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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TAX LAWS AMENDMENT (2011 MEASURES No. 2) BILL 2011

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)



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# Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
APRA	Australian Prudential Regulation Authority
AEI	Australian Educational International
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
DGR	deductible gift recipient
GST	goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
RSA	retirement savings account
RSA Act	<i>Retirement Savings Accounts Act 1997</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	self managed superannuation fund
TAA 1953	<i>Taxation Administration Act 1953</i>
TFNs	tax file numbers
TIES	Tax Issues Entry System



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# General outline and financial impact

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## Deductible gift recipients

Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* to update the list of deductible gift recipients (DGRs) to make two entities DGRs, and change the name of another entity.

**Date of effect:** For the Charlie Perkins Trust for Children & Students, and the Roberta Sykes Indigenous Education Foundation the amendments apply to gifts made after 2 August 2010. The name change to Girl Guides Australia applies from 1 January 2011.

**Proposal announced:** The listing of Charlie Perkins Trust for Children & Students, and the Roberta Sykes Indigenous Education Foundation as DGRs was announced in the 2010-11 Mid-Year Economic and Fiscal Outlook.

**Financial impact:** This measure will have the following revenue implications:

<i>Organisation</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>
Charlie Perkins Trust for Children & Students	-\$0.005m	-\$0.03m	-\$0.03m	-\$0.03m
Roberta Sykes Indigenous Education Foundation	-\$0.004m	-\$0.02m	-\$0.02m	-\$0.02m
<b>Total</b>	<b>-\$0.01m</b>	<b>-\$0.05m</b>	<b>-\$0.05m</b>	<b>-\$0.05m</b>

**Compliance cost impact:** Nil.

## **Self managed superannuation fund investment in collectables and personal use assets**

Schedule 2 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to permit the regulations to impose rules on self managed superannuation fund (SMSF) trustees that make, hold or realise investments involving collectables or personal use assets. These amendments apply in relation to investments made by an SMSF before, on or after 1 July 2011. The regulations may specify that the amendments apply to only some of these investments. The regulations may prescribe penalties for non-compliance with the rules set out in the regulations, not exceeding 10 penalty units.

This Schedule also amends the SIS Act to remove a reference to a provision that was repealed on 24 September 2007.

***Date of effect:*** 1 July 2011.

***Proposal announced:*** This proposal was announced as a Government election commitment and titled ‘*New Standards for Storing Collectables and Personal Use Assets Held by Self Managed Superannuation Funds*’ on 30 July 2010.

***Financial impact:*** Nil.

***Compliance cost impact:*** Nil.

## **Superannuation — tax file number amendments**

Schedule 3 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* to allow superannuation fund trustees and retirement savings account providers to use tax file numbers (TFNs):

- as a method of locating member accounts; and
- to facilitate the consolidation of multiple member accounts.

***Date of effect:*** 1 July 2011 for the amendments to use TFNs to locate accounts, and 1 January 2012 or a date to be proclaimed for the consolidation amendments.

***Proposal announced:*** This measure was announced in the Assistant Treasurer and Minister for Financial Services and Superannuation’s Media Release No. 024 of 16 December 2010.



*Financial impact:* Nil.

*Compliance cost impact:* Low.

## **Exempting Australian taxes, fees and charges from the goods and services tax**

Schedule 4 to this Bill amends:

- the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to replace the current mechanism for ensuring Australian taxes, and certain Australian fees and charges are not subject to the goods and services tax with specific legislative exemptions;
- the GST Act to allow for the making of regulations to treat an Australian tax, or an Australian fee or charge in a particular way; and
- the *A New Tax System (Luxury Car Tax) Act 1999* to account for changes being made to the GST Act.

*Date of effect:* These amendments apply from 1 July 2011.

*Proposal announced:* This measure was announced in the 2010-11 Budget.

*Financial impact:* Nil.

*Compliance cost impact:* These amendments are expected to result in a low overall compliance cost impact, comprised of a low implementation impact and a low decrease in ongoing compliance.

## **Miscellaneous amendments**

Schedule 5 to this Bill makes technical corrections and other minor and miscellaneous amendments to the taxation laws. These amendments are part of the Government's commitment to the care and maintenance of the tax system.

*Date of effect:* These amendments commence from Royal Assent unless otherwise stated in this explanatory memorandum.

***Proposal announced:*** These amendments were all foreshadowed by their release in draft form on the Treasury website on 28 January 2011.

***Financial impact:*** The amendment to allow the nomination of controllers of discretionary trusts for the purposes of capital gains tax small business concessions (Part 19, comprising items 91 to 105) is expected to result in a small cost to revenue (with an upper bound of \$10 million per annum).

The other amendments are expected to have nil to minimal revenue impacts.

***Compliance cost impact:*** Nil to low.

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# **Chapter 1**

## **Deductible gift recipients**

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### **Outline of chapter**

1.1 Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to update the list of deductible gift recipients (DGRs) by changing the name of one entity and making two entities deductible gift recipients.

### **Context of amendments**

1.2 The income tax law allows taxpayers who make gifts of \$2 or more to DGRs to claim income tax deductions. To be a DGR, an organisation must fall within one of the general categories set out in Division 30 of the ITAA 1997, or be listed by name in that Division.

1.3 DGR status assists eligible funds and organisations to attract public support for their activities.

### **Summary of new law**

1.4 These amendments add the Charlie Perkins Trust for Children & Students, and the Roberta Sykes Indigenous Education Foundation to the list of specifically listed DGRs, and change the name of a currently listed DGR from 'Guides Australia Incorporated' to 'Girl Guides Australia'.

### **Detailed explanation of new law**

#### **Charlie Perkins Trust for Children & Students (ABN 24 869 741 764)**

1.5 Schedule 1 allows taxpayers to claim a deduction for gifts made to the Charlie Perkins Trust for Children & Students after 2 August 2010 and before 2 August 2013. [*Schedule 1, item 4, item 2.2.39 in the table in subsection 30-25(2)*]

1.6 The purpose of the Charlie Perkins Trust for Children & Students is to advance the education of Aboriginal and Torres Strait

Islander people through the provision of scholarships to Indigenous Australians for study at overseas institutions, such as Oxford and Cambridge University.

1.7 It is a condition of the listing that the fund meets the requirements of the scholarship general DGR category, except for the provisions requiring that it must be provided by an Australian higher education provider and not target a predetermined section of the community. Also, as a condition of listing, that the Australian Educational International (AEI) raise no objections to the institutions to which the scholarship fund seeks to send scholars, and that the fund advise the Australian Government annually on those institutions to which scholars have been sent in a given year.

### **Roberta Sykes Indigenous Education Foundation (ABN 99 950 620 671)**

1.8 This Schedule allows taxpayers to claim a deduction for gifts made to the Roberta Sykes Indigenous Education Foundation after 2 August 2010 and before 2 August 2013. *[Schedule 1, item 4, item 2.2.40 in the table in subsection 30-25(2)]*

1.9 The Roberta Sykes Indigenous Education Foundation works to advance the education and life opportunities for Aboriginal and Torres Strait Islanders, and provides additional assistance to female Indigenous scholars undertaking programs overseas, such as assisting with the cost of relocating families and partners.

1.10 It is a condition of the listing that the fund meets the requirements of the scholarship general DGR category, except for the provisions requiring that it must be provided by an Australian higher education provider and not target a predetermined section of the community. Also, as a condition of listing, that the AEI raise no objections to the institutions to which the scholarship fund seeks to send scholars, and that the fund advise the Australian Government annually on those institutions to which scholars have been sent in a given year.

### **Girl Guides Australia (ABN 62 477 364 942)**

1.11 This Schedule also changes the name of 'Guides Australia Incorporated' to 'Girl Guides Australia'. *[Schedule 1, items 1 and 2, items 10.2.2 and 10.2.3 in the table in section 30-90]*

1.12 The purpose and operation of the organisation has not changed.

## **Consequential amendments**

1.13 Changes have been made to update the index in Division 30 of the ITAA 1997 to add Charlie Perkins Trust for Children & Students and the Roberta Sykes Indigenous Education Foundation. *[Schedule 1, items 5 and 6, items 30A and 97AA in the table in section 30-315].*

1.14 Changes have been made to update the index in Division 30 to reflect the change in name to Girl Guides Australia. *[Schedule 1, item 3, item 53A in the table in section 30-315]*



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## **Chapter 2**

# ***Self managed superannuation fund investment in collectables and personal use assets***

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### **Outline of chapter**

- 2.1 Schedule 2 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to permit the regulations to impose rules on self managed superannuation fund (SMSF) investment in collectables and personal use assets.
- 2.2 Schedule 2 also amends the SIS Act to remove a reference to a provision that was repealed on 24 September 2007.
- 2.3 This measure will have effect from 1 July 2011.
- 2.4 All legislative references in this chapter are to the SIS Act unless otherwise stated.

### **Context of amendments**

- 2.5 Superannuation funds, including SMSFs, are generally free to invest in any asset they choose. However, taxation concessions are provided to superannuation savings with the objective of providing individuals with better income in retirement. Consequently, there are some rules on superannuation investments. The aim of these rules is to ensure that superannuation savings are accumulated for retirement income purposes, not current day benefit or estate planning.
- 2.6 These rules include that investments must be consistent with the sole purpose test in section 62 of the SIS Act, which, broadly, requires that superannuation funds must be maintained for the sole purpose of providing retirement income to members or, in the event of a member's death, to the member's dependants or legal personal representative. Although the sole purpose test covers all operations of the fund, in terms of investment this means that investments must be made solely for retirement income purposes.

2.7 In May 2009, the Government announced a review into the governance, efficiency, structure and operation of Australia's superannuation system. The Super System Review had the goal of ensuring that the superannuation system operates in the most cost effective manner and in the best interests of all its members.

2.8 The Super System Review's final report was released on 5 July 2010. The report made a number of recommendations regarding SMSFs, one of which was that SMSF investment in collectables and personal use assets should be prohibited and that existing SMSF holdings of these assets should be disposed of within five years.

2.9 The Super System Review panel found that investments in collectables and personal use assets pose issues in relation to the application of the sole purpose test. They argued that these investments lend themselves to personal enjoyment and therefore can involve current day benefits being derived by those using or accessing the assets. The panel argued that these assets should not be regarded as investments that build retirement savings and consequently should not be available to SMSFs.

2.10 An SMSF is a superannuation entity that has less than five members, all of whom are trustees of the fund or directors of the corporate trustee. A key characteristic of an SMSF is that all members are involved in the decision-making process and control the management of the fund.

2.11 SMSFs are subject to compliance-based regulation by the Australian Taxation Office (ATO), unlike most other superannuation funds which are subject to prudential regulation by the Australian Prudential Regulation Authority (APRA). SMSFs are subject to a less onerous prudential regime than APRA-regulated entities on the basis that all members of SMSFs are in a position to protect their own interests.

2.12 Given the closely-held nature of SMSFs, members have direct control over the investment of their superannuation savings and have the capacity to invest their money for their own current day benefit. The same risk does not exist in APRA-regulated funds, because the members in these funds have minimal control over investment decisions and are unlikely to receive any current day benefit from an investment.

2.13 It is extremely difficult for the ATO to determine the true purpose for which an investment in a collectable or personal use asset is made, particularly where the asset is 'stored' in premises owned by the SMSF trustee. As such, there are insufficient regulatory tools available to prevent SMSF investment in collectables and personal use assets giving rise to current day benefits for SMSF members.



2.14 On 30 July 2010, the Government announced, as an election commitment, that it does not support the Super System Review recommendation to prohibit SMSF investment in collectables and personal use assets, in recognition that collectables can be a legitimate investment for some SMSF trustees. However, the Government also announced that it would tighten the legislative standards applying to SMSF investment in collectables and personal use assets to ensure that such investments do not give rise to current day benefit for SMSF trustees.

## **Summary of new law**

2.15 Schedule 2 amends the SIS Act to permit the regulations to impose rules on SMSF trustees that make, hold or realise investments involving collectables or personal use assets. Assets considered to be collectables and personal use assets are listed in the provisions.

2.16 This Schedule also amends the SIS Act to remove a reference to a provision that was repealed on 24 September 2007.

## **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
SMSF trustees must comply with any rules set by the regulations in relation to investments in collectables and personal use assets, in addition to the rules that also apply to other asset classes.	SMSF trustees must comply with legislative rules which apply to all SMSF investments.
There is no reference to subsection 376(6) in paragraph 353(1)(d).	There is a reference to subsection 376(6) in paragraph 353(1)(d).

## **Detailed explanation of new law**

2.17 Currently, SMSF trustees may invest in a broad range of assets, provided the investments are permitted by the fund's trust deed and are in accordance with its investment strategy. The trustees must also comply with legislative rules, regardless of the asset class in which they invest. These amendments to the SIS Act provide for specific legislative rules to be applied solely to SMSF investments involving collectables and personal use assets.

