Tax Laws Amendment (2005 Measures No. 2) Act 2005

No. 78, 2005

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 (2005 Measures No. 2) Act 2005

No. 78, 2005

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

[*Assented to 29 June 2005*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2005 Measures No. 2) Act 2005*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Simplified imputation system

Income Tax Assessment Act 1997

1 Subsection 205-70(2) (steps 1 and 2 of the method statement)

After "Then", insert ", subject to subsection (5) (which relates to a *private company's first year of tax liability),".

2 At the end of section 205-70

Add:

30% reduction will generally not apply to private company's first year of tax liability

(5) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the *tax offset to which the entity is entitled for the relevant year if:

(a) the entity is a *private company for the relevant year; and

(b) if the company did not have the tax offset (but had all its other tax offsets) it would have had an income tax liability for the relevant year; and

(c) the company has not had an income tax liability for any income year before the relevant year; and

(d) the amount of the liability referred to in paragraph (b) is at least 90% of the amount of the *deficit in the company's *franking account at the end of the relevant year.

3 Application

The amendments made by this Schedule apply to assessments for the income year in which the amendments commence and later income years.

Schedule 2—CGT roll-over for transfer of assets to superannuation funds with licensed trustees

Income Tax Assessment Act 1997

1 Section 112-150 (at the end of the table)

Add:

9	Transfer of CGT assets between 30 June 2004 and 1 July 2006 from a superannuation fund whose trustee is not licensed to one or more superannuation funds whose trustees are or will be licensed	Subdivision 126-F

2 At the end of Division 126

Add:

Subdivision 126-F—Transfer of assets of superannuation funds to meet licensing requirements

Guide to Subdivision 126-F

126-200 What this Subdivision is about

> There is a roll-over for the transfer of assets of a superannuation fund to one or more other superannuation funds that is made between 30 June 2004 and 1 July 2006 because the trustee of the first fund will not be licensed by 1 July 2006 and the other funds have or will have licensed trustees.

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Operative provisions

126-205 Object of this Subdivision

The object of this Subdivision is to encourage compliance with the requirements of the *Superannuation Industry (Supervision) Act 1993* for the licensing of trustees of registrable superannuation entities.

126-210 When there is a roll-over and what its effects are

When there is a roll-over

(1) There is a roll-over if:

(a) after 30 June 2004 and before 1 July 2006, one or more *CGT events happen because the trustee (the ***first RSE trustee***) of a registrable superannuation entity, as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993*, ceases to hold all its *CGT assets; and

(b) because of the cessation, CGT assets (the ***identical assets***) that, together, are identical to all the first RSE trustee's CGT assets just before the CGT events start to be held after 30 June 2004 and before 1 July 2006 by:

(i) the trustee (the ***successor RSE trustee***) of another such registrable superannuation entity; or

(ii) the trustees (each of whom is a ***successor RSE trustee***) of 2 or more other such registrable superannuation entities;

(whether or not all the identical assets were the first RSE trustee's assets just before the CGT events); and

(c) the cessation and starting occur because:

(i) it is reasonable to assume that the first RSE trustee will not have an RSE licence under Part 2A of that Act by 1 July 2006; and

(ii) each successor RSE trustee has such an RSE licence, or it is reasonable to assume that each successor RSE trustee will have such an RSE licence by 1 July 2006.

Note: Under section 10 of the *Superannuation Industry (Supervision) Act 1993*, ***registrable superannuation entity*** is defined as covering certain kinds of superannuation funds, approved deposit funds and pooled superannuation trusts.

Effects of the roll-over

(2) A *capital gain or *capital loss the first RSE trustee makes from each of the *CGT events is disregarded.

(3) For a successor RSE trustee, the first element of the *cost base of each of the identical assets the successor RSE trustee holds is the cost base of the corresponding asset for the first RSE trustee at the time of the relevant *CGT event.

(4) For a successor RSE trustee, the first element of the *reduced cost base of each of the identical assets the successor RSE trustee holds is the reduced cost base of the corresponding asset for the first RSE trustee at the time of the relevant *CGT event.

Example: There is a roll-over if the first RSE trustee had a block of land and 10,000 units in a unit trust and the following events happen on 30 June 2006 because the first RSE trustee does not have an RSE licence but each of the 2 successor RSE trustees (successor RSE trustee A and successor RSE trustee B) does:

(a) the first RSE trustee transfers the block to successor RSE trustee A;

(b) the first RSE trustee's units in the unit trust are cancelled at the first RSE trustee's request;

(c) 10,000 identical units in the unit trust are issued to successor RSE trustee B because of the cancellation.

The first RSE trustee disregards any capital gain or capital loss from the transfer of the block or the cancellation of the units.

The first element of successor RSE trustee A's cost base and reduced cost base for the block is the same as the first RSE trustee's cost base and reduced cost base respectively for the block at the time of the transfer.

The first element of successor RSE trustee B's cost base and reduced cost base for the units issued to successor RSE trustee B is the same as the first RSE trustee's cost base and reduced cost base respectively for its units at the time they were cancelled.

