2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (STRONGER, FAIRER, SIMPLER AND OTHER MEASURES) BILL 2011

EXPLANATORY MEMORANDUM

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

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Glossary

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

Abbreviation	***Definition***
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
IT(TP)A 1997	*Income Tax (Transitional Provisions) Act 1997*
ITAA 1997	*Income Tax Assessment Act 1997*
RSA	retirement savings account
TAA 1953	*Taxation Administration Act 1953*
TFN	tax file number

General outline and financial impact

Abolish the entrepreneurs' tax offset

Schedule 1 to this Bill repeals 'Subdivision 61-J — 25% entrepreneurs' tax offset' of the *Income Tax Assessment Act 1997*, abolishing the entrepreneurs' tax offset.

Date of effect: This measure applies for the 2012-13 income year and later income years.

Proposal announced: This measure was announced in the Deputy Prime Minister and Treasurer's Media Release No. 045 of 8 May 2011.

Financial impact: This measure will have a revenue gain of $365 million over the forward estimates period.

2011-12	***2012-13***	***2013-14***	***2014-15***
Nil	Nil	$180m	$185m

Compliance cost impact: Nil to low.

Increase to the small business instant asset write-off threshold and simplified depreciation

Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* by:

- increasing the small business instant asset write-off threshold from $1,000 to $6,500; and
- consolidating the long life small business pool and the general small business pool into a single pool to be written off at one rate.

Date of effect: Part 1 of Schedule 2 — the increase in the instant asset write-off threshold from $1,000 to $5,000 and the simplified pooling arrangements — commences on the later day of Royal Assent of the Bills giving effect to the Minerals Resource Rent Tax and of Royal Assent of this Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011.

Part 2 of Schedule 2 — the increase in the instant asset write-off threshold from $5,000 to $6,500 will commence after the commencement of Part 1of Schedule 2 to this Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011 and Royal Assent of the Clean Energy Bill 2011.

Proposal announced: The increase in the instant asset write-off threshold to $5,000 and the simplified depreciation rules were jointly announced by the then Prime Minister and the Treasurer in the Treasurer's Media Release No. 028 of 2 May 2010. The further increase in the instant asset write-off threshold from $5,000 to $6,500 was jointly announced by the Deputy Prime Minister and Treasurer, the Minister for Climate Change and Energy Efficiency and the Minister for Small Business in the Deputy Prime Minister and Treasurer's Media Release No. 077 of 10 July 2011.

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

2011-12	***2012-13***	***2013-14***	***2014-15***
Nil	Nil	−$1,160m	−$1,140m

Compliance cost impact: Low. This measure will simplify existing practice. There is no ongoing compliance cost impact and a minimal transitional impact, reflecting the need for some taxpayers to be aware of the amendment.

Small business entities' deductions for motor vehicles

Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* to allow small business entities to claim an accelerated initial deduction for motor vehicles acquired in the 2012-13 and subsequent income years.

Date of effect: These amendments will commence on the day this Bill receives Royal Assent.

Proposal announced: This measure was jointly announced by the Deputy Prime Minister and Treasurer, the Assistant Treasurer and Minister for Financial Services and Superannuation and the Minister for Small Business in the Deputy Prime Minister and Treasurer's Media Release No. 049 of 10 May 2011.

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

2011-12	***2012-13***	***2013-14***	***2014-15***
Nil	Nil	−$200m	−$150m

Compliance cost impact: Low. Taxpayers already depreciate motor vehicles under existing practice. This will bring forward the depreciation benefits, meaning there is no ongoing compliance cost impact and a minimal transitional impact.

Low income superannuation contribution

Schedule 4 to this Bill amends the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003* to provide for the low income superannuation contribution.

Date of effect: These amendments apply to the eligible concessional contributions of an individual for a year starting on 1 July 2012. These amendments are dependent on the passing of the Minerals Resource Rent Tax package**.**

Proposal announced: This measure was announced as part of *Stronger, Fairer, Simpler: A tax plan for our future* in the Treasurer's and the then Prime Minister's joint Media Release No. 028 of 2 May 2010.

Financial Impact: This measure will have the following implications on the underlying cash balance:

2011-12	***2012-13***	***2013-14***	***2014-15***
−$0.7m	−$19.6m	−$892.4m	−$975.6m

Compliance cost impact: Minimal.

Chapter 1
Abolish the entrepreneurs' tax offset

Outline of chapter

1.1 Schedule 1 to this Bill 2011 repeals 'Subdivision 61-J — 25% entrepreneurs' tax offset' of the *Income Tax Assessment Act 1997* (ITAA 1997), abolishing the entrepreneurs' tax offset.

1.2 All the legislative references in this chapter are to the ITAA 1997 unless otherwise specified.

Context of amendments

1.3 The entrepreneurs' tax offset was introduced into the ITAA 1997 by the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* and applies to assessments for income years commencing on or after 1 July 2005.

1.4 The entrepreneurs' tax offset provides up to a 25 per cent tax offset on the income tax liability attributable to business income of small businesses that have an annual turnover of under $75,000. The benefit of the offset begins to phase out for small businesses with an annual turnover above $50,000 and eligibility ceases when turnover reaches $75,000. In addition, the entrepreneurs' tax offset is subject to an income test that restricts the eligibility of individuals whose income is over a threshold amount ($70,000 if they are single and $120,000 if they have a family).

