



Tax Laws Amendment (2004 Measures No. 1) Act 2004

No. 95, 2004

**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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Tax Laws Amendment (2004 Measures No. 1) Act 2004

No. 95, 2004

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

[Assented to 29 June 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2004
Measures No. 1) Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2004
2. Schedules 1 to 3	The day on which this Act receives the Royal Assent.	29 June 2004
3. Schedule 4, items 1 to 7	Immediately after the commencement of the <i>Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003</i> .	1 July 2003
4. Schedule 4, item 8	The day on which this Act receives the Royal Assent.	29 June 2004
5. Schedules 5 and 6	The day on which this Act receives the Royal Assent.	29 June 2004
6. Schedule 7	1 July 2004.	1 July 2004
7. Schedules 8 and 9	The day on which this Act receives the Royal Assent.	29 June 2004
8. Schedule 10	1 July 2005.	1 July 2005
9. Schedule 11	The day on which this Act receives the Royal Assent.	29 June 2004

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.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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—Medical expenses offset

Income Tax Assessment Act 1936

1 Subsection 159P(4) (paragraph (i) of the definition of *medical expenses*)

Repeal the paragraph, substitute:

- (i) for the maintenance of a dog used for the guidance or assistance of, but not social therapy for, a person with a disability, being a dog that the Commissioner is satisfied is properly trained in the guidance or assistance of persons with disabilities.

2 Application

The amendment made by this Schedule applies, and is taken to have applied, in relation to the 2002-03 income year and later income years.

Schedule 2—Deduction for transport between workplaces

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “car expenses”)

After:

“12% of original value” method Subdivision 28-D

insert:

see also *transport expenses*

2 Section 12-5 (after table item headed “transfer pricing”)

Insert:

transport expenses

incurred in travel between workplaces..... 25-100

3 At the end of Division 25

Add:

25-100 Travel between workplaces

When a deduction is allowed

- (1) If you are an individual, you can deduct a *transport expense to the extent that it is incurred in your *travel between workplaces.

Travel between workplaces

- (2) Your **travel between workplaces** is travel directly between 2 places, to the extent that:
- (a) while you were at the first place, you were:
 - (i) engaged in activities to gain or produce your assessable income; or
 - (ii) engaged in activities in the course of carrying on a *business for the purpose of gaining or producing your assessable income; and
 - (b) the purpose of your travel to the second place was to:

- (i) engage in activities to gain or produce your assessable income; or
 - (ii) engage in activities in the course of carrying on a business for the purpose of gaining or producing your assessable income;
- and you engaged in those activities while you were at the second place.
- (3) Travel between 2 places is not *travel between workplaces* if one of the places you are travelling between is a place at which you reside.
 - (4) Travel between 2 places is not *travel between workplaces* if, at the time of your travel to the second place:
 - (a) the arrangement under which you gained or produced assessable income at the first place has ceased; or
 - (b) the *business in respect of which you engaged in activities at the first place has ceased.

No deduction for capital expenditure

- (5) You cannot deduct expenditure under subsection (1) to the extent that the expenditure is capital, or of a capital nature.

4 Subsection 28-25(3)

Repeal the subsection, substitute:

- (3) *Business kilometres* are kilometres the *car travelled in the course of:
 - (a) producing your assessable income; or
 - (b) your *travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

5 Subsection 28-50(2)

Repeal the subsection, substitute:

- (2) *Business kilometres* are kilometres the *car travelled in the course of:
 - (a) producing your assessable income; or
 - (b) your *travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

6 Subsection 28-75(2)

Repeal the subsection, substitute:

(2) ***Business kilometres*** are kilometres the *car travelled in the course of:

- (a) producing your assessable income; or
- (b) your *travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

7 Subsection 28-90(4)

Repeal the subsection, substitute:

(4) ***Business kilometres*** are kilometres the *car travelled in the course of:

- (a) producing your assessable income; or
- (b) your *travel between workplaces.

8 At the end of subsection 900-30(7) (before the notes)

Add:

; (c) expenditure you incur that entitles you to a deduction under section 25-100 (transport expenses incurred in your travel between workplaces), other than *car expenses.

9 At the end of section 900-30

Add:

Note 3: See Subdivision 900-C for car expenses that are also transport expenses incurred in your travel between workplaces.

10 Subsection 995-1(1)

Insert:

travel between workplaces has the meaning given by section 25-100.

11 Application

TSchedule 2T Deduction for transport between workplacesT
T TT T

The amendments made by this Schedule apply to assessments for the 2001-2002 income year and each later income year.

Schedule 3—Small business CGT relief and discretionary trusts

Income Tax Assessment Act 1997

1 Paragraph 152-30(2)(a)

Before “beneficially own”, insert “except where the other entity is a discretionary trust—”.

2 At the end of subsection 152-30(2)

Add:

Note: There are further rules relating to discretionary trusts in subsections (4) to (6C).

3 Subsection 152-30(3)

After “subsection (2)”, insert “or (5)”.

4 Subsections 152-30(5) and (6)

Repeal the subsections, substitute:

Control of discretionary trust

(5) An entity (the *first entity*) controls a discretionary trust if, for any of the 4 income years before the income year for which relief is sought for a *CGT event under this Division:

(a) the trustee paid to, or applied for the benefit of:

(i) the first entity; or

(ii) one or more of the first entity’s *small business CGT affiliates; or

(iii) the first entity and one or more of the first entity’s small business CGT affiliates;

any of the income or capital of the trust; and

(b) the amount paid or applied is at least 40% (the *control percentage*) of the total amount of income or capital paid or applied by the trustee for that income year.

(6) An entity does not control a discretionary trust because of subsection (5) if the entity is:

- (a) an *exempt entity; or
- (b) a *deductible gift recipient.

(6A) The trustee of a discretionary trust may, for an income year for which the trust had a *tax loss and for which the trustee did not pay or apply any income or capital of the trust, nominate not more than 4 beneficiaries as being controllers of the trust.

Note: The trust might not have had the funds to make a distribution for that income year, which would prevent it from being controlled in that year. The trustee may wish to make the nomination to ensure that a relevant CGT asset is treated as an active asset (see section 152-40).

(6B) This section has effect as if each nominated beneficiary controlled the trust during the relevant income year in the way described in this section.

(6C) A nomination must be in writing and signed by the trustee and by each nominated beneficiary.

5 Subsection 152-30(8)

Repeal the subsection, substitute:

(8) However, if an entity (the *first entity*) controls an entity of a kind referred to in subsection (9) (the *public entity*), this section does not, merely because of subsection (7), apply to the first entity as if it controlled any other entity that is controlled by the public entity.

(9) The kinds of entities are:

- (a) a company *shares in which (except shares that carry the right to a fixed rate of *dividend) are listed for quotation in the official list of an *approved stock exchange; or
- (b) a *publicly traded unit trust; or
- (c) a *mutual insurance company; or
- (d) a *mutual affiliate company; or
- (e) a company (other than one covered by paragraph (a)) all the shares in which are beneficially owned by one or more of the following:
 - (i) a company covered by paragraph (a);
 - (ii) a publicly traded unit trust;
 - (iii) a mutual insurance company;
 - (iv) a mutual affiliate company.

