





# **Taxation Laws Amendment Act (No. 6) 2001**

**Act No. 169 of 2001 as amended**

This compilation was prepared on 6 August 2002

**[This Act was amended by Act No. 57 of 2002]**

## **Amendments from Act No. 57 of 2002**

[Schedule 12 (item 57) amended Item 11 of Schedule 5

Schedule 12 (item 58) added Heading before Item 16L of Schedule 6

Schedule 12 (item 59) repealed Heading before Item 17 of Schedule 6

Schedule 12 (items 57-59) commenced on 1 October 2001]

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra



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# An Act to amend the law relating to taxation

[Assented to 1 October 2001]

The Parliament of Australia enacts:

## 1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 6) 2001*.

## 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), Part 1 of Schedule 1 commences on a day to be fixed by Proclamation.
- (3) If Part 1 of Schedule 1 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (4) Items 4 and 5 of Schedule 4 commence, or are taken to have commenced, immediately after the commencement of Schedule 3 to the *Taxation Laws Amendment Act (No. 5) 2001*.
- (4A) Items 10 and 11 of Schedule 5 commence immediately after the commencement of item 9A of that Schedule.
- (4B) Items 4A and 4B of Schedule 6 commence immediately after the commencement of item 4 of that Schedule.
- (4C) Item 4C of Schedule 6 commences:
  - (a) if Schedule 1 to the *Taxation Laws Amendment Act (No. 5) 2001* commences before the day on which this Act receives the Royal Assent—immediately after the commencement of item 4B of Schedule 6 to this Act; or
  - (b) if paragraph (a) does not apply—immediately after the commencement of Schedule 1 to that Act.
- (5) Item 5 of Schedule 6 commences:

- (a) if Schedule 1 to the *Taxation Laws Amendment Act (No. 5) 2001* commences before the day on which this Act receives the Royal Assent—immediately after the commencement of item 4 of Schedule 6 to this Act; or
- (b) if paragraph (a) does not apply—immediately after the commencement of Schedule 1 to that Act.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Amendment of assessments**

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

## **Schedule 1—Petroleum Resource Rent Tax**

### **Part 1—Sales gas**

#### ***Petroleum Resource Rent Tax Assessment Act 1987***

##### **1 Section 2 (definition of sales gas)**

Repeal the definition, substitute:

*sales gas* means a substance:

- (a) which is in a gaseous state when at the temperature of 15°C and a pressure of one atmosphere; and
- (b) which consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons; and
- (c) the principal constituent of which is methane; and
- (d) which:
  - (i) if it is to be used as a feedstock for conversion to another product—has been processed so that it is suitable for that use; or
  - (ii) in any other case—has been processed so that it is suitable for direct consumption as energy.

##### **2 At the end of paragraph 24(a)**

Add “and”.

##### **3 Paragraph 24(b)**

After “marketable petroleum commodity”, insert “(other than sales gas)”.

##### **4 Paragraph 24(c)**

After “marketable petroleum commodity”, insert “(other than sales gas)”.

##### **5 At the end of section 24**

Add:

- ; and (d) where any sales gas produced from petroleum recovered from the area or areas to which paragraph (a) applies

becomes or became an excluded commodity by virtue of being sold:

- (i) if the sale is a non-arm's length transaction—the amount worked out in accordance with the regulations; and
  - (ii) in any other case—the consideration receivable, less any expenses payable, by the person in relation to the sale; and
- (e) where any sales gas produced from petroleum recovered from the area or areas to which paragraph (a) applies becomes or became an excluded commodity otherwise than by virtue of being:
- (i) sold; or
  - (ii) treated or processed, or moved, for re-injection or destruction or for use in carrying on or providing operations, facilities or other things of a kind referred to in section 37, 38 or 39 in relation to the petroleum project;
- the amount worked out in accordance with the regulations.

(2) In this section:

*non-arm's length transaction* means a transaction where the Commissioner, having regard to any connection between the parties to the transaction or to any other relevant circumstances, is satisfied that the parties to the transaction are not dealing with each other at arm's length in relation to the transaction.

## 6 Section 26

Omit "24(c)", substitute "24(1)(c), 24(1)(e)".

## 7 At the end of section 57

Add:

- (3) This section does not apply to receipts determined under subparagraph 24(1)(d)(i).

## 8 After subsection 97(1A)

Insert:

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- (1AA) If the whole or a part of the assessable petroleum receipts that would be taken into account in working out the current period liability were determined under subparagraph 24(1)(d)(i) or paragraph 24(1)(e) (the *special calculation provisions*), then, in calculating the current period liability under subsection (1A):
- (a) any assessable petroleum receipts determined under the special calculation provisions are to be excluded; and
  - (b) the amount worked out in accordance with the regulations in respect of those assessable petroleum receipts is to be included.

## **9 After section 106**

Insert:

### **106A Review of certain decisions**

A person who is dissatisfied with a decision made under this Act or the regulations in relation to the person, being a decision that is prescribed for the purposes of this section, may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## Part 2—The 5 year rule

### *Petroleum Resource Rent Tax Assessment Act 1987*

#### **10 Paragraph 34A(1)(a)**

Omit “the production licence in relation to the project came into force”, substitute “the date specified in the notice issued under subsection 41(3) of the *Petroleum (Submerged Lands) Act 1967* in relation to the project”.

#### **11 Clause 1 of Schedule 1 (paragraph (a) of the definition of relevant pre-commencement day)**

Omit “the issue of the production licence in relation to the project”, substitute “the date specified in the notice issued under subsection 41(3) of the *Petroleum (Submerged Lands) Act 1967* in relation to the project”.

#### **12 Clause 1 of Schedule 1 (paragraph (b) of the definition of relevant pre-commencement day)**

Omit “before the issue of the oldest production licence to which the project relates”, substitute “the earliest date specified in a notice issued under subsection 41(3) of the *Petroleum (Submerged Lands) Act 1967* in relation to a production licence to which the project relates”.

