Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005

No. 161, 2005

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

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005

No. 161, 2005

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

[*Assented to 19 December 2005*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Assessments

Part 1—Amending assessments

Income Tax Assessment Act 1936

1 Subsections 170(1) to (7)

Repeal the subsections, substitute:

(1) The Commissioner may amend an assessment as follows:

Amendment of assessments

	Time of amendment	Qualification
1	The Commissioner may amend an assessment of an individual for a year of income within 2 years after the day on which the Commissioner gives notice of the assessment to the individual.	This item does not apply: (a) if the individual carries on a business at any time in that year unless the individual is an STS taxpayer for that year; or (b) if the individual is a partner in a partnership that carries on a business at any time in that year unless the partnership is an STS taxpayer for that year; or (c) to an individual in the capacity of a trustee of a trust estate at any time in that year (see item 3 for this case); or (d) if the individual is a beneficiary of a trust estate at any time in that year unless the trust is an STS taxpayer for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or (e) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the individual obtaining a scheme benefit in relation to income tax from the scheme for that year; or (f) in any other circumstance prescribed by the regulations. This item is subject to items 5 and 6.

Amendment of assessments		
	Time of amendment	**Qualification**
2	The Commissioner may amend an assessment of a company that is an STS taxpayer for the year of income to which the assessment relates within 2 years after the day on which the Commissioner gives notice of the assessment to the company.	This item does not apply: (a) if the company is a partner in a partnership that carries on a business at any time in that year unless the partnership is an STS taxpayer for that year; or (b) to a company in the capacity of a trustee of a trust estate at any time in that year (see item 3 for this case); or (c) if the company is a beneficiary of a trust estate at any time in that year unless the trust is an STS taxpayer for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or (d) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the company obtaining a scheme benefit in relation to income tax from the scheme for that year; or (e) in any other circumstance prescribed by the regulations. This item is subject to items 5 and 6.

Amendment of assessments

	Time of amendment	Qualification
3	The Commissioner may amend an assessment of a person (in the capacity of a trustee of a trust estate) for a year of income if the trust is an STS taxpayer for that year. The Commissioner may amend the assessment within 2 years after the day on which he or she gives notice of the assessment to the person.	This item does not apply: (a) if the person (in that capacity) is a partner in a partnership that carries on a business at any time in that year unless the partnership is an STS taxpayer for that year; or (b) if the person (in that capacity) is a beneficiary of another trust estate at any time in that year unless the other trust is an STS taxpayer for that year or the trustee of the other trust (in that capacity) is a full self-assessment taxpayer for that year; or (c) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the person (in that capacity) obtaining a scheme benefit in relation to income tax from the scheme for that year; or (d) in any other circumstance prescribed by the regulations. This item is subject to items 5 and 6.
4	If item 1, 2 or 3 does not apply, the Commissioner may amend an assessment within 4 years after the day on which he or she gives notice of the assessment to the taxpayer.	This item is subject to items 5 and 6.
5	The Commissioner may amend an assessment at any time if he or she is of the opinion there has been fraud or evasion.	None.

Amendment of assessments		
	Time of amendment	**Qualification**
6	The Commissioner may amend an assessment at any time: (a) to give effect to a decision on a review or appeal; or (b) as a result of an objection made by the taxpayer or pending a review or appeal.	None.

Note 1: This section applies to assessments where no tax is payable: see the definition of ***assessment*** in subsection 6(1).

Note 2: This section also applies to amended assessments: see section 173. However, there are limits on how amended assessments can be amended: see subsections (2) and (3) of this section.

Note 3: The amendment period mentioned in item 1, 2, 3 or 4 may be extended: see subsections (5) to (7).

Limit on amending amended assessments under subsection (1)

(2) The Commissioner cannot amend an amended assessment under item 1, 2, 3 or 4 of the table in subsection (1) if the limited amendment period for the original assessment concerned has ended.

Note: The Commissioner can amend amended assessments at any time under item 5 or 6 of the table in subsection (1).

Refreshed amendment period for amending amended assessments

(3) If the Commissioner amends an assessment (the ***earlier assessment***) as set out in column 2 of the following table, he or she may, under this subsection, amend the assessment (the ***later assessment***) that results from that amendment in the way set out in column 3 within:

(a) if item 1, 2 or 3 of the table in subsection (1) applies to the original assessment concerned (which may or may not be the earlier assessment)—2 years after the day on which he or she gives notice of the later assessment to the taxpayer; or

(b) otherwise—4 years after that day.

Amendment of later assessment		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
1	The Commissioner amends the earlier assessment about a particular in a way that reduces a taxpayer's liability and the Commissioner accepts a statement made by the taxpayer in making the amendment	The Commissioner may amend the later assessment about that particular in a way that increases the taxpayer's liability.
2	The Commissioner amends the earlier assessment about a particular in a way that: (a) increases a taxpayer's liability; or (b) reduces a taxpayer's liability (other than in a case covered by item 1)	The Commissioner may amend the later assessment about that particular in a way that reduces the taxpayer's liability.

Note 1: The earlier assessment may be the original assessment or an amended assessment.

Note 2: The Commissioner can amend the later assessment at any time under item 5 or 6 of the table in subsection (1).

Note 3: The amendment period mentioned in paragraph (3)(a) or (b) may be extended: see subsections (5) to (7).

(4) The Commissioner cannot amend an assessment under item 2 of the table in subsection (3) about a particular if he or she has previously amended an assessment under item 1 of that table about that particular.

Extensions—applications by taxpayer

(5) The Commissioner may amend an assessment even though the limited amendment period has ended if, before the end of that period, the taxpayer applies for an amendment in the approved form. The Commissioner may amend the assessment to give effect to the decision on the application.

Extensions—giving effect to private rulings

(6) The Commissioner may amend an assessment even though the limited amendment period has ended if:

(a) the taxpayer applies for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953* before the end of that period; and

(b) the Commissioner makes a private ruling under that Division because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

Extensions—Federal Court orders or taxpayer consent

(7) If:

(a) the Commissioner has started to examine the affairs of a taxpayer in relation to an assessment; and

(b) the Commissioner has not completed the examination before the end of the limited amendment period or that period as extended;

the limited amendment period may be extended as follows:

Extensions of limited amendment period		
	In this case:	**the position is:**
1	The Commissioner, before the end of the limited amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the limited amendment period	The Court may order an extension of the limited amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the limited amendment period, or that period as extended, because of: (a) any action taken by the taxpayer; or (b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take.
2	The Commissioner, before the end of the limited amendment period or that period as extended, requests the taxpayer to consent to extending the limited amendment period	The taxpayer may, by notice in writing, consent to extending the limited amendment period for a specified period.

(8) The limited amendment period for an assessment may be extended more than once under subsection (7).

Note: The following heading to subsection 170(9) is inserted "*Other amendment periods*".

2 Subsections 170(9A), (9E) and (9F)

Repeal the subsections.

3 Subsection 170(10)

Repeal the subsection, substitute:

(10) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of this Act set out in this table.