6 Subsection 152-305(3)

Omit “(within the meaning of subsection 152-30(6))”, substitute “of a kind referred to in subsection 152-30(9)”.

7 Application of amendments

The amendments made by this Schedule apply to CGT events happening after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

8 Transitional: general

- (1) In this item and in item 9:
assent day means the day on which this Act receives the Royal Assent.
 - (2) The subsection 152-30(5) of the *Income Tax Assessment Act 1997* inserted by this Schedule applies to assessments for the 1999-2000, 2000-01 and 2001-02 income years as if the reference to any of the 4 income years before the income year for which relief is sought for a CGT event under Division 152 of that Act were a reference to the income year for which that relief is sought.
 - (3) The following subitems apply in relation to:
 - (a) a CGT event that happened before the assent day; and
 - (b) an entity who becomes eligible to make a choice under Division 152 of the *Income Tax Assessment Act 1997* in relation to that event because of this Schedule.
 - (4) Despite subsection 103-25(1) of the *Income Tax Assessment Act 1997*, any such choice must be made by the entity by the latest of:
 - (a) the day the entity lodges its income tax return for the income year in which the relevant CGT event happened; and
 - (b) 12 months after the assent day; and
 - (c) a later day allowed by the Commissioner of Taxation.
 - (5) The period within which the entity must acquire a replacement asset as mentioned in subsection 152-420(1) or (2) of the *Income Tax Assessment Act 1997* ends on the latest of:
 - (a) 2 years after the happening of the last CGT event in the income year for which the entity obtained the small business roll-over; and
 - (b) 12 months after the assent day; and
-

- (c) a later day allowed by the Commissioner of Taxation.
- (6) The period within which a replacement asset the entity acquires must be an active asset as mentioned in subsection 152-420(4) of the *Income Tax Assessment Act 1997* (if it is not an active asset when acquired) ends on the latest of:
 - (a) 2 years after the happening of the last CGT event in the income year for which the entity obtained the small business roll-over; and
 - (b) 12 months after the assent day; and
 - (c) a later day allowed by the Commissioner of Taxation.

9 Transitional: choice

- (1) This item applies to CGT events that happen no later than the end of the 2003-04 income year.
- (2) Subject to subitem (3), an entity can choose that Division 152 of the *Income Tax Assessment Act 1997* apply to such a CGT event as if the amendments made by this Schedule had not been made.
- (3) However, subsection 152-30(6) inserted by item 4 of this Schedule applies to those CGT events.
- (4) A choice under this item must be made by the latest of:
 - (a) the day the entity lodges its income tax return for the income year in which the relevant CGT event happened; and
 - (b) 12 months after the assent day; and
 - (c) a later day allowed by the Commissioner of Taxation.

Schedule 4—Amendment of the Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003

1 Subitem 1(1) of Schedule 7

Omit “This”, substitute “Subject to subitem (1A), this”.

2 Subitem 1(1) of Schedule 7

Omit “a person”, substitute “an entity”.

3 At the end of subitem 1(1) of Schedule 7

Add “as in force on 1 July 2003 (including as affected by regulations under that Act commencing on that day)”.

4 Subitem 1(2) of Schedule 7

Repeal the subitem, substitute:

(1A) This item does not apply if:

- (a) the on-road alternative fuel is liquefied natural gas or biodiesel; or
- (b) the entity purchased or imported into Australia the off-road diesel fuel before 1 July 2002 for a use mentioned in paragraph 53(4)(a) of the *Energy Grants (Credits) Scheme Act 2003* as in force on 1 July 2003.

(2) The *Energy Grants (Credits) Scheme Act 2003* and regulations under that Act apply to fuel to which this item applies in the same way as they apply to on-road diesel fuel, on-road alternative fuel or off-road diesel fuel purchased or imported into Australia on 1 July 2003.

Note: The effect of subitem (2) will be to create entitlements to energy grants that, subject to subitem (3), can be claimed under section 15 of the *Product Grants and Benefits Administration Act 2000*. However, because of the claim period requirements in that section, a claim will not be able to be made more than 3 years after the actual time of purchase or importation of the fuel concerned.

5 Subitem 1(3) of Schedule 7

Omit “a person”, substitute “an entity”.

6 Subitem 1(3) of Schedule 7

Omit “the person” (wherever occurring), substitute “the entity”.

7 No entitlements under original version of Schedule

To avoid doubt, no entitlement to an energy grant arises under Schedule 7 to the *Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003* as in force before its amendment by this Schedule.

8 Recouping entitlement to certain energy grants where assessment made before commencement

(1) If:

- (a) the amendments made by this Schedule have the effect of reducing (the amount of the reduction being the *recoupment amount*) an entity’s entitlement to an energy grant (including to nil); and
- (b) before the time at which this item commenced (the *commencement time*), an assessment was made under section 17 of the *Product Grants and Benefits Administration Act 2000* of the entity’s entitlement to the energy grant;

then:

- (c) the Commissioner of Taxation is not entitled to amend the assessment under section 20 of that Act to give effect to the reduction in the entitlement; but

Note: However, the Commissioner is not prevented from amending the assessment for any other purpose.

- (d) the following entitlements of the entity:
 - (i) entitlements to grants and benefits within the meaning of the *Product Grants and Benefits Administration Act 2000* that arose before the commencement time, where an assessment was not made before that time under section 17 of that Act of the entity’s entitlement to the grant or benefit;
 - (ii) entitlements to grants and benefits, within the meaning of that Act, that, disregarding this item, arise at or after the commencement time;are reduced in accordance with the rules in subitem (2).

(2) The rules are:

- (a) the entitlements are reduced, in the order in which they arose or arise, until the total amount of the reduction equals the recoupment amount; and
- (b) if 2 or more entitlements arose or arise at the same time, they are taken for the purposes of paragraph (a) to have arisen or to arise in the order determined by the Commissioner of Taxation.

Schedule 5—Net input tax credits and capital gains tax

Income Tax Assessment Act 1997

1 At the end of section 17-10

Add:

- (2) However, the amount is not *assessable income* to the extent that, because it becomes a component of a *net input tax credit, a reduction is made under section 103-30 (reduction of cost base etc. by net input tax credits).

2 At the end of section 27-10

Add:

- (4) However, you cannot deduct an amount under subsection (1) or (3) to the extent that, because it becomes a component of a *net input tax credit, a reduction is made under section 103-30 (reduction of cost base etc. by net input tax credits).

3 At the end of Division 103

Add:

103-30 Reduction of cost base etc. by net input tax credits

Reduce the *cost base and *reduced cost base of a *CGT asset, and any other amount that could be involved in the calculation of an entity's *capital gain or *capital loss, by the amount of any *net input tax credit of the entity in relation to that amount.

Example: The other amount could be expenditure in the case of some CGT events (see, for example, CGT event D1).

Note: Subsection 116-20(5) deals with the effect of net GST on supplies for the purposes of capital proceeds.

4 Subsection 110-25(1) (note)

Omit “Note”, substitute “Note 1”.

5 At the end of subsection 110-25(1)

Add:

Note 2: The cost base is reduced by net input tax credits: see section 103-30.

