayer. Therefore, to maintain the treatment provided by Schedule 2G, subsection 392-80(3) of the ITAA 1997 is rewritten to exclude apportionable deductions from the definition of primary production deductions. ***[Schedule 4, Part 2, item 46, subsection 392-80(3)]***

Special rules relating to the financial claims scheme for account-holders with insolvent ADIs

5.29 Subdivision 393-D of Schedule 2G — the financial claims scheme rules — has been rewritten as Subdivision 393-C. ***[Schedule 4, Part 1, item 2, Subdivision 393-C]***

Reporting obligations

5.30 The reporting obligations contained in section 264AA of the ITAA 1936 have been relocated and the terminology has been updated. ***[Schedule 4, Part 1, item 7, Division 398, Schedule 1 to the TAA 1953]***

Application and transitional provisions

Application

5.31 The rewrite applies to assessments for the 2010-11 income year and later years. ***[Schedule 4, Part 3, item 50, section 393-1 of the IT(TP)A 1997]***

Transitional

5.32 The effect of the deductions provided under Schedule 2G continues under the rewrite. References in the rewrite to deductions for FMDs include references in Schedule 2G to deductions for FMDs that relate to deposits made before the 2010-11 income year. This is important

particularly for the application of 'unrecouped FMD deduction' which is used to calculate the amount of assessable income on repayment of a deposit. ***[Schedule 4, Part 3, item 50, section 393-5 of the IT(TP)A 1997]***

Consequential amendments

5.33 References to Schedule 2G are replaced by references to the equivalent provisions in the rewrite. Some of those consequential amendments also change wording, or add asterisks, to reflect the transfer of Schedule 2G defined terms into the ITAA 1997 Dictionary. ***[Schedule 4, Part 2, items 8 to 49, subsection 3(2) (paragraph (aa) of the definition of 'exempt livestock proceeds') of the Farm Household Support Act 1992, subsections 6(1), 95(1), 101A(4), 170(1) (item 9 in the table), 177B(1) and (2), 202DM(1) and 202DM(3) of the ITAA 1936, sections 97A, 202DK, 202DL, 202DL (note), 264AA of the ITAA 1936, paragraphs 202DL(a) and (b), 202DM(1)(a) and 202DM(3)(a) of the ITAA 1936, paragraph 268-35(5)(j) in Schedule 2F of the ITAA 1936, paragraph 268-35(5)(j) in Schedule 2F (note) of the ITAA 1936, sections 10-5 (item in the table headed 'farm management deposits') and 12-5 (item in the table headed 'primary production') of the ITAA 1997, paragraphs 26-55(2)(c), 165-55(5)(j) of the ITAA 1997, subparagraph 61-570(1)(a)(iii) of the ITAA 1997, paragraph 165-55(5)(j) (note) of the ITAA 1997, subsection 230-460(15) and 392-80(3) of the ITAA 1997, subsection 253-5(1) (paragraph (b) of the note) of the ITAA 1997, subsections 8J(18) and (19) of the TAA 1953, subsections 45-120(4) and (5) in Schedule 1 to the TAA 1953]***

Legislative history of Schedule 2G

5.34 Schedule 2G to the ITAA 1936 was added by the *Taxation Laws Amendment (Farm Management Deposits) Act 1998* [Act No. 85 of 1998].

5.35 These Acts have amended Schedule 2G:

Act title	***Act No.***	***Effect of amendments***
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001	146 of 2001	Minor amendments consequential on the reform of the *Criminal Code Act 1995*.

Act title	***Act No.***	***Effect of amendments***
Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Act 2002	138 of 2002	Originally, FMDs had to be made as 12-month fixed term deposits rather than as at-call accounts. Amendments removed this requirement and section 393-37 was inserted to ensure that only FMDs held for at least 12 months qualify for the tax consequences. The requirements for FMDs in section 393-30 were amended to remove the restriction on repaying deposits within the first 12 months. Section 393-37 was substituted to allow early access to FMDs for individuals in exceptional circumstances-declared areas and to allow partial withdrawals within the first 12 months not to deny FMD status for the balance, as long as the balance is not reduced to less than $1,000.
Taxation Laws Amendment Act (No. 8) 2003	107 of 2003	Definition of 'financial institution' in section 393-25 was substituted to make it easier for primary producers to determine whether the entity they are dealing with is eligible to accept FMDs. Section 393-52 inserted to treat certain entities (non-complying entities) as financial institutions, in relation to certain pre-1 July 2003 deposits and transfers (eligible deposits). Definition of 'entity' inserted in section 393-25.
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101 of 2006	Removal of inoperative provisions and consequential amendments.
Superannuation Legislation Amendment (Simplification) Act 2007	15 of 2007	Consequential amendments resulting from simplified superannuation reforms.