(5) A successor RSE trustee that starts to hold one of the identical assets because of the cessation is taken to have *acquired the asset before 20 September 1985 if the first RSE trustee acquired the corresponding asset before that day.

Note 1: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

Note 2: Subsection (5) cannot apply if the first RSE trustee was the trustee of a complying superannuation fund, complying approved deposit fund or pooled superannuation trust. This is because section 306 of the *Income Tax Assessment Act 1936* treats such a trustee as having acquired on 30 June 1988 any assets it owned on that day.

No roll-over if successor RSE trustee not licensed

(6) A roll-over under this section is taken never to have happened if each successor RSE trustee does not have an RSE licence under Part 2A of the *Superannuation Industry (Supervision) Act 1993* by 1 July 2006.

Schedule 3—Deducting expenditure on telecommunications rights

Part 1—IRUs

Income Tax Assessment Act 1997

1 Subsections 40-45(3) and (4)

Repeal the subsections.

2 Subsection 40-95(9)

Omit “international telecommunications submarine”, substitute “telecommunications”.

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

Omit “an international telecommunications submarine”, substitute “a telecommunications”.

Income Tax (Transitional Provisions) Act 1997

4 After section 40-45

Insert:

40-47 IRUs

(1) Division 40 of the new Act does not apply to an IRU to the extent to which expenditure on the IRU was incurred at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 (the ***IRU time***).

(2) Division 40 of the new Act does not apply to an IRU over an international telecommunications submarine cable system if the system had been used for telecommunications purposes at or before the IRU time.

5 Application of amendments

(1) The amendments made by items 2 and 3 apply in relation to expenditure incurred on or after 12 May 2004.

(2) Those amendments do not apply to expenditure incurred by an entity to acquire an IRU if:

(a) the IRU was acquired by the entity before 12 May 2004; and

(b) the entity becomes a member of a consolidated group or MEC group on or after that day; and

(c) because of subsection 701-55(2) of the *Income Tax Assessment Act 1997*, the IRU is taken to have been acquired on or after that day.

(3) However, if:

(a) an entity incurs expenditure on or after 12 May 2004 relating to an IRU (the ***new right***) granted to the entity on or after that day for a cable system; and

(b) before that day, the entity had another IRU (the ***earlier right***) to use that cable system;

then, to the extent (if any) that the new right covers the level of capacity over that cable system that the earlier right covered, the amendments made by items 2 and 3 do not apply to so much of the expenditure as is reasonably attributable to that level of capacity.

Part 2—Rights of access to telecommunications sites

Income Tax Assessment Act 1997

6 Section 12-5 (table item headed "capital allowances")

Before:

trading ships, special depreciation **57AM**

insert:

telecommunications site access rights ..... Subdivision 40-B

7 Section 12-5 (after the table item headed "tax related expenses")

Insert:

telecommunications site access rights

see *capital allowances*

8 At the end of subsection 40-30(2)

Add:

; (h) *telecommunications site access rights.

9 At the end of subsection 40-70(2)

Add:

; or (e) a *telecommunications site access right.

10 Subsection 40-95(7) (at the end of the table)

Add:

14	*Telecommunications site access right	The term of the right

11 Subsection 995-1(1)

Insert:

telecommunications site access right means a right (except an *IRU) of a carrier (as defined in the *Telecommunications Act 1997*):

(a) to share a facility (as defined in section 7 of that Act); or
(b) to install such a facility at a particular location or on a particular structure; or
(c) to enter or cross premises for the purposes of installing or maintaining such a facility that is on the premises, or is at a location, or on a structure, that is accessible by way of the premises.

12 Application of amendments

(1) The amendments made by this Part apply in relation to expenditure incurred on or after 12 May 2004.

(2) Those amendments do not apply to expenditure incurred by an entity to acquire a right if:
(a) the right was acquired by the entity before 12 May 2004; and
(b) the entity becomes a member of a consolidated group or MEC group on or after that day; and
(c) because of subsection 701-55(2) of the *Income Tax Assessment Act 1997*, the right is taken to have been acquired on or after that day.

(3) However, if:
(a) an entity incurs expenditure on or after 12 May 2004 relating to telecommunications site access rights (the ***new rights***) granted to the entity on or after that day in relation to a facility; and
(b) before that day, the entity had other telecommunications site access rights (the ***earlier rights***) of the same kind in relation to the same facility; and
(c) the earlier rights end before they would ordinarily have ended under the contract under which they were granted;

then, to the extent (if any) that the new rights provide the same ability to share the facility, install the facility or enter or cross the premises as the earlier rights, the amendments made by this Part do not apply to so much of the expenditure as is reasonably attributable to the extent of that ability.

Schedule 4—Changing from annual to quarterly payment of PAYG instalments

Taxation Administration Act 1953

1 Subsection 45-50(3) in Schedule 1 (note)

Repeal the note.

2 Paragraph 45-125(2)(b) in Schedule 1

Omit “year; or”, substitute “year.”.

3 Paragraph 45-125(2)(c) in Schedule 1

Repeal the paragraph.