### *Petroleum (Submerged Lands) Act 1967*

#### **13 At the end of section 41**

Add:

- (3) If the Designated Authority receives an application, or further information, the Designated Authority must, within 28 days, determine whether or not sufficient information has been received to determine the application. If the Designated Authority considers that sufficient information has been provided, the Designated Authority must issue the applicant with a notice to that effect specifying the last date on which information was provided.

- (4) The issuing of a notice under subsection (3) does not prevent the Designated Authority from later requiring further information under subsection (2). However, the later request does not affect the notice under subsection (3).
- (5) If an application is finalised without a licence being granted, any notice issued under subsection (3) in relation to that application is taken never to have been issued.

Examples: An application may be finalised because it is withdrawn or because it is refused.

#### **14 Transitional**

If, before the commencement of this item, a notice was issued by a Designated Authority stating that sufficient information had been received to determine an application made under section 39A, 40 or 40A of the *Petroleum (Submerged Lands) Act 1967*, then, for the purposes of that Act as amended by this Act:

- (a) that notice is taken to have been issued under subsection 41(3) of that Act; and
- (b) the date that the notice was issued is taken to be the date specified in the notice.

#### **15 Application**

The amendments made by this Part apply to projects in respect of which an application was made under section 39A, 40 or 40A of the *Petroleum (Submerged Lands) Act 1967* after 23 December 1998.

## Schedule 2—Local government businesses

### *Income Tax Assessment Act 1936*

#### **1 Section 24AT (paragraph (b) of the definition of excluded STB)**

Omit “paragraph 23(d)”, substitute “section 50-25 of the *Income Tax Assessment Act 1997*”.

#### **2 Section 24AT (after paragraph (b) of the definition of government entity)**

Insert:

- (ba) a municipal corporation or other local governing body (within the meaning of section 50-25 of the *Income Tax Assessment Act 1997*); or

Note: The effect of this paragraph is that some bodies owned or controlled by a municipal corporation or other local governing body may be an STB even though the municipal corporation or other local governing body is an excluded STB.

#### **3 Application**

The amendments made by this Schedule apply in relation to income derived after 30 June 2000.

## **Schedule 3—Superannuation fund residence requirements**

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

#### **1 Paragraph 6E(1)(c)**

Repeal the paragraph, substitute:

- (c) at the relevant time:
  - (i) the central management and control of the fund is in Australia; or
  - (ii) the fund satisfies subsection (1A) or (1B); and

#### **2 After subsection 6E(1)**

Insert:

- (1A) A fund satisfies this subsection at the relevant time if the trustees of the fund are individuals and at that time:
  - (a) a trustee or trustees of the fund are temporarily absent from Australia; and
  - (b) the central management and control of the fund would be in Australia if that trustee or those trustees were in Australia; and
  - (c) the continuous period for which that trustee or each of those trustees has, at that time, been outside Australia does not exceed:
    - (i) 2 years; or
    - (ii) such longer period as is applicable to the circumstances in accordance with the regulations.
- (1B) A fund satisfies this subsection at the relevant time if the trustee of the fund is a company and at the relevant time:
  - (a) a director or directors of the company are temporarily absent from Australia; and
  - (b) the central management and control of the fund would be in Australia if that director or those directors were in Australia; and

(c) the continuous period for which the director or each of those directors has, at that time, been outside Australia does not exceed:

- (i) 2 years; or
- (ii) such longer period as is applicable to the circumstances in accordance with the regulations.

(1C) In applying subsections (1A) and (1B), a person who:

- (a) is outside Australia at a particular time; and
- (b) returns to Australia for a continuous period of 28 days or less; and
- (c) then leaves Australia;

is treated as having been outside Australia for the period referred to in paragraph (b).

### 3 After subsection 6E(4)

Insert:

#### *Active member of fund*

(4A) A member of a fund is an **active member** of a fund at the relevant time if:

- (a) the member is a contributor to the fund at that time; or
- (b) another person has made before that time, or makes at or after that time, contributions to the fund on the member's behalf in respect of the year of income in which that time occurs.

(4B) A member of a fund is not an **active member** of the fund at the relevant time under paragraph (4A)(b) if:

- (a) the member is not a resident of Australia at the relevant time; and
- (b) the member has ceased to be a contributor to the fund at the relevant time; and
- (c) the only contributions that have been made to the fund on the member's behalf after the member ceased to be a resident of Australia have been payments in respect of a time when the member was a resident.

### 4 Subsection 6E(5) (definition of active member)

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Repeal the definition.

## Schedule 4—Tax relief for shareholders in listed investment companies

### *Income Tax Assessment Act 1997*

#### **1 Section 10-5 (table item headed “dividends”)**

Insert:

benefit of LIC capital gain through a trust or partnership . 115-280

#### **2 Section 12-5 (table item headed “dividends”)**

Insert:

dividends including LIC capital gain component ..... 115-280

#### **3 At the end of subsection 102-3(2)**

Add:

Note: Shareholders in a listed investment company can also receive a concession equivalent to a discount capital gain: see Subdivision 115-D.

#### **4 Subsection 104-70(7) (heading)**

Omit “*Exception*”, substitute “*Exceptions*”.

#### **5 At the end of section 104-70**

Add:

(8) *CGT event E4* does not happen to the extent that the payment is reasonably attributable to a \*LIC capital gain.

#### **6 Subsection 110-25(8) (after table item 3)**

Insert:

4 A listed investment company                      The company

#### **7 Subsection 114-5(2) (after table item 3)**

Insert:

4 A listed investment company                      The company

#### **8 At the end of section 115-1**

Add:

Special rules apply to certain capital gains made by listed investment companies to enable shareholders receiving dividends that include these gains to obtain benefits similar to those conferred by the CGT discount.

## **9 At the end of subsection 115-20(1)**

Add:

Note: A listed investment company must also calculate capital gains without reference to indexation in order to allow its shareholders to access the concessions in Subdivision 115-D.