Amendment of assessments

Item	Provision	Brief description
1	Section 23AB	Income of certain persons serving with an armed force under the control of the United Nations
2	Section 23H	Exemption of certain film income
3	Section 26AG	Certain film proceeds included in assessable income
4	Subsection 47(2B)	Distributions by liquidator
5	Section 51AD	Deductions not allowable in respect of property used under certain leveraged arrangements
6	Section 51AH	Deductions not allowable where expenses incurred by employee are reimbursed
7	Subsection 57AM(10), (13), (14), (15) or (16)	Special depreciation on trading ships
8	Subsection 59(2D)	Disposal, loss or destruction of depreciated property
9	Subsection 77F(5)	Money paid before 1 July 1991 on shares in management and investment companies
10	Section 78A	Certain gifts not to be allowable deductions
11	Section 78B	Promoters recoupment tax
12	Section 82KJ	Deduction not allowable in respect of certain pre-paid outgoings
13	Section 82KK	Schemes designed to postpone tax liability
14	Section 82KL	Tax benefit not allowable in respect of certain recouped expenditure
15	Subsection 82S(3)	Interest on certain convertible notes to be an allowable deduction—where loan made before 1 January 1976

Amendment of assessments		
Item	**Provision**	**Brief description**
16	Subsection 82SA(2)	Interest on certain convertible notes to be an allowable deduction—where loan made on or after 1 January 1976
17	Section 100A	Present entitlement arising from reimbursement agreement
18	Subdivision C of Division 6D of Part III	Ultimate beneficiary non-disclosure tax on share of net income
19	Section 105AA	Additional period for making sufficient distribution
20	Section 105AB	Additional period for distribution by liquidator
21	Section 121AT	Other tax consequences of demutualisation
22	Division 9C of Part III	Assessable income diverted under certain tax avoidance schemes
23	Division 10BA of Part III	Australian films
24	Section 136AF	Consequential adjustments to assessable income and allowable deductions
25	Division 16D of Part III	Certain arrangements relating to the use of property
26	Subsection 159GZZZH(2)	Post-cancellation disposals of eligible interests etc.
27	Section 160ABB	Rebate in respect of certain payments by the Commonwealth Savings Bank of Australia
28	Section 271-105 in Schedule 2F	Amounts subject to family trust distribution tax not assessable
29	Schedule 2G	Farm management deposits

4 Subsection 170(10AA) (table item 10)

Repeal the item.

5 Subsection 170(10AA) (after table item 20)

Insert:

22	Section 59-30	Repayment of amounts

6 Subsection 170(10AA) (table item 210)

Repeal the item.

7 Subsection 170(10AB)

Repeal the subsection.

8 Subsection 170(13)

Repeal the subsection.

9 Subsection 170(14)

Insert:

> ***limited amendment period***, for an assessment, means the period within which the Commissioner may amend the assessment:
>
> (a) under item 1, 2, 3 or 4 of the table in subsection (1); or
>
> (b) under paragraph (3)(a) or (b).

Note: The following heading to subsection 170(14) is inserted "*Definitions*".

10 Subsection 170(14)

Insert:

> ***scheme*** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

11 Subsection 170(14)

Insert:

> ***scheme benefit*** has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

12 Subsection 170(14)

Insert:

> ***STS taxpayer*** has the meaning given by section 328-435 of the *Income Tax Assessment Act 1997*.

13 Subsection 170(14) (definition of *tax*)

Repeal the definition.

14 Section 170A

Repeal the section.

15 Application

The amendments made by this Part apply in relation to assessments for the 2004-05 year of income and later years of income.

Part 2—Nil assessments

Income Tax Assessment Act 1936

16 Subsection 6(1) (definition of *assessment*)

Repeal the definition, substitute:

assessment means:

(a) the ascertainment of the amount of taxable income (or that there is no taxable income) and of the tax payable on that taxable income (or that no tax is payable); or

Note 1: A taxpayer does not have a taxable income if the taxpayer's deductions equal or exceed the taxpayer's assessable income: see subsection 4-15(1) of the *Income Tax Assessment Act 1997*.

Note 2: A taxpayer may have no tax payable on an amount of taxable income if that income is below the tax-free threshold or if the taxpayer's tax offsets reduce the taxpayer's basic income tax liability to nil.

(b) for a taxpayer being the trustee of a unit trust that is a corporate unit trust within the meaning of section 102J—the ascertainment of the net income of the trust as defined by section 102D (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or

(c) for a taxpayer being the trustee of a unit trust that is a public trading trust within the meaning of section 102R—the ascertainment of the net income of the trust as defined by section 102M (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or

(d) for any other taxpayer that is the trustee of a trust estate but excluding a taxpayer that is the trustee of a fund or unit trust referred to in paragraph (a), (b) or (c) of the definition of ***eligible entity*** in subsection 267(1)—the ascertainment of so much of the net income of the trust estate as is net income in respect of which the trustee is liable to pay tax (or that there is no net income in respect of which the trustee is so liable) and of the tax payable on that net income (or that no tax is payable); or

(e) the ascertainment of the amount of interest payable under section 102AAM (about distributions from non-resident trust estates); or

(f) the ascertainment of an amount of additional tax under section 128TE; or

(g) the ascertainment of an amount of tax under section 159GZZZZH.

17 Section 175A

Before “A”, insert “(1)”.

18 At the end of section 175A

Add:

(2) A taxpayer cannot object under subsection (1) against an assessment ascertaining that:

(a) the taxpayer has no taxable income; or

(b) the taxpayer has an amount of taxable income and no tax is payable;

unless the taxpayer is seeking an increase in the taxpayer’s liability.

19 Application

The amendments made by this Part apply in relation to the 2004-05 year of income and later years of income.

Part 3—Making assessments for the 2003-04 year of income or earlier

Income Tax Assessment Act 1936

20 After section 171

Insert:

171A Limited period to make assessments for nil liability returns for the 2003-04 year of income or earlier

(1) If the circumstances set out in column 2 of the following table apply to a taxpayer in relation to the 2003-04 year of income (a ***nil year***) or an earlier year of income (also a ***nil year***), the Commissioner cannot make an original assessment for that taxpayer for that year in the circumstances set out in column 3:

Making assessments

Column 1 Item	Column 2 In this case:	Column 3 the position is:
1	The taxpayer's return of income for a nil year disclosed, or the Commissioner has given the taxpayer a notice for a nil year that stated, either of the following: (a) the taxpayer had an amount of taxable income, and that no tax was payable; (b) the taxpayer had no taxable income because the taxpayer's deductions equalled the taxpayer's assessable income; and the taxpayer did not deduct a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the later of the following: (a) 31 October 2008; (b) the period of 4 years beginning on the day on which the taxpayer lodged the taxpayer's return of income for the nil year.

Making assessments		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
2	The taxpayer's return of income for a nil year disclosed, or the Commissioner has given the taxpayer a notice for a nil year that stated, either of the following: (a) the taxpayer had an amount of taxable income, and that no tax was payable; (b) the taxpayer had no taxable income because the taxpayer's deductions equalled the taxpayer's assessable income; and the taxpayer did deduct a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following: (a) the day on which the taxpayer lodged the taxpayer's return of income for the 2004-05 year of income or, if the taxpayer is a member of a consolidated group at the end of that year of income, the day on which head company's return of income for that year of income is lodged; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.
3	The taxpayer had a tax loss in a nil year, none of which has been carried forward to the 2004-05 year of income	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following: (a) the day on which the taxpayer lodged the taxpayer's return of income for the 2004-05 year of income or, if the taxpayer is a member of a consolidated group at the end of that year of income, the day on which head company's return of income for that year of income is lodged; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.