Act title	***Act No.***	***Effect of amendments***
Tax Laws Amendment (2006 Measures No. 7) Act 2007	55 of 2007	Non-primary production income threshold in section 393-10 increased from $50,000 to $65,000. The total amount that a primary producer can hold in an FMD increased from $300,000 to $400,000 (section 393-35).
Tax Laws Amendment (2008 Measures No. 2) Act 2008	38 of 2008	Paragraphs 393-37(3)(b) and (c) substituted to allow withdrawals from FMDs within 12 months without losing the tax benefit if, at the time of the withdrawal, the primary producer is eligible to be issued an exceptional circumstances certificate and had made the FMD before the exceptional circumstances declaration applied to them.
Tax Laws Amendment (2009 Measures No. 2) Act 2009	42 of 2009	Subdivision 393-D inserted to provide special rules for financial claims scheme account-holders with insolvent ADIs. The rules ensure that there are no adverse taxation consequences for holders of FMDs arising from a payment made by the Australian Prudential Regulation Authority, or by a liquidator, under the financial claims scheme. This is achieved by amending the law to treat payments made under the financial claims scheme in the same way as if they had been made by the failed institution to which the scheme applies.

Chapter 6
General insurance rewrite — Schedule 2J

Outline of chapter

6.1 Schedule 5 to this Bill rewrites the provisions in Schedule 2J to the *Income Tax Assessment Act 1936* (ITAA 1936) to the *Income Tax Assessment Act 1997* (ITAA 1997).

Context of amendments

6.2 Schedule 2J to the ITAA 1936 specifies the taxation treatment of general insurance companies in respect of:

- liabilities in respect of the provision for, and payment of, outstanding claims — that is, outstanding claims liabilities; and
- premium income.

6.3 This Schedule also specifies the taxation treatment of the outstanding claims liabilities of companies that self-insure in respect of workers' compensation liabilities.

6.4 The effect of this Schedule is to effectively spread the income and deductions of a general insurance company, and the deductions of a company that self-insures in respect of workers' compensation liabilities, over the period to which the income and deductions relate.

Detailed explanation of new law

6.5 The rewrite repeals Schedule 2J and reproduces its effect in the ITAA 1997. ***[Schedule 5, items 1 and 2, Division 321]***

How the rewrite is different

6.6 The provisions in the rewrite follow the same order as the provisions in Schedule 2J. The main changes are that:

- the provisions have been slightly restructured;
  - Division 321 of Schedule 2J (which applies to general insurance companies) is in Subdivisions 321-A and 321-B of the rewrite; and
  - Division 323 of Schedule 2J (which applies to companies that self-insure in respect of workers' compensation liabilities) is in Subdivision 321-C of the rewrite;
- the basis for working out the value of the outstanding claims liabilities of a general insurance company has been modified to clarify that the value of the liabilities is not reduced by recoveries under certain reinsurance policies;
- some provisions have been replaced by method statements; and
- guide material, application provisions and transitional provisions have been omitted.

6.7 The purpose of these changes is to clarify and simplify the presentation of the ideas already expressed in Schedule 2J.

Differences in Subdivisions 321-A and 321-B — General insurance companies

6.8 Subdivisions 321-A and 321-B specify the taxation treatment of general insurance companies in respect of:

- the provision for, and payment of, outstanding claims liabilities; and
- premium income.

Subdivision 321-A — Provision for, and payment of, claims by general insurance companies

Provision for outstanding claims liabilities

6.9 Subdivision 321-A specifies the taxation treatment of general insurance companies in respect of the provision for outstanding claims liabilities.

6.10 The provisions compare the value of a general insurance company's outstanding claims liabilities at the end of an income year with the value of those liabilities at the end of the previous income year.

- If the value of the outstanding claims liabilities at the end of an income year is *less* than the value at the end of the previous income year, the difference is included in assessable income.
- If the value of the outstanding claims liabilities at the end of an income year *exceeds* the value at the end of the previous income year, the excess is allowed as a deduction.

[Schedule 5, item 2, sections 321-10 and 321-15]

6.11 The rewrite uses a method statement to specify the basis for working out the value of a general insurance company's outstanding claims liabilities under general insurance policies at the end of an income year. ***[Schedule 5, item 2, section 321-20]***

6.12 The first step in the method statement is to add up the amounts that, at the end of an income year, the general insurance company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

- outstanding claims liabilities under those general insurance policies; and
- direct settlement costs associated with those outstanding claims liabilities.

[Schedule 5, item 2, step 1 in the method statement in section 321-20]

6.13 The second step in the method statement is to reduce the step 1 amount by the amount that the company expects to recover:

- under a contract of reinsurance; or
- in any other way.