## **10 At the end of Division 115**

Add:

### **Subdivision 115-D—Tax relief for shareholders in listed investment companies**

#### **Guide to Subdivision 115-D**

#### **115-275 What this Subdivision is about**

This Subdivision allows shareholders of certain listed companies to obtain benefits similar to those conferred by discount capital gains.

The benefits accrue where dividends paid by those companies represent capital gains that would be discount capital gains had they been made by an individual, a trust or a complying superannuation entity.

#### **Table of sections**

##### **Operative provisions**

115-280	Deduction for certain dividends
115-285	Meaning of <i>LIC capital gain</i>
115-290	Meaning of <i>listed investment company</i>
115-295	Maintaining records

[This is the end of the Guide.]

## Operative provisions

### 115-280 Deduction for certain dividends

- (1) You can deduct an amount for a \*dividend paid to you by a company (the *payment company*) if:
  - (a) you are:
    - (i) an individual, a \*complying superannuation entity, a trust or a partnership; or
    - (ii) a \*life insurance company where the dividend is in respect of \*shares that are \*virtual PST assets; and
  - (b) you are an Australian resident when the dividend is paid; and
  - (c) all or some part of the dividend is reasonably attributable to a \*LIC capital gain made by a \*listed investment company; and
  - (d) in a case where the LIC capital gain was made by a company other than the payment company—the payment company was a listed investment company when it received a dividend part of which is attributable to the LIC capital gain.

Note: The concession is available for LIC capital gains made directly by a listed investment company, and for LIC capital gains that company receives as a dividend through one or more other listed investment companies.

- (2) The amount you can deduct is:
  - (a) 50% of your share of the amount (the *attributable part*) worked out under subsection (3) if you are an individual, a trust (except a trust that is a \*complying superannuation entity) or a partnership; or
  - (b) 33<sup>1</sup>/<sub>3</sub>% of your share of the attributable part if you are a complying superannuation entity or a \*life insurance company.

Note 1: The listed investment company will advise you of your share of the attributable part.

Note 2: If a shareholder in a listed investment company is a trust or partnership, a beneficiary of the trust or a partner in the partnership has no share of the attributable part.

- (3) The attributable part is worked out using this formula:

$$\text{After tax gain} + \frac{\text{After tax gain} \times \text{General company tax rate (at the time of the *CGT event)}}{1 - \text{General company tax rate (at that time)}}$$

where:

**after tax gain** is the after tax \*LIC capital gain.

**Example:** A listed investment company disposes of a CGT asset for \$30,000. The asset had a cost base of \$10,000. The capital gain is therefore \$20,000. The company applies a capital loss of \$10,000 against the gain. Its net capital gain is \$10,000.

The net capital gain is subject to tax at 30%. The after tax gain is therefore \$7,000.

The company pays a fully franked dividend to Daryl, one of its shareholders. It advises Daryl that his share of the attributable part of the dividend is:

$$\$7 + \frac{\$7}{0.7} \times 0.3 = \frac{\$10}{1 - 0.3} = \$10$$

Daryl, being an individual, can deduct 50% of \$10, which is \$5.

- (4) An amount is included in your assessable income if:
- (a) a deduction is allowed under subsection (1) to a trust or a partnership; and
  - (b) you are a beneficiary of the trust or a partner in the partnership and you are not an individual; and
  - (c) the income of the trust or partnership is reduced by an amount because of that deduction; and
  - (d) a part of the deduction (the **reduction amount**) is reflected in your share of the net income of the trust or partnership.
- (5) The amount included is:
- (a) the reduction amount if you are a company, a trust (except a trust that is a \*complying superannuation entity) or a partnership; or
  - (b) one-third of the reduction amount if you are a complying superannuation entity or a \*life insurance company.

**Example:** The Burnett Partnership received a dividend from a listed investment company. The dividend statement advised that the dividend included a \$100 attributable part. The partnership deducted \$50 under this section in calculating its net income.

The partnership has 2 equal partners, Amy Burnett and Burnett Consulting Pty Ltd.

Burnett Consulting's assessable income includes its share of the net income of the partnership plus \$25 (being that part of the \$50 deduction allowed to the partnership that is reflected in the company's share of the partnership net income).

Subsections (4) and (5) do not apply to Amy because she is an individual.

### 115-285 Meaning of LIC capital gain

- (1) A **LIC capital gain** is a \*capital gain:
- (a) from a \*CGT event that happens on or after 1 July 2001; and
  - (b) that is made by a company that is a \*listed investment company from a \*CGT asset that is an investment to which paragraph 115-290(1)(c) applies; and
  - (c) that meets the requirements of sections 115-20 and 115-25; and
  - (d) that is not a capital gain that could not be a \*discount capital gain had it been made by an individual because of section 115-40 or 115-45; and
  - (e) that is included in the \*net capital gain of the company; and
  - (f) that is reflected in the taxable income of the company for the income year in which the company had the net capital gain.

Note 1: The listed investment company must be able to demonstrate that at least some part of the LIC capital gain, whether made by the company itself or by another listed investment company, remains after claiming deductions and losses against that income for the income year.

Note 2: Section 115-30 may affect the date of acquisition of a CGT asset for the purposes of sections 115-25, 115-40 and 115-45.

- (2) However, a \*capital gain made by a company is not a **LIC capital gain** if the company:
- (a) became a \*listed investment company after 1 July 2001; and
  - (b) \*acquired the \*CGT asset concerned before the day on which it became a listed investment company.
- (3) In applying subsection (2), a \*CGT asset is treated as if it had been \*acquired by the company *before* it became a \*listed investment company if the asset would otherwise be treated as being acquired *after* that time because of one of these provisions:
- (a) section 70-110 (about trading stock);

- (b) Subdivision 124-E or 124-F (replacement asset roll-overs for exchange of \*shares, units, rights or options);
- (c) Subdivision 126-B (same-asset roll-over for transfers within a wholly-owned group).