2.18 Part 7 of the SIS Act sets out rules that apply only to regulated superannuation funds.

2.19 A new section is inserted into Part 7 to allow the regulations to prescribe rules that specifically relate to investments by an SMSF involving assets that are:

- artwork (within the meaning of the *Income Tax Assessment Act 1997*);
- jewellery;
- antiques;
- artefacts;
- coins or medallions;
- postage stamps or first day covers;
- rare folios, manuscripts or books;
- memorabilia;
- wine;
- cars;
- recreational boats;
- memberships of sporting or social clubs; or
- assets of a particular kind, if assets of that kind are ordinarily used or kept mainly for personal use or enjoyment (not including land).

*[Schedule 2, item 1, section 62A]*

2.20 This measure applies not only where the asset is the primary investment but also where the asset is attached to an investment or is a related benefit of an investment.

### **Example 2.1**

Jemma is a trustee of an SMSF. As trustee of her SMSF, Jemma makes an investment in XYZ Golf Club. By making the investment, Jemma receives a complimentary membership. Although the membership is not the primary investment, Jemma must comply with regulations made for the purpose of section 62A of the SIS Act in relation to the membership.

2.21 ‘Self managed superannuation fund’ is defined in section 17A of the SIS Act.

2.22 Section 62A does not override section 62 of the SIS Act, which sets out the sole purpose test. Investments to which this measure applies need to comply with both section 62 and section 62A.

2.23 The rules that the regulations may prescribe can relate to the making, holding and realising an investment. In other words, the rules may be in relation to how the asset is acquired, stored and used while in the SMSF, and disposed of. [*Schedule 2, item 1, section 62A*]

2.24 The regulations may prescribe penalties for non-compliance with the rules set out in the regulations. The penalties cannot exceed 10 penalty units. This is consistent with paragraph 353(1)(d) of the SIS Act, which provides that the regulations may prescribe penalties not exceeding 10 penalty units in respect of offences against the regulations. [*Schedule 2, item 1, section 62A, note*]

2.25 Matters relating to offences against the rules will be set out in the regulations. Including the offence with the rules will ensure transparency and simplicity, and will assist with interpretation.

### **Minor amendment**

2.26 Paragraph 353(1)(d) is amended to remove the reference to subsection 376(6). Subsection 376(6) was repealed on 24 September 2007 by item 55 of Schedule 1 to the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007*. [*Schedule 2, item 2, paragraph 353(1)(d)*]

### **Application provisions**

2.27 These amendments apply in relation to investments made by an SMSF before, on or after 1 July 2011. [*Schedule 2, item 3*]

2.28 The regulations may specify that the amendments apply to only some of these investments. This will allow the five-year transitional period, announced by the Government as part of its election commitment, to be included in the regulations. *[Schedule 2, item 3]*

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## **Chapter 3**

# **Superannuation — tax file number amendments**

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### **Outline of chapter**

3.1 Schedule 3 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Retirement Savings Accounts Act 1997* (RSA Act) to allow superannuation fund trustees and retirement savings account (RSA) providers respectively to use tax file numbers (TFNs) to locate member accounts and to facilitate the consolidation of multiple member accounts.

### **Context of amendments**

#### **Current law**

3.2 A TFN is a unique number issued by the Australian Taxation Office (ATO) for each taxpayer, which allows the ATO to match details of income disclosed in a taxpayer's return with details of a person's income received from other sources. TFNs are used by the ATO as a primary identifier of an individual for the purposes of the administration of taxation and superannuation laws administered by the Commissioner of Taxation (Commissioner).

3.3 There are current laws which allow use of TFNs in the superannuation industry. These laws apply to trustees of regulated superannuation funds, approved deposit funds, RSAs, exempt public sector superannuation schemes, and employers.

3.4 The collection of TFNs by superannuation funds is authorised under Part 25A of the SIS Act. This Act provides clear limitations on the use of TFNs and also outlines details of the recording and destruction of TFN records.

3.5 If the superannuation fund trustee or RSA provider is not provided with a member's TFN for superannuation purposes, the superannuation fund trustee or RSA provider is required to seek the member's TFN within 30 days of the person becoming a fund member. However, it is not compulsory for the member to quote their TFN.

3.6 However, where a TFN is not provided, member contributions may not be accepted, and there may be adverse taxation consequences. For example, if a TFN is not quoted and the fund receives employer contributions for that member, additional income tax is payable by the fund which will generally reduce the member's benefit in the fund.

3.7 Superannuation fund trustees and RSA providers currently use TFNs primarily for the purpose of calculating the amount of tax which will be deducted from the member's benefit when paid. In most cases, where a TFN is quoted, tax will be deducted at normal, concessional rates.

3.8 Currently, TFNs may only be used by a superannuation fund trustee or RSA provider to locate, in the fund's records, member accounts provided other methods are used first and only if the other methods are insufficient. It is an offence for the superannuation fund trustee or RSA provider to contravene this part of the Act.

3.9 Superannuation fund trustees and RSA providers are not currently permitted to use TFNs for the purpose of locating multiple accounts held by the same person in order to consolidate the accounts, whether in the same superannuation fund, RSA, or across multiple superannuation funds.

3.10 TFN use by superannuation funds is governed by the *Privacy Act 1988* and the *Taxation Administration Act 1953* (TAA 1953) to ensure member privacy is protected and to prevent unauthorised use of TFNs.

## **Summary of new law**

3.11 Schedule 3 amends the SIS Act and the RSA Act to allow superannuation fund trustees and RSA providers respectively to use TFNs to locate member accounts and to facilitate the consolidation of multiple accounts held by the same person.

3.12 This measure was announced in the Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 024 of 16 December 2010.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
TFNs may be used by superannuation fund trustees and RSA providers to locate member accounts.	TFNs may only be used by a superannuation fund trustee or RSA provider to locate, in the fund's or provider's records, member accounts provided other methods are used first and only if the other methods are insufficient or to confirm the identification of amounts resulting from the use of the other information.
TFNs may be used by superannuation fund trustees and RSA providers to facilitate account consolidation	TFNs cannot be used by the superannuation fund trustee or RSA provider in the first instance for account consolidation purposes.

## Detailed explanation of new law

3.13 These amendments will allow superannuation fund trustees and RSA providers to use TFNs to locate member accounts. [*Schedule 3, item 2, section 137A of the RSA Act; item 12, section 299LA of the SIS Act*]

3.14 The new laws will cover TFNs regardless of whether they are provided to the superannuation fund by the member, the member's employer or the Commissioner in accordance with the SIS Act and the RSA Act provisions.

3.15 The new law does not impose any compulsory obligations on superannuation fund trustees and RSA providers.

3.16 The new law will allow superannuation fund trustees and RSA providers to use TFNs to locate a member's account details. However the law will not allow the fund to use TFNs to replace their existing account numbers. The aim of the law is to remove the impediment for funds to use other search methods before TFNs are used. It will not replace existing account identification methods (such as account or membership numbers). This ensures that the amendment operates in accordance with National Privacy Principle 7. [*Schedule 3, item 2, subsection 137A(3) of the RSA Act; item 12, subsection 299LA(3) of the SIS Act*]

3.17 These amendments will also allow superannuation fund trustees and RSA providers to use TFNs to facilitate the consolidation of multiple accounts held by the same person in the same superannuation fund and across multiple superannuation funds, provided the requirements of the

regulations are met (see paragraph 3.24). *[Schedule 3, item 2, subsection 137A(2) of the RSA Act; item 12, subsection 299LA(2) of the SIS Act]*

**Example 3.1: Consolidation within a fund**

Rhonda is not aware she has two superannuation accounts with Fund A. Fund A is permitted to match Rhonda's TFN and consolidate the two accounts provided the conditions in the regulations are met. The regulations, may for example, provide conditions relating to member consent and other procedures that superannuation fund trustees must follow before consolidating accounts.

**Example 3.2: Consolidation between funds**

Stephen holds a superannuation account with Fund A and suspects he may hold an account in Fund B. The regulations may provide conditions relating to member consent and other procedures that superannuation fund trustees must follow before consolidating accounts. Provided Stephen consents to the consolidation and the other conditions in the regulations are met, the fund may use the TFN to facilitate the consolidation of the accounts.

3.18 All of these amendments will apply to eligible superannuation entities, regulated exempt public sector superannuation schemes (as defined under section 299W of the SIS Act), and RSAs.

**Safeguarding member privacy**

3.19 This Schedule will not alter an individual's right to choose not to quote their TFN and there will not be additional consequences for not quoting a TFN. However, the current consequences for failing to quote a TFN will remain.

**Example 3.3: Non-quotation of a TFN**

Vincci has not quoted her TFN to her superannuation fund. In accordance with the conditions in the regulations, her fund has advised that it will match TFNs in its records to locate multiple accounts. The fund provides Vincci the opportunity to provide her TFN before the matching occurs, however Vincci decides not to quote her TFN. As her fund does not have her TFN in relation to this account, the fund will not be able to match any additional accounts she may have using this method. In addition, her fund may be liable for extra income tax on no-TFN contributions made for her which it may deduct from her account. Further, her fund will not be able to accept member contributions from her.

3.20 Sections 8WA and 8WB of the existing TAA 1953 will provide for a penalty for the unauthorised use or recording of TFNs. The



penalty is currently 100 penalty units (currently \$11,000), or imprisonment for two years, or both. [Schedule 3, items 2 and 16, note in subsection 137A(2) of the RSA Act; items 12 and 17, note in subsection 299LA(2) of the SIS Act]

3.21 Binding TFN Guidelines, issued under section 17 of the *Privacy Act 1988*, protect the privacy of natural persons by regulating the collection, storage, use, disclosure, security and disposal of TFN information. In addition, the National Privacy Principles, contained in Schedule 3 to the *Privacy Act 1988*, govern the collection, use and disclosure of personal information and the use of agency identifiers.

3.22 TFN Guideline 1.1 states that ‘The TFN is not to be used as a national identification system by whatever means.’ Guideline 1.2 states that ‘The rights of individuals under taxation, assistance agency or superannuation law to choose not to quote a TFN shall be respected.’

3.23 These amendments are consistent with the *Privacy Act 1988*, the National Privacy Principles and the TFN Guidelines. The reasons include:

- superannuation funds will not be able to use TFNs to replace member account numbers;
- use of TFNs for the purposes outlined in the legislation is a limited extension of the current TFN use rather than a new application;
- the increased use of TFNs has been authorised by amending the superannuation law as referenced under the TFN Guidelines;
- the increased use of TFNs will be safeguarded by regulations that ensure member identity is protected and member consent is obtained where appropriate;
- the law does not alter an individual’s right to choose not to quote a TFN; and
- superannuation funds are not obliged to increase their TFN use.

## Regulation changes

3.24 In addition to the legislation, regulations will also be made to specify additional requirements that must be met. In relation to account consolidation, these will cover requirements for member consent and

other procedures that superannuation fund trustees and RSA providers must follow before consolidating accounts. *[Schedule 3, items 2 and 16, subsection 137A(2) of the RSA Act; items 12 and 17, subsection 299LA(2) of the SIS Act]*

3.25 The details of these regulations will be finalised following consultation with relevant stakeholders.

## **Application and transitional provisions**

3.26 The amendments relating to account location will apply from 1 July 2011. The amendments relating to consolidation will apply from 1 January 2012 or a date as proclaimed and both amendments will apply to the use of TFNs on or after commencement whether the TFN was quoted before, on or after the commencement of this Schedule. *[Schedule 3, items 13 and 18]*

3.27 The proclamation provision has been included to allow time for consultation on the regulations relating to the legislation. The regulations will contain necessary safeguards and processes and it is important that industry is given sufficient time to consider these changes. Given the importance of these regulations, the Government has included a proclamation provision to ensure that the legislation and the accompanying regulations commence operation as close to the same time as possible.

3.28 Transitional provisions relating to the regulations are included to ensure that any regulations which were made under Schedule 3, Part 1 continue to have effect when Schedule 3, Part 2 repeals and replaces the relevant provisions. *[Schedule 3, item 19]*

3.29 Safeguards are in place to ensure that fund members and RSA holders who have previously provided a TFN are not disadvantaged by the change, including strong penalties for the misuse of TFNs. In addition, superannuation providers are not obliged to increase their use of TFNs and members can still decide not to provide their TFN to their superannuation provider.