6 Subsection 110-45(3A)

Repeal the subsection.

7 Subsection 110-50(3A)

Repeal the subsection.

8 At the end of subsection 110-55(1)

Add:

Note: The reduced cost base is reduced by net input tax credits: see section 103-30.

9 Application

The amendments made by this Schedule apply to CGT events that happen after the end of the day the Bill for this Act was introduced into the Parliament.

Schedule 6—Confidentiality of ABN information

A New Tax System (Australian Business Number) Act 1999

1 Subparagraph 30(3)(c)(i)

Omit all the words after “purposes of”, substitute “carrying out functions of the Agency (within the meaning of that Act); or”.

2 Subparagraph 30(3)(c)(vi)

Omit all the words after “purposes of”, substitute “carrying out functions of the Department; or”.

3 Subparagraph 30(3)(d)(i)

Omit all the words after “purposes of”, substitute “carrying out functions of the Agency (within the meaning of that Act); or”.

4 Subparagraph 30(3)(d)(iv)

Omit all the words after “purposes of”, substitute “carrying out functions of the Department; or”.

5 Application of amendments

The amendments of the *A New Tax System (Australian Business Number) Act 1999* made by this Schedule apply in relation to disclosures made on or after 15 October 2001.

Schedule 7—Deductions for contributions relating to fund-raising events

Part 1—Amendments

Income Tax Assessment Act 1997

1 Subsection 20-30(1) (after table item 1.8A)

Insert:

1.8B	item 7 of the table in section 30-15	contributions relating to fund-raising events
1.8C	item 8 of the table in section 30-15	contributions relating to fund-raising auctions

2 Section 30-15 (at the end of the table)

Add:

7	A *deductible gift recipient that is a fund, authority or institution covered by item 1 or 2 of this table.	A contribution of: <ul style="list-style-type: none"> (a) money, if the amount is more than \$250; or (b) property that you purchased during the 12 months before making the contribution, if the lesser of: <ul style="list-style-type: none"> • the market value of the property on the day you made the contribution; and • the amount you paid for the property; 	(a) if the contribution is money—the amount of the contribution, reduced by the *GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event; or (b) if the contribution is property that you purchased during the 12 months before	(a) if the contribution is money—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed the lesser of: <ul style="list-style-type: none"> • 10% of the amount of the contribution; and • \$100; and (b) if the
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| <p>is more than \$250; or</p> <p>(c) property valued by the Commissioner at more than \$5,000, if you did not purchase the property during the 12 months before making the contribution;</p> <p>where:</p> <p>(d) the contribution is not a gift; and</p> <p>(e) either:</p> <ul style="list-style-type: none"> • the contribution is made in return for a right permitting you to attend, or participate in, a particular *fund-raising event in Australia; or • the contribution is made in return for a right permitting an individual (other than you) to attend, or participate in, a particular fund-raising event in | <p>making the contribution—the lesser of:</p> <ul style="list-style-type: none"> • the market value of the property on the day you made the contribution; and • the amount you paid for the property; <p>reduced by the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event; or</p> <p>(c) if the contribution is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the contribution—the value of the property as determined by the Commissioner, reduced by the GST inclusive market value,</p> | <p>contribution is property that you purchased during the 12 months before making the contribution—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed the lesser of:</p> <ul style="list-style-type: none"> • 10% of the lesser of the market value of the property on the day you made the contribution and the amount you paid for the property; and • \$100; and <p>(c) if the contribution is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the</p> |
|---|--|--|

Australia.	on the day you made the contribution, of the right to attend, or participate in, the fund-raising event.	contribution—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed \$100; and (d) if, instead of making the contribution, you had made a gift of money to the fund, authority or institution, and: <ul style="list-style-type: none">• the amount of the gift had been more than \$2; and• the gift had been made for the same purpose for which funds were to be raised by the fund-raising event; you could have deducted the gift under item 1 or 2 of this table; and (e) you must be an individual; and (f) you cannot deduct more
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				than 2 contributions in relation to the same fund-raising event; and
				(g) if the property is to be valued by the Commissioner—the requirements of section 30-212 are satisfied.
8	A *deductible gift recipient that is a fund, authority or institution covered by item 1 or 2 of this table.	A contribution of money, if: (a) the amount is more than \$250; and (b) the contribution is not a gift; and (c) you made the contribution by way of consideration for the supply of goods or services; and (d) you made the contribution because you were the successful bidder at an auction that: <ul style="list-style-type: none"> • was a particular *fund-raising event in Australia; or • was held at a particular fund-raising event in 	The amount of the contribution, reduced by the *GST inclusive market value, on the day you made the contribution, of the goods or services.	(a) the GST inclusive market value, on the day you made the contribution, of the goods or services must not exceed the lesser of: <ul style="list-style-type: none"> • 10% of the amount of the contribution; and • \$100; and (b) if, instead of making the contribution, you had made a gift of money to the fund, authority or institution, and: <ul style="list-style-type: none"> • the amount of the gift had been more than \$2; and • the gift had been made for the same

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| Australia;
and
(e) the amount of
the contribution
exceeds the
*GST inclusive
market value, on
the day you
made the
contribution, of
the goods or
services. | purpose for
which funds
were to be
raised by the
fund-raising
event;
you could have
deducted the gift
under item 1 or
2 of this table;
and
(c) you must be an
individual. |
|---|---|

3 At the end of section 30-15

Add:

- (4) For the purposes of item 7 of the table in subsection (2), in working out the *GST inclusive market value of the right in question, disregard anything that would prevent or restrict conversion of the right to money.
- (5) For the purposes of item 8 of the table in subsection (2), in working out the *GST inclusive market value of the goods or services in question, disregard anything that would prevent or restrict conversion of the goods or services to money.

4 Paragraphs 30-125(4)(a) and (b)

After “gifts”, insert “, or deductible contributions,”.

5 After subsection 30-125(4)

Insert:

- (4A) For the purposes of subsection (4), if a contribution described in item 7 or 8 of the table in section 30-15 is made in relation to a *fund-raising event:
 - (a) the contribution is a deductible contribution; and
 - (b) the contribution is taken to have been made for the same purpose for which funds were raised by the fund-raising event.

6 Subsection 30-212(1)

After “gift”, insert “or contribution”.

7 At the end of section 30-228 (after the note)

Add:

- (2) If a *deductible gift recipient issues a receipt for a contribution described in item 7 of the table in section 30-15, the deductible gift recipient must ensure that the receipt states:
 - (a) the name of the deductible gift recipient; and
 - (b) the *ABN (if any) of the deductible gift recipient; and
 - (c) the fact that the receipt is for a contribution made in return for a right to attend, or participate in, a specified *fund-raising event; and
 - (d) if the contribution is money—the amount of the contribution; and
 - (e) the amount of the *GST inclusive market value, on the day the contribution was made, of the right to attend, or participate in, the fund-raising event.
- (3) For the purposes of paragraph (2)(e), in working out the *GST inclusive market value of the right in question, disregard anything that would prevent or restrict conversion of the right to money.
- (4) If a *deductible gift recipient issues a receipt for a contribution described in item 8 of the table in section 30-15, the deductible gift recipient must ensure that the receipt states:
 - (a) the name of the deductible gift recipient; and
 - (b) the *ABN (if any) of the deductible gift recipient; and
 - (c) the fact that the receipt is for a contribution made by way of consideration for the supply of goods or services; and
 - (d) the fact that the contribution was made because the contributor was the successful bidder at an auction that:
 - (i) was a specified *fund-raising event; or
 - (ii) was held at a specified fund-raising event; and
 - (e) if the contribution is money—the amount of the contribution; and
 - (f) the *GST inclusive market value, on the day the contribution was made, of the goods or services.
- (5) For the purposes of paragraph (4)(f), in working out the *GST inclusive market value of the goods or services in question,

disregard anything that would prevent or restrict conversion of the goods or services to money.