[Schedule 5, item 2, step 2 in the method statement in section 321-20]

6.14 However, the step 1 amount is not reduced by the amount that the company expects to recover under a contract of reinsurance to which subsection 148(1) of the ITAA 1936 applies. ***[Schedule 5, item 2, step 2 in the method statement in section 321-20]***

6.15 The amount worked out under step 1 in the method statement reflects the present value of the estimated outstanding claims liabilities of a general insurance company. Step 2 reduces this amount by the amount that the company expects to recover because, for example, the company has reinsured some or all of the liabilities. Therefore, the step 2 amount is the present value of the estimated recoveries.

6.16 The rewrite clarifies that the value of a general insurance company's outstanding claims liabilities is not reduced by the amount that the company expects to recover under a contract of reinsurance to which subsection 148(1) of the ITAA 1936 applies.

6.17 Subsection 148(1) applies, so far as is relevant, to a reinsurance policy taken out by a general insurance company carrying on business in Australia with a non-resident company. If the subsection applies, broadly:

- the Australian general insurance company cannot deduct premiums paid in respect of the policy and is not assessable on any reinsurance recoveries; and

- the non-resident reinsurance company is not assessed in Australia on the premiums received or receivable.

6.18 If subsection 148(1) applies to a contract of reinsurance which is taken out by a general insurance company, the premiums and recoveries under the reinsurance contract are effectively ignored in working out the reinsured company's taxable income.

6.19 Under step 2 in the method statement, the value of the reinsured company's outstanding claims liabilities is not reduced by the amount the company expects to recover under the reinsurance contract. If step 2 was reduced by this amount, the reinsured company's taxable income would effectively be increased by the amount of the expected reinsurance recoveries. This would be inconsistent with the objective of subsection 148(1).

Payment of outstanding claims liabilities

6.20 Subdivision 321-A also specifies the taxation treatment of general insurance companies in respect of the payment of outstanding claims liabilities.

6.21 A general insurance company can deduct the amounts paid during an income year in respect of claims under general insurance policies. ***[Schedule 5, item 2, section 321-25]***

6.22 In this context, a claim is taken to be paid by a general insurance company in an income year even though the funds have not actually been disbursed at the end of the income year provided that:

- the amount of the claim is settled in that income year;
- the relevant liability is no longer reflected in the company's outstanding claims liabilities at the end of that income year; and
- the claim is payable by the company at the end of that income year.

Subdivision 321-B — Premium income of general insurance companies

6.23 Subdivision 321-B specifies the taxation treatment of general insurance companies in respect of premium income.

6.24 Gross premium income received or receivable in respect of general insurance policies in an income year is included in a general insurance company's assessable income. ***[Schedule 5, item 2, section 321-45]***

6.25 The value of a general insurance company's unearned premium reserve under general insurance policies issued in the course of carrying on insurance business which relate to risks covered by those policies in respect of later income years must be worked out at the end of each income year.

6.26 The value of the unearned premium reserve at the end of an income year is then compared with the value of that reserve at the end of the previous income year:

- If the value of the unearned premium reserve at the end of an income year is *less* than the value at the end of the previous income year, the difference is included in assessable income.
- If the value of the unearned premium reserve at the end of an income year *exceeds* the value at the end of the previous income year, the excess is allowed as a deduction.

[Schedule 5, item 2, sections 321-50 and 321-55]

6.27 The rewrite uses a method statement to specify the basis for working out the value of a general insurance company's unearned premium reserve at the end of an income year. ***[Schedule 5, item 2, section 321-60]***

6.28 The first step in the method statement is to add up gross premiums received or receivable in the income year, or in an earlier income year, in relation to general insurance policies issued by the company in the course of carrying on insurance business. ***[Schedule 5, item 2, step 1 in the method statement in section 321-60]***

6.29 The premiums received or receivable by a general insurance company in an income year include premiums paid in respect of a general insurance policy where:

- the policy was originally issued in the course of another company's insurance business; and
- the policy has been transferred to the general insurance company under a portfolio transfer.

6.30 The second step in the method statement is to reduce the step 1 amount by so much of the costs incurred by the company in connection with the issue of those policies that relate to the gross premiums, including:

- commission and brokerage fees;
- administration costs of processing insurance proposals and renewals;
- administration costs of collecting premiums;
- selling and underwriting costs;
- fire brigade charges;
- stamp duty; and
- other charges, levies and contributions imposed by governments or governmental authorities that directly relate to general insurance policies.

[Schedule 5, item 2, step 2 in the method statement in section 321-60]

6.31 The third step in the method statement is to reduce the step 2 amount by the amount of any relevant reinsurance premiums paid or payable by the company in the income year or in an earlier income year.

The relevant reinsurance premiums are premiums paid or payable for the reinsurance of risks covered by the general insurance policies issued by the company except:

- reinsurance premiums that the company cannot deduct because of subsection 148(1) of the ITAA 1936; and

- reinsurance premiums that were paid or payable in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agreed to pay, in respect of the loss incurred by the company that is covered by the relevant policy, some or all of the excess over an agreed amount.