## **Consequential amendments**

3.30 Several amendments are required to repeal the previous TFN provisions. *[Schedule 3, item 1, subsections 137(4) and (5) of the RSA Act; items 3, 6, 8 and 10, subsections 299H(4) and (5), 299J(4) and (5), 299K(4) and (5) and 299L(4) and (5) of the SIS Act]*

3.31 Several amendments are required to remove references to the previous uses of TFNs from the applicable offences and strict liability sections of the SIS Act. *[Schedule 3, items 4, 5, 7, 9 and 11, subsections 299H(6) and (7), 299J(6) and (7), 299K(6) and (7), 299L(6) and (7) of the SIS Act]*

3.32 The definitions of ‘eligible superannuation entity’ and ‘regulated exempt public sector superannuation scheme’ are added to the RSA Act. *[Schedule 3, items 14 and 15, section 16 of the RSA Act]*



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## **Chapter 4**

# ***Exempting Australian taxes, fees and charges from the goods and services tax***

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### **Outline of chapter**

- 4.1 Schedule 4 to this Bill amends:
- the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to replace the current mechanism for ensuring Australian taxes, and certain Australian fees and charges are not subject to the goods and services tax (GST) with specific legislative exemptions;
  - the GST Act to allow for the making of regulations to treat an Australian tax, or an Australian fee or charge to be treated in a particular way; and
  - the *A New Tax System (Luxury Car Tax) Act 1999* to account for changes being made to the GST Act.

### **Context of amendments**

4.2 This Schedule implements the Government's decision to replace the current mechanism for ensuring Australian taxes, fees and charges are not subject to GST with a 'self assessment' mechanism, announced in the 2010-11 Budget on 11 May 2010.

4.3 The GST Act operates by treating a payment, or the discharging of a liability to make such a payment, of any Australian tax, fee or charge (other than GST) to be consideration for a supply that the Australian government agency makes to the payer in return for that payment (subsection 81-5(1) of the GST Act). This ensures that all Australian taxes, fees and charges are potentially subject to GST regardless of whether they are connected with a supply under the GST basic rules.

4.4 However, the GST Act then allows the Commonwealth Treasurer to specify by legislative instrument (a Determination), that the payment, or discharging of the liability to make such a payment, of any Australian tax, fee or charge is not the provision of consideration (subsection 81-5(2) of the GST Act). The effect of this is that taxes, fees

and charges included in the Determination are not consideration for a taxable supply and therefore not subject to GST.

4.5 The Determination is updated twice a year in accordance with an administrative process that involves the agreement of the GST Administration Sub-Committee of the Ministerial Council for Federal Financial Relations and the formal agreement of the state and territory Treasurers. The Determination is registered as a legislative instrument and is subject to scrutiny by the Senate Regulations and Ordinances Committee.

4.6 When the GST was introduced, the Commonwealth, states and territories agreed that the GST would apply to the commercial activities of government at all levels and that the non-commercial activities of government would be outside the scope of the GST.

4.7 Accordingly, under the *Intergovernmental Agreement on Federal Financial Relations* the parties agreed that Division 81 of the GST Act will exempt Australian taxes, fees and charges from GST in accordance with the following principles:

- taxes that are in the nature of a compulsory impost for general purposes and compulsory charges by the way of fines or penalties will be exempt from GST; and
- regulatory charges that do not relate to particular goods or services will be exempt from GST, including:
  - fees and charges levied on specific industries and used to finance particular regulatory or other activities in the government sector; and
  - licences, permits and certifications that are required by government prior to undertaking a general activity.

4.8 The current Determination is the A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1).

4.9 The Determination has grown to over 680 pages and its making involves a lengthy process that places an administrative burden on all levels of government. This amendment will reduce administrative costs by removing the need to list items in a Determination and undertake a twice yearly exhaustive process of updating the Determination. It will also provide increased certainty by allowing government entities to treat eligible items as exempt from the time that they are introduced rather than some later time when they are listed in a Determination.

## **Summary of new law**

### **Exempting Australian taxes or Australian fees and charges from the GST**

4.10 Schedule 4 repeals and replaces Division 81 of the GST Act to allow entities to self assess the GST treatment of a payment of an Australian tax or an Australian fee or charge in accordance with certain principles. Under these amendments, government agencies will no longer need to have an Australian tax or certain categories of Australian fees or charges listed on the Determination in order for those taxes, fees or charges to not be subject to GST.

4.11 In addition, the amendments allow for regulations to be made to treat an Australian tax, or any Australian fee or charge in a particular way that will determine if the amount paid, or the discharging of a liability to make such payment, is subject to GST.

4.12 Those Australian taxes, fees and charges currently not subject to GST under the *A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1)* will remain not subject to GST until 1 July 2012 and thereafter will be assessed under the changes made in this Schedule.

4.13 The GST treatment of all new Australian taxes or Australian fees or charges that are not currently entered on the *A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1)* will be self assessed under the changes made by this Schedule with effect from 1 July 2011. Those Australian taxes or Australian fees and charges that are not covered by the changes made by this Schedule and meet the requirements of section 9-5 of the GST Act will be taxable supplies, unless excluded by regulation.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>The payment, or the discharging of a liability to make such a payment, of an Australian tax is not treated as the provision of consideration. Such a payment will not be subject to GST. However, regulations can be made to treat the payment of a tax, or of a kind of tax, as consideration for a supply made by the entity to which the tax is payable, in which case it will be subject to GST.</p> <p>A payment, or the discharging of a liability to make such a payment, of certain categories of Australian fees or charges is not treated as the provision of consideration. Such a payment will not be subject to GST. However, regulations can be made to treat the payment of any Australian fee or charge, or of a kind of payment, as consideration for a supply made by the entity to which the fee or charge is payable, in which case it may be subject to GST.</p> <p>The payment, or the discharging of a liability to make such a payment, of an Australian tax or an Australian fee or charge that is not exempted by a specific provision within Division 81, including by regulation made under that Division, may be consideration for a taxable supply if the requirements of section 9-5 of the GST Act are met.</p> <p>Regulations that are made under Division 81 can be expressed to take effect from a date before the regulations are registered under the <i>Legislative Instruments Act 2003</i>.</p>	<p>The payment of any Australian tax, fee or charge is treated in the first instance as the provision of consideration for a supply, which may be a taxable supply.</p> <p>However, an Australian tax, fee or charge is not treated as consideration for a supply if it is included in a legislative instrument made by the Commonwealth Treasurer, in which case it is not subject to GST.</p> <p>The fact that a supply is not connected with Australia does not stop the supply being a taxable supply in connection with the payment of an Australian tax, fee or charge.</p>

## Detailed explanation of new law

4.14 Schedule 4 repeals and replaces Division 81 of the GST Act to allow government agencies to self assess the GST treatment of any



Australian tax or any Australian fee or charge imposed under an Australian law and payable to the agency, in accordance with certain principles.

4.15 Under these amendments, an ‘Australian tax’ or an ‘Australian fee or charge’ (as defined in the GST Act) will no longer be treated as the provision of consideration for a supply at first instance. Government agencies will no longer need to have an Australian tax, fee or charge listed on a Determination made by the Commonwealth Treasurer as a prerequisite for it not to be subject to GST.

4.16 Under these amendments, the payment of an Australian tax will not be treated as the provision of consideration and therefore any supply to which it relates will not attract GST. Furthermore, an Australian fee or charge of a kind to which subsections 81-10(4) and (5) apply will not be treated as the provision of consideration (for a supply) and also will not attract GST.

4.17 However, a regulation can be made with the effect of treating payments, or the discharging of a liability to make such payments, of an Australian tax or of an Australian fee or charge, as the provision of consideration for a supply. The GST treatment of the supply to which the tax, fee or charge relates may be a taxable supply.

4.18 The changes also provide for the making of regulations, where necessary, that will allow for the payment of an Australian fee or charge, or the discharging of a liability to make such a payment, to not be the provision of consideration and therefore any supply to which it relates will not be subject to GST.

4.19 It is not intended that the payment of a fine or penalty imposed under an Australian law and payable to an Australian government agency be subject to GST. Application of the GST basic rules should ensure that such payments are not subject to GST, therefore they are not addressed by these amendments.

### **Australian taxes**

4.20 Taxes are imposed as part of the general revenue raising activities of government and should not be subject to GST. Generally, taxes are not considered to be associated with a supply and are not subject to GST under the GST basic rules. However, given the expansive definition of ‘supply’ and ‘consideration’ contained within the GST Act, these amendments ensure all payments of taxes imposed under an Australian law will not be subject to GST at first instance.

4.21 The payment of an Australian tax, or the discharging of a liability to make such a payment, will not be treated as the provision of consideration (for any supply). Therefore, a supply (if any) will not be a taxable supply as the supply has not been made for consideration in accordance with paragraph 9-5(a) of the GST Act. Consequently, an Australian tax, imposed under an Australian law, will not attract GST. *[Schedule 4, item 2, subsection 81-5(1)]*

4.22 Examples of Australian taxes imposed under an Australian law include: income tax, stamp duty, fringe benefits tax, payroll tax, the Medicare Levy, local government 'ordinary rates' and various industry levies.

4.23 These amendments allow for a payment, or the discharging of a liability to make such a payment, of an Australian tax, or of a kind, that is *not treated as the provision* of consideration under subsection 81-5(1) of the GST Act, to be treated, by way of regulation, *as the provision* of consideration to the entity to which the tax is payable for a supply made by that entity to the payer. Therefore, the supply will be a taxable supply if all of the requirements of section 9-5 of the GST Act are satisfied. *[Schedule 4, item 2, subsections 81-5(2) and (3)]*

4.24 The abovementioned regulation-making power allows for circumstances where, for policy reasons, the Government considers that GST should apply to a payment that falls within the definition of an 'Australian tax'.

4.25 Any regulations would be made through procedures agreed to by the Commonwealth and the states and territories, in accordance with the *A New Tax System (Managing the GST Rate and Base) Act 1999*. The agreed procedures involve consultation and agreement between the Commonwealth and the states and territories on changes made to the GST base, through the GST Administration Sub-Committee of the Ministerial Council for Federal Financial Relations. Following consultation, any proposed regulation would require the unanimous agreement of the members of the Ministerial Council for Federal Financial Relations.

## **Australian fees and charges**

4.26 These amendments ensure that a payment or the discharging of a liability to make such a payment, for certain categories of Australian fees or charges will not be treated as the provision of consideration and therefore, any supply to which the payment relates will not be subject to GST. A supply to which a payment, or the discharging of a liability to make such a payment, relates will not be subject to GST to the extent the payment is for a fee or charge covered by subsection 81-10(1) of the

GST Act. For a supply to which a fee or charge relates not to be subject to GST, the fee or charge must be imposed under an Australian law and be payable to an Australian government agency. [*Schedule 4, item 2, subsection 81-10(1)*]

4.27 To the extent a payment, or the discharging of a liability to make such a payment, is a payment or discharge of an Australian fee or charge that relates to, or relates to the application for, the provision, amendment or retention under an Australian law, of a permission, exemption, authority or licence, it will not be treated as the provision of consideration. Therefore, any supply to which the fee or charge relates will not be subject to GST. A fee or charge in relation to the provision, amendment or retention of a permission, exemption, authority or licence (however described) includes but is not limited to:

- application fees, licences, permits and certifications that are required by government prior to undertaking an occupation (for example, medical and legal professionals' right of practice licences, pilots' licences, heavy vehicle drivers' licences and adjustments to such licences); and
- regulatory charges imposed to undertake an activity (for example, compulsory testing fees for regulatory purposes, compulsory inspection fees for regulatory purposes, a permit for restaurants to occupy the footpath, and a licence for an event to close roads).

4.28 As noted, this exemption applies to an Australian fee or charge imposed in relation to, or to the application for, the *retention* of a permission, exemption, authority or licence. An example of such a fee would be a periodic compulsory inspection fee, made under an Australian law and payable to an Australian government agency, for the retention of a permit. In such cases, the inspection fee is directly related to the retention of the permission (the permit) and would not be subject to GST. In cases where the inspection fee is payable to a private entity (not an Australian government agency) then subsection 81-10(4) of the GST Act will not apply and the supply will be taxable provided it meets the requirements of section 9-5 of the GST Act. [*Schedule 4, item 2, subsection 81-10(4)*]

4.29 The payment of an Australian fee or charge, to an Australian government agency, in relation to the lodgment of, or access to, documents provided under an Australian law will not be treated as the provision of consideration. Therefore, the supply to which the fee or charge relates will not be subject to GST. Examples of such fees and charges, payable to Australian government agencies, are those that are paid in order to obtain information from a government agency under

relevant freedom of information legislation, searches and extracts from registers, copies of official documents, registration fees and lodgment fees for property transfers, deeds, plans and instruments.