Note: The heading to section 30-228 is altered by adding at the end “**or contribution**”.

8 Subsection 30-315(2) (after table item 51)

Insert:

51AA Fund-raising events—contributions items 7 and 8 of the table in section 30-15

9 Subsection 995-1(1) (paragraph (b) of the definition of *apportionable deductions*)

Omit “item 1 or 2”, substitute “item 1, 2, 7 or 8”.

10 Subsection 995-1(1)

Insert:

fund-raising event has the meaning given by section 40-165 of the *A New Tax System (Goods and Services Tax) Act 1999*, as modified by the omission of subparagraph 40-165(1)(b)(i) of that Act.

Income Tax Assessment Act 1936

11 Subsection 6(1) (paragraph (aa) of the definition of *apportionable deductions*)

Omit “item 1 or 2”, substitute “item 1, 2, 7 or 8”.

12 Paragraph 6AD(3)(c)

Omit “item 1, 2 or 3”, substitute “item 1, 2, 3, 7 or 8”.

Part 2—Application of amendments

13 Application of amendments

The amendments made by this Schedule apply in relation to contributions made on or after 1 July 2004.

Schedule 8—Distributions to certain entities

Part 1—Division 7A amendments

Income Tax Assessment Act 1936

1 Section 109S

Omit “, 109UA and 109UB”, substitute “and 109UA”.

2 Section 109UB

Repeal the section.

3 After Subdivision E of Division 7A of Part III

Insert:

Subdivision EA—Unpaid present entitlements

109XA Payments, loans and debt forgiveness by a trustee in favour of a shareholder etc. of a private company with an unpaid present entitlement

Payments

- (1) Section 109XB applies if:
- (a) a trustee makes a payment to a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) (the *actual transaction*); and
 - (b) the payment is a discharge of or a reduction in a present entitlement of the shareholder or associate that is wholly or partly attributable to an amount that is an unrealised gain; and
 - (c) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee’s return of income for the trust for the year of income of the trust in which the actual transaction takes place.

Loans

- (2) Section 109XB applies if:
- (a) a trustee makes a loan to a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) (the **actual transaction**); and
 - (b) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place.

Forgiven debts

- (3) Section 109XB applies if:
- (a) all or part of a debt owed to a trustee by a shareholder or an associate of a shareholder of a private company is forgiven (except where the shareholder or associate is a company) (the **actual transaction**); and
 - (b) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place.

Amount involved in the actual transaction

- (4) The amount involved in the actual transaction is the lesser of:
- (a) the amount actually involved in the actual transaction; and
 - (b) the amount worked out using the formula:

Unpaid present entitlement – Previous transactions

where:

previous transactions means the sum of:

- (a) the amounts that, because of previous applications of section 109UB (as in force before the commencement of this section) have been taken to be loans; and

- (b) the amounts that, because of previous applications of this Subdivision, have been included in an entity's assessable income;
in relation to the unpaid present entitlement.

unpaid present entitlement means:

- (a) if the actual transaction is a payment—the amount of the present entitlement referred to in paragraph (1)(c) that remained unpaid on the earlier of the dates mentioned in that paragraph; and
- (b) if the actual transaction is a loan—the amount of the present entitlement referred to in paragraph (2)(b) that remained unpaid on the earlier of the dates mentioned in that paragraph; and
- (c) if the actual transaction is the forgiveness of a debt—the amount of the present entitlement referred to in paragraph (3)(b) that remained unpaid on the earlier of the dates mentioned in that paragraph.

The amount of the actual transaction where the entitlement is only partly attributable to an unrealised gain

- (5) For the purposes of subsection (4), where the actual transaction was a payment and that payment was only partly attributable to an amount that is an unrealised gain, the amount of the actual transaction is taken to be the amount of the payment that was attributable to the amount that is the unrealised gain.

Creation of a present entitlement is not a payment

- (6) The creation of a present entitlement to the capital or income of a trust estate is not, of itself, a payment for the purposes of this Subdivision.

Meaning of unrealised gain

- (7) In this section:

unrealised gain, in relation to a trust estate and an actual payment, means any unrealised gain, whether of a capital or income nature, but does not include an unrealised gain to the extent that it has been or would be included in the assessable income of the trust, apart from this Division, for:

- (a) a year of income before the year in which the actual payment was made; or
- (b) the year of income in which the actual payment was made; or
- (c) the year of income following the year in which the actual payment was made.

109XB Amounts included in assessable income

- (1) An amount is included, as if it were a dividend, in the assessable income of the shareholder or associate referred to in subsection 109XA(1), (2) or (3) if:
 - (a) had the actual transaction been done by a private company (the *notional company*); and
 - (b) had the shareholder or associate been a shareholder of the notional company at the time the actual transaction took place;an amount (the *Division 7A amount*) would have been included in the shareholder's or associate's assessable income because of a provision of this Division outside this Subdivision.
- (2) Subject to section 109Y, the amount that is included under subsection (1) is the Division 7A amount.

Note: There are some modifications of this Division for the purposes of working out the Division 7A amount: see section 109XC.

109XC Modifications

Modifications for this Subdivision only

- (1) The modifications in this section have effect for the purposes of the operation of this Subdivision.

General modifications

- (2) This Division (but not this Subdivision) applies to an actual transaction done by a trustee of a trust estate with these modifications:
 - (a) a reference (except in section 109Y) to an amount paid to a private company has effect as a reference to an amount paid to the trustee; and

- (b) a reference to a year of income of a private company has effect as a reference to the corresponding year of income of the trust estate; and
- (c) a reference to the ordinary course of a private company's business has effect as a reference to the ordinary course of the trust estate's business.

Modified operation of section 109E

- (3) A loan referred to in this Subdivision that is made during a year of income of a trust estate is taken to have been fully repaid at the end of the year for the purposes of paragraph 109E(3)(a) if it is fully repaid by the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for that year of income of the trust.

Modified operation of section 109J

- (4) Section 109J does not apply to a payment to the extent that it is a discharge of or a reduction in a present entitlement.

Modified operation of section 109N

- (5) A loan referred to in this Subdivision is taken to have been made under a written agreement for the purposes of paragraph 109N(1)(a) if a written agreement is made in relation to the loan before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the loan was made.