[Schedule 5, item 2, step 3 in the method statement in section 321-60]

6.32 The fourth step in the method statement is to increase the step 3 amount by the amount of any reinsurance commissions received or receivable by the company that relate to relevant reinsurance premiums. ***[Schedule 5, item 2, step 4 in the method statement in section 321-60]***

6.33 Under step 5 in the method statement, the value at the end of an income year of the unearned premium reserve of a general insurance company is so much of the step 4 amount that the company determines, based on proper and reasonable estimates, to relate to risks covered by the policies in respect of later income years. ***[Schedule 5, item 2, step 5 in the method statement in section 321-60]***

6.34 The unearned premium reserve relates to risks in respect of later years. Therefore, steps 1 to 4 in the method statement only take into account, broadly:

- premiums in relation to which there is an unexpired risk at the end of an income year; and

- the relevant costs, reinsurance premiums and commissions relating to those premiums.

Guide material omitted

6.35 Guide material in existing sections 321-1, 321-5 and 321-40 of Schedule 2J has been omitted from the rewrite. This is because the provisions are quite short and are self explanatory. As a result, the guide material is unnecessary.

Application and transitional provisions omitted

6.36 The application and transitional provisions in sections 321-30, 321-35 and 321-65 of Schedule 2J have been omitted from the rewrite. These provisions:

- ensured that Subdivision 321-A in Schedule 2J (which relates to the provision for, and payment of, claims) applied to the insurance business, other than reinsurance business, of a general insurance company for the 1991-92 income year and subsequent income years;
- specified the basis for applying Subdivision 321-A to the insurance business, other than reinsurance business, of a general insurance company in the 1991-92 income year;
- ensured that Subdivision 321-A in Schedule 2J (which relates to the provision for and payment of claims) applied to the reinsurance business of a general insurance company for the 1995-96 income year and subsequent income years;
- specified the basis for applying Subdivision 321-A to the reinsurance business of a general insurance company in the 1995-96 income year; and
- ensured that Subdivision 321-B in Schedule 2J (which relates to premium income) applied to a general insurance company for the 1999-2000 income year and subsequent income years.

6.37 These application and transitional provisions have been omitted from the rewrite because they are redundant.

Differences in Subdivision 321-C — Companies that self-insure in respect of workers' compensation liabilities

6.38 Subdivision 321-C specifies the taxation treatment of the outstanding claims liabilities of companies that self-insure in respect of workers' compensation liabilities.

6.39 The provisions apply to a company that is not required by law to insure, and does not insure, against liability for workers' compensation claims that:

- arose from events that occurred in the current year or in an earlier income year; and
- were not paid in full before the end of the current year.

[Schedule 5, item 2, paragraphs 321-80(a) and (b), 321-85(a) and (b)]

6.40 The provisions compare the value of the company's outstanding liabilities for workers' compensation claims at the end of an income year with the value of those liabilities at the end of the previous income year.

- If the value of the outstanding claims liabilities at the end of an income year is *less* than the value at the end of the previous income year, the difference is included in assessable income.

- If the value of the outstanding claims liabilities at the end of an income year *exceeds* the value at the end of the previous income year, the excess is allowed as a deduction.

[Schedule 5, item 2, paragraphs 321-80(b) and 321-85(b)]

6.41 The value, at the end of an income year, of a company's outstanding liabilities for workers' compensation claims is worked out by adding up the amounts that, at the end of that income year, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

- liabilities for those claims; and

- direct settlement costs associated with those liabilities.

[Schedule 5, item 2, section 321-90]

6.42 The company can deduct the amounts paid during an income year in respect of workers' compensation claims. ***[Schedule 5, item 2, section 321-95]***

6.43 In this context, a workers' compensation claim is taken to be paid in an income year if:

- the amount of the claim is settled in that income year;

- the relevant liability is no longer included in the company's outstanding claims liabilities at the end of that income year; and

- the claim is payable by the company at the end of that income year.

Guide material omitted

6.44 Guide material in existing section 323-1 of Schedule 2J has been omitted from the rewrite. This is because the provisions are self explanatory. As a result, the guide material is unnecessary.

Application provisions omitted

6.45 The application provision in section 323-25 of Schedule 2J has been omitted from the rewrite. This provision ensured that Division 323 in Schedule 2J applied to a company that self-insures in respect of its workers' compensation liabilities for the 1996-97 income year and subsequent income years. The provision has been omitted from the rewrite because it is redundant.