1.5 The *Australia's Future Tax System* Review noted that removing the entrepreneurs' tax offset would reduce compliance and administration costs and provide a more equitable and neutral treatment between self-employment and employment income. The *Australia's Future Tax System* Review recommended (recommendation 6) the abolition of the entrepreneurs' tax offset as it is complex to administer and provides problematic incentives related to business structure.

1.6 On 8 May 2011, the Government announced as part of the small business tax reform package in the 2011-12 Budget that it would abolish the entrepreneurs' tax offset from the 2012-13 income year.

Summary of new law

1.7 This Schedule repeals the 25 per cent entrepreneurs' tax offset from the 2012-13 income year.

Comparison of key features of new law and current law

New law	*Current law*
The entrepreneurs' tax offset is abolished from the 2012-13 income year.	The entrepreneurs' tax offset provides small businesses that have an annual turnover of less than $75,000 with a tax offset of up to 25 per cent of their income tax liability in respect of their business income. An income test restricts the eligibility of individuals whose income is over a threshold amount for entrepreneurs' tax offset purposes ($70,000 if they are single and $120,000 if they have a family).

Detailed explanation of new law

1.8 This Schedule repeals the 25 per cent entrepreneurs' tax offset from the 2012-13 income year. ***[Schedule 1, items 1 to 3, headings under section 13-1, Subdivision 61-J]***

Application and transitional provisions

1.9 The amendments made by this Schedule apply in relation to the 2012-13 income year and later income years. ***[Schedule 1, item 10]***

Consequential amendments

1.10 Consequential amendments are made to the ITAA 1997, the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) and the *Taxation Administration Act 1953* (TAA 1953) to remove references to the entrepreneurs' tax offset. ***[Schedule 1, items 4 to 9, note to subsection 328-10(2), section 995-1, paragraphs 328-111(2)(c) and 328-112(3)(c) of the IT(TP)A 1997, paragraph (c) of step 1 in section 45-340 in Schedule 1 to the TAA 1953]***

Chapter 2
Increase to the small business instant asset write-off threshold and simplified depreciation

Outline of chapter

2.1 Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) by:

- increasing the small business instant asset write-off threshold from $1,000 to $6,500; and
- consolidating the long life small business pool and the general small business pool into a single pool to be written off at one rate.

2.2 All legislative references in this chapter are to the ITAA 1997 unless otherwise specified.

Context of amendments

2.3 Small businesses can choose to use the capital allowance arrangements in Subdivision 328-D to depreciate assets.

2.4 The existing capital allowance arrangements for small businesses allow low cost assets to be written off in the year the small business first started to use the asset or had it installed ready for use. A low cost asset (except a horticultural plant) is defined in section 40-425 as one which has a cost of less than $1,000 at the end of the income year in which the asset started to be used or is installed ready for use, for a taxable purpose.

2.5 Other depreciating assets, generally those costing $1,000 or more, are allocated to one of two depreciation pools, depending on the effective life of the asset: the long life small business pool or the general small business pool. The pools are depreciated at different rates (5 per cent or 30 per cent).

2.6 Recommendation 29 of the *Australia's Future Tax System* Review (December 2009) proposed that the capital allowance arrangements for small business be streamlined and simplified by allowing:

- depreciating assets costing less than $10,000 to be immediately written off; and
- all other depreciating assets (except buildings) to be pooled together, with the value of the pool depreciated at a single declining balance rate.

2.7 In response to this review, the Government announced on 2 May 2010 that from the 2012-13 income year small businesses would be allowed to write off assets costing less than $5,000, and that simplified pooling arrangements would be provided for other assets.

2.8 On 10 July 2011, the Government announced that as part of the *Clean Energy Future* Plan the small business instant asset write-off threshold would be further increased from $5,000 to $6,500.

2.9 These changes increase cash flow, reduce compliance costs, expand the existing small business capital allowance concessions and simplify the depreciation calculations for small businesses.

Summary of new law

2.10 From the 2012-13 income year, these amendments enable small businesses that choose to use the capital allowance provisions in Subdivision 328-D to:

- write off depreciating assets costing less than $6,500 in the income year in which they start to use the asset or have it installed ready for use for a taxable purpose during or before that income year; and
- allocate depreciating assets costing $6,500 or more to the general small business pool and depreciated at a rate of 15 per cent in the year of allocation and 30 per cent in following years.

Comparison of key features of new law and current law

New law	***Current law***
Small businesses can write off depreciating assets costing less than \$6,500 in the income year in which they start to use the asset, or have it installed ready for use, for a taxable purpose.	Small businesses can write off depreciating assets costing less than \$1,000 in the income year in which they start to use the asset, or have it installed ready for use, for a taxable purpose.
Small businesses can allocate depreciating assets costing \$6,500 or more to the general small business pool to be depreciated at a rate of 15 per cent in the year of allocation and 30 per cent in other years irrespective of the effective life of the asset.	Small businesses can allocate depreciating assets costing \$1,000 or more to either the long life small business pool or the general small business pool, depending on the effective life of the asset. The depreciation rates of the pools are 5 per cent and 30 per cent respectively.

Detailed explanation of new law

2.11 These amendments increase the threshold used to identify assets that can be written off by a small business in the year in which they start to use the asset or have it installed ready for use, for a taxable purpose. ***[Schedule 2, items 8 to 13, 68 and 69]***

2.12 These amendments apply to small business entities as defined in section 328-110 that have an aggregated turnover of less than \$2 million for an income year. Aggregated turnover is defined in section 328-115 and includes the turnover of the small business entity and certain connected and affiliated entities. A depreciating asset is defined in section 40-30 as an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used.