4.30 It is intended that consideration that is provided for commercial sales of information supplied by Australian government agencies, including supplies of books by a government bookshop, be subject to GST at first instance. It is also intended that consideration that is provided for supplies made under commercial arrangements, including the hire of government assets (such as recreation halls, office space, conference centres and equipment), be subject to GST at first instance. [*Schedule 4, item 2, subsection 81-10(5)*]

4.31 These amendments allow for a payment, or discharging of a liability to make such a payment, of any Australian fee or charge, or a fee or charge of a specified kind, (including fees and charges that have not been treated as the provision of consideration due to the application of subsection 81-10(1)) to be treated, by way of regulation, as the provision of consideration for a supply made by the entity to which the fee or charge is payable. This supply will be a taxable supply if the requirements of section 9-5 of the GST Act are met. [*Schedule 4, item 2, subsections 81-10(2) and (3)*]

4.32 The abovementioned regulation-making power allows for circumstances where, for policy reasons, the Government considers that GST should apply to the payment, or discharging of a liability to make such a payment, of an Australian fee or charge.

4.33 These amendments allow for the payment of any Australian fee or charge, or the discharging of a liability to make such a payment, to be treated as *not the provision of consideration* and therefore, any supply to which the fee or charge relates will not be subject to GST. This power is to apply in circumstances where an Australian fee or charge is not otherwise covered by subsections 81-10(4) and (5) of the GST Act, and for policy reasons, the Government considers that GST should not apply. This will also assist with the correcting of unintended consequences that may arise as a result of the operation of the new provisions inserted by these amendments. [*Schedule 4, item 2, section 81-15*]

4.34 These amendments have effect despite the operation of section 9-15 which otherwise defines, for GST purposes, what constitutes consideration. [*Schedule 4, item 2, section 81-20*]

4.35 Any regulations would be made through procedures agreed to by the Commonwealth and the states and territories, in accordance with the *A New Tax System (Managing the GST Rate and Base) Act 1999*. The agreed procedures involve consultation and agreement between the

Commonwealth and the states and territories on all changes made to the GST base, through the GST Administration Sub-Committee of the Ministerial Council for Federal Financial Relations. Following consultation, any proposed regulation would require the unanimous agreement of the members of the Ministerial Council for Federal Financial Relations.

4.36 The changes also allow for a regulation that is made under these amendments to be expressed as taking effect from a date before the regulations are registered under the *Legislative Instruments Act 2003*. This is despite the operation of subsection 12(2) of that Act which otherwise limits the commencement date of regulations in certain circumstances. This would for instance, allow for the desired GST treatment for a payment, or discharging of the liability to make such a payment, to be achieved where a new Australian tax or Australian fee or charge is imposed under an Australian law before regulations can be made to provide for the desired treatment. *[Schedule 4, item 2, section 81-25]*

## **Application and transitional provisions**

4.37 These amendments will apply in relation to Australian taxes or Australian fees or charges that are imposed under an Australian law on or after 1 July 2011.

4.38 However, under these amendments, the *A New Tax System (Goods and Services Tax)(Exempt taxes, fees and charges) Determination 2011 (No. 1)* which lists all Australian taxes, fees and charges that are not treated as consideration, and thus supplies to which they relate are not subject to GST, is to be grandfathered for one year. Thus, taxes, fees and charges that are imposed prior to 1 July 2012 and are currently listed in the Determination will not 'be subject to GST' for the transitional period (until 1 July 2012), after which any supplies to which they relate will be assessed against the provisions set out in these amendments. *[Schedule 4, item 16]*

4.39 This transitional arrangement will allow for Australian government agencies to reconcile the current taxes, fees and charges listed in the *A New Tax System (Goods and Services Tax)(Exempt taxes, fees and charges) Determination 2011 (No. 1)* with these amendments.

4.40 Any taxes, fees or charges that are currently listed in the *A New Tax System (Goods and Services Tax)(Exempt taxes, fees and charges) Determination 2011 (No. 1)* that become subject to GST (in relation to a supply) under these amendments will attract GST if they are imposed under an Australian law on or after 1 July 2012 (provided they satisfy the

requirements of section 9-5 of the GST Act and are not otherwise treated, by way of regulation, as not being subject to GST).

## **Consequential amendments**

- 4.41 As a consequence of the amendments under this Schedule 4:
- Subsection 82-10(3) of the GST Act, which refers to the previous subsection 81-5(1), is amended to refer to the new provisions inserted by this Schedule [*Schedule 4, item 3, subsection 82-10(3)*].
  - Subparagraph 117-5(1)(ba)(i) of the GST Act, which refers to the previous subsection 81-5(2), is amended to refer to the new provisions inserted by this Schedule [*Schedule 4, item 4, subparagraph 117-5(1)(ba)(i)*].
  - The definition of ‘Australian tax, fee or charge’ has been repealed from section 195-1 of the GST Act. Definitions for ‘Australian tax’ and for ‘Australian fee and charge’ have been inserted into section 195-1 of the GST Act and references to the previous definition have been amended to refer to the new definitions. Consequentially, previous references to the former definition have been amended to make reference to the new definitions in section 27-1, paragraph 5-20(1)(b) and paragraph 5-20(6)(b) of the *A New Tax System (Luxury Car Tax) Act 1999* [*Schedule 4, items 5 to 8, section 195-1, GST Act; items 11 to 13, section 27-1, paragraphs 5-20(1)(b) and 5-20(6)(b) of the A New Tax System (Luxury Car Tax) Act 1999*].
  - A reference to the previous provisions repealed by this Schedule in section 195-1 (note at the end of the definition of ‘taxable supply’) and in section 195-1 (note at the end of the definition of ‘connected with Australia’) has been removed [*Schedule 4, item 10, section 195-1*].
  - A reference to the previous provisions repealed by this Schedule in section 195-1 (note at the end of the definition of ‘consideration’) has been amended to refer to the new provisions inserted by this Schedule [*Schedule 4, item 9, section 195-1*].
  - A reference to the previous provisions repealed by this Schedule in subparagraph 13-20(2)(ba)(i) was amended to

refer to the new provisions inserted by this Schedule  
*[Schedule 4, item 1, subparagraph 13-20(2)(ba)(i)].*

- The note in the previous section 81-1 has been amended to reflect the new provisions inserted by this Schedule  
*[Schedule 4, item 2, section 81-1].*





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## **Chapter 5**

### **Miscellaneous amendments**

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#### **Outline of chapter**

5.1 Schedule 5 makes various miscellaneous amendments to the taxation laws.

#### **Context of amendments**

5.2 These amendments seek to ensure the taxation law operates as intended by correcting technical or drafting defects, removing anomalies, and addressing unintended outcomes. The miscellaneous amendments are part of the Government's commitment to the care and maintenance of the taxation laws.

5.3 Miscellaneous amendment packages include addressing issues raised through the Tax Issues Entry System (TIES). The TIES website ([www.ties.gov.au](http://www.ties.gov.au)), which the Australian Taxation Office (ATO) and Treasury jointly operate, provides a way for tax professionals and the general public to raise issues relating to the care and maintenance of the tax system. The relevant parts of the explanatory memorandum identify TIES issues.

#### **Summary of new law**

5.4 The issues these miscellaneous amendments deal with include:

- correcting grammatical, referencing and asterisking errors;
- ensuring that provisions are consistent with the original policy intent; and
- repealing inoperative provisions.

5.5 The table below lists the titles of the various parts of this Schedule.

<b><i>Part</i></b>	<b><i>Title</i></b>
1	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
2	Approved worker entitlement funds
3	Confidentiality of taxpayer information
4	Employee share schemes
5	General interest charge
6	Deductible gift recipients
7	Section 23AB of the <i>Income Tax Assessment Act 1936</i>
8	Definitions and signposts to related material
9	Repeal of redundant reference to Papua New Guinea
10	Repeal of redundant references to franking
11	Correction of cross-reference in provision about dividend streaming etc.
12	Minor changes to provisions about concessional rebates
13	Fixing outdated references to Medicare levy
14	Repeal of references to previously repealed provision
15	Correction of asterisking of reference to tax debts
16	Repeal of outdated provisions about exemption from income tax
17	Correction of asterisking of references to quarter
18	Inclusion of Commissioner's discretion to extend main residence exemption from CGT
19	Nomination of controllers of discretionary trust
20	Definitions mainly relevant to Subdivision 165-F of the <i>Income Tax Assessment Act 1997</i>
21	Removal of definition from imputation provisions
22	Correction of outdated references to virtual PST assets
23	Repeal of spent provisions about land transport facilities borrowings
24	Prevention of double counting for direct value shifts
25	Ineligible income tax remission decisions
26	Correction of references to chains of fixed trusts
27	Gender-specific language
28	Misdescribed amendments
29	References to Schedules
30	References to taxation laws
31	Other amendments

5.6 More significant amendments include:

- providing the Commissioner of Taxation (Commissioner) with a discretion to extend the main residence exemption from CGT (Part 18, comprising items 93 and 94). (This issue was identified through **TIES issue 0056-2009**); and
- allowing the nomination of controllers of discretionary trusts for the purposes of the CGT small business concessions (Part 19, comprising items 95 to 109). (This issue was identified through **TIES issue 0059-2009**).

5.7 All of the amendments in this Schedule commence from the date of Royal Assent unless otherwise stated.

## Detailed explanation of new law

### Part 1 — A New Tax System (Goods and Services Tax) Act 1999

**Table 5.1: Part 1 —A New Tax System (Goods and Services Tax) Act 1999**

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>A New Tax System (Goods and Services Tax) Act 1999</i> 153-50(1)(d)(i) <i>[Item 1]</i>	Gives effect to the suggestion made through <b>TIES issue 0014-2010</b> .  A technical amendment replacing the reference to ‘agent’s’ with a reference to ‘intermediary’s’, which was the intention of the legislation.
<i>A New Tax System (Goods and Services Tax) Act 1999</i> 195-1(definition of ‘member’), and paragraph (b) of that definition <i>[Items 2 and 3]</i>	Ensures that the definition of ‘member’ is grammatically correct. The definition uses the word ‘means’ in the opening line and then has the words ‘has the meaning’ in paragraphs (a) and (c).

**Part 2 — Approved worker entitlement funds**

**Table 5.2: Part 2 — Approved worker entitlement funds**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Fringe Benefits Tax Assessment Act 1986</i></b>                      58PB(2) and (3)                      58PB(4)                      58PC                      [Items 4 to 8]</p>	<p>Replaces the current approval arrangements with provisions that allow the Commissioner to endorse a fund as an approved worker entitlement fund or an entity endorsed to operate the fund when satisfied that it meets the legislative requirements without the need for the Governor-General to make a regulation. The new arrangements will apply from the day after this Bill receives Royal Assent. Existing funds will be given a six-month period to obtain an Australian Business Number. The Australian Business Registrar will be required to enter a fund or entity as an endorsed fund or entity on the Australian Business Register. The Registrar will have 18 months from the commencement date to make the changes to accommodate these amendments.</p>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      126-130(2)(b)                      [Item 9]</p>	
<p><b><i>Taxation Administration Act 1953</i></b>                      426-5(ba) in Schedule 1                      426-55 in Schedule 1 (paragraph (b) of the note)                      426-65(ba) and (bb) in Schedule 1                      [Items 10 to 14]</p>	

**Part 3 — Confidentiality of taxpayer information**

**Table 5.3: Part 3 — Confidentiality of taxpayer information**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1936</i></b>                      6(1)                      [Items 15 to 17]</p>	<p>Repeals the definitions of ‘Employment Department’ and ‘Employment Minister’ to reflect the fact that these terms are now being defined in the ITAA 1997. The definition of ‘Employment Secretary’ is also amended so that it links into the appropriate ITAA 1997 definitions.</p>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      995-1(1)                      [Items 18 to 20]</p>	<p>Inserts the definitions of ‘Employment Department’, ‘Employment Minister’ and ‘Employment Secretary’.</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Taxation Administration Act 1953</i></b></p> <p>355-65(2) in Schedule 1 (cell in item 4 in the table, column headed ‘The record is made for or the disclosure is to ...’) <b><i>[Item 21]</i></b></p>	<p>Supplements the reference to ‘Education Secretary’ with a reference to ‘Employment Secretary’. This clarifies that disclosure under this provision can be made to the Education/Employment Secretary in each separate capacity.</p>
<p>355-65(2) in Schedule 1 (cell in item 6 in the table, column headed ‘The record is made for or the disclosure is to ...’) <b><i>[Items 22 and 24]</i></b></p>	<p>Supplements the reference to the ‘Families Secretary’ to include a reference to the ‘Chief Executive Officer of Centrelink’. This recognises the reality that disclosures made to the Family Assistance Office for the purpose of administering family tax benefit payments are made to Centrelink Officers. An amendment contingent on the <i>Human Services Legislation Amendment Act 2011</i> is made to replace the reference of ‘Chief Executive Officer of Centrelink’ with ‘Chief Executive Centrelink’ (within the meaning of the <i>Human Services (Centrelink) Act 1997</i>).</p>
<p>355-65(5) in Schedule 1 (paragraph (b) of the cell in the table, column headed ‘and the record or disclosure ...’) <b><i>[Item 23]</i></b></p>	<p>Replaces the words ‘or residential address information’ with ‘residential address information or spousal information’.</p>

#### **Part 4 — Employee share schemes**

5.8 These amendments make some miscellaneous changes to ensure recent reforms to the taxation of employee share schemes, introduced in the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*, apply as intended.