4 Section 45-150 in Schedule 1

Repeal the section, substitute:

45-150 Entity stops being annual payer if involved with GST registration or instalment group

(1) You stop being an *annual payer if, during an *instalment quarter that is in an income year that starts after the commencement of this section:

(a) you become *registered, or *required to be registered, under Part 2-5 of the *GST Act; or

(b) you become a partner in a partnership that is registered, or required to be registered, under that Part; or

(c) a partnership in which you are a partner becomes registered, or required to be registered, under that Part; or

(d) in the case of a company—the company becomes a *participant in a *GST joint venture under Division 51 of that Act; or

(e) in the case of a company—the company becomes part of an *instalment group.

(2) If you stop being an *annual payer under subsection (1):

(a) you must still pay an annual instalment for the income year mentioned in that subsection; and

(b) you must pay an instalment for each instalment quarter in the next income year for which subsection 45-50(1) or (2) requires you to do so.

(3) You may again become an *annual payer if:

(a) you again satisfy the conditions in section 45-140; and

(b) you again choose under that section to pay instalments annually.

5 Saving

Despite:

(a) the repeal of paragraph 45-125(2)(c) in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) the repeal and substitution of section 45-150 in that Schedule;

by this Schedule, that paragraph and section, as in force immediately before the repeal, continue to apply in relation to income years starting before the day on which this Act receives the Royal Assent.

Schedule 5—Deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-40(2) (at the end of the table)

Add:

3.2.7	The Page Research Centre Limited	the gift must be made after 12 January 2005

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

Add:

4.2.30	Freedom Across Australia	the gift must be made after 7 November 2004 and before 8 November 2006

3 Subsection 30-80(2) (at the end of the table)

Add:

9.2.13	The Rotary Leadership Victoria Australian Embassy for Timor-Leste Fund Limited	the gift must be made after 7 November 2004 and before 8 November 2006
9.2.14	Russian Welfare Aid to Russia Fund	the gift must be made after 22 December 2004 and before 23 December 2006

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

Add:

13.2.9	National Police Memorial	the gift must be made after 7 November 2004 and before 8 November 2006

5 Subsection 30-315(2) (after table item 50C)

Insert:

50D	Freedom Across Australia	item 4.2.30

6 Subsection 30-315(2) (after table item 75)

Insert:

75A	National Police Memorial	item 13.2.9

7 Subsection 30-315(2) (after table item 82)

Insert:

82A	Page Research Centre Limited	item 3.2.7

8 Subsection 30-315(2) (after table item 97)

Insert:

97AAA	Rotary Leadership Victoria Australian Embassy for Timor-Leste Fund Limited	item 9.2.13

9 Subsection 30-315(2) (after table item 105)

Insert:

105A	Russian Welfare Aid to Russia Fund	item 9.2.14

Schedule 6—Goods and services tax and real property

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

1 Section 17-99 (after table item 11)

Insert:

11A	Sale of freehold interests etc.	Division 75

2 After subsection 40-75(2)

Insert:

(2A) A supply of the premises is disregarded as a sale for the purposes of applying paragraph (1)(a):

(a) if it is a supply by a member of a *GST group to another member of the GST group; or

(b) if:

(i) it is a supply by the *joint venture operator of a *GST joint venture to another entity that is a *participant in the joint venture; and

(ii) the other entity acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into.

3 After subsection 48-55(1)

Insert:

(1A) If:

(a) while you were not a *member of any *GST group, you acquired or imported a thing; and

(b) you become a member of a GST group at a time when you still hold the thing;

then, when the *representative member of the GST group applies section 129-40 for the first time after you became a member of the GST group, the *intended or former application of the thing is the extent of *creditable purpose last used to work out:

(c) the amount of the input tax credit to which you were entitled for the acquisition or importation; or

(d) the amount of any *adjustment you had under Division 129 in relation to the thing;

as the case requires.

4 Paragraph 48-115(1)(a)

Repeal the paragraph, substitute:

(a) either:

(i) while you were a *member of a *GST group (the ***first GST group***), you acquired a thing (other than from another member of that group) or imported a thing; or

(ii) you acquired or imported a thing while you were not a member of any GST group, and you subsequently became a member of a GST group (the ***first GST group***) while you still held the thing; and

5 Subsection 48-115(1)

Omit “, under section 48-55”.

6 Paragraph 48-115(1)(c)

After “to which”, insert “you or”.

7 Paragraph 48-115(1)(d)

After “*adjustment”, insert “you or”.

9 Section 75-5 (heading)

Repeal the heading, substitute:

75-5 Applying the margin scheme

10 Subsection 75-5(1)

Repeal the subsection, substitute:

(1) The *margin scheme applies in working out the amount of GST on a *taxable supply of *real property that you make by:

(a) selling a freehold interest in land; or

(b) selling a *stratum unit; or

(c) granting or selling a *long-term lease;

if you and the *recipient of the supply have agreed in writing that the margin scheme is to apply.

(1A) The agreement must be made:

(a) on or before the making of the supply; or

(b) within such further period as the Commissioner allows.