Application and transitional provisions

6.46 The rewrite applies to the first income year starting on or after the day that the Act receives Royal Assent and later income years. ***[Schedule 5, item 13]***

Consequential amendments

6.47 The amendments update references in the law to Schedule 2J provisions that are rewritten into the ITAA 1997. ***[Schedule 5, items 6 to 12, sections 10-5, 12-5 and 713-710]***

6.48 The amendments also repeal redundant definitions in the ITAA 1936 and clarify that the definition of 'contract of reinsurance' in subsection 995-1(1) only applies to relevant policies issued by life insurance companies. ***[Schedule 5, items 3 to 5 and 16, definition of 'contract of reinsurance' in subsection 995-1(1)]***

Legislative history of Schedule 2J

6.49 Schedule 2J to the ITAA 1936 was added by the T*axation Laws Amendment Act (No. 3) 2002* [Act No. 97 of 2002].

6.50 No amendments have been made to Schedule 2J.

Chapter 7
Finding tables

Outline of chapter

7.1 This chapter has finding tables to help you locate which provision in the Bill corresponds to a provision in the current law that has been rewritten, and vice versa.

7.2 References to old law in the finding tables are to these provisions in the *Income Tax Assessment Act 1936* (ITAA 1936):

- Part VI (sections 204 to 222ARA);
- Schedule 2C (sections 245-1 to 245-265);
- Schedule 2E (sections 42A-1 to 42A-150);
- Schedule 2G (sections 393-1 to 393-85); and
- Schedule 2J (sections 321-1 to 321-65 and 323-1 to 323-25).

7.3 References to the new law are to provisions of the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated. Also, in the finding tables:

- *No equivalent* means that this is a new provision that has no equivalent in the current law. Typically, these would be Guide material.
- *Omitted* means that the provision of the current law has not been rewritten in the new law.
- # indicates that the provision is already present in the ITAA 1997 or in the indicated Act.

Finding table 1 — Old law to new law

Old law	*New law*
204	5-5, 5-10, 5-15
213	255-100, 255-105, 255-110 Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953)
219	169AA ITAA 1936
222AFA	268-1, 268-5 Schedule 1 TAA 1953
222AFB	Omitted
222AFC	Omitted
222AGA	268-10 Schedule 1 TAA 1953
222AGB	268-15 Schedule 1 TAA 1953
222AGC	268-35, 268-40 Schedule 1 TAA 1953
222AGD	268-35, 268-40 Schedule 1 TAA 1953
222AGE	268-35 Schedule 1 TAA 1953
222AGF	268-90 Schedule 1 TAA 1953
222AGG	268-10 Schedule 1 TAA 1953
222AHA	268-20 Schedule 1 TAA 1953
222AHB	268-50, 268-60 Schedule 1 TAA 1953
222AHC	268-40 Schedule 1 TAA 1953
222AHD	268-40 Schedule 1 TAA 1953
222AHE	268-90 Schedule 1 TAA 1953

Old law	*New law*
222AIA	268-65 Schedule 1 TAA 1953
222AIB	268-40, 268-65 Schedule 1 TAA 1953
222AIC	268-40 Schedule 1 TAA 1953
222AID	268-90 Schedule 1 TAA 1953
222AIE	268-25 Schedule 1 TAA 1953
222AIF	268-30 Schedule 1 TAA 1953
222AIG	268-45 Schedule 1 TAA 1953
222AIH	268-90 Schedule 1 TAA 1953
222AII	268-100 Schedule 1 TAA 1953
222AJA	268-75 Schedule 1 TAA 1953
222AJB	268-80 Schedule 1 TAA 1953
222AKA	268-55 Schedule 1 TAA 1953
222AKB	268-70 Schedule 1 TAA 1953
222ALA	Omitted
222ALB	Omitted
222AMA	268-85 Schedule 1 TAA 1953
222AMB	268-95 Schedule 1 TAA 1953
222ANA	269-1, 269-5 Schedule 1 TAA 1953
222ANB	Partly omitted, 269-10 Schedule 1 TAA 1953

Old law	*New law*
222AOA	269-10 Schedule 1 TAA 1953
222AOB	269-10, 269-15 Schedule 1 TAA 1953
222AOBAA	269-10, 269-15 Schedule 1 TAA 1953
222AOBA	269-10, 269-15 Schedule 1 TAA 1953
222AOC	269-20 Schedule 1 TAA 1953
222AOD	269-20 Schedule 1 TAA 1953
222AOE	269-25 Schedule 1 TAA 1953
222AOF	269-50 Schedule 1 TAA 1953
222AOG	269-30 Schedule 1 TAA 1953
222AOH	269-40 Schedule 1 TAA 1953
222AOI	269-45 Schedule 1 TAA 1953
222AOJ	269-35 Schedule 1 TAA 1953
222APA	269-10, 269-15 Schedule 1 TAA 1953
222APB	269-10, 269-15 Schedule 1 TAA 1953
222APC	269-20 Schedule 1 TAA 1953
222APD	269-20 Schedule 1 TAA 1953
222APE	269-25 Schedule 1 TAA 1953
222APF	269-25 Schedule 1 TAA 1953