Making assessments		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
4	(a) the taxpayer had a tax loss in a nil year, some or all of which has been carried forward to the 2004-05 year of income; and (b) the taxpayer or, if the taxpayer is a member of a consolidated group at the end of the 2004-05 year of income, the head company notifies the Commissioner, in the approved form, that the taxpayer or the head company had a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following: (a) the day on which the Commissioner received the notification; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.

(2) Subsection (1) does not apply in relation to a nil year if:

(a) the Commissioner is of the opinion there has been fraud or evasion; or

(b) had the Commissioner made an assessment, in accordance with the taxpayer's return of income, that the taxpayer had no taxable income or that no tax was payable by the taxpayer (assuming that such an assessment could have been made)—this Act would not have prevented the Commissioner amending the assessment at any time.

Part 4—Consequential amendments

Division 1—SPOR taxpayer provisions

Income Tax Assessment Act 1936

21 Subsection 6(1) (definition of *shorter period of review taxpayer* or *SPOR taxpayer*)

Repeal the definition.

22 Section 6AD

Repeal the section.

23 Subsection 251R(6D)

Omit “subsections (6F) and (6FA)”, substitute “subsection (6F)”.

24 Subsections 251R(6F) and (6FA)

Repeal the subsections, substitute:

(6F) Subsection (6D) does not apply, and is taken never to have applied, if the first person fails to retain the family agreement until the end of:

(a) 5 years beginning on the date of lodgment of the first person’s return of income for the year of income concerned; or

(b) a shorter period determined by the Commissioner in writing for the first person; or

(c) a shorter period determined by the Commissioner by legislative instrument for a class of persons that includes the first person.

(6FA) A determination under paragraph (6F)(c) may specify different periods for different classes of taxpayers.

25 Application

The amendments made by items 23 and 24 apply in relation to the 2004-05 year of income and later years of income.

Income Tax Assessment Act 1997

26 Subsection 995-1(1) (definition of *SPOR taxpayer*)

Repeal the definition.

Taxation Administration Act 1953

27 Subsection 2(1) (definition of *SPOR taxpayer*)

Repeal the definition.

28 Paragraphs 14ZW(1)(aa) and (aaa)

Repeal the paragraphs, substitute:

(aa) if the taxation objection is made under section 175A of the *Income Tax Assessment Act 1936*:

(i) if item 1, 2 or 3 of the table in subsection 170(1) of that Act applies to the assessment concerned—2 years after notice of the assessment is given to the person; or

(ii) otherwise—4 years after notice of the assessment concerned is given to the person; or

(aaa) if the taxation objection is made under section 78A of the *Fringe Benefits Tax Assessment Act 1986* or section 160AL of the *Income Tax Assessment Act 1936*—4 years after notice of the taxation decision to which it relates has been given to the person; or

29 Subsections 14ZW(1A) and (1AA)

Repeal the subsections, substitute:

(1A) The person cannot lodge a taxation objection against a private ruling that relates to a year of income after the end of whichever of the following ends last:

(a) 60 days after the ruling was made;

(b) whichever of the following is applicable:

(i) if item 1, 2 or 3 of the table in subsection 170(1) of the *Income Tax Assessment Act 1936* applies to the person's assessment for that income year—2 years after the last day allowed to the person for lodging a return in relation to the person's income for that year of income;

(ii) otherwise—4 years after that day.

30 Paragraph 14ZW(1B)(b)

Omit “paragraph (1)(aa),”, substitute “subparagraph (1)(aa)(ii) or paragraph (1)(aaa),”.

31 Paragraph 14ZW(1BA)(b)

Omit “paragraph (1)(aaa)”, substitute “subparagraph (1)(aa)(i)”.

32 Application

The amendments made by items 28 to 31 apply in relation to taxation decisions made in:

(a) for income tax—the 2004-05 income year or a later income year; or

(b) for fringe benefits tax—the year of tax starting on 1 April 2004 or a later year of tax.

33 Subsection 18-100(1) in Schedule 1

Repeal the subsection, substitute:

(1) An entity that is given a *payment summary and a copy of it in any financial year under this Part must retain the copy for:

(a) 5 years after the end of that financial year; or

(b) a shorter period determined by the Commissioner in writing for the entity; or

(c) a shorter period determined by the Commissioner by legislative instrument for a class of entities that includes the entity.

(1AA) A determination under paragraph (1)(c) may specify different periods for different classes of entities.

34 Subsection 18-100(2) in Schedule 1

Repeal the subsection.

35 Application

The amendments made by items 33 and 34 apply in relation to payment summaries, and copies of payment summaries, given to entities in the financial year beginning on 1 July 2004 and later financial years.

36 Subsection 388-65(3) in Schedule 1

Repeal the subsection, substitute:

(3) You must retain the declaration or a copy of it for:

(a) 5 years after it is made; or

(b) a shorter period determined by the Commissioner in writing for you; or

(c) a shorter period determined by the Commissioner by legislative instrument for a class of entities that includes you.

(3A) A determination under paragraph (1)(c) may specify different periods for different classes of entities.

37 Application

The amendment made by item 36 applies to declarations made on or after 1 April 2004.

Division 2—Nil assessment provisions

Income Tax Assessment Act 1936

38 Paragraphs 161AA(a) and (b)

Repeal the paragraphs, substitute:

(a) its taxable income or its net income for that year of income (or that it has no taxable income or net income for that year); and

(b) the amount of the tax payable on that taxable income or net income (or that no tax is payable); and

39 Section 166

After “taxable income”, insert “(or that there is no taxable income)”.

40 Section 166

After “tax payable thereon”, insert “(or that no tax is payable)”.

41 Paragraph 166A(3)(c)

Repeal the paragraph, substitute:

(c) the Commissioner is taken to have made an assessment of the taxable income or net income (or an assessment that there is no taxable income or net income), and the tax payable on that income (or that no tax is payable), in accordance with what the taxpayer specified in the return;

42 Subsection 168(1)

After “taxable income derived”, insert “(or that there is no taxable income)”.

43 Subsection 168(1)

After “tax payable thereon”, insert “(or that no tax is payable)”.

44 Section 169

After “pay tax”, insert “(including a nil liability)”.

45 Section 169

After “such tax”, insert “(or an assessment that no tax is payable)”.

Taxation Administration Act 1953

46 Subsection 18-15(1) in Schedule 1

Repeal the subsection, substitute:

(1) A person is entitled to a credit equal to the total of the *amounts withheld from *withholding payments made to the person during an income year if an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the person for the income year.

47 Paragraph 18-20(1)(c) in Schedule 1

Repeal the paragraph, substitute:

(c) an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the person for the income year.

48 Paragraph 18-25(2)(c) in Schedule 1

Repeal the paragraph, substitute:

(c) an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the beneficiary for the income year.

49 Paragraph 18-25(4)(a) in Schedule 1

Before “tax”, insert “income”.