Note: Refusing to allow, or allowing, a further period within which to make an agreement is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

11 Subsection 75-5(2)

Repeal the subsection, substitute:

(2) However, the *margin scheme does not apply if you acquired the entire freehold interest, *stratum unit or *long-term lease through a supply that was *ineligible for the margin scheme.

Note: If you acquired part of the interest, unit or lease through a supply that was ineligible for the margin scheme, you may have an increasing adjustment: see section 75-22.

(3) A supply is ***ineligible for the margin scheme*** if:

(a) it is a *taxable supply on which the GST was worked out without applying the *margin scheme; or

(b) it is a supply of a thing you acquired by *inheriting it from a deceased person, and the deceased person had acquired all of it through a supply that was ineligible for the margin scheme; or

(c) it is a supply in relation to which all of the following apply:

(i) you were a *member of a *GST group at the time you acquired the interest, unit or lease in question;

(ii) the entity from whom you acquired it was a member of the GST group at that time;

(iii) the last supply of the interest, unit or lease by an entity who was not (at the time of that supply) a member of the GST group to an entity who was (at that time) such a member was a supply that was ineligible for the margin scheme; or

(d) it is a supply in relation to which both of the following apply:

(i) you acquired the interest, unit or lease from the *joint venture operator of a *GST joint venture at a time when you were a *participant in the joint venture;

(ii) the joint venture operator had acquired the interest, unit or lease through a supply that was ineligible for the margin scheme.

(4) A reference in paragraph (3)(b), (c) or (d) to a supply that was ineligible for the margin scheme is a reference to a supply:

(a) that was ineligible for the margin scheme because of one or more previous applications of subsection (3); or

(b) that would have been ineligible for the margin scheme for that reason if subsection (3) had been in force at all relevant times.

12 Subsection 75-10(2)

Omit "The ***margin***", substitute "Subject to subsection (3) and section 75-11, the ***margin***".

13 Subsection 75-10(3)

Omit "However", substitute "Subject to section 75-11".

14 Paragraph 75-10(3)(b)

Omit "a valuation", substitute "an *approved valuation".

15 Paragraph 75-10(3)(b)

Omit "that complies with any requirements determined in writing by the Commissioner for making valuations for the purposes of this Division".

16 After section 75-10

Insert:

75-11 Margins for supplies of real property in particular circumstances

Margin for supply of real property acquired from fellow member of GST group

(1) If:

(a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were *members of the same *GST group; and

(b) on or after 1 July 2000, there has been a supply (an ***earlier supply***) of the interest, unit or lease that occurred at a time when the supplier was not a member of the GST group; and

(ba) the *recipient was at that time, or subsequently became, a member of the GST group;

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds:

(c) the consideration for the last such earlier supply, if the supplier and the recipient were not *associates at that time; or

(d) the *GST inclusive market value of the interest, unit or lease at that time, if the 2 entities were associates at that time.

(2) If:

(a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were *members of the same *GST group; and

(b) subsection (1) does not apply;

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds an *approved valuation of the interest, unit or lease as at 1 July 2000.

Margin for supply of real property acquired from joint venture operator of a GST joint venture

(2A) If:

(a) you acquired the interest, unit or lease in question at a time when you were a *participant in a *GST joint venture and the entity from whom you acquired it was the *joint venture operator of the joint venture; and

(b) you acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into; and

(c) on or after 1 July 2000, there has been a supply (an ***earlier supply***) of the interest, unit or lease to the entity from whom you acquired it (whether or not that entity was the joint venture operator of the joint venture at the time of that acquisition);

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds:

(d) the consideration for the last such earlier supply, if the supplier and the *recipient were not *associates at the time of the earlier supply; or

(e) the *GST inclusive market value of interest, unit or lease at that time, if the 2 entities were associates at that time.

(2B) If:

(a) you acquired the interest, unit or lease in question at a time when you were a *participant in a *GST joint venture and the entity from whom you acquired it was the *joint venture operator of the joint venture; and

(b) you acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into; and

(c) subsection (2A) does not apply;

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds an *approved valuation of the interest, unit or lease as at 1 July 2000.

Margin for supply of real property acquired from deceased estate

(3) If:

(a) you acquired the interest, unit or lease in question by *inheriting it; and

(b) none of subsections (1) to (2B) applies; and

(c) the entity from whom you inherited the interest, unit or lease (the ***deceased***) acquired it before 1 July 2000;

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds:

(ca) if you know what was the consideration for the supply of the interest, unit or lease to the deceased and you choose to use that consideration to work out the margin for the supply—that consideration; or

(d) if paragraph (ca) does not apply and, immediately before the time at which you inherited the interest, unit or lease, the deceased was neither *registered nor *required to be registered—an *approved valuation of the interest, unit or lease as at the latest of:

(i) 1 July 2000; or

(ii) the day on which you inherited the interest, unit or lease; or

(iii) the first day on which you registered or were required to be registered; or

(e) if paragraph (ca) does not apply and, immediately before the time at which you inherited the interest, unit or lease, the deceased was registered or required to be registered—an

approved valuation of the interest, unit or lease as at the later of:

(i) 1 July 2000; or

(ii) the first day on which the deceased registered or was required to be registered.