5.9 An employee share scheme provides employees with a financial interest in the company they work for through the distribution of shares in that company. Employee share schemes are concessionally taxed to align the interests of employees with their employer.

**Table 5.4: Part 4 —Employee share schemes —  
Amendments to the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      104-75(6)(note)                      104-85(6)                      130-90(1A)                      130-90(2)                      [Items 25 to 29]</p>	<p>Ensures that any capital gain or loss made by an employee share trust is disregarded if it arises as a result of a beneficiary of the trust becoming absolutely entitled to an employee share scheme share, or as a result of a disposal of an employee share scheme share or right to a beneficiary.</p> <p>An employee share trust is a trust which obtains employee share scheme interests in a company, and provides them on behalf of employers to employees of that company or their associates, or carries out activities incidental to the holding and providing of employee share scheme interests (for example, bookkeeping, passing on dividends or opening and closing employee accounts). Use of an employee share trust is a common feature of employee share schemes, and provides a convenient mechanism for issuing shares that may later be forfeited.</p> <p>An employee share trust should not have to include capital gains or losses made when providing shares or rights to shares in the trust to a beneficiary as a part of the operation of an employee share scheme in their assessable income (subject to certain integrity rules).</p> <p>This is appropriate because any gain is subsequently used to provide remuneration to employees and taxing these would otherwise require the provision of an additional deduction to employers to offset that additional remuneration, which would unnecessarily increase the complexity of the tax system. Further, without this rule, the employee share trust may derive assessable income greater than the deduction provided to the employer (who claims a deduction equal to the amounts contributed value of the interest at the time the employee share trust acquired it).</p> <p>Capital gains or losses are not disregarded if the employee share trust itself makes a cash profit from the transaction.</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>Consistent with the current law, the gains or losses will not be disregarded if the employee acquires the share for more than its cost base in the hands of the employee share trust. This is to ensure that there are no untaxed capital gains in the trust which are not embedded (and taxed) in the value of the right to the share to the employee.</p> <p>The omission of this new provision at the time the employee share scheme reforms were introduced was unintended. The change does not disadvantage any taxpayer.</p> <p>The amendment applies from 1 July 2009, from when the reforms to employee share schemes applied.</p>

**Table 5.5: Part 4 —Employee share schemes — Amendments to the *Income Tax (Transitional Provisions) Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax (Transitional Provisions) Act 1997</i></b> 83A-5 (2A) <i>[Item 30]</i></p>	<p>Ensures that shares or rights acquired while an individual is undertaking employment outside Australia prior to 1 July 2009, which would have been qualifying shares or rights under the previous employee share scheme rules, are transitioned to the new employee share scheme rules, regardless of whether the period of employment that relates to Australia is served after the old rules were repealed.</p> <p>Under the previous employee share scheme rules, taxpayers who acquire employee shares or rights while employed offshore, and then later become Australian employees while still engaged in employment or service that is relevant to the acquisition of the shares or rights, would have been subject to the employee share scheme provisions at the point of becoming an Australian employee.</p> <p>Such taxpayers (inbound taxpayers) would have either been assessed in the year of becoming a relevant employee for the first time or at a cessation time for qualifying shares or rights where the relevant election is not made. If assessed in the year of income in which the taxpayer becomes an employee in Australia, the discount will still be valued</p>

<b><i>Provision being amended</i></b>	<b><i>What the amendment does</i></b>
	<p>as at acquisition.</p> <p>Interests will be transitioned into the new rules if:</p> <ul style="list-style-type: none"> <li>• the interest was acquired before 1 July 2009;</li> <li>• at the pre-1 July 2009 time, the old employee share scheme rules did not apply in relation to the interest because it was acquired while engaged in foreign service, and the taxpayer in question was not yet an employee;</li> <li>• after 1 July 2009, the old rules would have applied in relation to the interest if they were still in force, because the taxpayer in question became an employee (within the meaning of the old rules); and</li> <li>• at the time the taxpayer became an employee, the cessation time under the previous law would not yet have occurred.</li> </ul> <p>Unlike taxpayers who came to Australia pre-1 July 2009, the taxpayers to whom this provision applies will not be able to make an election to be taxed upfront in the year that they arrive in Australia.</p> <p>This provision clarifies how the transitional rules apply to shares acquired before 1 July 2009. The need for this transitional provision was not identified prior to the passage of the principal reforms.</p> <p>The amendment applies from 1 July 2009, consistent with the application of the reforms to employee share schemes.</p>
<p><b><i>Income Tax (Transitional Provisions) Act 1997</i></b> 83A-15 (3) <b><i>[Item 31]</i></b></p>	<p>Ensures that the Commissioner can amend an income tax assessment at any time for the purposes of taxing an employment benefit which becomes an employee share scheme interest.</p> <p>The employee share scheme reforms introduced a new concept of ‘indeterminate rights’.</p> <p>Indeterminate rights are rights to employment benefits acquired by employees where at the time the right is acquired it may be unclear</p>



<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>whether the right will result in receipt of an employee share scheme interest (for example, the employer has a discretion to provide shares or cash) or it may be unclear how many employee share scheme interests will be received. The new law provides that if a right acquired before 1 July 2009 becomes a right to acquire a beneficial interest in a share on or after 1 July 2009, the previous rules are taken to have applied as if the right had always been a right to acquire the beneficial interest in the share.</p> <p>Based on the treatment of a right as an employee share scheme interest from the time of acquisition, the taxing point for the right under the employee share scheme rules may have occurred in an income year before the nature of the right became clear.</p> <p>If a taxpayer acquired a right prior to 1 July 2009, which only clearly became a right to acquire a beneficial interest in a share in a company after 1 July 2009, then that taxpayer will be assessable under the previous rules, in an earlier year, where:</p> <ul style="list-style-type: none"> <li>• an election made under the former rules covers the right (the election may have been made in an earlier year in respect of other shares or rights acquired during the year or the Commissioner may allow a later election to be made in relation to the indeterminate right);</li> <li>• the indeterminate right did not meet the qualifying conditions under the former rules; or</li> <li>• the indeterminate right is a qualifying right and a cessation event (ceasing employment) occurs before 1 July 2009.</li> </ul> <p>When the nature of the right to an employment benefit as an employee share scheme interest becomes clear, the Commissioner may amend an employee's income tax assessment for the income year in which the taxing point for the employee share scheme interest occurred (based on the treatment of the right as an employee share scheme interest from the time of its acquisition). The Commissioner can amend an assessment relating to an employee share</p>

<b><i>Provision being amended</i></b>	<b><i>What the amendment does</i></b>
	<p>scheme at anytime, for the purposes of taxing an employment benefit which becomes an employee share scheme interest.</p> <p>The omission of this transitional provision at the time the employee share scheme reforms were introduced was an oversight. The explanatory memorandum clearly explained that this outcome was intended.</p> <p>The amendment applies from 1 July 2009, consistent with the application of the reforms to employee share schemes.</p>
<p><b><i>Income Tax (Transitional Provisions) Act 1997</i></b>                      Part 3-3 Division 125                      section 125-75  <b><i>[Item 32]</i></b></p>	<p>Ensures that all employee share scheme shares or rights that would have been disregarded from the CGT demerger ownership tests before the commencement of the amending Act (<i>Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009</i>) can continue to be disregarded.</p> <p>Division 125 of the ITAA 1997 provides ‘CGT roll-over’ demerger relief rules for certain company demerger events. Generally, for the roll-over to be available, each owner’s interest in the new demerged company has to be proportional to their interest in the parent company.</p> <p>Shares or rights acquired under employee share schemes are often subject to unique contractual arrangements that may make satisfying this proportional ownership rule difficult. For instance, a particular scheme might provide for the issue of shares in the <i>employer</i> in the future (with no provisions to take account of possible demergers).</p> <p>Moreover, there is no policy incentive to align the interests of parent company employees with the interests of a demerged entity. For these reasons, employee share scheme interests are generally disregarded for these ownership tests.</p> <p>Before 1 July 2009, the law provided that shares or rights acquired under an employee share scheme were disregarded for the purposes of the CGT demerger relief rules. Specifically, this carve-out applied to ‘qualifying shares or rights’ acquired under the previous employee share scheme tax provisions. Shares or rights that would meet</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>this test if not for being in a trust were also disregarded.</p> <p>The amending Act repealed these provisions, and replaced them with updated provisions reflecting new terminology. The amending Act provided that shares or rights acquired under previous taxing regimes, and over which tax was deferred to the 2009-10 income year or later, were transitioned into the new regime. This meant that transitioned shares and rights were intentionally carved out from the demerger ownership tests.</p> <p>However, shares or rights acquired under previous tax regimes over which tax was payable in a previous income year did not need to be transitioned.</p> <p>The previous regimes continue to apply to these shares or rights, and the carve-out does not capture them. This amendment ensures that all employee share scheme shares or rights that would have been disregarded from the CGT demerger ownership tests before the commencement of the amending Act continue to be disregarded.</p> <p>The amendment applies from 1 July 2009, consistent with the application of the reforms to employee share schemes.</p>

**Table 5.6: Part 4 —Employee share schemes —  
Amendments to the *Taxation Administration Act 1953***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1997</i> 130-97 [Item 33]</p>	<p>Renumbers section 130-100 that was inserted by item 40 of Schedule 1 to the <i>Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009</i> as section 130-97.</p>

**Part 5 — General interest charge**

**Table 5.7: Part 5 — General interest charge**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Taxation Administration Act 1953</i></b>                      8AAB(1)                      8AAB(4) and (5)                      [Items 34 and 35]</p>	<p>Provides an index of provisions of the laws dealing with references that make a person liable to general interest charge.</p>

**Part 6 — Deductible gift recipients**

**Table 5.8: Part 6 — Deductible gift recipients**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      30-20(2) (cell in item 1.2.4 in the table headed ‘Fund, authority or institution’)                      [Item 37]</p>	<p>Amends the specific listing of the following deductible gift recipients (DGRs) listing to reflect a name change of the listed organisation from the ‘College of Radiologists in Australasia’ to ‘The Royal Australian and New Zealand College of Radiologists’.</p>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      30-20(2) (cell in item 1.2.16 in the table headed ‘Fund, authority or institution’)                      30-65 (cell in item 7.2.4 in the table headed ‘Fund, authority or institution’)                      30-20(2) (items 1.2.2, 1.2.3, 1.2.4, 1.2.11 and 1.2.15 in the table)                      30-25(2) (items 2.2.15 and 2.2.19 in the table)                      30-40(2) (item 3.2.3 in the table)                      30- 45(2) (items 4.2.5 and 4.2.15 in the table)                      30-50(2) (items 5.5.16, 5.2.24, 5.2.25 and 5.2.27 in the table)                      30-65 (items 7.2.1, 7.2.2 and 7.2.4 in the table)</p>	<p>Deems the following specifically listed DGRs, which are eligible for endorsement under the general categories, to have been endorsed by the Commissioner as DGRs under the general categories on the same day as the specific listing is repealed, but does not prevent the Commissioner from revoking that endorsement at a later time:</p> <ul style="list-style-type: none"> <li>• Breast Cancer Network Australia; and</li> <li>• Indigenous Community Volunteers Limited.</li> </ul> <p>Repeals and updates the specific listings of the following DGRs where: the organisations no longer exist for the purposes for which they were listed; or the organisations were listed for a limited time and that time has expired, or the organisations have ceased to exist, or have merged with other DGR eligible organisations:</p> <ul style="list-style-type: none"> <li>• Australian College of Occupational Medicine;</li> </ul>

