





# **Taxation Laws Amendment Act (No. 1) 2003**

**No. 12, 2003**

**An Act to amend the law relating to taxation, and  
for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedule(s).....	3
<b>Schedule 1—Interest withholding tax exemptions</b>		<b>4</b>
	<i>Income Tax Assessment Act 1936</i>	4
<b>Schedule 2—CGT exemption for certain compensation payments</b>		<b>8</b>
	<i>Income Tax Assessment Act 1997</i>	8
<b>Schedule 3—Friendly society investment products</b>		<b>9</b>
Part 1—Exempt income of friendly societies		9
	<i>Income Tax Assessment Act 1997</i>	9
Part 2—Deductions for friendly societies		<b>Error! Bookmark not defined.</b>
	<i>Income Tax Assessment Act 1997</i>	10
Part 3—Assessment of income from certain policies		<b>Error! Bookmark not defined.</b>
	<i>Income Tax Assessment Act 1936</i>	12
	<i>Income Tax Assessment Act 1997</i>	12
Part 4—Definition		<b>Error! Bookmark not defined.</b>
	<i>Income Tax Assessment Act 1997</i>	14
<b>Schedule 4—Goods and services tax</b>		<b>15</b>
	<i>A New Tax System (Goods and Services Tax Transition) Act 1999</i>	15





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# An Act to amend the law relating to taxation, and for related purposes

[Assented to 2 April 2003]

The Parliament of Australia enacts:

## 1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 1) 2003*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 April 2003
2. Schedule 1	29 August 2001	29 August 2001
3. Schedule 2	The day on which this Act receives the Royal Assent	2 April 2003
4. Schedule 3	The day on which this Act receives the Royal Assent	2 April 2003
5. Schedule 4	The day on which this Act receives the Royal Assent	2 April 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

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

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.

## Schedule 1—Interest withholding tax exemptions

### *Income Tax Assessment Act 1936*

#### 1 Subsection 128A(1)

Insert:

*ADI* means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

#### 2 Subsection 128A(1)

Insert:

*foreign bank* means a non-resident company that carries on a banking business.

#### 2A Subsection 128A(1)

Insert:

*non-ADI financial institution* means a corporation that:

- (a) is a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*; and
- (b) is included in Category D (Money Market Corporation) in a list kept under section 11 of that Act; and
- (c) carries on a general business of providing finance (within the meaning of that Act) on a commercial basis.

#### 3 Subsection 128A(1)

Insert:

*nostro account* means an account that:

- (a) an ADI or non-ADI financial institution holds with a foreign bank and maintains for the sole purpose of settling international transactions; and
- (b) operates on the basis that:

- (i) amounts deposited in the account are held in the account for no more than 10 days; and
- (ii) amounts advanced by way of an overdraft on the account are repaid within 10 days.

#### **4 After paragraph 128B(3)(gb)**

Insert:

- (gc) income that consists of interest derived on a nostro account by a non-resident that is a foreign bank; or

#### **5 After subsection 128F(1A)**

Insert:

(1B) If:

- (a) some or all of the transfer price (within the meaning of section 128AA) of a debenture is taken under that section to be income that consists of interest; and
- (b) the issue of the debenture satisfies the public offer test set out in subsection (3) or (4);

this section applies to the interest.

Note: Subsection (6) does not apply to the interest because that subsection deals only with interest paid on a debenture by the issuing company.

#### **6 Subsection 128F(5)**

Repeal the subsection, substitute:

*Issues that always fail the public offer test*

- (5) The issue of a debenture by a company does not ***satisfy the public offer test*** if, at the time of the issue, the company knew, or had reasonable grounds to suspect, that:
  - (a) the debenture, or an interest in the debenture, was being, or would be, acquired either directly or indirectly by an associate of the company; and
  - (b) either:
    - (i) the associate is a non-resident and the debenture or interest was not being, or would not be, acquired by the associate in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or

- (ii) the associate is a resident of Australia and the debenture or interest was being, or would be, acquired by the associate in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and
- (c) the debenture or interest was not being, or would not be, acquired by the associate in the capacity of:
  - (i) a dealer, manager or underwriter in relation to the placement of the debenture; or
  - (ii) a clearing house, custodian, funds manager or responsible entity of a registered scheme.