50 Paragraph 18-25(4)(c) in Schedule 1

Repeal the paragraph, substitute:

(c) an assessment has been made of that income tax or an assessment has been made that no income tax is payable.

51 Paragraph 18-25(6)(a) in Schedule 1

Before “tax”, insert “income”.

52 Paragraph 18-25(6)(c) in Schedule 1

Repeal the paragraph, substitute:

(c) an assessment has been made of that income tax or an assessment has been made that no income tax is payable.

53 Section 18-27 in Schedule 1

Repeal the section, substitute:

18-27 Tax credit for alienated personal services payments

A person is entitled to a credit equal to the total of the amounts paid under Division 13 in respect of amounts included in the person’s assessable income for an income year under section 86-15 of the *Income Tax Assessment Act 1997* if an assessment has been made of the income tax payable, or an assessment has been made that no income tax is payable, by the person for the income year.

54 Subsection 45-30(1) in Schedule 1

Repeal the subsection, substitute:

(1) You are entitled to a credit when the Commissioner makes an assessment of the income tax you are liable to pay for an income year or an assessment that no income tax is payable by you for an income year.

55 Subsection 45-30(3) in Schedule 1

Omit “or determination”.

56 Subsection 45-865(1) in Schedule 1

Repeal the subsection, substitute:

(1) When the Commissioner makes an assessment:

(a) of the income tax that the *head company of a *consolidated group is liable to pay for a *consolidation transitional year for the head company; or

(b) that no income tax is payable by the head company for that year;

the head company is, in addition to any credit to which it is entitled under section 45-30 for that year, entitled to a credit in relation to instalments payable by an entity that is a *subsidiary member of the group at any time during that year.

Taxation (Interest on Overpayments and Early Payments) Act 1983

57 Subsections 8K(1) and (2)

Repeal the subsections.

58 Subsection 8K(3)

Omit "(3)".

59 Application

The amendments made by this Division apply in relation to the 2004-05 year of income and later years of income.

Division 3—Other provisions

Child Support (Assessment) Act 1989

60 Subsection 56(3)

Omit "subsection 170(2) (Amendment of assessments because of tax avoidance) of the *Income Tax Assessment Act 1936*", substitute "subsection 170(1) (amendment of assessments) of the *Income Tax Assessment Act 1936* to increase the person's taxable income".

61 Application

The amendment made by item 60 applies in relation to assessments for the 2004-05 year of income and later years of income.

Income Tax Assessment Act 1936

62 Subsection 128TE(5)

Omit "170,".

63 Subsection 159GZZZZH(4)

Omit “170,”.

64 Subsection 177G(1)

Repeal the subsection.

65 Subsection 177G(2)

Omit “(2)”.

66 Paragraph 262A(4)(b)

Omit “paragraph 170(2)(b)”, substitute “section 170”.

67 Paragraph 262A(4)(b)

Omit “by virtue of an order of the Federal Court of Australia made under subsection 170(4A) or the consent of the person given under subsection 170(4B)”, substitute “under subsection 170(7)”.

68 Application

The amendments made by items 66 and 67 apply in relation to assessments for the 2004-05 year of income and later years of income.

69 Paragraph 245-265(4)(b) in Schedule 2C

Omit “paragraph 170(2)(b)”, substitute “section 170”.

70 Paragraph 245-265(4)(b) in Schedule 2C

Omit “by an order of the Federal Court of Australia made under subsection 170(4A) or by the consent of the person given under subsection 170(4B)”, substitute “under subsection 170(7)”.

71 Paragraph 245-265(7)(b) in Schedule 2C

Omit “paragraph 170(2)(b)”, substitute “section 170”.

72 Paragraph 245-265(7)(b) in Schedule 2C

Omit “by an order of the Federal Court of Australia made under subsection 170(4A) or by the consent of the company given under subsection 170(4B)”, substitute “under subsection 170(7)”.

73 Application

The amendments made by items 69 to 72 apply in relation to assessments for the 2004-05 year of income and later years of income.

Income Tax (Transitional Provisions) Act 1997

74 Paragraph 830-15(2)(d)

After "*Income Tax Assessment Act 1936*", insert "(as in force before the day on which the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005* received the Royal Assent)".

Schedule 2—ATO advice

Part 1—Rulings

Taxation Administration Act 1953

1 Division 360 in Schedule 1

Repeal the Division, substitute:

Division 357—Object and common rules

Table of Subdivisions

Guide to Division 357
357-A Object of this Part
357-B Common rules for rulings

Guide to Division 357

357-1 What this Division is about

This Division sets out the object of this Part, and common rules that apply to public, private and oral rulings. (For the rules specific to each of those kinds of ruling, see Divisions 358, 359 and 360.)

A ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you.

A ruling binds the Commissioner if it applies to you and you act in accordance with it. If you do act in accordance with it and the law turns out to be less favourable to you than the ruling provides, you are protected by the ruling from any adverse consequences.

The Division also sets out some other general rules for rulings.

Subdivision 357-A—Object of this Part

Table of sections

357-5 Object of this Part

357-5 Object of this Part

(1) The object of this Part is to provide a way for you to find out the Commissioner's view about how certain laws administered by the Commissioner apply to you so that the risks to you of uncertainty when you are self assessing or working out your tax obligations or entitlements are reduced.

(2) This object is achieved by:
  (a) making advice in the form of rulings by the Commissioner available on a wide range of matters and to many taxpayers; and
  (b) ensuring that the Commissioner provides rulings in a timely manner; and
  (c) enabling the Commissioner to obtain, and make rulings based on, relevant information; and
  (d) protecting you from increases in tax and from penalties and interest where you rely on rulings; and
  (e) protecting you from decreases in entitlements where you rely on rulings; and
  (f) limiting the ways the Commissioner can alter rulings to your detriment; and
  (g) giving you protection from interest charges where you rely on other advice from the Commissioner, or on the Commissioner's general administrative practice.

Subdivision 357-B—Common rules for rulings

Table of sections

Rules for all rulings

357-50 Scope of Division
357-55 The provisions that are relevant for rulings
357-60 When rulings are binding on the Commissioner
357-65 Stopping relying on a ruling
357-70 Commissioner may apply the law if more favourable than the ruling
357-75 Inconsistent rulings
357-80 Contracts for schemes
357-85 Effect on ruling if relevant provision re-enacted
357-90 Validity of ruling not affected by formal defect

Common rules for public and private rulings

357-95 Electronic communications
357-100 Evidence

Common rules for private and oral rulings

357-105 Further information must be sought
357-110 Assumptions in making private or oral ruling
357-115 Additional information provided by applicant
357-120 Commissioner may take into account information from third parties
357-125 Applications and objections not to affect obligations and powers

Rules for all rulings

357-50 Scope of Division

This Division applies to *public rulings, *private rulings and *oral rulings.

357-55 The provisions that are relevant for rulings

Provisions of Acts and regulations of which the Commissioner has the general administration are relevant for rulings if the provisions are about any of the following:

(a) *tax;
(b) Medicare levy;
(c) fringe benefits tax;
(d) *franking tax;
(e) *withholding tax;
(f) *mining withholding tax;
(g) the administration or collection of those taxes;
(h) a grant or benefit mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000*, or the administration or payment of such a grant or benefit.