Old law	*New law*
222APG	269-40 Schedule 1 TAA 1953
222APH	269-45 Schedule 1 TAA 1953
222API	269-35 Schedule 1 TAA 1953
222AQA	Omitted
222AQB	Omitted
222AQC	Omitted
222AQD	Omitted
222ARA	268-100, 269-55 Schedule 1 TAA 1953
245-1	245-1
245-2	245-2
245-3	Omitted
245-5	245-5
245-6	Omitted
245-10(1)	245-10
245-10(2)	245-10(1) *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997)
245-15(1)	Omitted
245-15(2)	245-40(a)
245-15(3)	245-40(b)
245-20	Omitted
245-25(1)	Omitted
245-25(2)	245-10(a), (c)
245-25(3)	245-10(b), (c)
245-25(4)	245-15
245-25(4A)	245-40(f)
245-25(5)	245-10(c)
245-26	#960-100
245-30	245-30
245-31	Omitted
245-35(1)	245-35(a)

Old law	***New law***
245-35(2)	245-35(b)
245-35(3)	245-45
245-35(4)	245-36
245-35(5)	245-37
245-35(6)	245-36(1)(b)
245-40	245-40
245-45	245-53
245-46	Omitted
245-47	Omitted
245-50	245-50
245-55	245-55
245-60	245-60
245-61	245-61
245-65	245-65
245-70	Omitted
245-75(1)	245-75(1)(a)
245-75(2)(a)	245-75(1)(b)
245-75(2)(b)	245-75(2)
245-75(3)	245-77
245-80	245-80
245-81	Omitted
245-85	245-85
245-90	245-90
245-95	245-95
245-96	Omitted
245-100	245-100
245-105(1), (2)	245-105(1)
245-105(3), (4)	Omitted
245-105(5)	245-115
245-105(6)	245-130
245-105(7)	245-145(1)
245-105(8)	245-175(1)
245-110	245-115
245-115	245-115
245-120	245-120
245-125	245-130

Old law	***New law***
245-130	245-130
245-135	245-135
245-140(1), (2)	245-145
245-140(3), (4)	245-10(2) IT(TP)A 1997
245-145	245-145
245-150	245-150
245-155(1)	245-155
245-155(2)	245-157
245-160	245-160
245-165	245-175(1), 245-180, 245-185, 245-190
245-170	245-175(2)
245-175	245-175(1)
245-180	245-180
245-185	245-185
245-190	245-190
245-195	245-195
245-200	245-200
245-201	Omitted
245-205(1)	#94K ITAA 1936
245-205(2)	#94J ITAA 1936
245-205(3)	#94D ITAA 1936
245-210	#960-100, Division 5 of Part III ITAA 1936
245-215	245-215
245-220	Omitted
245-221	Omitted
245-225	Omitted
245-230	Omitted
245-235	Omitted
245-240	Omitted
245-245(1) (associate)	#995-1(1) (associate)

Old law	*New law*
245-245(1) (commencement day)	Omitted
245-245(1) (debt)	245-20
245-245(1) (debtor company)	Omitted
245-245(1) (deductible net capital loss)	Omitted
245-245(1) (deductible revenue loss)	Omitted
245-245(1) (extinguished)	245-35(a)
245-245(1) (forgive)	995-1(1) (forgiveness)
245-245(1) (forgiveness year of income)	Omitted
245-245(1) (moneylending debt)	995-1(1) (moneylending debt)
245-245(1) (net forgiven amount)	995-1(1) (net forgiven amount)
245-245(1) (non-debtor company)	Omitted
245-245(1) (pay)	Omitted
245-245(1) (related group of companies)	Omitted
245-245(1) (total net forgiven amount)	995-1(1) (total net forgiven amount)
245-245(2)	Omitted
245-250	#995-1(1) (under common ownership)
245-255	#995-1(1) (controller (for capital gains tax purposes))
245-260	Omitted

Old law	*New law*
245-265	245-265
42A-1	242-1
42A-5	242-5
42A-10(1)(a) to (c)	242-10(1)(a) to (c)
42A-10(1)(d)	242-10(2) IT(TP)A 1997
42A-10(2)	242-10(2) IT(TP)A 1997
42A-10(3)	242-10(2)
42A-15(1)	242-15(1)
42A-15(2)	242-15(2)
42A-15(3)	242-15(2)
42A-20	242-20, 242-20 IT(TP)A 1997
42A-25	242-25
42A-30	242-30
42A-35(1)	242-35(1)
42A-35(2) and (3)	Omitted
42A-40(1)	242-40(1)
42A-40(2)	242-40(1) (note)
42A-40(3)	242-40(2)
42A-45	242-45
42A-50	242-50
42A-55	242-55
42A-60	242-60
42A-65	242-65
42A-70	242-70
42A-75	242-75
42A-80(1)	242-80(1)
42A-80(2)	242-80(2)
42A-80(3)	242-80(3)
42A-80(4)	242-80(4)
42A-80(5)	242-80(5)
42A-80(6)	242-80(6)
42A-80(7)	242-80(5)