2.13 A small business can write off (that is, claim a deduction for) a depreciating asset which has a cost of less than \$6,500 at the end of an income year in which the business starts to use it, or has it installed ready for use, for a taxable purpose. ***[Schedule 2, items 4, 8, 9 and 67 to 69]***

Example 2.1: Claiming a deduction for an asset under the instant asset write-off threshold

> Kylie's Flowers is a small business entity. During the 2012-13 income year it buys a new refrigeration unit for \$3,000. As the refrigeration unit is a depreciating asset and costs less than \$6,500, the business can claim an immediate \$3,000 deduction for the 2012-13 income year.

2.14 The instant asset write-off for depreciating assets costing under $6,500 is available on an asset by asset basis. It is not necessary for small businesses to aggregate the cost of assets that are identical, substantially identical or form part of a set.

2.15 The existing capital allowance rules about the taxable purpose proportion of the depreciating asset still apply, and affect the amount of the deduction that can be claimed.

2.16 If the cost of an asset is less than $6,500 but the small business entity uses the asset only part of the time for a taxable purpose, the deduction available would be less than the cost the asset.

Example 2.2: Writing off an asset that is used partly for a taxable purpose and partly for a non-taxable purpose

> Pablo's Newsagency is a small business entity. During the 2013-14 income year, Pablo purchases a laptop for $3,000. He uses the laptop 80 per cent of the time for business purposes and 20 per cent of the time for personal purposes.
>
> As the laptop cost less than $6,500 it can be written off immediately. However, as the taxable purpose proportion is 80 per cent, the business can claim a deduction of $2,400 (80 per cent of $3,000) for the 2013-14 income year.

2.17 If the cost of an asset is $6,500 or more, and the taxable purpose use determines that the amount to be depreciated is less than $6,500, the asset must be allocated to the general small business pool.

Example 2.3: Taxable purpose proportion below the instant asset write-off threshold

> Owen's Graphic Designs is a small business entity. During the 2012-13 income year it buys a new powerful computer for $6,800 that Owen uses 80 per cent of the time for business purposes and 20 per cent of the time for personal purposes. Although the taxable purpose proportion of the computer is $5,440 (80 per cent of $6,800) the business cannot claim an immediate deduction for this asset. To depreciate this asset Owen allocates $5,440 to the general small business pool for the 2012-13 income year.

2.18 Small businesses that choose to use the capital allowance provisions in Subdivision 328-D may also claim an immediate deduction for the taxable purpose proportion of additions to existing assets (that cost less than $6,500) if the addition also costs less than $6,500. ***[Schedule 2, items 10 to 13 and 69]***

Example 2.4: Deduction of cost additions below the instant asset write-off threshold

Martin's Printing buys a new industrial printer for $6,000. Martin's Printing claims an immediate deduction of $6,000 for the printer.

Martin's Printing later spends $1,000 on a new component for the industrial printer. The $1,000 component is a second element cost of the printer.

As the second element cost of the printer is under $6,500, Martin's Printing may claim an immediate deduction of the cost of the component.

In the next income year, Martin's Printing spends $2,000 on another new component for the industrial printer. As Martin's Printing has already claimed a deduction for the cost addition to the printer (the first new component), this addition must be allocated to the general small business pool.

2.19 Existing rules for the disposal of assets that have been totally written off continue to apply. ***[Schedule 2, items 45 and 72]***

Simplified depreciation pooling arrangements

2.20 Depreciating assets costing $6,500 or more are depreciated using a pooling arrangement. A pool is treated as a single depreciating asset although it is made up of the individual costs of the depreciating assets that are allocated to it. Pool deductions are calculated on a diminishing value basis at a set rate. ***[Schedule 2, item 14]***

2.21 To simplify and streamline depreciation arrangements for small business, the long life small business pool ceases to exist after the 2011-12 income year. The closing balance of a small business' long life pool and general small business pool for the 2011-12 income year is to be added together to calculate the opening balance of the general small business pool for the 2012-13 income year. ***[Schedule 2, items 15 and 65, section 328-200 of the Income Tax (Transitional Provisions) Act 1997 (IT(TP)A 1997)]***

Example 2.5: Consolidation of the depreciation pools for 2012-13 income year

Chantal's Cafe is a small business entity and at the end of the 2011-12 income year the closing balance of its long life pool was $8,000 and the closing balance of its general small business pool was $10,000. For the 2012-13 income year, Chantal's Cafe's long life pool no longer exists, but her general small business pool opening balance is now $18,000 (that is, $8,000 + $10,000).

2.22 The calculation of the opening balance of the general small business pool for the 2012-13 income year is also adjusted by changes in the proportion of the taxable purpose use of the assets allocated to the depreciation pools.