357-60 When rulings are binding on the Commissioner

(1) A ruling binds the Commissioner in relation to you (whether or not you are aware of the ruling) if:

(a) the ruling applies to you; and
(b) you rely on the ruling by acting (or omitting to act) in accordance with the ruling.

Example 1: A public ruling is expressed to apply to a class of entities in relation to a particular scheme. Tim is a member of that class of entities and he is

one of a number of taxpayers who enter into that scheme. The ruling applies to Tim.

Tim relies on the ruling by lodging an income tax return that is in accordance with the ruling.

Under the ruling, Tim's deductions in relation to the scheme are worked out to be a particular amount. Because Tim has relied on the ruling, the Commissioner must use that amount in making Tim's assessment (unless Tim stops relying on the ruling or the law is more favourable to him: see sections 357-65 and 357-70).

Example 2: Cecelia applies for, and obtains, a private ruling that, when she makes a payment in specified circumstances, she would not have to withhold an amount under a relevant provision. Cecelia makes the payment in the circumstances specified in the ruling, so the ruling applies to her.

Cecelia relies on the ruling by not withholding an amount from the payment. The Commissioner must not apply the provision in relation to Cecelia in a way that is inconsistent with the ruling (unless Cecelia stops relying on the ruling or the law is more favourable to her: see sections 357-65 and 357-70).

Note 1: A ruling about the amount of tax payable that binds the Commissioner provides protection in relation to that amount. There is no shortfall interest charge or tax shortfall penalty payable in respect of that amount as there can be no shortfall in tax payable.

Note 2: A ruling about the operation of a provision would stop applying to you if the provision is repealed, or is amended to have a different effect. However, if the provision is re-enacted and expresses the same ideas as the old provision, the ruling would still apply: see section 357-85.

(2) You may rely on the ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law. It is not necessary to do so at the first opportunity.

357-65 Stopping relying on a ruling

(1) You can stop relying on a ruling. You do this by acting (or omitting to act) in a way that is not in accordance with the ruling.

Note: There is no penalty for a shortfall resulting from failing to follow a ruling. However, there are penalties for shortfalls resulting from failing to take reasonable care, and from taking a position about a large income tax item that is not reasonably arguable: see Division 284.

(2) You may stop relying on a ruling at any time unless prevented from doing so by a time limit imposed by a *taxation law.

(3) Having stopped relying on a ruling, you may rely on the ruling again unless prevented from doing so by a time limit imposed by a *taxation law.

357-70 Commissioner may apply the law if more favourable than the ruling

(1) The Commissioner may apply a relevant provision to you in the way it would apply if you had not relied on a ruling if:

(a) doing so would produce a more favourable result for you; and

(b) the Commissioner is not prevented from doing so by a time limit imposed by a *taxation law.

(2) The Commissioner does not have a duty to consider whether to apply subsection (1) to you, whether he or she is requested to do so by you or by any other entity.

357-75 Inconsistent rulings

(1) The rules in this table have effect if:

(a) a ruling and a later ruling both apply to you; and

(b) the 2 rulings are inconsistent.

However, the rules in the table only apply to the extent of the inconsistency.

Inconsistent rulings

Item	If the earlier ruling is:	And the later inconsistent ruling is:	The result is:
1	A *public ruling	Any ruling	You may rely on either ruling.
2	A *private ruling or an *oral ruling	A private ruling or an oral ruling	If you informed the Commissioner about the existence of the earlier ruling when you applied for the later ruling, the earlier ruling is taken not to have been made. Otherwise, the later ruling is taken not to have been made.

Inconsistent rulings			
Item	**If the earlier ruling is:**	**And the later inconsistent ruling is:**	**The result is:**
3	A *private ruling or an *oral ruling	A *public ruling	The earlier ruling is taken not to have been made if, when the later ruling is made: (a) the income year or other period to which the rulings relate has not begun; and (b) the *scheme to which the rulings relate has not begun to be carried out. Otherwise, you may rely on either ruling.

(2) If 3 or more rulings apply to you and the rulings are inconsistent, apply the rules in the table to each combination of 2 rulings in the order in which they were made.

357-80 Contracts for schemes

For the purposes of this Part, if a contract requiring a *scheme has been entered into, the scheme is taken to have begun to be carried out.

357-85 Effect on ruling if relevant provision re-enacted

If:

(a) the Commissioner makes a ruling about a relevant provision (the ***old provision***); and

(b) that provision is re-enacted or remade (with or without modifications, and whether or not the old provision is repealed);

the ruling is taken also to be a ruling about that provision as re-enacted or remade (the ***new provision***), but only so far as the new provision expresses the same ideas as the old provision.

Note 1: Section 357-55 specifies the relevant provisions.

Note 2: Ideas in taxation provisions are not necessarily different just because different forms of words are used: see section 15AC of the *Acts Interpretation Act 1901* and section 1-3 of the *Income Tax Assessment Act 1997*.

357-90 Validity of ruling not affected by formal defect

The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with.

Common rules for public and private rulings

357-95 Electronic communications

A communication between the Commissioner and another entity made for the purposes of a *public ruling or *private ruling may be made electronically.

357-100 Evidence

The production of:

(a) a *public ruling or *private ruling; or

(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner, purporting to be a copy of the ruling or of a notice of withdrawal of a public ruling;

is conclusive evidence of the proper making of the ruling, or of the withdrawal of the public ruling.

Common rules for private and oral rulings

357-105 Further information must be sought

(1) If the Commissioner considers that further information is required to make a *private ruling or an *oral ruling, the Commissioner must request the applicant to give that information to him or her.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner requests further information under this section, that period is extended: see subsection 359-50(2).

(2) The Commissioner may decline to make the ruling if the applicant does not give the information to the Commissioner within a reasonable time.

Note: The Commissioner must give the applicant written reasons for declining to make a private ruling: see section 359-35.

357-110 Assumptions in making private or oral ruling

(1) If the Commissioner considers that the correctness of a *private ruling or an *oral ruling would depend on which assumptions were made about a future event or other matter, the Commissioner may:

(a) decline to make the ruling; or

(b) make such of the assumptions as the Commissioner considers to be most appropriate.

(2) Before making the ruling, the Commissioner must:

(a) tell the applicant which assumptions (if any) the Commissioner proposes to make; and

(b) give the applicant a reasonable opportunity to respond.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner tells the applicant about assumptions the Commissioner proposes to make under this section, that period is extended: see subsection 359-50(2).

357-115 Additional information provided by applicant

In considering an application for a *private ruling or an *oral ruling, the Commissioner may take into account additional information provided by the applicant after the application was made (whether in response to a request under section 357-105 or otherwise).

357-120 Commissioner may take into account information from third parties

In making a *private ruling or an *oral ruling, the Commissioner may take into account any relevant information provided by an entity other than the applicant (whenever it was provided) if the Commissioner:

(a) tells the applicant what that information is and that the Commissioner intends to take the information into account; and

(b) gives the applicant a reasonable opportunity to respond before making the ruling.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner tells the applicant about third party information under this section, that period is extended: see subsection 359-50(2).

357-125 Applications and objections not to affect obligations and powers

The fact that you have applied for a *private ruling or an *oral ruling, or have made an objection against a private ruling, does not affect:

(a) your obligation to lodge a return or do anything else; or

(b) the Commissioner's power to make or amend an assessment or do anything else.