(4) If:

(a) you acquired the interest, unit or lease in question by *inheriting it; and

(b) none of subsections (1) to (2B) applies; and

(c) the entity from whom you inherited the interest, unit or lease (the ***deceased***) acquired it on or after 1 July 2000;

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds:

(d) if you know what was the consideration for the supply of the interest, unit or lease to the deceased and you choose to use that consideration to work out the margin for the supply—that consideration; or

(e) if paragraph (d) does not apply—an *approved valuation of the interest, unit or lease as at the day on which the deceased acquired it.

Margin for supply of real property acquired from associate

(7) If:

(a) you acquired the interest, unit or lease in question from an entity who was your *associate at the time of the acquisition; and

(b) none of the other subsections of this section apply;

the ***margin*** for the supply you make is the amount by which the *consideration for the supply exceeds:

(c) if your acquisition was made before 1 July 2000—an *approved valuation of the interest, unit or lease as at 1 July 2000; or

(d) if your acquisition was made on or after 1 July 2000—the *GST inclusive market value of the interest, unit or lease at the time of the acquisition.

(8) Subsection (7) applies to an acquisition through a supply made by:

(a) a *GST branch; or

(b) a *non-profit sub-entity; or

(c) a *government entity of a kind referred to in section 72-95 or 72-100;

as if Subdivision 72-D affected the operation of subsection (7) in the same way that it affects the operation of Division 72.

75-12 Working out margins to take into account failure to pay full consideration

In working out the *margin for a *taxable supply of *real property you make (the ***later supply***), if:

(a) you had acquired the interest, unit or lease in question through a supply (the ***earlier supply***); and

(b) the *consideration for:

(i) if your acquisition was not an acquisition from a *member of a *GST group of which you were also a member at the time of the acquisition—the earlier supply; or

(ii) if your acquisition was such an acquisition—the last supply of the interest, unit or lease at a time when the supplier of that last supply was not, but the *recipient of that last supply was, a member of the GST group;

had not been paid in full at the time of the later supply;

treat the amount of the consideration as having been reduced by the amount of unpaid consideration referred to in paragraph (b).

Note: If you subsequently pay more of the consideration for the earlier supply, you may have a decreasing adjustment: see section 75-27.

75-13 Working out margins to take into account supplies to associates

In working out the *margin for a *taxable supply of *real property you make to an entity who is your *associate at the time of the supply, treat the *consideration for the supply as if it were the same as the *GST inclusive market value of the interest, unit or lease at the time of the supply.

75-14 Consideration for acquisition of real property not to include cost of improvements etc.

(1) To avoid doubt, in working out the *consideration for an acquisition for the purposes of applying the *margin scheme to a *taxable supply of *real property, disregard:

(a) the cost or value of any other acquisitions that have been made by you, or any work that has been performed, in relation to the real property; and

(b) the cost or value of any other acquisitions that are intended to be made by you, or any work that is intended to be performed, in relation to the real property after its acquisition;

including acquisitions or work connected with bringing into existence the interest, unit or lease supplied.

(2) This section does not affect what constitutes *consideration for a purpose not connected with applying the *margin scheme.

17 Section 75-15

Omit “section 75-10”, insert “sections 75-10 to 75-14”.

18 After section 75-20

Insert:

75-22 Increasing adjustment relating to input tax credit entitlement

(1) You have an ***increasing adjustment*** if:

(a) you make a *taxable supply of *real property under the *margin scheme; and

(b) an acquisition that you made of part of the interest, unit or lease in question was made through a supply that was *ineligible for the margin scheme; and

(c) you were, or are, entitled to an input tax credit for the acquisition.

The amount of the increasing adjustment is an amount equal to the *previously attributed input tax credit amount for the acquisition.

(2) You have an ***increasing adjustment*** if:

(a) you make a *taxable supply of *real property under the *margin scheme; and

(b) you acquired all or part of the interest, unit or lease in question by inheriting it; and

(c) the entity from whom you inherited (the ***deceased***) had acquired part of the interest, unit or lease that you inherited through a supply that was *ineligible for the margin scheme; and

(d) the deceased was entitled to an input tax credit for that acquisition.

The amount of the increasing adjustment is an amount equal to the *previously attributed input tax credit amount for the acquisition.

19 After section 75-25

Insert:

75-27 Decreasing adjustment for later payment of consideration

(1) You have a ***decreasing adjustment*** if:

(a) section 75-12 applied to working out the *margin for a *taxable supply of *real property that you made; and

(b) after you made the supply, a further amount of the *consideration was paid for the earlier supply referred to in that section.

(2) The amount of the decreasing adjustment is an amount equal to 1/11 of the further amount of the *consideration paid.

20 At the end of Division 75

Add:

75-35 Approved valuations

(1) The Commissioner may, by legislative instrument, determine in writing requirements for making valuations for the purposes of this Division.

(2) A valuation made in accordance with those requirements is an ***approved valuation***.