2.23 From the 2012-13 income year the deduction for an asset acquired during an income year and then allocated to the general small business pool is 15 per cent of the taxable purpose proportion of its adjustable value. The general small business pool is written off at a rate of 30 per cent per income year thereafter. ***[Schedule 2, items 25, 28 and 29]***

Example 2.6: Depreciation of assets acquired during the income year and allocated to the general small business pool

> Following on from Example 2.5, the opening balance of Chantal's Cafe's general small business pool for the 2012-13 income year is \$18,000. During the year it purchased a new large oven for \$7,500. The business can deduct 15 per cent of the cost of the oven (\$1,125) in the 2012-13 income year. To calculate the deduction for the general small business pool for the 2012-13 income year, Chantal uses a rate of 30 per cent (\$18,000 × 30% = \$5,400). Chantal's Cafe's total deduction for the 2012-13 income year is \$6,525 (that is, \$1,125 + \$5,400).

Writing off the balance of the pool

2.24 The threshold at which a small business is allowed to write off the total balance of the general small business pool is aligned with the instant asset write-off threshold of \$6,500. ***[Schedule 2, items 41 to 43, 70 and 71]***

Example 2.7: Writing off the balance of the general small business pool

> Justin's Gardening Pty Ltd is a small business entity and the opening balance of its general small business pool for the 2012-13 income year is \$7,200. During the year Justin's Gardening sold a ride-on lawn mower for \$1,000. No other assets were acquired during the year. The pool balance is adjusted (\$7,200 − \$1,000 = \$6,200) and as it is less than \$6,500, Justin's Gardening can deduct the full pool balance of \$6,200 for the 2012-13 income year.

2.25 All other existing rules relating to depreciation pools, including the calculation of opening and closing pool balances, and estimates of taxable purpose proportion continue to operate.

2.26 The consolidation of the long life pool into the general small business pool occurs regardless of whether an entity has chosen to use the

Subdivision 328-D capital allowance provisions for the 2012-13 income year.

2.27 If the general small business pool balance (and the long life small business pool closing balance for the 2011-12 income year) is less than zero, the amount by which the balance is less than zero is to be added to the taxpayer's assessable income for that income year. The closing pool balance for that income year is then taken to be zero.

Roll-overs

2.28 Existing section 328-250 addresses roll-over relief for certain balancing adjustment events by working out the amounts that a small business entity (a transferor or a transferee) can deduct for a depreciating asset that the transferor or transferee started to use or have installed ready for use for a taxable purpose in an income year in which the balancing adjustment event occurred. Section 328-250 applies to deductions for assets costing less than $6,500 and assets that are pooled. ***[Schedule 2, items 55 to 60 and 72 to 74]***

Application and transitional provisions

2.29 These amendments apply to assets that small businesses first use or have installed ready for use in the 2012-13 and later income years. ***[Schedule 2, items 66 and 75]***

2.30 The increase in the instant asset write-off threshold from $1,000 to $5,000 will commence on the later day of Royal Assent of the Bills giving effect to the Minerals Resource Rent Tax and of Royal Assent of this Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011.

2.31 The increase in the instant asset write-off threshold from $5,000 to $6,500 will commence after the commencement of Part 1 of Schedule 2 to this Bill and Royal Assent of the Clean Energy Bill 2011.

Consequential amendments

2.32 Consequential amendments are made to the ITAA 1997 to consolidate the depreciation pools by removing the small business long life pool so that the general small business pool is the only available pool for use. ***[Schedule 2, items 1 to 3, 5 to 7, 16 to 24, 26, 27, 30 to 39, 40, 44, 46 to 54 and 61 to 64]***

2.33 The consequential amendments made to the IT(TP)A 1997 clarify the treatment of the general small business pooling arrangements for the 2012-13 income year. ***[Schedule 2, item 65]***

Chapter 3
Small business entities' deductions for motor vehicles

Outline of chapter

3.1 Schedule 3 to this Bill 2011 amends the *Income Tax Assessment Act 1997* (ITAA 1997) to allow small business entities to claim an accelerated initial deduction for motor vehicles acquired in the 2012-13 and subsequent income years.

3.2 All legislative references in this chapter are to ITAA 1997 unless otherwise specified.

Context of amendments

3.3 Small businesses can choose to use the capital allowance arrangements in Subdivision 328-D to depreciate assets, including motor vehicles.

3.4 As part of the 2011-12 Budget, the Government announced that small business entities would be allowed to bring forward a deduction of up to $5,000 for any motor vehicles purchased in the 2012-13 and subsequent income years. The remainder of the purchase value of the motor vehicle is depreciated through the general small business pool at 15 per cent in the first year and 30 per cent in later years.

3.5 Motor vehicles are a significant capital item for many of Australia's 2.7 million small businesses. This accelerated initial deduction delivers benefits by improving cash flow and helping small businesses to reinvest and grow their businesses.

Summary of new law

3.6 From the 2012-13 income year, small business entities that choose to use the capital allowance provisions in Subdivision 328-D can claim up to $5,000 as an immediate deduction for a motor vehicle in the year they start to use the motor vehicle, or have it installed ready for use, for a taxable purpose. Taking into account the amount already written off, the remainder of the purchase cost is depreciated as part of the general small business pool, at 15 per cent in the first year and 30 per cent in later years. This is an exception to the general small business capital allowance rules for depreciating assets.

Comparison of key features of new law and current law

New law	***Current law***
After allocating a motor vehicle to the general small business pool, a small business can claim up to $5,000 as an immediate deduction for a motor vehicle in the income year in which they start to use the motor vehicle, or have it installed ready for use. The remaining value is depreciated through the general small business pool at a rate of 15 per cent in the first year and 30 per cent in later years. If the motor vehicle is under the instant asset write-off threshold (an asset to which subsection 328-180(1) of the ITAA 1997 applies), a small business claims a deduction under that subsection instead of under the special rules for motor vehicles.	Small businesses can write off depreciating assets, including motor vehicles, costing less than $1,000 in the income year in which they start to use the motor vehicle, or have it installed ready for use, and can depreciate assets costing $1,000 or more through the general small business pool at a rate of 15 per cent in the year of allocation and 30 per cent in later years.