Division 358—Public rulings

Guide to Division 358

358-1 What this Division is about

A public ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to entities generally or a class of entities.

The Commissioner must publish the ruling.

A public ruling may be withdrawn.

Note: Division 357 has some rules that relate to rulings generally.

Table of sections

Making public rulings

358-5 What is a public ruling?
358-10 Application of public rulings
358-15 When a public ruling ceases to apply

Withdrawing public rulings

358-20 Withdrawing public rulings

Making public rulings

358-5 What is a public ruling?

(1) The Commissioner may make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to:
  (a) entities generally or a class of entities; or
  (b) entities generally, or a class of entities, in relation to a class of *schemes; or
  (c) entities generally, or a class of entities, in relation to a particular scheme.

Note: Section 357-55 specifies the relevant provisions.

(2) Such a ruling may cover any matter involved in the application of the provision.

(3) Such a ruling is a ***public ruling*** if it:
  (a) is published; and
  (b) states that it is a public ruling.

(4) The Commissioner must publish notice of the making of a *public ruling in the *Gazette*.

Note: The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with: see section 357-90.

358-10 Application of public rulings

(1) A *public ruling applies from the time it is published or from such earlier or later time as is specified in the ruling.

(2) A *public ruling that relates to a *scheme does not apply to you if the scheme has begun to be carried out when the ruling is published and:
  (a) the ruling changes the Commissioner's general administrative practice; and
  (b) the ruling is less favourable to you than the practice.

358-15 When a public ruling ceases to apply

(1) A *public ruling may specify the time at which it ceases to apply.

(2) If a *public ruling does not do this, it applies until it is withdrawn.

Withdrawing public rulings

358-20 Withdrawing public rulings

(1) The Commissioner may withdraw a *public ruling, either wholly or to an extent, by publishing notice of the withdrawal.

(2) The withdrawal takes effect from the time specified in the notice. That time must not be before the time the notice is published.

(3) To the extent that a *public ruling is withdrawn, it continues to apply to *schemes to which it applied that had begun to be carried out before the withdrawal but does not apply to schemes that begin to be carried out after the withdrawal.

Note: A scheme is taken to have begun to be carried out if a contract requiring the scheme has been entered into: see section 357-80.

(4) The Commissioner must publish notice of the withdrawal of a *public ruling in the *Gazette*.

Division 359—Private rulings

Guide to Division 359

359-1 What this Division is about

A private ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you in relation to a specified scheme. Private rulings are usually made on application by you, your agent or your legal personal representative.

The Commissioner must make the ruling applied for, except in certain cases. If you are entitled to receive a ruling, you can object if the Commissioner takes too long to make it.

The Commissioner must record the ruling in writing and give a copy of it to you. The ruling must include certain details.

If you are dissatisfied with the ruling, you may object to it.

Note: Division 357 has some common rules that affect private rulings.

Table of sections

Private rulings

359-5 Private rulings
359-10 Applying for a private ruling
359-15 Private rulings to be given to applicants
359-20 Private rulings must contain certain details
359-25 Time of application of private rulings
359-30 Ruling for trustee of a trust
359-35 Dealing with applications
359-40 Valuations
359-45 Related rulings
359-50 Delays in making private rulings
359-55 Revised private rulings
359-60 Objections, reviews and appeals relating to private rulings
359-65 Commissioner may consider new information on objection
359-70 Successful objection decision alters ruling

Private rulings

359-5 Private rulings

(1) The Commissioner may, on application, make a written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to you in relation to a specified *scheme. Such a ruling is called a ***private ruling***.

Note: Section 357-55 specifies the relevant provisions.

(2) A *private ruling may cover any matter involved in the application of the provision.

359-10 Applying for a private ruling

(1) You, your *agent or your *legal personal representative may apply to the Commissioner for a *private ruling.

(2) An application for a *private ruling must be made in the *approved form.

(3) You, your *agent or your *legal personal representative may withdraw the application at any time before the ruling is made. The Commissioner must confirm the withdrawal in writing.

359-15 Private rulings to be given to applicants

The Commissioner makes a *private ruling by recording the ruling in writing and giving a copy of it to the applicant. The copy may be given electronically.

359-20 Private rulings must contain certain details

(1) A *private ruling must state that it is a private ruling.

(2) A *private ruling must identify the entity to whom it applies and specify the relevant *scheme and the relevant provision to which it relates.

Note 1: The Commissioner must tell the applicant which assumptions the Commissioner made in making the ruling: see section 357-110.

Note 2: Section 357-55 specifies the relevant provisions.

359-25 Time of application of private rulings

(1) A *private ruling may specify the time from which it begins to apply and the time at which it ceases to apply.

(2) The specified start time, or end time, may be before, when, or after the *private ruling is made and may be determined by reference to a specified event.

(3) A *private ruling that does not specify a start time applies from the time when it is made.

(4) A *private ruling that does not specify an end time ceases to apply at the end of the income year or other accounting period in which it started to apply.

359-30 Ruling for trustee of a trust

A *private ruling given to or for the trustee of a trust and relating to the affairs of the trust also applies to:

(a) the beneficiaries of the trust; and

(b) another trustee who is appointed to replace a trustee.

359-35 Dealing with applications

(1) The Commissioner must comply with an application for a *private ruling and make the ruling. However, this obligation is subject to subsections (2) and (3).

(2) The Commissioner may decline to make a *private ruling if:
  (a) the Commissioner considers that making the ruling would prejudice or unduly restrict the administration of a *taxation law; or
  (b) the matter sought to be ruled on is already being, or has been, considered by the Commissioner for you.

(3) The Commissioner may also decline to make a *private ruling if the matter sought to be ruled on is how the Commissioner would exercise a power under a relevant provision and the Commissioner has decided or decides whether or not to exercise the power.

Example: Michael applies for a private ruling on the way in which the Commissioner might exercise the Commissioner's discretion under section 255-10 (deferring the payment time). Rather than make the ruling, the Commissioner decides to defer the time at which an amount would otherwise be payable by Michael.

Note: The Commissioner may also decline to make a private ruling if:

(a) the Commissioner has requested the applicant to give further information under section 357-105 and the applicant has not given it to the Commissioner within a reasonable time; or

(b) the Commissioner considers that the correctness of a private ruling would depend on which assumptions were made about a future event or other matter (see section 357-110).

(4) The Commissioner must give the applicant written reasons for declining to make a *private ruling.

359-40 Valuations

(1) If making a *private ruling would require determining the value of any thing, the Commissioner may:
  (a) refer the valuation to a valuer; or
  (b) refer a valuation provided by the applicant to a valuer for review.

Note: The Commissioner may request further information: see section 357-105.

(2) If the Commissioner refers the valuation to a valuer, the Commissioner must tell the applicant that he or she has done so.

(3) When the valuer has completed its work in relation to the valuation, the Commissioner must tell the applicant that it has done so.

Note: The Commissioner should make a private ruling within 60 days. However, if the Commissioner refers a valuation to a valuer under this section, that period is extended: see subsection 359-50(2).