### **7 Subsection 128F(6)**

Repeal the subsection, substitute:

*No exemption for interest paid to certain associates of the issuing company*

- (6) This section does not apply to interest paid by the company to a person in respect of the debenture if, at the time of the payment, the company knows, or has reasonable grounds to suspect, that:
  - (a) the person is an associate of the company; and
  - (b) either:
    - (i) the associate is a non-resident and the payment is not received by the associate in respect of a debenture that the associate acquired in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or
    - (ii) the associate is a resident of Australia and the payment is received by the associate in respect of a debenture that the associate acquired in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and
  - (c) the associate does not receive the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

### **8 Subsection 128F(9)**

Insert:

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*registered scheme* has the same meaning as in the *Corporations Act 2001*.

## **9 Subsection 128F(9)**

Insert:

*responsible entity*, of a registered scheme, has the same meaning as in the *Corporations Act 2001*.

## **10 Application**

- (1) The amendment made by item 4 applies to income that consists of interest derived on or after 29 August 2001.
- (2) The amendment made by item 5 applies to an amount of the transfer price of a debenture that is, on or after 29 August 2001, deemed by section 128AA to be income that consists of interest.
- (3) The amendment made by item 6 applies to the issue of a debenture by a company on or after 29 August 2001.
- (4) The amendment made by item 7 applies to interest paid on or after 29 August 2001 by a company in respect of a debenture.

## Schedule 2—CGT exemption for certain compensation payments

### *Income Tax Assessment Act 1997*

#### **1 At the end of section 118-37**

Add:

- (4) A \*capital gain or \*capital loss you make from a payment you receive is disregarded if:
- (a) you are an \*Australian resident; and
  - (b) you receive the payment:
    - (i) under the program known as the “German Forced Labour Compensation Programme”; and
    - (ii) from the Foundation known as “Remembrance, Responsibility and Future” or any of the Foundation’s partner organisations; and
  - (c) the payment is in the nature of compensation for:
    - (i) any wrong or injury; or
    - (ii) any loss of, or damage to, property;that you, or another person, suffered as a result of injustices committed during the National Socialist period.

#### **2 Application of amendment**

The amendment of the *Income Tax Assessment Act 1997* made by this Schedule applies to assessments for the 2001-2002 income year and later income years.

## **Schedule 3—Friendly society investment products**

### **Part 1—Exempt income of friendly societies**

#### *Income Tax Assessment Act 1997*

#### **1 Subparagraph 320-35(1)(f)(ii)**

Repeal the subparagraph, substitute:

- (ii) amounts received on or after 1 January 2003 that are attributable to income bonds or funeral policies issued before 1 January 2003; and
- (iii) amounts received on or after 1 January 2003 that are attributable to scholarship plans issued before 1 January 2003 and that would have been exempt from income tax if they had been received before 1 July 2001.

#### **2 Application**

The amendment made by this Part applies to an assessment for the income year including 1 January 2003 or a later income year.

## Part 2—Deductions for friendly societies

### *Income Tax Assessment Act 1997*

#### **3 Section 320-110**

Omit “30 November 1999”, substitute “31 December 2002”.

#### **4 At the end of section 320-110**

Add:

(2) This section has effect despite subsection 320-80(3).

#### **5 After section 320-110**

Insert:

#### **320-111 Deduction for funeral policy payout**

(1) A \*life insurance company that is a \*friendly society can deduct the amount of a benefit provided in the income year by the company under a \*funeral policy issued after 31 December 2002, reduced by so much of the sum of the amounts deducted or deductible by the company under section 320-75 for any income year as is reasonably related to the benefit.

(2) This section has effect despite subsection 320-80(3).

#### **320-112 Deduction for scholarship plan payout**

(1) A \*life insurance company that is a \*friendly society can deduct the amount of a benefit it provides in the income year and on or after 1 January 2003:

(a) under a \*scholarship plan covered by subsection (2) or (3);  
and

(b) to, or on behalf of, a person nominated in the plan as a beneficiary whose education is to be helped by the benefit;  
reduced by so much of the sum of the amounts deducted or deductible by the company under section 320-75 for any income year as is reasonably related to the benefit.