21 Savings provision—determinations under paragraph 75-10(3)(b)

A determination by the Commissioner, for the purposes of paragraph 75-10(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*, that was in force immediately before the commencement of this Schedule:

(a) continues in force on that commencement as if it had been made under section 75-35 of that Act as amended by this Act; and

(b) may be revoked or amended by the Commissioner in the same way as a determination under section 75-35.

22 Section 195-1

Insert:

approved valuation has the meaning given by subsection 75-35(2).

23 Section 195-1 (note at the end of the definition of *consideration*)

After "sections", insert "75-12, 75-13, 75-14,".

24 Section 195-1 (after table item 4 of the definition of *decreasing adjustment*)

Insert:

4AA	Section 75-27	Payments of further consideration for supplies relating to supplies of *real property under the *margin scheme

25 Section 195-1 (after table item 4 of the definition of *increasing adjustment*)

Insert:

4AAA	Section 75-22	Input tax credit entitlements for acquisitions relating to supplies of *real property under the *margin scheme

26 Section 195-1

Insert:

ineligible for the margin scheme has the meaning given by subsections 75-5(3) and (4).

26A Section 195-1

Insert:

inherit: you inherit a freehold interest in land, a stratum unit or a long-term lease if you become an owner of the interest, unit or lease:

(a) under the will of a deceased person, or that will as varied by a court order; or

(b) by operation of an intestacy law, or such a law as varied by a court order; or

(c) because it is appropriated to you by the legal personal representative of a deceased person in satisfaction of a pecuniary legacy or some other interest or share in the deceased person's estate; or

(d) under a deed of arrangement if:

(i) you entered into the deed to settle a claim to participate in the distribution of the deceased person's estate; and

(ii) any *consideration given by you for the interest, unit or lease consisted only of the variation or waiver of a claim to one or more other assets that formed part of the estate.

27 Section 195-1 (definition of *margin*)

Omit "subsection 75-10(2)", substitute "sections 75-10 and 75-11".

27A Section 195-1 (definition of *margin scheme*)

Omit "you choose, under section 75-5, to use the margin scheme in working out the amount of GST on the supply", substitute "subsection 75-5(1) applies".

Taxation Administration Act 1953

27B Subsection 62(2) (after table item 37A)

Insert:

37AA	refusing to allow, or allowing, a further period within which to make an agreement that the margin scheme is to apply	paragraph 75-5(1A)(b)

28 Application

(1) The amendments made by this Schedule (other than items 3 to 7, 9 and 10) apply, and are taken to have applied, in relation to supplies made on or after the day the Bill for this Act was introduced into the Parliament.

(2) The amendments made by items 3 to 7 apply, and are taken to have applied, in relation to adjustments arising under Division 129 of the *A New Tax System (Goods and Services Tax) Act 1999* on or after the day the Bill for this Act was introduced into the Parliament.

(3) The amendments made by items 9 and 10 apply only in relation to supplies that:

(a) are made under contracts entered into on or after the day on which this Act receives the Royal Assent; and

(b) are not made pursuant to rights or options granted before that day.

Schedule 7—Superannuation and family law

Income Tax Assessment Act 1936

1 Subsection 27A(1)

Insert:

member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

2 Subsection 27A(1)

Insert:

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

3 Subsection 27A(1)

Insert:

payment split means a payment split under Part VIIIB of the *Family Law Act 1975*.

4 Subsection 27A(1)

Insert:

splittable payment has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

5 At the end of subsection 27AAA(2)

Add:

Note: Subsection (7A) contains an exception in relation to splittable payments under Part VIIIB of the *Family Law Act 1975*.

6 After subsection 27AAA(7)

Insert:

(7A) A payment is not a death benefit under subsection (2) if it is made to the non-member spouse as a result of a payment split applying to a splittable payment after the death of the member spouse unless the non-member spouse was a dependant (within the ordinary

meaning of that expression) of the member spouse immediately before the death of the member spouse.

7 Paragraphs 27ACA(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) as a result:

(i) a payment is made to the non-member spouse (or to his or her legal personal representative if he or she has died); or

(ii) an interest in a superannuation fund, or an annuity, is created for, or an amount is transferred to a superannuation fund for the benefit of, the non-member spouse in circumstances prescribed by the regulations; and

(c) either:

(i) the payment mentioned in subparagraph (b)(i); or

(ii) a payment equal to the value of the interest or annuity created or the amount transferred mentioned in subparagraph (b)(ii);

if it had been made to the original payee, would have been an eligible termination payment under a paragraph of the definition of ***eligible termination payment*** in subsection 27A(1);

8 Subsection 27ACA(1)

Omit "under that same paragraph", substitute:

under:

(d) if the splittable payment becomes payable before the death of the member spouse—that same paragraph; or

(e) otherwise—paragraph (ba) of that definition.

9 After subsection 27ACA(1)

Insert:

ETP taken to be rolled over in some cases

(1A) There is taken to be a roll-over of the new ETP in a case to which subparagraph (1)(b)(ii) applies.

10 Subsection 27ACA(5) (definition of *non-member spouse*)

Repeal the definition.

11 Subsection 27ACA(5) (definition of *payment split*)

Repeal the definition.

12 Subsection 27ACA(5) (definition of *splittable payment*)

Repeal the definition.