Detailed explanation of new law

What is a motor vehicle

3.7 A ***motor vehicle*** is defined by subsection 955-1(1) to be any motor powered road vehicle (including a four wheel drive vehicle). This is not limited to new motor vehicles.

3.8 Motor vehicles do not include road vehicles if the main function of the road vehicle is not related to public road use or if the vehicle's ability to travel on a public road is secondary to its main function.

3.9 Examples of motor vehicles that can be written off under the small business depreciation for motor vehicles provisions include:

- cars;
- trucks;
- vans;
- utilities;
- motorbikes; and
- scooters.

3.10 Examples of vehicles that cannot be written off under the small business deprecation for motor vehicles provisions include:

- road rollers;
- graders;
- tractors;
- combine harvesters;
- earthmoving equipment; and
- trailers.

Example 3.1: The main function of a motor vehicle is related to public road use

> Adam and John own a civil engineering business that is a small business entity. They purchase a truck and a mini excavator. The truck is a road vehicle and its main function is to transport soil to and from work sites. The mini excavator is used to dig and move soil around work sites. Sometimes the mini-excavator travels small distances on public roads between sites — however, this is secondary to its main function. Therefore, the truck is a motor vehicle that can be written off under the special small business motor vehicle depreciation rules, but the mini-excavator is not.

Current depreciation regime

3.11 Under the existing law small business entities that choose to use the capital allowance arrangements in Subdivision 328-D can write off low cost assets — that is, assets costing less than $1,000 — in the income year in which they start to use the asset or have it installed ready for use.

3.12 This Schedule amends the current law to increase the threshold for a low cost asset to $5,000 and then further increases it to $6,500. The result is that in the year a small business starts to use the depreciating asset or has it installed ready for use, for a taxable purpose, the small business can deduct the taxable purpose proportion of the adjustable value of depreciating assets, such as motor vehicles, that cost less than $6,500.

3.13 Furthermore, this Schedule allows small businesses to allocate depreciating assets costing $6,500 or more to the general small business pool to be depreciated at a rate of 15 per cent of the taxable purpose proportion of the adjustable value of the asset in the year of allocation to the pool. In other years the deduction is calculated using a rate of 30 per cent.

3.14 The total balance of the general small business pool can be written off when it falls below $6,500.

Application to motor vehicles

3.15 The existing capital allowance rules (as amended by this Schedule) apply to motor vehicles as depreciating assets. For motor vehicles costing less than the instant asset write-off threshold a small business can write off the taxable purpose proportion of the adjustable value of the motor vehicle under subsection 328-180(1) in the year it starts to use the motor vehicle, or have it installed ready for use, for a taxable purpose. Where that is the case, the special rules for motor vehicles do not apply. ***[Schedule 3, item 3, paragraph 328-237(1)(d)]***

3.16 The existing capital allowance rules also determine how to treat second element costs of a motor vehicle.

3.17 The disposal of a motor vehicle that has been written off in full under subsection 328-180(1), requires a small business to include the sale amount in their assessable income.

Special rules for certain motor vehicles

Deductions in the year the small business starts to use the motor vehicle

3.18 Small business entities can claim up to $5,000 as an immediate deduction for motor vehicles in the year they start to use the motor vehicle, or have it installed ready for use, for a taxable purpose (‘start year’). ***[Schedule 3, item 3, subsection 328-237(1)]***

3.19 Small businesses cannot use these rules if their motor vehicle can be written off immediately under subsection 328-180(1), that is, motor vehicles that are written off under the instant asset write-off. ***[Schedule 3, item 3, paragraph 328-237(1)(d)]***

Example 3.2: A motor vehicle that is written off under the instant asset write-off

> Assume that the instant asset write-off threshold is $6,500.
>
> Barry's Gardening Services is a small business entity and in the 2013-14 income year purchases a second-hand ute for $6,000 to transport the business' gardening tools. The vehicle is used only for business purposes. Barry's Gardening Services claims a deduction for the full value of the ute ($6,000) in the start year under subsection 328-180(1).

3.20 Where small businesses use the depreciation rules in Subdivision 328-D, all motor vehicles that are not subject to subsection 328-180(1) are allocated to the general small business pool in the start year under the existing law.

3.21 Once in the pool, the deduction available in the start year depends on the amount of the taxable purpose proportion of the adjustable value of the motor vehicle. ***[Schedule 3, item 3, subsections 328-237(2) to (4)]***

Treatment if the taxable purpose proportion of the adjustable value is more than $5,000

3.22 Where the taxable purpose proportion of the adjustable value of a motor vehicle is more than $5,000, the deduction for the start year, comprises of:

- $5,000; and
- 15% × ((the taxable purpose proportion × the adjustable value of the motor vehicle) − $5,000).