Modified operation of section 109R

- (6) For the purposes of applying section 109R to an actual transaction:
 - (a) a reference in that section to obtaining a loan from a private company has effect as a reference to obtaining a loan from the trustee; and
 - (b) a reference in that section to property transferred to a private company has effect as a reference to property transferred to the trustee; and
 - (c) a reference in that section to an amount paid by a private company for a transfer of property has effect as a reference to an amount paid by the trustee for a transfer of property.

Modified operation of section 109Y

- (7) Section 109Y applies to the Division 7A amount in this way:
- (a) assume that the private company referred to in subsection 109XA(1), (2) or (3) had been taken to have paid a dividend to the shareholder or associate referred to in that subsection equal to the Division 7A amount; and
 - (b) assume that the dividend was taken to have been paid at the end of the year of income of the company in which the actual transaction took place; and
 - (c) a reference in that section to a private company's distributable surplus has effect as a reference to the distributable surplus of the private company referred to in paragraph (a).

Certain provisions do not apply

- (8) Subsection 109D(1A), sections 109K, 109NA and 109NB and paragraphs 109R(3)(a), (b) and (ba) do not apply to an actual transaction.

4 Paragraph 109XA(1)(c)

Repeal the paragraph, substitute:

- (c) either:
- (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
 - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

5 Paragraph 109XA(2)(b)

Repeal the paragraph, substitute:

(b) either:

- (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
- (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

6 Paragraph 109XA(3)(b)

Repeal the paragraph, substitute:

(b) either:

- (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
- (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

7 Subsection 109XA(4) (definition of *unpaid present entitlement*)

Repeal the definition, substitute:

unpaid present entitlement means:

- (a) in a case mentioned in subparagraph (1)(c)(i), (2)(b)(i) or (3)(b)(i)—the amount of the present entitlement that remained unpaid on the earlier of the dates mentioned in that subparagraph; and
- (b) in a case mentioned in subparagraph (1)(c)(ii), (2)(b)(ii) or (3)(b)(ii)—the amount of the present entitlement that remained unpaid on the earlier of the dates mentioned in that subparagraph.

Part 2—Application

8 Application of items 1, 2 and 3

The amendments made by items 1, 2 and 3 of this Schedule apply to payments or loans made, or debts forgiven, on or after 12 December 2002.

9 Application of items 4, 5, 6 and 7

The amendments made by items 4, 5, 6 and 7 of this Schedule apply to payments or loans made, or debts forgiven, on or after the day on which the Bill for this Act was introduced into the House of Representatives.

Schedule 9—Deductions for dividends on-paid to non-resident owners

Income Tax Assessment Act 1936

1 Subsection 46F(1) (definition of *group company*)

After “this Act”, insert “as in force immediately before 1 July 2002”.

2 Paragraph 46FA(1)(c)

After “but for”, insert “subsection 46AB(1) or 46AC(2) or”.

3 Subsection 46FA(5)

Repeal the subsection, substitute:

Unfranked amount of flow-on dividend unfrankable

- (5) Part 3-6 of the *Income Tax Assessment Act 1997* (the imputation system) applies to the unfranked amount of the flow-on dividend as if it were an unfrankable distribution within the meaning of section 202-45 of that Act if a deduction is allowed to the resident company in relation to the flow-on dividend.

4 Subsection 46FA(11) (definition of *fully-franked dividend*)

Repeal the definition, substitute:

fully-franked dividend means a dividend whose franking percentage (within the meaning of section 203-35 of the *Income Tax Assessment Act 1997*) is 100%.

5 Subsection 46FA(11) (definition of *group company*)

After “160AFE”, insert “as in force immediately before 1 July 2002”.

6 Subsection 46FA(11) (definition of *unfranked amount*)

Repeal the definition, substitute:

unfranked amount of a dividend (including an unfrankable distribution within the meaning of section 202-45 of the *Income Tax Assessment Act 1997*) means the amount of the dividend less the franked part.

7 Subsection 46FB(6) (definition of *group company*)

After “160AFE”, insert “as in force immediately before 1 July 2002”.

8 Subsection 46FB(6) (definition of *unfranked amount*)

Repeal the definition, substitute:

unfranked amount of a dividend (including an unfrankable distribution within the meaning of section 202-45 of the *Income Tax Assessment Act 1997*) means the amount of the dividend less the franked part.

9 Application

- (1) Subject to subitem (2), the amendment made by item 2 of this Schedule applies to dividends paid after 30 June 2003.
- (2) For a taxpayer to which section 46AC of the *Income Tax Assessment Act 1936* applies, the amendment made by item 2 of this Schedule applies to dividends paid on or after the consolidation day referred to in that section.
- (3) The amendments made by items 1, 3, 4, 5, 6, 7 and 8 of this Schedule apply to dividends paid on or after 1 July 2002.

Schedule 10—Endorsement of charities etc.

Part 1—Amendments

A New Tax System (Australian Business Number) Act 1999

1 Subsection 25(2) (note)

Omit “Note”, substitute “Note 1”.

2 At the end of subsection 25(2) (after the note)

Add:

Note 2: Section 426-65 in Schedule 1 to the *Taxation Administration Act 1953* also requires the Registrar to make entries in the Australian Business Register about entities that are endorsed in the ways mentioned in that section.

3 After paragraph 26(3)(g)

Insert:

(ga) any statement required to be entered in the *Australian Business Register in relation to the entity under section 426-65 in Schedule 1 to the *Taxation Administration Act 1953*;

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

4 After subsection 29-40(2)

Insert:

(2A) Subsection (2) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (2) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

5 Subsection 29-50(5)

Omit “Paragraph (1)(a)”, substitute “Subject to subsection (6), paragraph (1)(a)”.

6 At the end of section 29-50

Add:

- (6) Subsection (5) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (5) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

7 At the end of section 38-250

Add:

- (3) Subsections (1) and (2) do not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsections (1) and (2) do not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

8 At the end of section 38-255

Add:

- (2) Subsection (1) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (1) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

9 At the end of section 38-270

Add:

- (2) Subsection (1) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (1) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

10 At the end of section 40-160

Add:

- (2) Subsection (1) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (1) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

11 After subsection 48-15(1)

Insert:

- (1AA) Subparagraph (1)(e)(iii) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subparagraph (1)(e)(iii) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

12 At the end of section 63-5

Add:

- (3) Paragraph (2)(a) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Paragraph (2)(a) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

13 At the end of section 111-18

Add:

- (2) Subsection (1) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is

an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (1) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

14 At the end of section 129-45

Add:

- (2) Subsection (1) does not apply in relation to a charitable institution or a trustee of a charitable fund unless the institution or trustee is an *endorsed charitable institution or an *endorsed trustee of a charitable fund.

Example: Subsection (1) does not apply in relation to an entity that is both a charitable institution and a gift-deductible entity unless the entity is an endorsed charitable institution.

15 Before Division 177

Insert:

Division 176—Endorsement of charitable institutions etc.

176-1 Endorsement by Commissioner as charitable institution

- (1) The Commissioner must endorse an entity as a charitable institution if:
- (a) the entity is entitled to be endorsed as a charitable institution (see subsection (2)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) An entity is entitled to be endorsed as a charitable institution if the entity:
- (a) is a charitable institution; and
 - (b) has an *ABN.