<i>Provision being amended</i>	<i>What the amendment does</i>
<p>30-80(2) (items 9.2.2, 9.2.15, 9.2.16 and 9.2.20 in the table)</p> <p>30-90 (item 10.2.6 in the table)</p> <p>30-105 (items 13.2.4, 13.2.5, 13.2.6, 13.2.11, 13.2.12, 13.2.13 and 13.2.14 in the table)</p> <p>30-315 (items 5, 19, 20AA, 21, 21A, 24, 25, 25C, 26, 28AAA, 28A, 28AB, 31A, 34, 38, 45AA, 49A, 50A, 60A, 61, 81, 83, 86F, 91, 105B, 112AFA, 112AG, 112BA, 121C, and 127AA in the table)</p> <p><b>[Items 36 to 54]</b></p> <p><b><i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i></b></p> <p>Item 15 of Schedule 3 (heading)</p> <p><b>[Items 55 and 56]</b></p>	<ul style="list-style-type: none"> <li>• Australian Council for Children and Youth Organisations Inc;</li> <li>• Australian Games Uniform Company Limited;</li> <li>• Australian Postgraduate Federation in Medicine;</li> <li>• Australian National Travel Association;</li> <li>• Australian Red Cross Society—US 2005 Hurricane Relief Appeal;</li> <li>• Australian Regional Council of Royal College of Obstetricians and Gynaecologists;</li> <li>• Bowral Vietnam Memorial Walk Trust Incorporated;</li> <li>• Business Against Domestic Violence Reserve;</li> <li>• City of Onkaparinga Memorial Gardens Association Incorporated;</li> <li>• Commonwealth (for gifts made for the purposes of research in the Australian Antarctic Territory);</li> <li>• Constitutional Centenary Foundation Incorporated;</li> <li>• Dunn and Lewis Youth Development Foundation Limited;</li> <li>• Foundation for Gambling Studies;</li> <li>• Industrial Design Council of Australia;</li> <li>• Nonprofit Australia Ltd;</li> <li>• Pearl Watson Foundation Limited;</li> <li>• Point Nepean Community Trust;</li> <li>• Productivity Promotion Council of Australia;</li> <li>• St Mary’s Cathedral Restoration Appeal Incorporated;</li> <li>• St Michael’s Church Restoration Fund;</li> <li>• St Paul’s Cathedral Restoration Fund;</li> <li>• The Finding Sydney Foundation;</li> <li>• The Salvation Army Hurricane Katrina Relief Appeal;</li> <li>• The Vietnam War Memorial of Victoria Incorporated; and</li> <li>• World Youth Day 2008 Trust.</li> </ul>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>All organisations affected have been consulted and none have objected.</p> <p>The specific listings of ‘Commonwealth’ enabled gifts for the purposes of research in the Australian Antarctic Territory, but the Commonwealth no longer accesses DGR support under that listing as DGR support was established under other programs.</p>
	<p>Amends the specific listing of the following deductible gift recipients (DGRs) listing to reflect a name change of the listed organisation from the ‘College of Radiologists in Australasia’ to ‘The Royal Australian and New Zealand College of Radiologists’.</p>
	<p>Deems the following specifically listed DGRs, which are eligible for endorsement under the general categories, to have been endorsed by the Commissioner as DGRs under the general categories on the same day as the specific listing is repealed, but does not prevent the Commissioner from revoking that endorsement at a later time:</p> <ul style="list-style-type: none"> <li>• Breast Cancer Network Australia; and</li> <li>• Indigenous Community Volunteers Limited.</li> </ul> <p>Repeals and updates the specific listings of the following DGRs where: the organisations no longer exist for the purposes for which they were listed; or the organisations were listed for a limited time and that time has expired, or the organisations have ceased to exist, or have merged with other DGR eligible organisations:</p> <ul style="list-style-type: none"> <li>• Australian College of Occupational Medicine;</li> <li>• Australian Council for Children and Youth Organisations Inc;</li> <li>• Australian Games Uniform Company Limited;</li> <li>• Australian Postgraduate Federation in Medicine;</li> <li>• Australian National Travel Association;</li> <li>• Australian Red Cross Society—US 2005 Hurricane Relief Appeal;</li> </ul>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<ul style="list-style-type: none"> <li>• Australian Regional Council of Royal College of Obstetricians and Gynaecologists;</li> <li>• Bowral Vietnam Memorial Walk Trust Incorporated;</li> <li>• Business Against Domestic Violence Reserve;</li> <li>• City of Onkaparinga Memorial Gardens Association Incorporated;</li> <li>• Commonwealth (for gifts made for the purposes of research in the Australian Antarctic Territory);</li> <li>• Constitutional Centenary Foundation Incorporated;</li> <li>• Dunn and Lewis Youth Development Foundation Limited;</li> <li>• Foundation for Gambling Studies;</li> <li>• Industrial Design Council of Australia;</li> <li>• Nonprofit Australia Ltd;</li> <li>• Pearl Watson Foundation Limited;</li> <li>• Point Nepean Community Trust;</li> <li>• Productivity Promotion Council of Australia;</li> <li>• St Mary’s Cathedral Restoration Appeal Incorporated;</li> <li>• St Michael’s Church Restoration Fund;</li> <li>• St Paul’s Cathedral Restoration Fund;</li> <li>• The Finding Sydney Foundation;</li> <li>• The Salvation Army Hurricane Katrina Relief Appeal;</li> <li>• The Vietnam War Memorial of Victoria Incorporated; and</li> <li>• World Youth Day 2008 Trust.</li> </ul> <p>All organisations affected have been consulted and none have objected.</p> <p>The specific listings of ‘Commonwealth’ enabled gifts for the purposes of research in the Australian Antarctic Territory, but the Commonwealth no longer accesses DGR support under that listing as DGR support was established under other programs.</p>
	<p>Amends the specific listing of the following deductible gift recipients (DGRs) listing to</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	reflect a name change of the listed organisation from the ‘College of Radiologists in Australasia’ to ‘The Royal Australian and New Zealand College of Radiologists’.

**Part 7 — Section 23AB of the *Income Tax Assessment Act 1936***

**Table 5.9: Part 7 — Section 23AB of the *Income Tax Assessment Act 1936***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Income Tax Assessment Act 1936</i></b> 23AB(5)(a) 23AB(7)(a) 23AB(10)(a) <b>[Items 57, 59 and 60]</b>	Adds conjunctions that had been omitted at the end of some paragraphs.
23AB(7) <b>[Item 58]</b>	Corrects an ambiguity in the wording of the provision, as the previous text did not explicitly state that the rebate was to be calculated as provided in the provision.

**Part 8 — Definitions and signposts to related material**

**Table 5.10: Part 8 — Definitions and signposts to related material**

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Income Tax Assessment Act 1936</i></b> 6(1) (at the end of the definition of ‘dividend’) 6(1) (at the end of the definition of ‘permanent establishment’) <b>[Items 61 and 62]</b>	Inserts notes to refer to the additional information contained in subsections 6(4) and (6) relating to the definitions of ‘dividend’ and ‘permanent establishment’ respectively.
6(1) (definition of ‘RSA’) 6(1) (definition of ‘RSA provider’) <b>[Items 63 and 64]</b>	Replaces the definitions of ‘RSA’ and ‘RSA provider’ in the ITAA 1936 with a reference to the meanings given by subsection 995-1(1) of the ITAA 1997.



## Part 9 — Repeal of redundant reference to Papua New Guinea

**Table 5.11: Part 9 — Repeal of redundant reference to Papua New Guinea**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1936</i></b>            6AA(1)(d)            6AA(1)(e)            6AA(1)(f)  <b><i>[Items 65 to 67]</i></b></p>	<p>Repeals the reference to Papua New Guinea as it is no longer required.</p>

## Part 10 — Repeal of redundant references to franking

**Table 5.12: Part 10 — Repeal of redundant references to franking**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1936</i></b>            45C(3)(a)  <b><i>[Items 68 and 69]</i></b></p>	<p>Modifies paragraph 45C(3)(a) to replace a redundant reference to ‘a class C franking debit’ with a reference to ‘a franking debit’. This amendment will apply from 1 July 2002, which is the time when class C franking debits ceased to exist.</p>
<p>45C(5) and (6)  <b><i>[Item 70]</i></b></p>	<p>Repeals subsections 45C(5) and 45C(6). Subsection 45C(5) is a transitional rule that is no longer required. Subsection 45C(6) refers to definitions in Part IIIAA of the ITAA 1936. Part IIIAA was previously removed as an inoperative provision.</p> <p>Under the simplified imputation system, introduced from 1 July 2002, the way that companies keep franking accounts changed from a taxed income basis to a tax paid basis. This removed the requirement for companies to maintain different classes of franking accounts. The amendments to update the terminology in section 45C will have no adverse impact on taxpayers as it confirms existing practice and removes uncertainty.</p>

**Part 11 — Correction of cross-reference in provision about dividend streaming etc.**

**Table 5.13: Part 11 — Correction of cross-reference in provision about dividend streaming etc.**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1936</i> 45D(2) [Items 71 and 72]</p>	<p>Replaces an incorrect reference in subsection 45D(2) to a determination made under paragraph 45D(1)(b) with a reference to a determination made under section 45A.</p> <p>Paragraph 45D(1)(b) was removed when the demerger provisions were introduced in 2002. However, a consequential amendment to update subsection 45D(2) was overlooked. This amendment will not have an adverse impact on taxpayers, as it confirms existing practice and removes uncertainty. Therefore this amendment applies to determinations made by the Commissioner on or after 24 October 2002.</p>

**Part 12 — Minor changes to provisions about concessional rebates**

**Table 5.14: Part 12 — Minor changes to provisions about concessional rebates**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1936</i> 159J(1B) [Item 73]</p>	<p>Fixes duplication of the word 'the'.</p>

**Part 13 — Fixing outdated references to Medicare levy**

**Table 5.15: Part 13 — Fixing outdated references to Medicare levy**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1997</i> 3(1) 3-5(1)(note 1) [Items 74 and 75]</p>	<p>Repeals the redundant provision and updates the note to subsection 3-5(1) to include the correct references to the Medicare levy.</p>

## Part 14 — Repeal of references to previously repealed provisions

**Table 5.16: Part 14 — Repeal of references to previously repealed provisions**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1997</i> 11-15 (item in the table headed ‘United Nations’) [Item 76]</p> <p>830-75 [Item 77]</p>	<p>Removes the item referring to section 23ADA, which was repealed by the <i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>.</p> <p>Clarifies that the reference should be ‘subject to foreign tax’.</p>

## Part 15 — Correction of asterisking of reference to tax debts

**Table 5.17: Part 15 — Correction of asterisking of reference to tax debts — Amendments to the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1997</i> 25-5(7) [Item 78]</p>	<p>Corrects the asterisking of the reference to ‘tax debts’.</p>

## Part 16 — Repeal of outdated provisions about exemptions from income tax

**Table 5.18: Part 16 — Repeal of outdated provisions about exemptions from income tax**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Income Tax Assessment Act 1936</i> 128B(3)(ab) [Item 79]</p> <p><i>Income Tax Assessment Act 1997</i> 11-5 (item in the table headed ‘film’) 11-5 (item in the table headed ‘mining’)</p>	<p>Repeals outdated provisions that covered exemptions from income tax. The Phosphate Mining Company of Christmas Island Limited no longer exists; the Australian Film Finance Corporation Pty Limited was deregistered and subsumed into Screen Australia; and the Commonwealth Games Federation entitlement to tax exemptions expired on 1 July 2007. Therefore the provisions relating to these are inoperative and are being repealed.</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
50-35 (item 7.1 in the table) 50-45 (heading) 50-45 (items 9.3 and 9.4 in the table) <i>[Items 80 to 84]</i>	

**Part 17 — Correction of asterisking of references to quarter**

**Table 5.19: Part 17 — Correction of asterisking of references to quarter**

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 114-15(2) 114-15(3) steps 1 and 3 in the method statement 114-15(5) and (6) 114-20 <i>[Items 85 to 88]</i>	Corrects the asterisking of the references to ‘quarter’.

**Part 18 — Inclusion of Commissioner’s discretion to extend main residence exemption from CGT**

**Table 5.20: Part 18 — Inclusion of Commissioner’s discretion to extend main residence exemption from CGT**

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 118-150(4)(a) <i>[Items 89 and 90]</i>	Gives effect to the suggestion made through <b>TIES issue 0056-2009</b> .  Section 118-150 of the ITAA 1997 extends the CGT main residence exemption to allow a taxpayer to treat land as their main residence for up to four years if they build, repair or renovate a dwelling on the land that subsequently becomes their main residence.  This amendment gives the Commissioner discretion to extend this period where the taxpayer does not build, repair or renovate a dwelling and establish it as their main residence within four years.

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>The Commissioner would be expected to exercise the discretion in situations such as the following:</p> <ul style="list-style-type: none"> <li>• When the taxpayer is unable to build, repair or renovate the dwelling within this time period due to circumstances outside their control. For example, the relevant builder becomes bankrupt and is unable to complete the building, repairs or renovations.</li> <li>• When the taxpayer is unable to build, repair or renovate the dwelling due to unforeseen circumstances arising during this period. For example, the taxpayer or a family member has a severe illness or injury.</li> <li>• When building, repairing or renovating the dwelling within the four years would impose a severe financial burden on the taxpayer. For example, the taxpayer would be required to incur an excessively high level of debt relative to their income. Consequently, the taxpayer may spend time accumulating sufficient savings (relative to their income) to build, repair or renovate a reasonable dwelling relative to their circumstances.</li> </ul> <p>These examples are not exhaustive.</p> <p>This amendment will apply in relation to CGT events happening on or after Royal Assent.</p>

## Part 19 — Nomination of controllers of discretionary trust

5.10 These amendments give effect to the suggestion made through **TIES issue 0059-2009**.

5.11 All references to legislative provisions in this Part are references to the *Income Tax Assessment Act 1997* unless otherwise stated.