13 At the end of subsection 27ACB(1)

Add:

Note: See subsections (2) to (4) for how to work out the identified components of the ETPs.

14 After subsection 27ACB(1)

Insert:

(1A) If, in respect of an eligible annuity (the ***original interest***) that a person (the ***first person***) has, either of the following apply at a particular time (the ***relevant time***):

(a) an annuity (within the meaning of subsection 27A(1) of this Act) is created for the non-member spouse in circumstances prescribed by the regulations;

(b) an amount is transferred to a superannuation fund, in circumstances prescribed by the regulations, for the benefit of the non-member spouse;

then:

(c) there is taken to be an ETP made in relation to the non-member spouse of an amount (the ***new ETP amount***) equal to the value of the annuity created for the non-member spouse or to the amount transferred (as the case may be); and

(d) there is taken to be an ETP made in relation to the first person of an amount (the ***remaining ETP amount***) equal to the value of the original interest immediately before the relevant time less the new ETP amount; and

(e) there is taken to be a roll-over of those ETPs.

15 Subsection 27ACB(5)

Insert:

eligible annuity has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

16 Subsection 27ACB(5) (at the end of the definition of *identified component*)

Add:

; (e) the untaxed element of the post-June 83 component.

17 Subsection 27ACB(5) (definition of *non-member spouse*)

Repeal the definition.

18 After subsection 82AAC(1)

Insert:

(1A) However, a contribution is not an allowable deduction under subsection (1) if it is an amount paid by the member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund, or to an RSA, to be held for the benefit of the non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the superannuation interest concerned.

19 Subsection 82AAC(3)

Insert:

member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

20 Subsection 82AAC(3)

Insert:

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

21 Subsection 82AAC(3)

Insert:

regulated superannuation fund has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

22 Subsection 82AAC(3)

Insert:

RSA has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

23 Subsection 82AAC(3)

Insert:

superannuation interest has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

24 Subsection 82AAT(1A)

Omit "The trustee", substitute "Subject to subsection (1AA), the trustee".

25 After subsection 82AAT(1A)

Insert:

(1AA) The trustee may refuse to acknowledge receipt of the person's notice under subsection (1A) in respect of a contribution made by the person if:

(a) after the person made the contribution and before the person gave the notice, either of the following occurred in respect of the person's interest in the fund:

(i) a payment was made to or for the benefit of the non-member spouse;

(ii) an interest in a superannuation fund was created for, or an amount was transferred to a superannuation fund for the benefit of, the non-member spouse in circumstances prescribed by the regulations; and

(b) as a result, the balance of the person's interest in the fund at the end of the day on which the trustee receives the notice is less than the tax that would be payable in respect of the person's contribution if the trustee were to acknowledge receipt of the notice.

26 Subsection 82AAT(1CB)

Omit "The RSA provider", substitute "Subject to subsection (1CBA), the RSA provider".

27 After subsection 82AAT(1CB)

Insert:

(1CBA) The RSA provider may refuse to acknowledge receipt of the person's notice under subsection (1CB) in respect of a contribution made by the person if:

(a) after the person made the contribution and before the person gave the notice, either of the following occurred in respect of the person's interest in the RSA:

(i) a payment was made to or for the benefit of the non-member spouse;

(ii) an interest in a superannuation fund was created for, or an amount was transferred to a superannuation fund for the benefit of, the non-member spouse in circumstances prescribed by the regulations; and

(b) as a result, the balance of the person's interest in the RSA at the end of the day on which the RSA provider receives the notice is less than the tax that would be payable in respect of the person's contribution if the RSA provider were to acknowledge receipt of the notice.

28 At the end of section 82AAT

Add:

(4) In this section:

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

29 Paragraph 140M(1A)(a)

Repeal the paragraph, substitute:

(a) a payment split applies to a splittable payment in respect of:

(i) an interest that a person has as a member of a superannuation fund; or

(ii) an eligible annuity (within the meaning of Part VIIIB of the *Family Law Act 1975*); and

30 Paragraph 140M(1A)(b)

After "interest", insert "or annuity".

31 Paragraph 140M(1A)(c)

After "pension", insert "or an immediate annuity".

32 Paragraph 140M(1A)(d)

After “interest”, insert “or annuity”.

33 Paragraph 140M(1A)(e)

After “pension”, insert “or an immediate annuity (as the case requires)”.

34 Subsection 140M(1A) (note 1)

After “pensions” (wherever occurring), insert “or annuities”.

35 Subsection 140M(1A) (note 2)

After “pension”, insert “or an annuity”.

36 Paragraph 140M(1C)(a)

Repeal the paragraph, substitute:

(a) a payer commences or has commenced to make payments of:

(i) a superannuation pension to a person (the ***first person***) in respect of an interest that a person has as a member of a superannuation fund; or

(ii) an eligible annuity (within the meaning of Part VIIIB of the *Family Law Act 1975*) to a person (the ***first person***); and

37 Paragraph 140M(1C)(b)

After “pension”, insert “or annuity”.

38 Paragraph 140M(1C)(c)

After “interest”, insert “or annuity”.