### **115-290 Meaning of listed investment company**

- (1) A *listed investment company* is a company:
  - (a) that is an Australian resident; and
  - (b) \*shares in which are listed for quotation on the official list of the Australian Stock Exchange Limited or of a body corporate that is approved as a stock exchange under section 769 of the *Corporations Act 2001*; and
  - (c) at least 90% of the \*market value of whose \*CGT assets consists of investments permitted by subsection (4).
- (2) A company is also a *listed investment company* if:
  - (a) it is a 100% subsidiary of a company that is a \*listed investment company because of subsection (1); and
  - (b) the subsidiary would be a listed investment company because of subsection (1) if it were able to comply with paragraph (1)(b).
- (3) This Subdivision applies to a company that does not comply with paragraph (1)(c) as if it did comply if the failure:
  - (a) was of a temporary nature only; and
  - (b) was caused by circumstances outside its control.
- (4) The permitted investments are:
  - (a) \*shares, units, options, rights or similar interests to the extent permitted by subsections (5), (6), (7) and (8); or
  - (b) financial instruments (such as loans, debts, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract); or
  - (c) an asset whose main use by the company in the course of carrying on its \*business is to derive interest, an annuity, rent, royalties or foreign exchange gains unless:
    - (i) the asset is an intangible asset and has been substantially developed, altered or improved by the

- company so that its market value has been substantially enhanced; or
- (ii) its main use for deriving rent was only temporary; or
- (d) goodwill.
- (5) The company can own a \*100% subsidiary if the subsidiary is a listed investment company because of subsection (2).
- (6) The company can own (directly or indirectly) any percentage of another \*listed investment company that is not the company's \*100% subsidiary.
- (7) Otherwise, the company cannot own (directly or indirectly) more than 10% of another company or trust.
- (8) In working out whether a company indirectly owns any part of another company or trust:
- (a) disregard any ownership it has indirectly through a \*listed public company or a \*publicly traded unit trust; and
- (b) if the company owns not more than 50% of another \*listed investment company—disregard any ownership it has indirectly through the other company.

### **115-295 Maintaining records**

A \*listed investment company must maintain records showing the balance of its \*LIC capital gains available for distribution.

### **11 At the end of subsection 320-205(3)**

Add:

- ; and (f) amounts included in the company's assessable income for the income year under subsection 115-280(4).

### **12 At the end of subsection 320-205(4)**

Add:

- ; and (f) the proportion of the amount that the company can deduct for the income year under subsection 115-280(1) that is attributable to a \*dividend paid to the company by a \*listed investment company in respect of virtual PST assets that are \*shares in the listed investment company.

**13 Subsection 995-1(1)**

Insert:

*LIC capital gain* has the meaning given by section 115-285.

**14 Subsection 995-1(1)**

Insert:

*listed investment company* has the meaning given by section 115-290.

**15 Application**

The amendments made by this Schedule apply to LIC capital gains made by listed investment companies on or after 1 July 2001.

## **Schedule 5—HIH rescue package**

### **Part 1—Income tax consequences**

#### *Income Tax Assessment Act 1997*

##### **1 Section 11-5 (after table item headed “health”)**

Insert:

###### **HIH rescue package**

HIH Claims Support Trust ..... 322-10

##### **2 Subsection 104-10(5) (note)**

Omit “Note”, substitute “Note 1”.

##### **3 At the end of subsection 104-10(5)**

Add:

Note 2: A capital gain or loss you make because you assign a right under or in relation to a general insurance policy you held with an HIH company to the Commonwealth, the trustee of the HIH Trust or a prescribed entity is also disregarded: see section 322-15.

##### **4 Part 3-35 (heading)**

Repeal the heading, substitute:

### **Part 3-35—Insurance business**

##### **5 Section 320-255 (link note)**

Repeal the link note.

##### **6 After Division 320**

Insert:

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## **Division 322—HIH rescue package**

### **Guide to Division 322**

#### **322-1 What this Division is about**

This Division sets out special measures to assist in the rescue package provided in response to the collapse of the HIH group.

#### **Table of sections**

##### **Operative provisions**

322-5	Rescue payments treated as insurance payments by HIH
322-10	HIH Trust exempt from tax
322-15	Certain capital gains and capital losses disregarded

*[This is the end of the Guide.]*

#### **Operative provisions**

##### **322-5 Rescue payments treated as insurance payments by HIH**

- (1) This Act applies to you as if a payment you receive from the Commonwealth, the \*HIH Trust or a prescribed entity for assignment of your rights under or in relation to a \*general insurance policy you held with an \*HIH company:
  - (a) had been made by the HIH company; and
  - (b) had been made under the terms and conditions of the general insurance policy you held with the HIH company.
- (2) The **HIH Trust** is the HIH Claims Support Trust (established on 6 July 2001).
- (3) An **HIH company** is:
  - (a) CIC Insurance Limited; or
  - (b) FAI General Insurance Company Limited; or
  - (c) FAI Reinsurances Pty Limited; or
  - (d) FAI Traders Insurance Company Pty Limited; or

- (e) HIIH Casualty and General Insurance Limited; or
- (f) HIIH Underwriting and Insurance (Australia) Pty Limited; or
- (g) World Marine and General Insurances Pty Limited; or
- (h) another related company specified in writing by the Commissioner.

### **322-10 HIIH Trust exempt from tax**

The total \*ordinary income and \*statutory income of:

- (a) the HIIH Trust; and
  - (b) an entity prescribed for the purposes of this Division;
- is exempt from income tax.

### **322-15 Certain capital gains and capital losses disregarded**

A \*capital gain or \*capital loss you make because you assign a right under or in relation to a \*general insurance policy you held with an \*HIIH company to the Commonwealth, the trustee of the \*HIIH Trust or a prescribed entity is disregarded.