Old law	***New law***
42A-80(8)	242-80(7)
42A-80(9)	242-80(8)
42A-85	242-85
42A-90(1)	242-90(1)
42A-90(2)	242-90(2)
42A-90(3)	242-90(3)
42A-90(4)	242-90(4) 242-20 IT(TP)A 1997
42A-90(5)	242-90(5)
42A-90(6)	Omitted
42A-95	242-75
42A-100	242-85
42A-105(1)	242-90(1)
42A-105(2)	242-90(2)
42A-105(3)	242-90(3)
42A-105(4)	242-90(4) 242-20 IT(TP)A 1997
42A-105(5)	Omitted
42A-110	Omitted
42A-115 (accrual amount)	242-35(2)
42A-115 (accrual period)	Omitted
42A-115 (associate)	242-10(3) 242-20(2)(b) 242-90(4)
42A-115 (extension)	Omitted
42A-115 (finance charge)	Omitted
42A-115 (hire purchase agreement)	#995-1(1) (hire purchase agreement)
42A-115 (implicit interest rate)	242-35(2)

Old law	***New law***
42A-115 (lease)	242-10(1)(a) 242-15(2)(b) 242-20(2)(a) 242-80(3)
42A-115 (leased car)	Omitted
42A-115 (lease payment)	995-1(1) (luxury car lease payment)
42A-115 (lease payment period)	242-35(3) 995-1(1) (luxury car lease payment period)
42A-115 (lease term)	Omitted
42A-115 (lessee)	Omitted
42A-115 (lessor)	Omitted
42A-115 (luxury car)	242-10(1)(b) 995-1(1) (luxury car)
42A-115 (motor car or car)	242-10(1)(d) #995-1(1) (car)
42A-115 (notional loan)	Omitted
42A-115 (notional loan principal)	Omitted
42A-115 (outstanding notional loan principal)	242-35(2)
42A-115 (right to use)	#995-1(1) (right to use)
42A-115 (short-term hire agreement)	#995-1(1) (short-term hire agreement)
42A-115 (termination amount)	995-1(1) (termination amount)
42A-120	242-10(1)(b) 995-1(1) (luxury car) 242-10(3) IT(TP)A 1997
42A-125	Omitted

Old law	*New law*
42A-130	Omitted
42A-135(1)	995-1(1) (luxury car lease payment period)
42A-135(2)	242-35(3)
42A-140(1)	Omitted
42A-140(2)	242-35(2)
42A-145	242-35(2)
42A-150(1)	242-35(2)
42A-150(2)	Omitted
393-1	393-1
393-5	Omitted
393-7	Omitted
393-10(1)	393-5(1)
393-10(2)	393-5(2)
393-10(3)	393-5(3)
393-15(1)	393-10(1)
393-15(2)	393-10(1)
393-15(3)	393-10(2) 995-1(1) (unrecouped FMD deduction) 393-5 and 393-10 IT(TP)A 1997
393-15(4)	393-10(4)
393-20	Omitted
393-25 (depositor)	393-25(4)
393-25 (entity)	#995-1(1) (entity)
393-25 (farm management deposit)	393-20(1) 995-1(1) (farm management deposit)
393-25 (financial institution)	393-20(3)
393-25 (make)	Omitted
393-25 (owner)	393-25(1) 995-1(1) (owner)
393-25 (primary producer)	Omitted
393-25 (primary production business)	393-25(2) 393-25(3)
393-25 (repay)	393-10(3)
393-25 (tax file number)	Omitted
393-30(1)	393-20(1)
393-30(2)	393-20(1)(b)
393-30(3)	393-20(2)
393-35(1)	393-35 393-30(1)
393-35(2)	393-35 (item 1 in the table)
393-35(3)	393-35 (item 2 in the table)
393-35(4)	393-35 (item 3 in the table)
393-35(5)	393-35 (item 4 in the table)
393-35(6)	393-35 (item 10 in the table)
393-35(7)	393-35 (item 5 in the table)
393-35(8)	393-35 (item 6 in the table)
393-35(9)	393-35 (item 7 in the table)
393-35(10)	393-35 (item 8 in the table)
393-35(11)	393-35 (item 9 in the table)
393-37(1)	393-40(1) 393-40(1) (note)
393-37(2)	393-40(2)
393-37(3)	393-40(3)
393-37(4)	393-40(4)
393-37(5)	393-40(5)
393-37(6)	393-15(1)(c)
393-37(7)	393-40(6), 393-40 IT(TP)A 1997