39 Paragraph 140M(1C)(d)

Repeal the paragraph, substitute:

(d) as a result:

(i) a payment is made to or for the benefit of the non-member spouse; or

(ii) an interest in a superannuation fund, or an annuity (within the meaning of subsection 27A(1) of this Act), is created for, or an amount is transferred to a superannuation fund for the benefit of, the non-member spouse in circumstances prescribed by the regulations; and

40 Paragraph 140M(1C)(g)

Repeal the paragraph, substitute:

(g) if the payer also makes a payment of the pension or eligible annuity to the first person—for the purposes of this Act, the payer is taken to have commenced to make payments of another superannuation pension or immediate annuity (as the case requires) to the first person.

41 Paragraph 140UA(1)(a)

Repeal the paragraph, substitute:

(a) a payer commences or has commenced to make payments of:

(i) a superannuation pension to a person (the ***first person***) in respect of an interest that a person has as a member of a superannuation fund; or

(ii) an eligible annuity (within the meaning of Part VIIIB of the *Family Law Act 1975*) to a person (the ***first person***); and

Note: The heading to section 140UA is altered by inserting "**or annuity**" after "**pension**".

42 Paragraph 140UA(1)(b)

After "pension", insert "or annuity".

43 Paragraph 140UA(1)(b)

After "interest", insert "or annuity".

44 Paragraph 140UA(1)(c)

After "interest", insert "or annuity".

45 Paragraph 140UA(1)(c)

After "pension", insert "or annuity".

46 Paragraph 140UA(1)(d)

Repeal the paragraph, substitute:

(d) if a residual pension or a residual annuity is payable to the first person, or to the non-member spouse in relation to that interest or annuity, on the commutation or partial commutation of the pension or annuity—subsections 140R(1) and 140T(1) apply in relation to that residual pension or

annuity and subsections 140R(1B) and 140T(2C) do not apply.

47 Paragraph 140UA(2)(b)

After "pension", insert "or annuity".

48 Paragraph 140ZFA(a)

After "(the ***new pension***)", insert "or an immediate annuity (the ***new annuity***)".

49 Paragraph 140ZFA(b)

After "the pension", insert "or annuity".

50 Section 140ZFA

After "then the new pension", insert "or new annuity".

51 At the end of section 140ZN

Add:

(3) If:

(a) a payer commences or has commenced to make payments of an eligible annuity (within the meaning of Part VIIIB of the *Family Law Act 1975*) to a person; and

(b) the annuity counts or counted towards the person's RBLs; and

(c) a payment split then applies to a splittable payment in respect of that annuity; and

(d) as a result:

(i) a payment is made to or for the benefit of the non-member spouse; or

(ii) an annuity (within the meaning of subsection 27A(1) of this Act) is created for, or an amount is transferred to a superannuation fund for the benefit of, the non-member spouse in circumstances prescribed by the regulations;

then, in working out the RBL amount of the eligible annuity, the amount of the ETP rolled-over to purchase that annuity is to be reduced by an amount worked out in accordance with a method determined by the Commissioner in writing in relation to the annuity.

(4) A determination made under subsection (3) is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the determination.

Note: The heading to section 140ZN is altered by adding at the end "**and payment splits**".

52 Paragraph 140ZP(3)(d)

Repeal the paragraph, substitute:

(d) as a result:

(i) a payment is made to or for the benefit of the non-member spouse; or

(ii) an interest in a superannuation fund is created for, or an amount is transferred to a superannuation fund for the benefit of, the non-member spouse in circumstances prescribed by the regulations;

53 After subsection 159T(1)

Insert:

(1A) However, a contribution is not an eligible spouse contribution for the purposes of subsection (1) if it is an amount paid by the member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund, or to an RSA, to be held for the benefit of the non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the superannuation interest concerned.

54 At the end of section 159T

Add:

(3) In this section:

member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

regulated superannuation fund has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

RSA has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

superannuation interest has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

55 At the end of subsection 274(1)

Add:

Note: Subsection (4) contains an exception in relation to payments mentioned in regulations under the *Family Law Act 1975*.

56 After subsection 274(3)

Insert:

(4) Contributions are not taxable contributions under subsection (1) if they are an amount paid by the member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund, or to an RSA, to be held for the benefit of the non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the superannuation interest concerned.

(5) In subsection (4):

member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

regulated superannuation fund has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

RSA has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

superannuation interest has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

Schedule 8—Worker entitlement funds

Fringe Benefits Tax Assessment Act 1986

1 Paragraph 58PA(b)

Omit “the person is required to make the contribution”, substitute “the contribution is made”.

2 Subparagraph 58PA(c)(i)

Omit “required”, substitute “made”.

2A Paragraph 58PC(1)(d)

Omit “or 1 April 2004”, substitute “, 1 April 2004 or 1 April 2005”.

3 Application

The amendments made by items 1 and 2 of this Schedule apply in respect of the FBT year beginning on 1 April 2005 and in respect of all later FBT years.

[*Minister’s second reading speech made in—*
House of Representatives on 17 March 2005
Senate on 20 June 2005]

(47/05)