[Schedule 3, item 3, subsections 328-237(2) and (4)]

Example 3.3: Initial deduction for a motor vehicle in the start year

Flynn's Courier Service is a small business entity and in the 2012-13 income year purchases a small second hand vehicle for $14,000 to assist with deliveries. The vehicle is only used for business purposes. Flynn's Courier Service calculates its start year deduction in the following way:

$\$5{,}000 + 15\% \times ((100\% \times \$14{,}000) - \$5{,}000) = \$6{,}350$

In the 2012-13 income year, Flynn's Courier Service can claim a deduction of $6,350 for the motor vehicle.

Example 3.4: Deduction for a motor vehicle with partial taxable purpose use in the start year

Following on from the previous example, in the 2014-15 income year Flynn's Courier Service purchases a new motor vehicle for $30,000 to help with larger deliveries. Flynn estimates that 20 per cent of his use of the motor vehicle is for private purposes, and 80 per cent is for taxable purposes. Flynn's Courier Service calculates its start year deduction in the following way:

$\$5{,}000 + 15\% \times ((80\% \times \$30{,}000) - \$5{,}000) = \$7{,}850$

In the 2014-15 income year, Flynn's Courier Service can claim a deduction of $7,850 for the new motor vehicle.

3.23 The calculation of 15 per cent of the taxable purpose proportion of the adjusted value of the motor vehicle aligns with the current depreciation of assets allocated to the general small business pool. However, the deduction claimed under this process is in place of the deduction under the existing subsection 328-190(2). No deduction can be claimed under that subsection in the start year. ***[Schedule 3, item 1, subsection 328-190(2A)]***

Taxable purpose proportion of the adjustable value is $5,000 or less

3.24 If a small business purchases a motor vehicle to which the special motor vehicle rules apply and allocates it to the general small business pool, but the amount of the taxable purpose proportion of the adjusted value is $5,000 or less, the deduction in the start year is that amount. ***[Schedule 3, item 3, subsections 328-237(2) and (3)]***

3.25 As the start year deduction is for the full deductible amount, there is no remaining amount to depreciate through the general small business pool. However, as the motor vehicle was added to the pool, the proceeds from any subsequent disposal of that vehicle reduce the pool value rather than form part of the assessable income of the taxpayer.

Example 3.5: Initial deduction for a motor vehicle in the start year where the taxable purpose proportion results in a deduction of less than $5,000

> Digby's Builders is a small business entity and in 2013-14 it purchases a second hand utility for $8,000. The cost of the utility means Digby's Builders allocates it to the general small business pool. Digby also enjoys many outdoor adventure leisure activities and often uses the utility to carry equipment, and travel to and from these private activities. He estimates that 40 per cent of his use of the motor vehicle is for private purposes and 60 per cent for taxable purposes. Digby's Builders calculates its start year deduction in the following way:
>
> 60% × $8,000 = $4,800
>
> In the 2013-14 income year, Digby's Builders can claim a deduction of $4,800 for the utility (which is equal to the amount initially allocated to the general small business pool).

The general small business pool value is less than the instant asset write-off threshold in the year the motor vehicle is allocated to the pool

3.26 Section 328-210 operates to allow a deduction for the full amount of the general small business pool where the balance of the pool falls below the threshold, which (as amended by this Schedule) is $6,500.

3.27 If, in the year the motor vehicle is allocated to the general small business pool (the start year), the pool is a low value pool (that is, the deduction that can be claimed for the pool is less than $6,500 but more than zero), the deduction is claimed under section 328-210 rather than the special motor vehicle rules in this Schedule. ***[Schedule 3, item 3, subsection 328-237(5)]***

Example 3.6: The amount of the deduction for the general small business pool is less than $6,500 in the start year

> Hans' Florist is a small business entity. In the 2013-14 income year, Hans buys a second hand van for $7,000 for flower deliveries. Hans only uses the van for business purposes. In the same year, Hans' Florist sells a large display refrigerator from his florist shop for $1,700. The opening pool balance for the year was $1,000. Under the existing calculations, Hans' florist works out the deduction for the general small business pool:
>
> $1,000 + $7,000 = $8,000 − $1,700 = $6,300
>
> Hans' Florist can claim a deduction for the general small business pool of $6,300, writing off the entire value of the pool.

The deductions for the motor vehicle are included in that deduction for the general small business pool and no further deductions are available for the van.

Deductions for income years other than the start year

3.28 Consistent with the current law, once the motor vehicle is allocated to the general small business pool and a 15 per cent deduction has been received for the start year, it forms part of the pool that is depreciated at a rate of 30 per cent per year.

Example 3.7: Motor vehicle depreciation in the start year and later years

Ruth's Creative Storage Solutions Pty Ltd is a small business entity. Ruth's Creative Storage Solutions purchases a utility vehicle in the 2012-13 income year for $25,000, which is wholly used for the business. The business' deduction for the motor vehicle for the 2012-13 income year is calculated in the following way:

$\$5,000 + 15\% \times ((100\% \times \$25,000) - \$5,000) = \$8,000$

In the 2012-13 income year, Ruth can claim a deduction of $8,000 for the utility.

In the 2013-14 income year, the remaining value of the utility ($\$25,000 - \$8,000 = \$17,000$) forms part of Ruth's general small business pool and is depreciated at a rate of 30 per cent.

3.29 The general small business capital allowance rules apply to cost addition amounts of depreciable assets, including motor vehicles.

Disposal of motor vehicle and writing off the pool balance

3.30 For income years other than the start year, all other existing rules relating to the general small business pool, including those that relate to asset disposal and writing off the pool balance, continue to operate.