(4) The Commissioner may charge the applicant an amount in accordance with the regulations for the valuer making or reviewing the valuation.

(5) This section does not apply to a valuation of a gift or contribution for the purposes of Division 30 of the *Income Tax Assessment Act 1997*.

359-45 Related rulings

If the Commissioner is making a *private ruling (the ***first ruling***) you sought on the way in which, in the Commissioner's opinion, a relevant provision applies or would apply to you, the Commissioner may:

(a) make the first ruling a ruling on the way in which another relevant provision applies or would apply to you; or

(b) make an additional private ruling on the way in which:

(i) another relevant provision applies or would apply; or

(ii) a relevant provision applies or would apply to you in relation to a *scheme related to the scheme to which the first ruling applies.

Note: Section 357-55 specifies the relevant provisions.

359-50 Delays in making private rulings

(1) The applicant for a *private ruling may give the Commissioner a written notice requiring him or her to make the ruling if, at the end of 60 days after the application was made, the Commissioner has neither:

(a) made the ruling; nor

(b) told the applicant that the Commissioner has declined to make the ruling.

(2) The 60 day period mentioned in subsection (1) is extended in a circumstance applicable under the table by the extension period

applicable to that circumstance. If 2 or more circumstances are applicable, ignore any overlap between the periods of extension.

Extending the 60 day period

Item	If the Commissioner, during the 60 day period:	The 60 day period is extended by the number of days in this period:
1	requests further information under section 357-105	the period starting on the day the information was requested and ending on the day it is received by the Commissioner
2	tells the applicant about assumptions the Commissioner proposes to make under section 357-110	the period starting on the day the Commissioner tells the applicant and ending on the day on which the Commissioner receives the applicant's response about the assumptions
3	tells the applicant about information provided by a third party that the Commissioner proposes to take into account under section 357-120	the period starting on the day the Commissioner tells the applicant and ending on the day on which the Commissioner receives the applicant's response about the information
4	refers a valuation to a valuer under section 359-40	the period starting on the day the Commissioner tells the applicant about the referral and ending on the day on which the Commissioner tells the applicant that the valuer has completed its work in relation to the valuation

(3) The applicant may object, in the manner set out in Part IVC, against the Commissioner's failure to make the ruling if the Commissioner:

(a) does not make the ruling within 30 days of the notice under subsection (1) being given; and

(b) has not otherwise declined to make the ruling by the end of that period.

(4) The applicant must lodge with the objection a draft *private ruling.

359-55 Revised private rulings

(1) The Commissioner may make a revised *private ruling that applies to you if:

(a) the Commissioner had previously made a private ruling that applies to you; and

(b) when the Commissioner makes the revised private ruling:
(i) the *scheme to which the earlier ruling relates has not begun to be carried out; and
(ii) if the earlier ruling relates to an income year or other accounting period—that year or period has not begun.

Note: Your private ruling may be affected by a later inconsistent public ruling: see section 357-75.

(2) The Commissioner must give you a copy of the revised *private ruling. The copy may be given electronically.

(3) The Commissioner may make the revised *private ruling in the circumstances mentioned in paragraph (1)(b) whether or not there is an application for the revised ruling.

(4) When the revised *private ruling is made, the ruling in its initial form stops applying to you.

359-60 Objections, reviews and appeals relating to private rulings

(1) You may object against a *private ruling that applies to you in the manner set out in Part IVC if you are dissatisfied with it.

(2) The ruling is taken to be a taxation decision (within the meaning of that Part).

(3) However, you cannot object against a *private ruling if:
(a) there is an assessment for you for the income year or other accounting period to which the ruling relates; or
(b) the ruling relates to *withholding tax or *mining withholding tax that has become due and payable.

359-65 Commissioner may consider new information on objection

(1) In deciding whether to allow (wholly or in part), or to disallow, an objection under Part IVC against a *private ruling, the Commissioner may consider any additional information that the Commissioner did not consider when making the ruling.

(2) For information you do not have, the Commissioner must tell you what the information is and give you a reasonable opportunity to respond before allowing or disallowing the objection.

(3) However, if the Commissioner considers that the additional information is such that the *scheme to which the application

related is materially different from the scheme to which the ruling relates:

(a) the Commissioner must request the applicant to make an application for another *private ruling; and

(b) the objection is taken not to have been made.

359-70 Successful objection decision alters ruling

A *private ruling has effect as altered by an objection decision (within the meaning of Part IVC) made by the Commissioner if:

(a) the Commissioner made the decision allowing, wholly or in part, a taxation objection (within the meaning of that Part) against the ruling; and

(b) the period in which an appeal against, or an application for the review of, the decision may be made has ended without such an appeal or application being made.

Note: See sections 14ZZC and 14ZZN for the time limits.

Division 360—Oral rulings

Guide to Division 360

360-1 What this Division is about

An oral ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies, or would apply, to you. Oral rulings are given on oral application by you or your legal personal representative.

Oral rulings can only be given for individuals.

The Commissioner must give the ruling unless he or she considers that the advice you are seeking relates to a business matter or a complex matter.

The Commissioner must give the ruling orally and must give you a registration identifier for the ruling.

Note: Division 357 has some common rules that affect oral rulings.

Table of sections

Oral rulings

360-5 Applying for and making of oral rulings
360-10 Withdrawing an application for an oral ruling
360-15 Commissioner determinations

Oral rulings

360-5 Applying for and making of oral rulings

(1) If you are an individual, you or your *legal personal representative may apply to the Commissioner for advice on the way in which the Commissioner considers a relevant provision applies or would apply to you in relation to a specified *scheme.

Note: Section 357-55 specifies the relevant provisions.

(2) An application under this section must be made orally and in the manner determined under section 360-15.

(3) The Commissioner must give you or your *legal personal representative that advice unless:

(a) the Commissioner considers that the advice sought relates to a *business matter or a complex matter; or

(b) the matter sought to be ruled on is already being, or has been, considered by the Commissioner for you.

That advice is an ***oral ruling***.

Note: The Commissioner may also decline to make an oral ruling if:

(a) the Commissioner has requested you to give further information under section 357-105 and you have not given it to the Commissioner; or

(b) the Commissioner considers that the correctness of an oral ruling would depend on which assumptions were made about a future event or other matter (see section 357-110).

(4) The Commissioner must give that advice orally and in the manner determined under section 360-15. That advice must include a registration identifier for the ruling.

Note: The Commissioner must tell you which assumptions the Commissioner made in making the ruling: see section 357-110.

(5) You are not entitled to receive a written record of that advice.

Note: However, you may be able to apply for a private ruling on the matter under Division 359.

360-10 Withdrawing an application for an oral ruling

(1) You or your *legal personal representative may withdraw an application under section 360-5 before the Commissioner makes the *oral ruling.

(2) The withdrawal must be done orally and in the manner determined under section 360-15.

360-15 Commissioner determinations

The Commissioner must, by writing, determine:

(a) the manner in which oral applications are to be made under section 360-5 or are to be withdrawn; and

(b) the manner in which the Commissioner is to give oral advice under that section.