Old law	***New law***
393-40(1)	393-35
393-40(3)	393-35 (item 11 in the table)
393-40(4)	393-35 (item 12 in the table)
393-40(5)	393-35 (item 13 in the table)
393-40(6)	393-35 (item 14 in the table)
393-45(1)	393-30(1)
393-45(2)	393-30(3)
393-45(3)	393-30(2)
393-50(1)	393-15(1)(a) 393-15(2)
393-50(2)	393-15(1)(b) 393-15(2)
393-50(3)	393-15(1)(b) 393-15(2)
393-50(4)	393-45
393-50(5)	393-15(1)(c) 393-15(2) 393-15(3)
393-52	Omitted
393-55	Omitted
393-60	Omitted
393-65	995-1(1) (taxable non-primary production income)
393-75	393-50
393-80	393-55
393-85	393-60
264AA	398-5 IT(TP)A 1997
321-1	Omitted
321-5	Omitted
321-10	321-10
321-15	321-15
321-20	321-20
321-25	321-25

Old law	***New law***
321-30	Omitted
321-35	Omitted
321-40	Omitted
321-45	321-45
321-50	321-50
321-55	321-55
321-60	321-60
321-65	Omitted
323-1	Omitted
323-5	321-80
323-10	321-85
323-15	321-90
323-20	321-95
323-25	Omitted

Finding table 2 — New law to old law

New Law	*Old law*
169AA ITAA 1936	219
5-1	No equivalent
5-5	204
5-10	204
5-15	204
242-1	42A-1
242-5	42A-5
242-10(1)(a) to (c)	42A-10(1)(a) to (c) 42A-115 (lease and luxury car) 42A-120
242-10(d)	42A-115 (motor car or car)
242-10(2)	42A-10(3)
242-10(3)	42A-115 (associate)
242-15(1)	42A-15(1)
242-15(2)	42A-15(2) and (3) 42A-115 (lease)
242-20	42A-20 42A-115 (associate and lease)
242-25	42A-25
242-30	42A-30
242-35(1)	42A-35(1)
242-35(2)	42A-115 (accrual amount, implicit interest rate and outstanding notional loan principal) 42A-140(2) 42A-145 42A-150(1)
242-35(3)	42A-115 (lease payment period) 42A-135(2)
242-40(1)	42A-40(1) and (2)
242-40(2)	42A-40(3)
242-45	42A-45
242-50	42A-50
242-55	42A-55
242-60	42A-60
242-65	42A-65
242-70	42A-70
242-75	42A-75 42A-95
242-80(1)	42A-80(1)
242-80(2)	42A-80(2)
242-80(3)	42A-80(3) 42A-115 (lease)
242-80(4)	42A-80(4)
242-80(5)	42A-80(5) and (7)
242-80(6)	42A-80(6)
242-80(7)	42A-80(8)
242-80(8)	42A-80(9)
242-85	42A-85 42A-100
242-90(1)	42A-90(1) 42A-105(1)
242-90(2)	42A-90(2) 42A-105(2)
242-90(3)	42A-90(3) 42A-105(3)
242-90(4)	42A-90(4) 42A-105(4) 42A-115 (associate)
242-90(5)	42A-90(5)
245-1	245-1
245-2	245-2
245-5	245-5
245-10	245-10(1) 245-25(2), (3) and (5)

New Law	***Old law***
245-15	245-25(4)
245-20	245-245(1) (debt)
245-30	245-30
245-35	245-35(1) and (2) 245-245(1) (extinguished)
245-36	245-35(4) and (6)
245-37	245-35(5)
245-40	245-15(2) and (3) 245-25(4A) 245-40
245-45	245-35(3)
245-50	245-50
245-53	245-45
245-55	245-55
245-60	245-60
245-61	245-61
245-65	245-65
245-75(1)(a)	245-75(1)
245-75(1)(b)	245-75(2)(a)
245-75(2)	245-75(2)(b)
245-77	245-75(3)
245-80	245-80
245-85	245-85
245-90	245-90
245-95	245-95
245-100	245-100
245-105	245-105(1) and (2)
245-115	245-105(5) 245-110 245-115
245-120	245-120
245-130	245-105(6) 245-125 245-130
245-135	245-135

New Law	***Old law***
245-145	245-105(7) 245-140(1) and (2) 245-145
245-150	245-150
245-155	245-155(1)
245-157	245-155(2)
245-160	245-160
245-175(1)	245-105(8) 245-165 245-175
245-175(2)	245-170
245-180	245-165 245-180
245-185	245-165 245-185
245-190	245-165 245-190
245-195	245-195
245-200	245-200
245-215	245-215
245-265	245-265
321-10	321-10
321-15	321-15
321-20	321-20
321-25	321-25
321-45	321-45
321-50	321-50
321-55	321-55
321-60	321-60
321-80	323-5
321-85	323-10
321-90	323-15
321-95	323-20
393-1	393-1
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New Law	***Old law***
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New Law	***Old law***
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995-1(1) (net forgiven amount)	245-245(1) (net forgiven amount)
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