3.31 If a motor vehicle has been allocated to the general small business pool and the small business then sells the motor vehicle, the balance of the pool must be adjusted by the sale amount.

Example 3.8: Sale of a motor vehicle that is allocated to the general small business pool

Following on from Example 3.7, Ruth's Creative Storage Solutions sells its utility in the 2014-15 income year for $14,000. As a result, Ruth's Creative Storage Solutions must decrease the value of its general small business pool by $14,000.

3.32 Where the general small business pool balance falls below $6,500, the total balance can be immediately written off. If the closing balance of the general small business pool is less than zero, then the amount by which the balance is less than zero is added to the taxpayer's assessable income for that income year, and the closing pool balance is taken to be zero.

Roll-overs

3.33 Existing section 328-250 addresses roll-over relief for certain balancing adjustment events by working out the amounts that a small business entity (a transferor or a transferee) can deduct for a depreciating asset that the transferor or transferee started to use or have installed ready for use for a taxable purpose in an income year in which the balancing adjustment event occurred.

3.34 Section 328-250 applies to deductions for low cost assets and assets that are pooled. Depending on their value, motor vehicles fall into one of these categories. ***[Schedule 3, items 4 to 6, subsections 328-250(1) and (2) and paragraph 328-250(3)(b)]***

Application and transitional provisions

3.35 These amendments commence the day this Bill receives Royal Assent.

3.36 These amendments apply for motor vehicles that small businesses start to hold in the 2012-13 and later income years. ***[Schedule 3, item 7]***

Consequential amendments

3.37 Consequential amendments are made to the ITAA 1997 to clarify the application of the write off of motor vehicles by small businesses from the 2012-13 income year. ***[Schedule 3, item 2]***

Chapter 4
Low income superannuation contribution

Outline of chapter

4.1 Schedule 4 to this Bill amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to enable eligible low income earners to receive the low income superannuation contribution.

Context of amendments

4.2 The low income superannuation contribution is part of a suite of reforms to improve the superannuation outcomes for Australians. It is dependent on the implementation of the Minerals Resource Rent Tax package of Bills. It is designed to ensure a fairer distribution of Australia's wealth in the resources boom by benefiting low income earners.

Summary of new law

4.3 Concessional contributions are generally contributions to a superannuation fund that receive concessional tax treatment. Concessional contributions are generally before tax contributions that include an employer's superannuation guarantee (SG) contributions, contributions made under a salary sacrifice arrangement and an individual's personal contributions that are deducted

4.4 The low income superannuation contribution seeks to effectively return the tax paid on concessional contributions by a person's superannuation fund or retirement savings account (RSA) provider to a person who is a low income earner. Low income earners are defined as individuals with an adjusted taxable income of $37,000 or less.

4.5 The maximum amount payable is $500.

Detailed explanation of new law

4.6 The low income superannuation contribution is a different payment from the existing Government superannuation co-contribution and an individual's entitlement to this payment will be the subject of a separate determination.

4.7 The low income superannuation contribution is payable even if an individual is not entitled to the existing Government superannuation co-contribution.

4.8 A person is entitled to the low income superannuation contribution if they satisfy the following requirements:

- The person has concessional contributions for the year.
- The individual's adjusted taxable income does not exceed $37,000.
- The individual is not a holder of a temporary resident visa (New Zealand citizens in Australia do not hold a temporary resident visa and are as such, eligible for the payment).
- The individual satisfies an income test in which 10 per cent or more of their total income is derived from business or employment.
- The amount payable for the individual is $20 or more.

[Schedule 4, item 2, section 12C]

Example 4.1

Alanna is an Australian resident. She has an adjusted taxable income of $30,000 which comprises of $2,000 in interest from her savings and $28,000 from working part time. Alanna's employer makes SG contributions on her behalf. These employer contributions are concessional contributions for Alanna. Alanna is entitled to receive the low income superannuation contribution with respect to the tax paid on her concessional contributions, as greater than 10 per cent of her income is from her employment.

4.9 There is no taper of adjusted taxable income. Individuals who have an adjusted taxable income of more than $37,000 will not be eligible for the low income superannuation contribution.

4.10 ***Adjusted taxable income*** is defined in Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* (disregarding Clauses 3 and 3A of that Schedule) as including taxable income, adjusted fringe benefits total, target foreign income, total net investment loss, tax-free pension or benefit, reportable superannuation contributions less any deductible child maintenance expenditure for that year.

4.11 When an individual does not lodge an income tax return (for example, an individual is under the tax-free threshold), the Commissioner of Taxation (Commissioner) will determine eligibility for the low income superannuation contribution based on information available to the Australian Taxation Office (ATO).

4.12 The ATO can have regard to a broad range of information when determining of eligibility for the low income superannuation contribution. This intended use of information is notwithstanding any other law. This includes information already held within the ATO which has been collected for another purpose as well as information from other agencies with respect to the components of an individual's adjusted taxable income and an individual's member contribution statement. The ATO can also use information relating to an individual's tax file number (TFN) if this has been provided to the ATO for another purpose.

4.13 These information-sharing provisions do not enable the ATO to gather additional information with respect to an individual, but, to make use of the information the ATO already has access to.

4.14 These information-sharing provisions allow the ATO to automatically make a payment of the low income superannuation contribution to a superannuation fund and operate in conjunction with section 264 of the *Income Tax Assessment Act 1936* which is a broad information-gathering power of the ATO. This ensures that individuals who are not required to lodge a tax return are not required to apply for the payment.