176-5 Endorsement by Commissioner as trustee of a charitable fund

- (1) The Commissioner must endorse an entity as a trustee of a charitable fund if:

- (a) the entity is entitled to be endorsed as a trustee of a charitable fund (see subsection (2)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) An entity is entitled to be endorsed as a trustee of a charitable fund if the entity:
- (a) is a trustee of a charitable fund; and
 - (b) has an *ABN.

16 Section 195-1

Insert:

endorsed charitable institution means a charitable institution that is endorsed under subsection 176-1(1).

17 Section 195-1

Insert:

endorsed trustee of a charitable fund means a trustee of a charitable fund who is endorsed under subsection 176-5(1).

Fringe Benefits Tax Assessment Act 1986

18 Subsection 57A(1)

After “public benevolent institution”, insert “endorsed under subsection 123C(1) or (5)”.

19 Subsection 57A(5)

Repeal the subsection, substitute:

- (5) A benefit provided in respect of the employment of an employee is an exempt benefit if:
- (a) the employer of the employee is a health promotion charity; and
 - (b) the health promotion charity is endorsed under subsection 123D(1).

Note: The heading to section 57A is altered by inserting “, **health promotion charities**” after “**public benevolent institutions**”.

20 Subsection 65J(1)

Omit “is not a charitable institution described in subsection 57A(5)”, substitute “is not a health promotion charity”.

21 Paragraph 65J(1)(b)

Repeal the paragraph, substitute:

- (b) a scientific or public educational institution (other than an institution of the Commonwealth, a State or a Territory);
- (baa) a charitable institution that is endorsed under subsection 123E(1);

22 After subsection 65J(1)

Insert:

- (1A) Despite subsection (1), if the employer is a charitable institution at any time during the year of tax, the employer is not a rebatable employer for the year of tax unless the employer is endorsed under subsection 123E(1) at that time.

23 After Part X

Insert:

Part XA—Endorsement of charitable institutions etc.

123C Endorsement by Commissioner as public benevolent institution

Endorsement of an entity that is a public benevolent institution

- (1) The Commissioner must endorse an entity as a public benevolent institution if:
 - (a) the entity is entitled to be endorsed as a public benevolent institution (see subsection (2)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) An entity is entitled to be endorsed as a public benevolent institution if the entity:
- (a) is a public benevolent institution; and
 - (b) has an ABN; and
 - (c) is not an employer in relation to which step 2 of the method statement in subsection 5B(1E) applies.

Endorsement of an entity for the operation of a public benevolent institution

- (3) The Commissioner must endorse an entity for the operation of a public benevolent institution if:
- (a) the entity is entitled to be endorsed for the operation of a public benevolent institution (see subsection (4)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (4) An entity is entitled to be endorsed for the operation of a public benevolent institution if:
- (a) the entity:
 - (i) includes the public benevolent institution; and
 - (ii) has an ABN; and
 - (b) the public benevolent institution is an employer; and
 - (c) the public benevolent institution is not an employer in relation to which step 2 of the method statement in subsection 5B(1E) applies.
- (5) If an entity is endorsed under subsection (3) for the operation of a public benevolent institution, the public benevolent institution is taken to be endorsed under this subsection as a public benevolent institution.

123D Endorsement by Commissioner as health promotion charity

- (1) The Commissioner must endorse an entity as a health promotion charity if:
- (a) the entity is entitled to be endorsed as a health promotion charity (see subsection (2)); and

- (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) An entity is entitled to be endorsed as a health promotion charity if the entity:
 - (a) is a health promotion charity; and
 - (b) has an ABN; and
 - (c) is not an employer in relation to which step 2 of the method statement in subsection 5B(1E) applies.

123E Endorsement by Commissioner as charitable institution (other than public benevolent institution or health promotion charity)

- (1) The Commissioner must endorse an entity as a charitable institution covered by paragraph 65J(1)(baa) if:
 - (a) the entity is entitled to be endorsed as a charitable institution covered by paragraph 65J(1)(baa) (see subsections (2) and (3)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) An entity is entitled to be endorsed as a charitable institution covered by paragraph 65J(1)(baa) if the entity:
 - (a) is a charitable institution; and
 - (b) has an ABN.

24 Section 135M

Omit:

Special rules apply for working out the employee's reportable fringe benefits amount in respect of the employee's employment if the benefits provided in respect of the employment include exempt benefits under section 57A or 58 (about employment with public benevolent institutions and bodies providing care for sick, elderly or disadvantaged persons) (see section 135Q).
--

substitute:

Special rules apply for working out the employee's reportable fringe benefits amount in respect of the employee's employment if the benefits provided in respect of the employment include exempt benefits under section 57A or 58 (about employment with public benevolent institutions, certain hospitals, health promotion charities and bodies providing care for sick, elderly or disadvantaged persons) (see section 135Q).

25 Subsection 136(1)

Insert:

ABN has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

26 Subsection 136(1)

Insert:

entity has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

27 Subsection 136(1)

Insert:

health promotion charity means a charitable institution whose principal activity is to promote the prevention or the control of diseases in human beings.

Income Tax Assessment Act 1997

28 Section 30-120

Omit "If an entity applies for it", substitute "If an entity applies for endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*".

29 At the end of section 30-120

Add:

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

30 Subsection 30-125(7) (note 2)

Repeal the note, substitute:

Note 2: Section 426-55 in Schedule 1 to the *Taxation Administration Act 1953* deals with revocation of endorsement.

31 At the end of section 30-125

Add:

[The next section is section 30-180.]

32 Sections 30-130 to 30-175

Repeal the sections.

33 Subsections 30-180(3) and (4)

Repeal the subsections.

34 Section 30-228 (note)

Omit “section 30-170”, substitute “section 426-55 in Schedule 1 to the *Taxation Administration Act 1953*”.

35 Subsection 50-52(2)

Repeal the subsection.

36 Subsection 50-52(3) (note)

Omit “(or is prescribed for the purposes of paragraph 50-50(c) or (d))”.

37 Paragraph 50-105(b)

Repeal the paragraph, substitute:

(b) has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

38 At the end of section 50-105

Add:

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

39 Sections 50-115 to 50-160

Repeal the sections.

Taxation Administration Act 1953

40 Section 425-30 in Schedule 1 (link note)

Repeal the link note.

41 After Part 5-30 in Schedule 1

Insert:

Part 5-35—Registration and similar processes for various taxes

Division 426—Process of endorsing charities and other entities

Table of Subdivisions

	Guide to Division 426
426-A	Application of Subdivision 426-B to various kinds of endorsement
426-B	Process of endorsement etc.
426-C	Entries on Australian Business Register

Guide to Division 426

426-1 What this Division is about

This Division sets out procedural rules relating to endorsement of charities and other entities (the conditions for entitlement to endorsement are set out in the *A New Tax System (Goods and Services Tax) Act 1999*, the *Fringe Benefits Tax Assessment Act 1986*, and the *Income Tax Assessment Act 1997*). These rules cover matters such as application for and revocation of endorsement, and entry of the details of endorsement on the Australian Business Register.