*[The next Part is Part 3-45.]*

### **7 Subsection 995-1(1)**

Insert:

***HIIH company*** has the meaning given by section 322-5.

### **8 Subsection 995-1(1)**

Insert:

***HIIH Trust*** has the meaning given by section 322-5.

### **9 Application**

The amendments made by this Part apply to things done on or after 15 May 2001.

## **Part 2—Goods and services tax consequences**

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

#### **9A After section 78-115**

Insert:

#### **78-118 Portfolio transfers**

- (1) If an insurer (the *first insurer*) enters into an arrangement, in the nature of a portfolio transfer, with another insurer for the other insurer:
  - (a) to act as the insurer in relation to an \*insurance policy; or
  - (b) to meet the first insurer's liabilities arising under an insurance policy;
 this Division applies, from the time the arrangement takes effect, as if the other insurer were an insurer in relation to the policy.
  
- (2) Without limiting subsection (1):
  - (a) anything done after that time by the other insurer that, if it had been done by the first insurer, would have been done under the policy is taken, for the purposes of this Division, to have been done by the other insurer under the policy; and
  - (b) sections 78-10 and 78-30 apply as if the other insurer were the insurer that supplied the policy; and
  - (c) section 78-18 applies as if the insurer that settles the claim referred to in paragraph 78-18(1)(b) or (3)(b) (as the case requires) has the \*increasing adjustment under that section, regardless of which insurer was paid the excess to which the adjustment relates.

#### **10 At the end of Subdivision 78-F**

Add:

**78-120 HII rescue package**

- (1) If a payment of \*money, a supply or both a payment of money and a supply are received by an entity from an \*HII rescue entity as \*consideration for:
- (a) the entity transferring or surrendering rights under an \*insurance policy held with an \*HII company; or
  - (b) the entity transferring or surrendering rights against another entity that is insured under an insurance policy held with an HII company; or
  - (c) the entity transferring or surrendering rights against another entity in relation to a matter in relation to which the entity also has or had rights under an insurance policy held with an HII company;

this Division (other than sections 78-10, 78-15 and 78-40) applies to the payment or supply as if the HII rescue entity made the payment or supply as the insurer in settlement of a claim under the insurance policy.

- (2) In particular:
- (a) this Division (other than sections 78-10, 78-15 and 78-40, subsection 78-50(1) and this section) applies as if:
    - (i) references to an insurer were references to the \*HII rescue entity; and
    - (ii) references to a claim under an \*insurance policy were references to a request or claim to the HII rescue entity for such a payment or supply; and
    - (iii) references to a settlement of such a claim were references to the agreement to make such a payment or supply as consideration for the transfer or surrender; and
  - (b) sections 78-18, 78-42 and 78-55 apply as if references in those sections to payments of excess to the insurer under the policy were references to payments to the HII rescue entity corresponding to such payments of excess; and
  - (c) section 78-30 applies as if references in that section to settling a claim were references to providing the consideration for the transfer or surrender; and
  - (d) section 78-100 applies as if references in that section to a claim for compensation under a \*statutory compensation scheme were references to a claim made to the HII rescue

entity corresponding to a claim for compensation under the scheme.

- (3) This section does not affect the operation of sections 78-10, 78-15 and 78-40.

## **11 Section 188-22**

Omit all the words after “\*consideration”, substitute:

for the supply:

- (a) is a payment of \*money, or a supply, by an insurer in settlement of a claim under an \*insurance policy; or
- (b) is a payment of money, or a supply, by an \*HIH rescue entity in the circumstances referred to in subsection 78-120(1).

## **12 Section 195-1**

Insert:

**HIH company** has the meaning given by section 322-5 of the \*ITAA 1997.

## **13 Section 195-1**

Insert:

**HIH rescue entity** means:

- (a) the HIH Claims Support Trust (established on 6 July 2001); or
- (b) the Commonwealth; or
- (c) an entity prescribed for the purposes of subsection 322-5(1) of the \*ITAA 1997.

## **14 Application**

- (1) The amendments made by this Part apply, and are taken to have applied:
- (a) in relation to net amounts for tax periods starting, or that started, on or after 15 March 2001; and
  - (b) in relation to payments and supplies, of a kind referred to in section 78-120 of the *A New Tax System (Goods and Services Tax) Act 1999*, that are, or have been, made on or after

15 March 2001 to an entity that is neither registered nor required to be registered.

- (2) However, the amendment made by item 9A applies, and is taken to have applied in relation to net amounts for tax periods starting, or that started, on or after 1 January 2001.

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## Schedule 6—Personal services income

### Part 1—Agents

#### *Income Tax Assessment Act 1997*

##### **1 At the end of subsection 87-20(1)**

Add:

Note: Sections 87-35 and 87-40 affect the operation of paragraph (1)(a) in relation to Australian government agencies and certain agents.

##### **2 After section 87-35**

Insert:

#### **87-40 Application of this Division to certain agents**

##### *Object of this section*

- (1) The object of this section is to modify the operation of this Division for agents who bear entrepreneurial risk in the way they provide services.

##### *Agents covered by this section*

- (2) Subsection 87-15(3) and section 87-20 apply, in the manner specified in this section, to an individual or \*personal services entity if:
  - (a) the individual or personal services entity is an agent of another entity (the *principal*) but not the principal's employee; and
  - (b) the agent receives income from the principal that is for services that the agent provides to other entities (*customers*) on the principal's behalf; and
  - (c) at least 75% of that income is commissions, or fees, based on the agent's performance in providing services to the customers on the principal's behalf; and
  - (d) the agent actively seeks other entities to whom the agent could provide services on the principal's behalf; and

- (e) the agent does not provide any services to the customers, on the principal's behalf, using premises:
  - (i) that the principal or an \*associate of the principal owns; or
  - (ii) in which the principal or an associate of the principal has a leasehold interest;unless the agent uses the premises under an arrangement entered into at arm's length.