5.12 Section 152-42 currently allows a trustee of a discretionary trust to nominate up to four beneficiaries of the trust as controllers of the trust for an income year in which the trustee did not make a distribution of income or capital and the trust had a tax loss or no taxable income for that year.

5.13 The result of nominating a beneficiary to be a controller of a discretionary trust is that the beneficiary and discretionary trust are connected entities for the income year but only for the purpose of applying the definition of ‘active asset’ in subparagraph 152-40(1)(a)(iii) or paragraph 152-40(1)(b).

5.14 This allows a capital gain made on a passively held CGT asset (that is, an asset that is owned by one entity and used in the business of an affiliate of, or an entity connected with, the asset-owning entity) to qualify for the small business CGT concessions via the maximum net asset value test where the asset is:

- owned by a nominated beneficiary (or beneficiaries) or by an entity connected with a nominated beneficiary; and
- used or held ready for use in the discretionary trust’s business.

5.15 However, where a beneficiary is a controller of a discretionary trust only because of the nomination in section 152-42, this does not make the beneficiary a controller of the trust for calculating the maximum net asset value of the entity that owns the asset.

5.16 Currently, section 152-42 does not apply to paragraph 152-10(1A)(a), which is part of the provisions that extend access to the small business CGT concessions via the small business entity test to passively-held assets.

5.17 This means that an entity that does not carry on a business (other than as a partner in partnership) and that is not connected with a discretionary trust cannot access the small business CGT concessions via the small business entity test for a capital gain made on a CGT asset it owned that was used in the business of the discretionary trust.

5.18 The amendments, which repeal section 152-42 with effect from Royal Assent, introduce a new provision to allow a trustee of a discretionary trust to nominate up to four beneficiaries of the trust as controllers of the trust for an income year in which the trustee did not make a distribution of income or capital and the trust had a tax loss or no net income for that year. The nomination must be in writing and signed by the trustee and by each nominated beneficiary. The proposed provision relates to ‘net income’ rather than ‘taxable income’, which is used in section 152-42. ‘Taxable income’ is technically incorrect because, under subsection 95(1) of the ITAA 1936, a trust has net income rather than taxable income. *[Schedule 5, items 99, 102 and subitem 105(2), sections 152-42 and 152-78 of the ITAA 1997]*

5.19 The amendments also extend the scope of the nomination so that it applies for the purposes of Subdivision 152-A and for sections 328-110, 328-115 and 328-125 as they relate to that Subdivision. *[Schedule 5, item 102, subsection 152-78(1) of the ITAA 1997]*

5.20 Where the trustee has made a nomination under the new provision, its extended scope allows an entity that does not carry on a business (other than as a partner in partnership) whose asset is used in the trust's business to access the small business CGT concessions via the small business entity test through the operation of subsection 152-10(1A).

5.21 The extended scope of a nomination also means that it applies for determining whether one entity is connected with another entity for calculating the maximum net asset value of the entity that owned the asset or the aggregated turnover of the discretionary trust that used the asset in its business.

5.22 Various notes in the legislation have been changed and new notes inserted to indicate the location and effect of the amendments. *[Schedule 5, items 91 to 98, 100, 103 and 104, paragraph 152-1-(1)(c)(note), subsection 152-10(1A)(note 1), subsection 152-10(1A)(note 2), section 152-15(note), section 152-15, subsections 152-20(2) to (4), subsection 152-40(1)(note 2), subsections 152-40(4) and (4A), 152-47(1) and 152-48(2), subsection 328-115(1)(note), subsection 995-1(1)(note at the end of the definition of 'connected with') of the ITAA 1997]*

5.23 For access to the small business CGT concessions generally, the amendments apply in relation to CGT events that happen on or after the day this Bill receives Royal Assent. *[Schedule 5, paragraph (a) of subitem 105(1)]*

5.24 For access to the small business CGT concessions via the small business entity test only, the amendments also apply in relation to CGT events that happen before the day this Bill receives Royal Assent but after the start of the 2007-08 income year. *[Schedule 5, item 109, paragraph (b) of subitem 105(1)]*

5.25 The combination of the two application rules results in:

- the amendments applying, for access to the concessions via the small business entity test, in relation to CGT events that happen in the 2007-08 income year and later income years (which aligns with the date of effect of the amendments that extended access to the concessions via the small business entity test to passively held assets); and
- taxpayers who accessed the concessions where a trustee made a nomination under section 152-42 prior to Royal Assent not being disadvantaged by the increased scope of the

new nomination, which includes determining whether one entity is connected with another entity for calculating the maximum net asset value of the entity that owned the relevant asset.

5.26 The retrospective component of the amendments will be beneficial to discretionary trust beneficiaries who, following the trustee of the trust making a nomination, will have the opportunity to access the small business CGT concessions via the small business entity test.

5.27 The small business CGT concessions require taxpayers to make choices. For example, the small business retirement exemption and small business roll-over are available only if the taxpayer chooses to obtain them.

5.28 Subsection 103-25(1) limits the date for making a choice to the day an entity lodges its income tax return for the income year in which the relevant CGT event happened or a later date allowed by the Commissioner.

5.29 Taxpayers who become eligible to make a choice under Division 152 due to these amendments will have an extended period, under a transitional rule, to make such a choice in relation to CGT events happening before the day on which this Bill receives Royal Assent.  
*[Schedule 5, subitem 105(3)]*

5.30 The time limit for an entity to make the choice it is eligible to make as a result of these amendments is the latest of:

- the day the entity lodges its income tax return for the income year in which the relevant CGT event happened;
- 12 months after the day this Bill receives Royal Assent; and
- a later day allowed by the Commissioner.

*[Schedule 5, subitem 105(4)]*



**Part 20 — Definitions mainly relevant to Subdivision 165-F of the *Income Tax Assessment Act 1997***

**Table 5.21: Part 20 — Definitions mainly relevant to Subdivision 165-F of the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b></p> <p>115-50(2)(a), 3(a) and 4(a)</p> <p>121-30(2)</p> <p>124-810(3)(a)</p> <p>165-45(4)(note 2)</p> <p>165-215(2)(a)(i)</p> <p>165-215(2)(a)(ii)</p> <p>165-215(2)(b)(i)</p> <p>165-215(3)</p> <p>165-215(4)(a)</p> <p>165-215(5)</p> <p>165-220(2)(a)(i)</p> <p>165-220(2)(a)(ii)</p> <p>165-220(2)(b)(i)</p> <p>165-220(2)(b)(ii)</p> <p>165-220(3)</p> <p>165-220(4)(a)</p> <p>165-220(5)</p> <p>165-225</p> <p>165-230(2)(a)(i)</p> <p>165-230(2)(a)(ii)</p> <p>165-230(2)(b)(i)</p> <p>165-230(2)(b)(ii)</p> <p>165-230(3)</p> <p>165-230(4)(a)</p> <p>165-230(5)</p> <p>165-235(3)</p> <p>165-235(4)(a)</p> <p>165-240(1)</p> <p>165-245</p> <p>207-130(6)(f)</p> <p><b><i>[Items 106 to 138]</i></b></p> <p>707-130(1)(note 1)</p> <p><b><i>[Items 139 and 140]</i></b></p> <p>995-1(1) (definition of ‘control of a non-fixed trust’)</p> <p>995-1(1) (definition of ‘excepted trust’)</p> <p>995-1(1) (definition of ‘more than a 50% stake’)</p> <p>995-1(1) (definition of ‘fixed</p>	<p>Inserts definitions of ‘control a non-fixed trust’, ‘excepted trust’, ‘fixed entitlement’ and ‘more than a 50% stake’</p> <p>Corrects the asterisking of the references to ‘fixed entitlement’, ‘fixed trust’, ‘non-fixed trusts’, ‘fixed entitlements’, ‘family trusts’, ‘excepted trust’, and ‘more than a 50% stake’.</p> <p>Repeals section 165-245 because the terms that were contained in that section are now defined in either the ITAA 1997 or the ITAA 1936 with cross references as required. Section 165-245 is replaced and a new rule to better explain the meaning of ‘holding fixed entitlements directly or indirectly when an entity has fixed entitlement to income or capital of a company’.</p> <p>Removes outdated cross-references to definitions.</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
entitlement') <i>[Items 141 to 145]</i>	
<i>Taxation Administration Act 1953</i> 45-287(1)(a) in Schedule 1 45-287(4)(a) in Schedule 1 <i>[Items 146 and 147]</i>	Corrects the asterisking of references to 'fixed entitlement'.

**Part 21 — Removal of definition from imputation provisions**

**Table 5.22: Removal of definition from imputation provisions**

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 204-70 204-75(1) and (2) 204-80(1) <i>[Items 148 to 150]</i>	Removes the definition of the term 'differs significantly' from the imputation provisions.

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**Part 22 — Correction of outdated references to virtual PST assets**
**Table 5.23: Part 22 — Correction of outdated references to virtual PST assets**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b></p> <p>320-141(2)(a)(i) 320-141(2)(a)(ii) <b><i>[Items 151 to 153]</i></b></p>	<p>Gives effect to a suggestion made through <b>TIES issue 0057-2009</b>.</p> <p>Replaces outdated references in subsection 320-141(2) to ‘virtual PST assets’ with references to ‘complying superannuation/FHSA assets’. This amendment applies on and after 26 June 2008.</p> <p>The concept of a ‘virtual PST asset’ was replaced with the concept of a ‘complying superannuation/FHSA asset’ when the first home savers account amendments were introduced in 2008. The amendments to update the terminology in subsection 320-141(2), which were sought by taxpayers through the TIES system, will have no adverse impact on taxpayers as they confirm existing practice and remove uncertainty.</p>

**Part 23 — Repeal of spent provision about land transport facilities borrowings**

**Table 5.24: Part 23 — Repeal of spent provision about land transport facilities borrowing**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      13-1(item in the table headed ‘land transport facilities borrowings’)                      250-60(3)                      250-60(3)(d)                      250-60(3)(e)                      Division 396                      995-1(1) (definition of ‘land transport facilities borrowings agreement’)                      995-1(1) (definition of ‘land transport facility’)                      995-1(1) (definition of ‘LTF interest’)                      995-1(1) (definition of ‘related facility’)                      [Items 154 to 162]</p>	<p>Repeals the provisions that provided the basis for the land transport facilities borrowings scheme. That scheme provided tax offsets to resident financiers on interest received from eligible land transport infrastructure borrowings provided that the borrower agreed to forego the tax deductibility of that interest. The scheme is no longer operative. Since 2004 no new projects have been approved under the scheme and no projects currently receive assistance under it.</p>

**Part 24 — Prevention of double counting for direct value shifts**

**Table 5.25: Part 24 — Prevention of double counting for direct value shifts**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      725-250                      725-255(2)                      725-335(3)                      725-340(2)                      [Items 163 to 167]</p>	<p>In certain circumstances, the direct value shifting rules could apply where an amount is already included in the adjustable value (such as the cost base or reduced cost base) of an up interest.</p> <p>This could happen where, for example, a shareholder makes a payment to another shareholder for an impairment of their share rights. This expenditure could qualify for inclusion in the fourth element of the cost base (and reduced cost base) of the paying shareholder’s shares.</p> <p>Providing that all of the conditions under the direct value shifting rules are satisfied, the</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>payer shareholder would also be able to make an adjustment to increase the cost base of their shares reflecting in whole or part the increase in the market value of their interest. This can duplicate the effect of the inclusion of an amount in the fourth element of the cost base.</p> <p>This amendment will ensure that where an amount is included in the adjustable value of an up interest, the value will not adjust the cost base of the up interest under the direct value shifting rules.</p> <p>This amendment applies in relation to schemes entered into on or after Royal Assent.</p>

## Part 25 — Ineligible income tax remission decisions

**Table 5.26: Part 25 — Ineligible income tax remission decisions**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Taxation Administration Act 1953</i></b>            2(1)            14ZQ (definition of ‘ineligible income tax remission decision’)            14ZS(1)            14ZS(2)            14ZS(5)  <i>[Items 168 to 172]</i></p> <p>388-65(3A) in Schedule 1  <i>[Items 431 and 432]</i></p>	<p>Moves the definition of ‘ineligible income tax remission decision’ from section 14ZQ to subsection 2(1).</p> <p>Corrects an incorrect cross-reference, and applies to determinations made on or after 1 April 2004.</p>