Subdivision 426-A—Application of Subdivision 426-B to various kinds of endorsement

Table of sections

426-5	Application of Subdivision 426-B to various kinds of endorsement
426-10	How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the <i>Income Tax Assessment Act 1997</i>

426-5 Application of Subdivision 426-B to various kinds of endorsement

Subdivision 426-B applies separately in relation to each of these kinds of endorsement:

- (a) endorsement of an entity as a charitable institution under subsection 176-1(1) of the *A New Tax System (Goods and Services Tax) Act 1999*;
- (b) endorsement of an entity as a trustee of a charitable fund under subsection 176-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999*;
- (c) endorsement of an entity as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (d) endorsement of an entity for the operation of a public benevolent institution under subsection 123C(3) of the *Fringe Benefits Tax Assessment Act 1986*;
- (e) endorsement of an entity as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (f) endorsement of an entity under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a charitable institution covered by paragraph 65J(1)(baa) of that Act;
- (g) endorsement of an entity as a *deductible gift recipient, or as a deductible gift recipient for the operation of a fund, authority or institution, under section 30-120 of the *Income Tax Assessment Act 1997*;
- (h) endorsement of an entity as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*.

426-10 How Subdivision 426-B applies to government entities in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*

- (1) This section applies in relation to endorsement under section 30-120 of the *Income Tax Assessment Act 1997*.
- (2) Subdivision 426-B applies in relation to a *government entity in the same way as it applies in relation to an entity.
- (3) If, apart from this subsection, section 426-40 or 426-45 (as applied by this section) would impose an obligation on a *government entity:
 - (a) that is an unincorporated association or body; and
 - (b) for whose management a single person is responsible to persons or bodies outside the government entity;the obligation is imposed on that person.
- (4) Subsection (3) has effect despite:
 - (a) subsection (2); and
 - (b) subsection 426-50(2) as it applies because of this section.

Subdivision 426-B—Process of endorsement etc.

Table of sections

426-15	Applying for endorsement
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426-25	Notifying outcome of application for endorsement
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426-35	Review of refusal of endorsement
426-40	Checking entitlement to endorsement
426-45	Telling Commissioner of loss of entitlement to endorsement
426-50	Partnerships and unincorporated bodies
426-55	Revoking endorsement
426-60	Review of revocation of endorsement

426-15 Applying for endorsement

- (1) An entity may apply to the Commissioner for endorsement.
- (2) The application:
 - (a) must be in a form approved by the Commissioner; and

- (b) may be *lodged electronically; and
- (c) must be signed for the entity, or include the entity's *electronic signature if the application is lodged electronically; and
- (d) must be lodged at, or posted to, an office or facility designated by the Commissioner as a receiving centre for applications of that kind.

Note: The Commissioner could approve a form that is part of an application form for an ABN.

- (3) Section 426-5 does not prevent the Commissioner from approving a single form to be used by an entity to make applications for 2 or more kinds of endorsement.

426-20 Dealing with an application for endorsement

Requiring further information or documents

- (1) The Commissioner may require an applicant to give the Commissioner specified information, or a specified document, that the Commissioner needs in order to decide whether the applicant is entitled to endorsement.

Treating application as being refused

- (2) After the time worked out under subsection (3), the applicant may give the Commissioner written notice that the applicant wishes to treat the application as having been refused, if the Commissioner has not given the applicant before that time written notice that the Commissioner endorses or refuses to endorse the applicant.

Note: Section 426-25 requires the Commissioner to give the applicant written notice if the Commissioner endorses or refuses to endorse the applicant.

- (3) The time is the end of the 60th day after the application was made. However, if before that time the Commissioner requires the applicant under subsection (1) to give information or a document, the time is the later of the following (or either of them if they are the same):
 - (a) the end of the 28th day after the last day on which the applicant gives the Commissioner information or a document he or she has required;

- (b) the end of the 60th day after the application was made.
- (4) If the applicant gives notice under subsection (2), section 426-35 operates as if the Commissioner had refused the application on the day on which the notice is given.
- Note: Section 426-35 lets the applicant object against refusal of an application in the manner set out in Part IVC of this Act. That Part provides for review of the refusal objected against.
- (5) The notice given by the applicant:
- (a) may be *lodged electronically; and
 - (b) must be signed for the applicant, or include the applicant's *electronic signature if the application is *lodged electronically.

426-25 Notifying outcome of application for endorsement

- (1) The Commissioner must give the applicant written notice if:
- (a) the Commissioner endorses the applicant; or
 - (b) the Commissioner refuses to endorse the applicant.
- (2) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

426-30 Date of effect of endorsement

- (1) The endorsement has effect from a date specified by the Commissioner.
- (2) The date specified may be any date (including a date before the application for endorsement was made and a date before the applicant had an *ABN).

426-35 Review of refusal of endorsement

If the applicant is dissatisfied with the Commissioner's refusal to endorse the applicant in accordance with the application, the applicant may object against the refusal in the manner set out in Part IVC of this Act.

Note: That Part provides for review of the refusal objected against.

426-40 Checking entitlement to endorsement

- (1) The Commissioner may require an entity that is endorsed to give the Commissioner information or a document that is relevant to the entity's entitlement to endorsement. The entity must comply with the requirement.

Note 1: The conditions for an entity to be entitled to be endorsed are set out in:

- (a) subsections 176-1(2) and 176-5(2) of the *A New Tax System (Goods and Services Tax) Act 1999*; and
- (b) subsections 123C(2) and (4), 123D(2) and 123E(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
- (c) sections 30-120 and 50-105 of the *Income Tax Assessment Act 1997*.

Note 2: Failure to comply with this subsection is an offence against section 8C. Also, the Commissioner may revoke the endorsement of the entity under section 426-55 if it fails to comply with this subsection.

Note 3: Section 426-50 modifies the way this subsection operates in relation to partnerships and unincorporated bodies.

- (2) The requirement:
- (a) is to be made by notice in writing to the entity; and
 - (b) may ask the entity to give the information in writing; and
 - (c) must specify:
 - (i) the information or document the entity is to give; and
 - (ii) the period within which the entity is to give the information or document.

The period specified under subparagraph (c)(ii) must end at least 28 days after the notice is given.

- (3) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.
- (4) If the requirement is for the entity to give information in writing, the document setting out the information:
- (a) must be given to the Commissioner; and
 - (b) may be *lodged electronically; and
 - (c) must be signed for the entity, or include the entity's *electronic signature if the document is lodged electronically.

426-45 Telling Commissioner of loss of entitlement to endorsement

- (1) Before, or as soon as practicable after, an entity that is endorsed ceases to be entitled to be endorsed, the entity must give the Commissioner written notice of the cessation.

Note 1: Failure to comply with this subsection is an offence against section 8C.

Note 2: Section 426-50 modifies the way this subsection operates in relation to partnerships and unincorporated bodies.

- (2) The notice:
- (a) may be *lodged electronically; and
 - (b) must be signed for the entity, or include the entity's *electronic signature if the document is lodged electronically.
- (3) Subsection (1) does not apply to an entitlement to endorsement ceasing because the entity ceases to have an *ABN.