*Whether personal services income is from one source*

- (3) If the agent is an individual, in applying subsection 87-15(3) to the \*personal services income of the agent during an income year, any part of the agent's personal services income from the principal that:
  - (a) the agent gains or produces during the income year; and
  - (b) is for services that the agent provided to a customer on the principal's behalf in the income year or an earlier income year;is treated as if it were personal services income from the customer, and not personal services income from the principal.
- (4) If the agent is a \*personal services entity, in applying subsection 87-15(3) to an individual's \*personal services income that is included in the entity's \*ordinary income or \*statutory income during an income year, any part of the individual's personal services income from the principal that:
  - (a) the agent gains or produces during the income year; and
  - (b) is for services that the individual or the agent provided to a customer on the principal's behalf in the income year or an earlier income year;is treated as if it were personal services income from the customer, and not personal services income from the principal.

*The unrelated clients test for a personal services business*

- (5) In determining whether, during an income year, the agent meets the unrelated clients test under section 87-20, any services the agent provided in the income year or an earlier income year:
  - (a) for which the agent gains or produces, during the income year, personal services income from the principal; and

(b) that were provided to a customer on the principal's behalf; are treated for the purposes of paragraph 87-20(1)(a) as if the agent, and not the principal, provided them to the customer.

**3 Subsection 995-1(1) (definition of agent)**

After “(the *principal*)”, insert “, except in section 87-40,”.

## Part 2—Personal services business tests

### *Income Tax Assessment Act 1997*

#### 4 Section 87-15

Repeal the section, substitute:

#### **87-15 What is a personal services business?**

- (1) An individual or \*personal services entity conducts a *personal services business* if:
- (a) for an individual—a \*personal services business determination is in force relating to the individual's \*personal services income; or
  - (b) for a personal services entity—a personal services business determination is in force relating to an individual whose personal services income is included in the entity's \*ordinary income or \*statutory income; or
  - (c) in any case—the individual or entity meets at least one of the 4 \*personal services business tests in the income year for which the question whether the individual or entity is conducting a personal services business is in issue.

Note 1: For personal services business determinations, see Subdivision 87-B.

Note 2: Under subsection (3), the personal services business tests, apart from the results test under section 87-18, do not apply if 80% or more of your personal services income is from one source (but they can still be used in deciding whether to make a personal services business determination).

- (2) The 4 *personal services business tests* are:
- (a) the results test under section 87-18; and
  - (b) the unrelated clients test under section 87-20; and
  - (c) the employment test under section 87-25; and
  - (d) the business premises test under section 87-30.
- (3) However, if 80% or more of an individual's \*personal services income during an income year is income from the same entity (or one entity and its \*associates), and:

- 
- (a) the individual's personal services income is not included in a \*personal services entity's \*ordinary income or \*statutory income during an income year, and the individual does not meet the results test under section 87-18 in that income year; or
  - (b) the individual's personal services income is included in a personal services entity's ordinary income or statutory income during an income year, and the entity does not, in relation to the individual, meet the results test under section 87-18 in that income year;

the individual's personal services income is *not* taken to be from conducting a \*personal services business unless:

- (c) when the personal services income is gained or produced, a \*personal services business determination is in force relating to the individual's personal services income; and
- (d) if the determination was made on the application of a personal services entity—the individual's personal services income is income from the entity conducting the personal services business.

Note: Sections 87-35 and 87-40 affect the operation of subsection (3) in relation to Australian government agencies and certain agents.

### **87-18 The results test for a personal services business**

- (1) An individual meets the results test in an income year if, in relation to at least 75% of the individual's \*personal services income (not including income referred to in subsection (2)) during the income year:
  - (a) the income is for producing a result; and
  - (b) the individual is required to supply the \*plant and equipment, or tools of trade, needed to perform the work from which the individual produces the result; and
  - (c) the individual is, or would be, liable for the cost of rectifying any defect in the work performed.
- (2) Paragraph (1)(a) does not apply to income:
  - (a) that the individual receives as an employee; or
  - (b) that the individual receives as an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (payments to office

holders) in Schedule 1 to the *Taxation Administration Act 1953*.

- (3) A \*personal services entity meets the results test in an income year if, in relation to at least 75% of the \*personal services income of one or more individuals that is included in the personal services entity's \*ordinary income or \*statutory income during the income year:
- (a) the income is for producing a result; and
  - (b) the personal services entity is required to supply the \*plant and equipment, or tools of trade, needed to perform the work from which the personal services entity produces the result; and
  - (c) the personal services entity is, or would be, liable for the cost of rectifying any defect in the work performed.
- (4) For the purposes of paragraph (1)(a), (b) or (c) or (3)(a), (b) or (c), regard is to be had to whether it is the custom or practice, when work of the kind in question is performed by an entity other than an employee:
- (a) for the \*personal services income from the work to be for producing a result; and
  - (b) for the entity to be required to supply the \*plant and equipment, or tools of trade, needed to perform the work; and
  - (c) for the entity to be liable for the cost of rectifying any defect in the work performed;
- as the case requires.

#### **4A Subsection 87-15(3)**

After "income" (first occurring), insert "(not including income referred to in subsection (4))".

#### **4B At the end of section 87-15**

Add:

- (4) Subsection (3) does not apply to income:
- (a) that the individual receives as an employee; or
  - (b) that the individual receives as an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (payments to office

holders) in Schedule 1 to the *Taxation Administration Act 1953*.

**4C At the end of subsection 87-15(4)**

Add:

; or (c) to the extent that it is a payment referred to in section 12-47 (payments to \*religious practitioners) in that Schedule.

**5 At the end of subsection 87-18(2)**

Add:

; or (c) to the extent that it is a payment referred to in section 12-47 (payments to \*religious practitioners) in that Schedule.

**5A After subsection 87-25(2)**

Insert:

(2A) If the \*personal services entity is a partnership, work that a partner performs is taken, for the purposes of subsection (2), to be work that the personal services entity engages another entity to perform.