4.15 The ATO is able to make a payment if the Commissioner is reasonably satisfied that an individual is eligible for the payment based on the information the ATO holds for the individual. ***[Schedule 4, item 3, paragraph 14(1)(d)]***

Example 4.2

Alicia is a university student and will earn $18,000 as a part time medical receptionist in the 2012-13 income tax year and will have SG contributions of $1,620. As Alicia will earn below the tax-free threshold of $18,200 for that income year she may not be required to submit an income tax return. The ATO receives information about Alicia's income and her employer's superannuation contributions from her member contribution statement. The ATO is reasonably satisfied that Alicia is eligible for the low income superannuation contribution and makes the payment of $243 to her superannuation fund.

4.16 The ATO is able to make the payment to a superannuation fund, an RSA, to an individual or an individual's legal personal representative or to a Superannuation Holding Accounts Special Account consistently with the rules for the existing government co-contributions. ***[Schedule 4, item 2, section 12B]***

4.17 Eligible contributions that will attract a payment of the low income superannuation contribution must be concessional contributions of the person. ***[Schedule 4, item 2, subsection 12C(b)]***

4.18 'Concessional contribution' is defined in the *Income Tax Assessment Act 1997* (ITAA 1997). Examples of concessional contributions that will be eligible include:

- SG contributions;
- notional taxed contributions;
- allocations from reserves that are concessional contributions;
- contributions an employer makes under a salary sacrifice arrangement; or
- personal contributions which are allowed as an income tax deduction.

4.19 As eligible concessional contributions include amounts allocated from a fund's reserves and the notional taxed contributions worked out for a defined benefit interest of an individual, the low income superannuation contribution may be payable in relation to an amount that is not an actual contribution that has been included in a fund's assessable income as a contribution.

4.20 The ITAA 1997 defines ***concessional contributions*** as belonging to a 'complying superannuation plan'. As this legislation incorporates the definition of 'concessional contribution' from that Act, a concessional contribution must for the purposes of the low income superannuation contribution belong to a complying superannuation plan.

Example 4.3

Joel works for a company that has its own corporate superannuation fund. The trustee of the superannuation fund allocates an amount from the reserves of the superannuation fund to every member's interest in the fund. The superannuation fund reports this amount on Joel's member contribution statement. The ATO may make a payment of the low income superannuation contribution in relation to the amount allocated to Joel's superannuation interest.

Example 4.4

Xavier is a member of a public sector superannuation scheme. His interest in the fund is a defined benefit interest. Xavier's employer is required to make contributions for Xavier to fund part of the superannuation benefits payable to him (or his beneficiaries on his death). These contributions are included in the assessable income of the scheme. These contributions are the notional taxed contributions for Xavier and are eligible for the low income superannuation contribution.

Example 4.5

Yolanda is a member of a public sector superannuation scheme. Her interest in the fund is a defined benefit interest. Notional taxed contributions for Yolanda are worked out using the formula in the *Income Tax Assessment Regulations 1997*. These notional taxed contributions are eligible for the low income superannuation contribution.

4.21 This payment will only apply to 'concessional contributions'. For example, payments to 'constitutionally protected funds' would be excluded.

4.22 The amount of low income superannuation contribution is calculated at a rate of 15 per cent of the total eligible concessional contributions for the year up to a maximum payment of $500. ***[Schedule 4, item 2, paragraph 12E(2)(a)]***

4.23 There is a minimum payment amount of $20. Individuals who are entitled to less than $20 will not be matched. This ensures that the ATO does not have to process very small amounts. ***[Schedule 4, item 2, paragraph 12E(2)(c)]***

4.24 The general administrative machinery provisions that apply to the superannuation co-contribution in the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* will apply to the low income superannuation contribution. ***[Schedule 4, item 2, section 12B]***

4.25 When the ATO has made a payment to an individual or their legal representative, the ATO must give information as prescribed in the regulations when the payment is made.

4.26 The ATO may be liable to pay interest on late payments and underpayments after certain time periods, as may be prescribed in the regulations, are exceeded. The Commissioner may recover overpayments directly from individuals or funds that the payment was made into.

4.27 If a superannuation fund is returning monies that cannot be credited to an account, the ATO may issue an infringement notice if the superannuation fund fails to provide the prescribed information as required in the regulations with the returned monies.

4.28 The ATO has broad powers of entry to premises to obtain and make copies of examinable documents to ensure compliance with the Act.

4.29 The Governor-General may make regulations pertaining to the low income superannuation contribution.

4.30 However, the specific reporting requirements for the existing government co-contribution do not apply to the low income superannuation contribution.

4.31 Also, these amendments ensure appropriate income tax consequences flow. For example, the low income superannuation contribution will not be included in the assessable income of any superannuation provider to which it is paid because of subsection 295-170(1) of the ITAA 1997. The low income superannuation contribution will also form part of the contributions segment (and therefore tax-free component of any superannuation benefit) for the person for whom it is paid under section 307-220 of the ITAA 1997. ***[Schedule 4, item 2, section 12B]***

Application and transitional provisions

4.32 These provisions apply to the 2012-13 income year and later income years. These provisions are dependent on the passing of the Minerals Resource Rent Tax package of Bills.

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Schedule 4: Low income superannuation contribution

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