**Part 26 — Correction of references to chains of fixed trusts**

**Table 5.27: Part 26 — Correction of references to chains of fixed trusts**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      855-40(2)(b)(i) and (ii)                      855-40(6)(b)                      [Items 173 to 175]</p>	<p>Corrects the asterisking of the references to ‘fixed trust’ and ‘chains of fixed trusts’.</p>

**Part 27 — Gender-specific language**

**Table 5.28: Part 27 — Gender-specific language**

<i>Provision being amended</i>	<i>What the amendments do</i>
<p><b><i>Income Tax Assessment Act 1936</i></b>                      6(1) (definition of ‘income from personal exertion’)                      6(1) (paragraph (a) of the definition of ‘income from personal exertion’)                      6(1) (paragraph (e) of the definition of ‘permanent establishment’)                      6(1) (subparagraphs (a)(i) and (ii) of the definition of ‘resident’)                      6A                      14(2)                      23AA(2)                      23AA(3)(a), (b) and (c) and (6)(a)                      23AB(2)                      23AB(7)                      23AB(7)(b)                      23AB(11)                      23AC(3)(a)(i)                      23AC(3)(a)(i), (ii), (iii) and (iv)                      23AC(3)(b)(i)                      23AC(3)(b)(ii)                      23AF(11)                      23AF(12)                      23AF(18) (paragraph (a) of the definition of ‘eligible</p>	<p>Ensures gender neutral references in the tax law provisions.</p>

<i>Provision being amended</i>	<i>What the amendments do</i>
foreign remuneration') 24B(1) (paragraph (b) of the definition of 'prescribed person') 24C(a) 24D(4) 24E(1)(b) 24E(4)(b) 24E(4)(c) 24G(1)(e) 25A(1) 25A(10)(a) 25A(11)(b)(i) 26AB(4) 26AG(3)(d) and (e) 26AG(4) 26AG(10)(f) and (g) 26AH(2)(b) 26AH(4) 26C(2)(b)(i) 27(1) 51AD(9) 51AD(20)(f) 52(1) 52A(3)(j) 73A(2) 73A(2)(b) 79A(1) 79A(2)(f) 79A(2A) 79A(3B)(c) 79A(3E) 79B(1) 79B(2)(b) 79B(5) and (5A) 82 82KL(8) 82L(1) (paragraph (b) of the definition of 'convertible note') 82M(1)(b) 82P(2)(b) and (3)(b) 82R(2) 82SA(1)(d)(i) 82SA(1)(d)(vii) 82SA(1)(d)(viii) 94(2)(a) 94(9), (10), (10A) and (10B) 94(10C)(a)(i)(A) 95B	

<i>Provision being amended</i>	<i>What the amendments do</i>
99A(3)(c)	
99C(2)(e)	
101	
101A(1)	
101A(2)	
102(1)(a)	
102(2)	
102(2)(a) and (b)	
102(3)	
102A(4)(a)(i) and (b)(i)	
102G(11)(a)	
102G(11)(b) and (c)	
103(2)	
103A(5)(d)	
103A(7)(a), (b) and (c)	
120(2)	
126(3)	
128A(3)	
128B(10) and (11)	
129	
130	
131	
134	
135	
136AF(1) and (3)	
136AF(5)	
142	
143	
147	
148(2)	
148(2)(b)	
148(3)	
148(3)	
148(4)	
148(5) and (8)	
148(9)	
148(9)(a)	
148(9)(b)	
152	
155(1)	
155(2)	
156(1) (definition of 'relevant primary production deductions')	
156(5)	
157(3)	
157(4)	
159H(a)	
159J(1), (1A) and (1B)	
159L(1) and (3)	



<i>Provision being amended</i>	<i>What the amendments do</i>
159L(4)(a)	
159M	
159P(4) (paragraph (h) of the definition of ‘medical expenses’)	
160AAB(2), (3) and (6)	
163	
164	
166	
167	
171(1)	
177E(1)(c)	
177F(1) and (3)	
177F(6)	
251R(4)	
251S(2)	
252(1)(c)	
252(1)(g)	
252(1)(i)	
252A(3)	
252A(6)	
252A(12)	
254(1)(a)	
254(1)(b)	
254(1)(c)	
254(1)(d)	
254(1)(e)	
254(1)(f)	
254(1)(g)	
254(1)(h)	
255(1)(a) and (b)	
255(1)(c)	
255(1)(d)	
255(2)	
257	
262	
263(1)	
264(1)(a)	
264(1)(b)	
264(2)	
<b>[Items 176 to 367]</b>	

**Part 28 — Misdescribed amendments**

**Table 5.29: Part 28 — Misdescribed amendments — Amendments to the *Tax Laws Amendment (2010 Measures No.1) Act 2010***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Tax Laws Amendment (2010 Measures No. 1) Act 2010</i></b></p> <p>Item 105 of Schedule 5                      Item 173 of Schedule 5                      Item 201 of Schedule 5                      Item 11 of Schedule 6 (heading)                      [Items 368 to 371]</p>	<p>Corrects grammatical and other errors, such as asterisking.</p>

**Table 5.30: Part 28 — Misdescribed amendments — Amendments to the *Tax Laws Amendment (Transfer of Provisions) Act 2010***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Tax Laws Amendment (Transfer of Provisions) Act 2010</i></b></p> <p>Item 16 of Schedule 2                      [Item 372]</p>	<p>Repeals an item that amends provisions that have been repealed.</p>

**Part 29 — References to Schedules**

**Table 5.31: Part 29 — References to Schedules — Amendments to the *Family Trust Distribution Tax (Primary Liability) Act 1998* and to the *Family Trust Distribution Tax (Secondary Liability) Act 1998***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Family Trust Distribution Tax (Primary Liability) Act 1998</i></b></p> <p>3                      [Item 373]</p> <p><b><i>Family Trust Distribution Tax (Secondary Liability) Act 1998</i></b></p> <p>3                      [Item 374]</p>	<p>Corrects the wording of how to refer to a Schedule.</p>

**Table 5.32: Part 29 — References to Schedules — Amendments to the *Fringe Benefits Tax Assessment Act 1986***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Fringe Benefits Tax Assessment Act 1986</i></b>            136(1) (paragraph (q) of the definition of ‘fringe benefit’)  <b><i>[Item 375]</i></b></p>	<p>Corrects the wording of how to refer to a Schedule.</p>

**Table 5.33: Part 29 — References to Schedules — Amendments to the *Income Tax Assessment Act 1936***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1936</i></b>            95(1) (note at the end of the definition of ‘net income’)            102D(1) (note at the end of the definition of ‘net income’)            102M (note at the end of the definition of ‘net income’)            102UC(4) (definition of ‘discretionary trust’)            102UC(4) (paragraphs (a), (d) and (e) of the definition of ‘excluded trust’)            102UC(4) (definition of ‘fixed entitlement’)            102UC(4) (definition of ‘indirectly’)  <b><i>[Items 376 to 382]</i></b></p>	<p>Corrects the wording of how to refer to a Schedule.</p>

**Table 5.34: Part 29 — References to Schedules — Amendments to the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1997</i></b>                      25-35(5) (cell in item 5 in the table, column headed ‘See:’)                      36-25                      109-60 (cell in item 9 in the table, column headed ‘See:’)                      109-60 (cell in item 10 in the table, column headed ‘See:’)                      112-97 (cell in item 5A in the table, column headed ‘See:’)                      112-97 (cell in item 20 in the table, column headed ‘See:’)                      128-15(1) (note 2)                      165-215(5)                      165-220(5)                      165-230(5)                      180-10(1)                      180-20(1)                      230-460(7)                      328-10(1) (cell in item 12 in the table, column headed ‘Provision’)                      328-110(4) (paragraph (a) of the note)                      995-1(1) (definition of ‘family trust’)                      995-1(1) (paragraph (a) of the definition of ‘income for surcharge purposes’)                      995-1(1) (note 1 to paragraph (a) of the definition of ‘tax loss’)  <b><i>[Items 383 to 396]</i></b></p>	<p>Corrects the wording of how to refer to a Schedule.</p> <p>Updates a reference to the old Schedule 2J in the ITAA 1936, which has since been rewritten into Subdivision 321-C in the ITAA 1997.</p>

**Table 5.35: Part 29 — References to Schedules — Amendments to the *Income Tax (Transitional Provisions) Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax (Transitional Provisions) Act 1997</i> 40-285(2)(a)(ii) [Item 397]	Corrects the wording of how to refer to a Schedule.

**Table 5.36: Part 29 — References to Schedules — Amendments to the *Medicare Levy Act 1986***

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Medicare Levy Act 1986</i> 3(2A) [Item 398]	Corrects the wording of how to refer to a Schedule.

**Table 5.37: Part 29 — References to Schedules — Amendments to the *Superannuation Contributions Tax (Assessment and Collection) Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i> 7A(3)(b) and (c) 7B(3)(b) and (c) [Item 399]	Corrects the wording of how to refer to a Schedule.

## **Part 30 — References to taxation laws**

**Table 5.38: Part 30 — References to taxation laws — Amendments to the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 995-1(1) [Item 400]	Inserts a definition of 'Excise Act'.

**Table 5.39: Part 30 — References to taxation laws — Amendments to the *Taxation Administration Act 1953***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Taxation Administration Act 1953</i></b>                      2(1) (at the end of the definition of ‘taxation law’)                      2(2)                      284-75(1)(a) in Schedule 1                      284-75(1) in Schedule 1 (note 1)                      284-75(1) in Schedule 1 (note 2)                      284-75(4)(a)(ii) in Schedule 1                      284-75(4)(b) in Schedule 1                      284-75(6)(d)(i) in Schedule 1                      284-75(6)(d)(ii) in Schedule 1                      284-80(1) in Schedule 1 (table item 2)                      284-90(1) in Schedule 1 (items 1, 2 and 3 in the table, column headed ‘In this situation:’)                      [Items 401 to 411]</p>	<p>Clarifies the limiting of the definition of ‘taxation law’ so as to exclude ‘Excise Acts’.</p>

**Part 31 — Other amendments**

**Table 5.40: Part 31 — Other amendments — Amendments to the *Income Tax Assessment Act 1936***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Income Tax Assessment Act 1936</i></b>                      170(10AA) (items 24, 25, 30 and 35 in the table)                      202DR(2)                      [Items 412 and 413]</p>	<p>Corrects the numbering and ordering of items in the table.                      Corrects a grammatical error.</p>

**Table 5.41: Part 31 — Other amendments —  
Amendments to the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Income Tax Assessment Act 1997</i></b> 112-20(3) (note 1) Subdivision H of Division 240 (heading) 376-170(4)(a)(i) 705-25(5)(c)(ii) 974-150(2) <b>[Items 414 to 418]</b>	Corrects typographical errors. Repeals a provision that related to a corporation that no longer exists. Corrects an incorrect cross-reference.

**Table 5.42: Part 31 — Other amendments —  
Amendments to the *Income Tax (Transitional Provisions) Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Income Tax (Transitional Provisions) Act 1997</i></b> 126-155 <b>[Item 419]</b>	Repeals a spent provision.

**Table 5.43: Part 31 — Other amendments —  
Amendments to the *Superannuation Legislation Amendment Act 2010***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Superannuation Legislation Amendment Act 2010</i></b> 21(1) in Schedule 1 <b>[Item 420]</b>	Corrects an incorrect cross-reference.

**Table 5.44: Part 31 — Other amendments —  
Amendments to the *Taxation (Interest on Overpayments and Early Payments) Act 1983***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i></b> 3C (definition of 'relevant tax') (item 50 in the table) <b>[Item 423]</b>	Corrects an incorrect cross-reference.

**Table 5.45: Part 31 — Other amendments —  
Amendments to the Taxation Administration Act 1953**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Taxation Administration Act 1953</i></b>                      2(1)                      14ZQ (definition of ‘ineligible income tax remission decision’)                      14ZS(1)                      14ZS(2)                      14ZS(5)                      388-65(3A) in Schedule 1                      [Items 421 and 422]</p>	<p>Corrects an incorrect cross-reference, and applies to determinations made on or after 1 April 2004.</p>

**Table 5.46: Part 31 — Other amendments —  
Amendments to the Tax Laws Amendment (2007 Measures No. 5) Act 2007**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Tax Laws Amendment (2007 Measures No. 5) Act 2007</i></b>                      Part 2 of Schedule 12 (heading relating to the <i>Industrial Research and Development Incentives Act 1976</i>)                      [Item 424]</p>	<p>Repeals a heading which refers to an Act that is not being amended.</p>



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