**6 Section 87-55**

Repeal the section.

## **Part 3—Personal services business determinations**

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

#### **7 Subparagraph 87-60(3)(a)(i)**

Repeal the subparagraph, substitute:

- (i) could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; or

#### **8 Subparagraph 87-60(3)(a)(ii)**

Omit “3”, substitute “4”.

#### **9 Subparagraphs 87-60(3)(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) if subparagraph (a)(i) applies—the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; or
- (ii) if subparagraph (a)(ii) applies—at least one of the 4 personal services business tests.

#### **10 Paragraph 87-60(3)(c)**

Repeal the paragraph.

#### **11 Subsections 87-60(5), (6) and (7)**

Repeal the subsections.

#### **12 Subparagraph 87-65(3)(a)(i)**

Repeal the subparagraph, substitute:

- (i) could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; or

#### **13 Subparagraph 87-65(3)(a)(ii)**

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Omit “3”, substitute “4”.

**14 Subparagraphs 87-65(3)(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) if subparagraph (a)(i) applies—the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; or
- (ii) if subparagraph (a)(ii) applies—at least one of the 4 personal services business tests.

**15 Paragraph 87-65(3)(c)**

Repeal the paragraph.

**16 Subsections 87-65(5), (6) and (7)**

Repeal the subsections.

## Part 4—Other amendments

### *Income Tax Assessment Act 1936*

#### **16A Section 202A (definition of payer)**

Repeal the definition, substitute:

*payer* means:

- (a) a person who makes an eligible PAYG payment (other than an alienated personal services payment), or is likely to make such a payment; or
- (b) a person who receives an alienated personal services payment, or is likely to receive such a payment.

#### **16B Section 202A (definition of recipient)**

Repeal the definition, substitute:

*recipient* means:

- (a) a person who receives an eligible PAYG payment (other than an alienated personal services payment), or is likely to receive such a payment; or
- (b) a person in relation to whose personal services income (within the meaning of the *Income Tax Assessment Act 1997*) a payer receives an alienated personal services payment, or is likely to receive such a payment.

#### **16C After section 222AOB**

Insert:

#### **222AOBAA Directors to cause company to remit or to go into voluntary administration or liquidation—alienated personal services payments**

- (1) The persons who are directors of the company on the payment day in relation to the payment or payments (referred to in paragraph 222AOA(1)(ba)) must cause the company to do at least one of the following before the end of the payment day:

- 
- (a) comply with section 13-5 and Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953* in relation to each payment relating to the payment day;
  - (b) make an agreement with the Commissioner under section 222ALA in relation to the company's liability under that Subdivision in respect of each such payment;
  - (c) appoint an administrator of the company under section 436A of the *Corporations Act 2001*;
  - (d) begin to be wound up within the meaning of that Act.
- (2) The **payment day** is the day on which the company must pay an amount under section 13-5 in Schedule 1 to the *Taxation Administration Act 1953* to the Commissioner in relation to the payment or payments (referred to in paragraph 222AOA(1)(ba)).
- (3) This section is complied with when:
- (a) the company complies as mentioned in paragraph (1)(a); or
  - (b) the company makes an agreement as mentioned in paragraph (1)(b); or
  - (c) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;  
or
  - (d) the company begins to be wound up within the meaning of that Act;
- whichever first happens, even if the directors did not cause the event to happen.
- (4) If this section is not complied with before the end of the payment day, the persons who are directors of the company on that day continue to be under the obligation imposed by subsection (1) until this section is complied with.

## **16D After subsection 222AOC(1)**

Insert:

- (1A) If section 222AOBAA is not complied with before the end of the payment day, each person who is a director of the company on the payment day is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount or amounts that the company is required to pay under section 13-5 in Schedule 1 to the

*Taxation Administration Act 1953* in respect of the payment or payments relating to the payment day.

**16E After subsection 222AOD(1)**

Insert:

(1A) If:

- (a) after the payment day, a person becomes, or again becomes, a director of the company at a time when section 222AOBAA has not yet been complied with in relation to the payment or payments relating to the payment day; and
- (b) at the end of 14 days after the person becomes a director, that section has still not been complied with in relation to that payment or those payments;

the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the liability referred to in subsection 222AOC(1A).

**16F Paragraph 222AOE(a)**

Omit “subsection 222AOC(1) or (2)”, substitute “subsection 222AOC(1), (1A) or (2)”.

**16G Paragraph 222AOG(b)**

After “section 222AOB”, insert “, 222AOBAA”.

Note: The heading to section 222AOG is altered by inserting “, 222AOBAA” after “222AOB”.

**16H Paragraph 222AOH(1)(b)**

Omit “subsection 222AOC(1) or (2)”, substitute “subsection 222AOC(1), (1A) or (2)”.

**16J Paragraph 222AOJ(2)(b)**

After “subsection 222AOB(1)”, insert “or 222AOBAA(1)”.

**16K Paragraph 222AOJ(3)(a)**

After “subsection 222AOB(1)”, insert “, 222AOBAA(1)”.

***Income Tax Assessment Act 1997***

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**16L At the end of section 85-20**

Add:

- (3) An amount or payment that you cannot deduct because of this section is neither assessable income nor \*exempt income of your \*associate.

**16M Subsection 86-20(2) (step 1 of the method statement)**

After “maintenance deductions”, insert “or deductions for amounts of salary or wages paid to you”.

**16N At the end of subsection 86-35(2)**

Add “or entitled to receive it”.

**17 Sections 87-1 and 87-5**

Repeal the sections, substitute:

**87-1 What this Division is about**

Divisions 85 and 86 do not apply to personal services income that is income from conducting a personal services business.

It is not intended that the Divisions apply to independent contractors.

A personal services business exists if there is a personal services business determination or if one or more of 4 tests for what is a personal services business are met.