426-50 Partnerships and unincorporated bodies

Application to partnerships

- (1) If, apart from this subsection, section 426-40 or 426-45 would impose an obligation on a partnership, the obligation is imposed on each partner, but may be discharged by any of the partners.

Application to unincorporated bodies

- (2) If, apart from this subsection, section 426-40 or 426-45 would impose an obligation on an unincorporated association or body, the obligation is imposed on each member of the committee of management of the association or body, but may be discharged by any of the members of the committee.

Defences for partners and members of committee of management

- (3) In a prosecution of a person for an offence against section 8C of this Act because of subsection (1) or (2), it is a defence if the person proves that the person:
- (a) did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and

- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

426-55 Revoking endorsement

- (1) The Commissioner may revoke the endorsement of an entity if:
 - (a) the entity is not entitled to be endorsed; or
 - (b) the Commissioner has required the entity under section 426-40 to provide information or a document that is relevant to its entitlement to endorsement and the entity has not provided the required information or document within the time specified in the requirement; or
 - (c) in the case of an entity endorsed under section 30-120 of the *Income Tax Assessment Act 1997*—the entity has contravened Subdivision 30-CA of that Act (which requires the entity to ensure that certain things are stated in any receipts it issues for certain gifts).

Note: The conditions for an entity to be entitled to be endorsed are set out in:

- (a) subsections 176-1(2) and 176-5(2) of the *A New Tax System (Goods and Services Tax) Act 1999*; and
 - (b) subsections 123C(2) and (4), 123D(2) and 123E(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
 - (c) sections 30-120 and 50-105 of the *Income Tax Assessment Act 1997*.
- (2) The revocation has effect from a day specified by the Commissioner (which may be a day before the Commissioner decided to revoke the endorsement).
 - (3) However, if the Commissioner revokes the endorsement because the entity is not entitled to it, the Commissioner must not specify a day before the day on which the entity first ceased to be entitled.
 - (4) The Commissioner must give the entity written notice if the Commissioner revokes its endorsement.
 - (5) The Commissioner may give the notice by way of electronic transmission. This does not limit the ways in which the Commissioner may give the notice.

426-60 Review of revocation of endorsement

If the entity is dissatisfied with the revocation of its endorsement, the entity may object against the revocation in the manner set out in Part IVC of this Act.

Note: That Part provides for review of the revocation objected against.

Subdivision 426-C—Entries on Australian Business Register

Table of sections

426-65 Entries on Australian Business Register

426-65 Entries on Australian Business Register

- (1) If an entity that is endorsed in any of these ways:
- (a) as a charitable institution under subsection 176-1(1) of the *A New Tax System (Goods and Services Tax) Act 1999*;
 - (b) as a trustee of a charitable fund under subsection 176-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999*;
 - (c) as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (d) for the operation of a public benevolent institution under subsection 123C(3) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (e) as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (f) as a charitable institution covered by paragraph 65J(1)(baa) of the *Fringe Benefits Tax Assessment Act 1986* under subsection 123E(1) of that Act;
 - (g) as exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*;

the *Australian Business Registrar must enter in the *Australian Business Register a statement that the entity is so endorsed for a specified period.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect concessions available to the entity under the Act for the purposes of which it is endorsed.

Note 2: For entities and government entities that are endorsed under section 30-120 of the *Income Tax Assessment Act 1997*, see section 30-229 of that Act.

- (2) The *Australian Business Registrar may remove the statement from the *Australian Business Register after the end of the period.
- (3) The *Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the *Australian Business Register under this section is true. For this purpose, the Registrar may:
 - (a) change the statement; or
 - (b) remove the statement from the Register if the statement is not true; or
 - (c) remove the statement from the Register and enter another statement in the Register under this section.
- (4) Making, changing or removing an entry in the *Australian Business Register as required or permitted by this section does not contravene section 16 of the *Income Tax Assessment Act 1936* (Officers to observe secrecy).

[The next Division is Division 444.]

Part 2—Application and transitional provisions

42 Application of GST amendments

The amendments of the *A New Tax System (Goods and Services Tax) Act 1999* made by this Schedule apply in relation to net amounts for tax periods starting on or after 1 July 2005.

43 Application of FBT amendments

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to benefits provided on or after 1 July 2005.

44 Transitional—GST and FBT endorsements

- (1) This item applies in relation to an entity if:
 - (a) immediately before 1 July 2005, the entity was endorsed under section 30-120 or section 50-105 of the *Income Tax Assessment Act 1997*; and
 - (b) the entity failed to notify the Commissioner in writing before 1 July 2005 that it chose not to have this item apply to it.
- (2) The entity is taken to have made an application to the Commissioner under section 426-15 in Schedule 1 to the *Taxation Administration Act 1953* for whichever of these kinds of endorsement is most appropriate for the entity:
 - (a) endorsement as a charitable institution under subsection 176-1(1) of the *A New Tax System (Goods and Services Tax) Act 1999*;
 - (b) endorsement as a trustee of a charitable fund under subsection 176-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.
- (3) The entity is taken to have made an application to the Commissioner under section 426-15 in Schedule 1 to the *Taxation Administration Act 1953* for whichever of these kinds of endorsement is most appropriate for the entity:
 - (a) endorsement as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;

- (b) endorsement for the operation of a public benevolent institution under subsection 123C(3) of the *Fringe Benefits Tax Assessment Act 1986*;
- (c) endorsement as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- (d) endorsement under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a charitable institution covered by paragraph 65J(1)(baa) of that Act.

45 Transitional—acts or things done before commencement under repealed endorsement provisions

- (1) In this item:
repealed provision means any of these provisions (as in force immediately before the commencement of this item):
 - (a) sections 30-130 to 30-175 of the *Income Tax Assessment Act 1997*;
 - (b) sections 50-115 to 50-160 of that Act.
- (2) This item applies to an act or thing if:
 - (a) the act or thing was done before the commencement of this item; and
 - (b) the act or thing was done under, or for the purposes of, a repealed provision.
- (3) The act or thing has effect, after the commencement of this item, as if it had been done under, or for the purposes of, the corresponding provision of the *Taxation Administration Act 1953* (as in force on and after the commencement of this item).

Schedule 11—Specific gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-25(2) (at the end of the table)

Add:

2.2.31 Country Education Foundation of Australia Limited the gift must be made on or after 20 August 2003

2 Subsection 30-45(2) (at the end of the table)

Add:

4.2.27 Crime Stoppers South Australia Limited the gift must be made on or after 19 September 2003

3 Subsection 30-50(2) (table item 5.2.16)

Omit “16 August 2003”, substitute “16 August 2005”.

4 Section 30-105 (at the end of the table)

Add:

13.2.6 Dunn and Lewis Youth Development Foundation Limited the gift must be made on or after 10 November 2003 and before 10 November 2005

5 Subsection 30-315(2) (after table item 40)

Insert:

40A Country Education Foundation of Australia Limited item 2.2.31

40B Crime Stoppers South Australia Limited item 4.2.27

6 Subsection 30-315(2) (after table item 45)

Insert:

45AA Dunn and Lewis Youth Development Foundation Limited item 13.2.6

*[Minister's second reading speech made in—
House of Representatives on 19 February 2004
Senate on 8 March 2004]*

(24/04)