- (2) This subsection covers a \*scholarship plan issued by the \*life insurance company after 31 December 2002.
- (3) This subsection covers a \*scholarship plan if:
  - (a) the plan was issued by the \*life insurance company before 1 January 2003; and
  - (b) no amount received by the company on or after 1 January 2003 and attributable to the plan is \*exempt income of the company under paragraph 320-35(1)(f).
- (4) This section has effect despite subsection 320-80(3).

## **6 Application**

The amendments made by this Part apply to an assessment for the income year including 1 January 2003 or a later income year.

## Part 3—Assessment of income from certain policies

### *Income Tax Assessment Act 1936*

#### **7 Subsection 26AH(1) (at the end of the definition of eligible policy)**

Add “, other than a funeral policy (as defined in the *Income Tax Assessment Act 1997*) issued on or after 1 January 2003”.

### *Income Tax Assessment Act 1997*

#### **8 Section 10-5 (after table item headed “franked dividends”)**

Insert:

##### **funeral policy**

benefit under ..... 15-55

#### **9 Section 10-5 (after table item headed “schemes”)**

Insert:

##### **scholarship plan**

benefit under ..... 15-60

#### **10 At the end of Division 15**

Add:

#### **15-55 Certain amounts paid under funeral policy**

- (1) Your assessable income includes the amount of a benefit provided to you by a \*life insurance company under a \*funeral policy issued after 31 December 2002 to pay for the funeral of the insured person, reduced by:
- (a) the amount of the premium or premiums of the policy that is reasonably related to the benefit; and
  - (b) the amount of the fees and charges included in the company’s assessable income for any income year under paragraph 320-15(k) that is reasonably related to the benefit.

- (2) This section does not apply if the benefit is included in your assessable income as:
- (a) \*ordinary income under section 6-5; or
  - (b) \*statutory income under a section of this Act other than this section.

### **15-60 Certain amounts paid under scholarship plan**

- (1) Your assessable income includes the amount of a benefit provided to you, or on your behalf, by a \*life insurance company under a \*scholarship plan covered by subsection (2) or (3), reduced by the amount worked out under subsection (4), if:
- (a) the benefit is provided on or after 1 January 2003; and
  - (b) you are nominated in the plan as a beneficiary whose education is to be helped by the benefit.
- (2) This subsection covers a \*scholarship plan issued by the \*life insurance company after 31 December 2002.
- (3) This subsection covers a \*scholarship plan if:
- (a) the plan was issued by the \*life insurance company before 1 January 2003; and
  - (b) no amount received by the company on or after 1 January 2003 and attributable to the plan is \*exempt income of the company under paragraph 320-35(1)(f).
- (4) The amount of the reduction is the sum of:
- (a) the amount of the premium or premiums of the plan that is reasonably related to the benefit; and
  - (b) the amount of the fees and charges included in the company's assessable income for any income year under paragraph 320-15(k) that is reasonably related to the benefit.

## **11 Application**

The amendments made by this Part apply to an assessment for the income year including 1 January 2003 or a later income year.

## Part 4—Definition

### *Income Tax Assessment Act 1997*

#### 12 Subsection 995-1(1) (definition of scholarship plan)

Repeal the definition, substitute:

*scholarship plan* means a \*life insurance policy that:

- (a) is issued by a \*friendly society for the sole purpose of providing benefits to help in the education of nominated beneficiaries; and
- (b) is not being used, and has never been used, as security for borrowing or raising money; and
- (c) if it is issued on or after 1 January 2003—contains a provision prohibiting use of the policy as security for borrowing or raising money.

#### 13 Application

The definition of *scholarship plan* in subsection 995-1(1) of the *Income Tax Assessment Act 1997* as amended by this Part applies on and after 1 January 2003.

## **Schedule 4—Goods and services tax**

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

#### **1 Paragraph 23(1)(a)**

After “scheme”, insert “, if the premium, contribution or similar payment relates to a period commencing”.

#### **2 Paragraph 23(1)(b)**

After “paid,”, insert “in respect of a period of cover commencing”.

#### **3 After subsection 23(1)**

Insert:

(1AA) It does not matter, for the purposes of subsection (1), whether the payment occurred before, on or after 1 July 2003.

#### **4 Application**

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2000.

(191/02)

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*[Minister’s second reading speech made in—  
House of Representatives on 19 September 2002  
Senate on 5 February 2003]*

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(191/02)