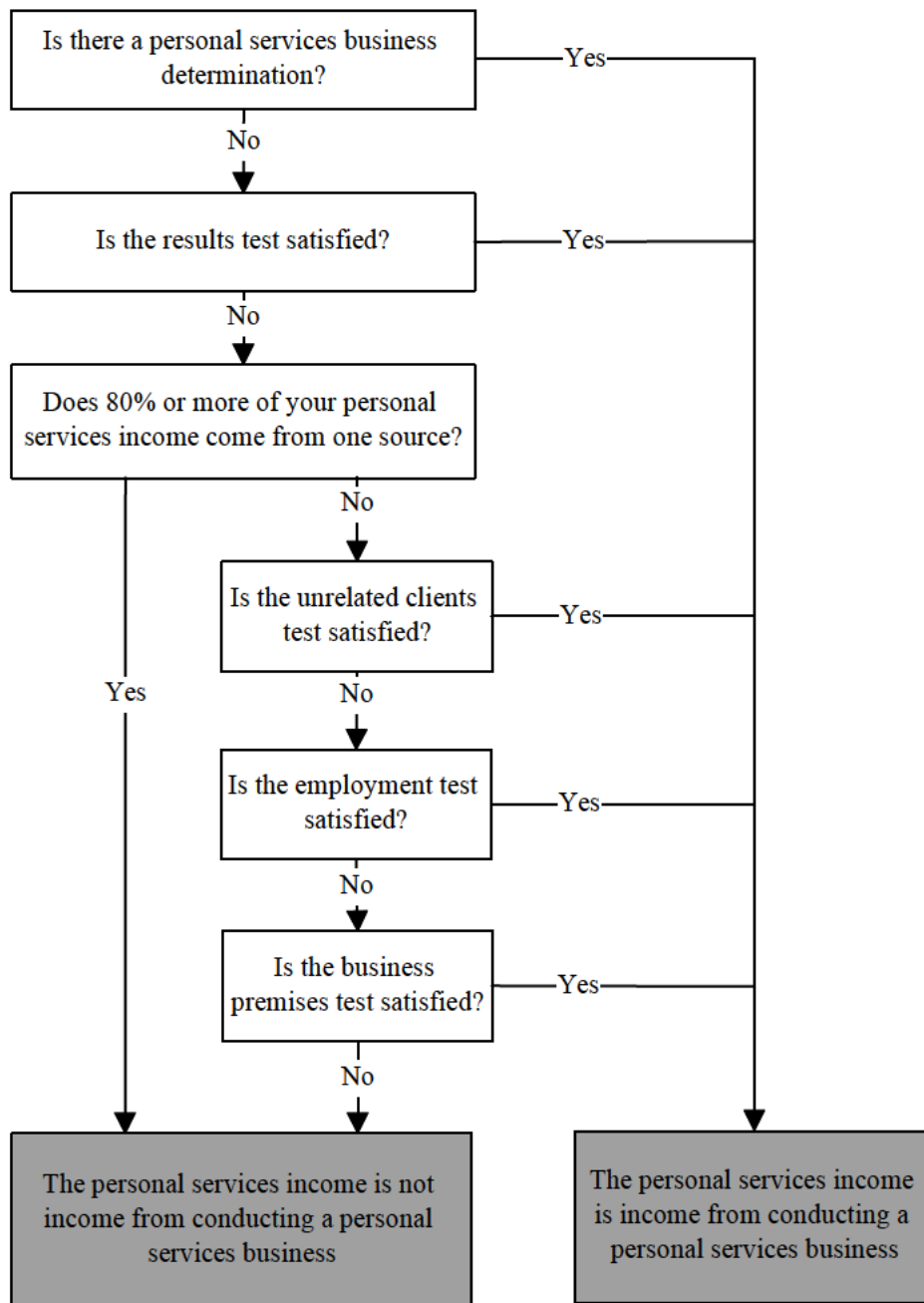
Regardless of how much of your personal services income is paid from one source, you can self-assess against the results test to determine whether you are an independent contractor. The results test is based on the traditional tests for determining independent contractors and it is intended that it apply accordingly.

However, you cannot “self-assess” whether you meet any of the other 3 tests if 80% or more of your personal services income is from one source. In these cases, you need a personal services

business determination in order to be treated as conducting a personal services business.

**87-5 Diagram showing the operation of this Division**

This diagram shows how this Division operates to ascertain whether personal services income is income from conducting a personal services business.



***Taxation Administration Act 1953***

**18 Subsection 13-15(3) in Schedule 1**

Omit all the words after “if”, substitute:

it is reasonable to expect that:

- (a) the entity will receive at least 80% of that income from the same entity (or one entity and its \*associates); and
- (b) the entity will not meet the results test under section 87-18 of the *Income Tax Assessment Act 1997*.

**18A Paragraph 45-120(3)(b) in Schedule 1**

Omit “\*amounts”, substitute “amounts”.

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## **Part 5—Application**

### **19 Application**

- (1) The amendments made by this Schedule (other than items 4A, 4B, 16C to 16J, 16L, 18 and 18A) apply, and are taken to have applied, to assessments for the 2000-2001 income year and later income years.
- (2) However, a declaration made under subitem 26(2) of Schedule 1 to the *New Business Tax System (Alienation of Personal Services Income) Act 2000* has effect, and is taken to have had effect, in relation to the amendments made by this Schedule in the same way that it has, and had, effect in relation to the amendments made by Part 1 of that Schedule.
- (2A) The amendments made by items 4A, 4B, 4C and 16M apply to assessments for the 2002-2003 income year and later income years.
- (2B) The amendments made by items 16C to 16K apply on and after the day on which this Act receives the Royal Assent.
- (3) Item 18 applies, and is taken to have applied, to an amount received, or a non-cash benefit provided, on or after 1 July 2000.
- (4) Item 18A applies to an amount received, or a non-cash benefit provided, on or after 1 July 2002.

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*[Minister's second reading speech made in—  
House of Representatives on 30 August 2001  
Senate on 26 September 2001]*

(181/01)

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