Division 361—Non-ruling advice and general administrative practice

Table of sections

361-5 Non-ruling advice and general administrative practice

361-5 Non-ruling advice and general administrative practice

(1) You are not liable to pay the *general interest charge or the *shortfall interest charge under a relevant provision to the extent that the charge would relate to a *shortfall amount or a *scheme shortfall amount that was caused by:

(a) you reasonably relying in good faith on:

(i) advice (other than a ruling) given to you or your *agent by the Commissioner; or

(ii) a statement in a publication approved in writing by the Commissioner;

unless the advice, or the statement or publication, is labelled as non-binding; or

(b) you reasonably relying in good faith on the Commissioner's general administrative practice.

Note 1: Section 357-55 specifies the relevant provisions.

Note 2: Section 284-215 also provides protection from administrative penalties for similar reliance on advice, statements or general administrative practice.

(2) However, subsection (1) does not apply to any *general interest charge accruing more than 21 days after the Commissioner notifies you of the correct position.

(3) Ignore the operation of section 284-215 in applying subsection (1).

Part 2—Consequential amendments

Fringe Benefits Tax Assessment Act 1986

2 Sections 74A to 74F

Repeal the sections.

Higher Education Support Act 2003

3 Clause 1 of Schedule 1 (definition of *income tax law*)

Omit "section 14ZAAA of the *Taxation Administration Act 1953*", substitute "subsection 995-1(1) of the *Income Tax Assessment Act 1997*".

Income Tax Assessment Act 1936

4 Paragraph 169A(2)(b)

Omit "Part IVAA of", substitute "Division 359 in Schedule 1 to".

5 Sections 170BA to 170BI

Repeal the sections.

Income Tax Assessment Act 1997

6 Subsection 1-3(2) (note)

Omit "sections 14ZAAM and 14ZAXA of", substitute "section 357-85 in Schedule 1 to".

7 Subsection 995-1(1) (definition of *Commissioner assessment*)

Repeal the definition.

8 Subsection 995-1(1) (definition of *fringe benefits tax law*)

Repeal the definition, substitute:

> ***fringe benefits tax law*** means a provision of an Act or regulations under which the extent of liability for tax imposed by the *Fringe Benefits Tax Act 1986* is worked out.

9 Subsection 995-1(1) (definition of *income tax law*)

Repeal the definition, substitute:

> ***income tax law*** means a provision of an Act or regulations under which is worked out the extent of liability for:
> (a) *tax; or
> (b) Medicare levy; or
> (c) *franking tax; or
> (d) *withholding tax; or
> (e) *mining withholding tax.

10 Subsection 995-1(1) (definition of *oral ruling*)

Repeal the definition, substitute:

> ***oral ruling*** has the meaning given by section 360-5 in Schedule 1 to the *Taxation Administration Act 1953*.

11 Subsection 995-1(1) (definition of *oral ruling arrangement*)

Repeal the definition.

12 Subsection 995-1(1) (definition of *private ruling*)

Omit “14ZAA of”, substitute “359-5 in Schedule 1 to”.

13 Subsection 995-1(1)

Insert:

> ***public ruling*** has the meaning given by section 358-5 in Schedule 1 to the *Taxation Administration Act 1953*.

14 Subsection 995-1(1) (definition of *self assessment*)

Repeal the definition, substitute:

> ***self assessment*** means an assessment:
> (a) for the making of which the Commissioner wholly accepts statements of the taxpayer; or
> (b) that, under section 166A of the *Income Tax Assessment Act 1936* or a provision of another law, is taken to have been made by the Commissioner.

Product Grants and Benefits Administration Act 2000

15 Part 4A

Repeal the Part.

Taxation Administration Act 1953

16 Parts IVAAA and IVAA

Repeal the Parts.

17 Subsection 14ZL(1)

After "or decision", insert ", or with a failure to make a private ruling,".

18 Section 14ZQ (definition of *private ruling*)

Omit "14ZAA", substitute "Division 359 in Schedule 1".

19 At the end of section 14ZU

Add:

Note: A person who objects against the Commissioner's failure to make a private ruling must lodge a draft private ruling with the objection: see subsection 359-50(4).

20 After paragraph 14ZW(1)(b)

Insert:

(ba) if the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling—60 days after the end of the period of 30 days referred to in that subsection; or

21 Subsection 14ZY(1)

Omit "If", substitute "Subject to subsection (1A), if".

22 After subsection 14ZY(1)

Insert:

(1A) If the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling, the Commissioner must:

(a) make a private ruling in the same terms as the draft ruling lodged with the objection; or

(b) make a different private ruling.

23 Subsection 14ZYA(1)

After "taxation objection" (first occurring), insert "(other than one under subsection 359-50(3) in Schedule 1)".

24 After section 14ZYA

Insert:

14ZYB Requiring Commissioner to make a private ruling

(1) This section applies if the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling and the Commissioner has not made an objection decision by the end of 60 days after the later of these days:

(a) the day on which the taxation objection was lodged with the Commissioner;

(b) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision was made.

(2) The Commissioner is taken, at the end of that 60 day period, to have disallowed the objection.

25 Section 14ZZ

After "objection decision" (first occurring), insert "(including a decision under paragraph 14ZY(1A)(b) to make a different private ruling)".

26 Sections 15AA and 15AB

Repeal the sections.

27 Paragraph 284-15(3)(d) in Schedule 1

Repeal the paragraph, substitute:

(d) a *public ruling.

Part 3—Transitional

28 Definition of *commencement day*

In this Part:

commencement day means the later of:

(a) the day on which this Act receives the Royal Assent; and

(b) 1 January 2006.

29 Status of existing rulings

(1) A public ruling in force immediately before the commencement day under Part IVAAA of the *Taxation Administration Act 1953* has effect, on and after that day, as if it were a public ruling made under Division 358 in Schedule 1 to that Act as amended by this Act.

(2) A private ruling in force immediately before the commencement day under Part IVAA of the *Taxation Administration Act 1953* has effect, on and after that day, as if it were a private ruling made under Division 359 in Schedule 1 to that Act as amended by this Act.

(3) An oral ruling in force immediately before the commencement day under Division 360 in Schedule 1 to the *Taxation Administration Act 1953* has effect, on and after that day, as if it were an oral ruling made under Division 360 in Schedule 1 to that Act as amended by this Act.

(4) A ruling to which this item applies is taken to have been made on the day on which it was originally made.

30 Inconsistent rulings

(1) The rules in the table in subsection 357-75(1) in Schedule 1 to the *Taxation Administration Act 1953* do not apply to work out the effect of 2 inconsistent rulings if both of them were originally made before the commencement day.

(2) Instead, the inconsistency rules that existed immediately before the commencement day are to be applied.

Note: See former sections 170BC to 170BDC of the *Income Tax Assessment Act 1936* for the old inconsistency rules.

31 Pending applications

(1) An application for a private ruling or an oral ruling under the *Taxation Administration Act 1953* made before the commencement day and not decided before that day has effect on and after that day as if it were an application for a private ruling under Division 359, or for an oral ruling under Division 360, in Schedule 1 to that Act as amended by this Act.

(2) The application is taken to have been made on the day on which it was originally made.

Part 4—Application

32 Application

The amendments made by this Schedule apply to things done on or after the later of:

(a) the day on which this Act receives the Royal Assent; and

(b) 1 January 2006.

[*Minister's second reading speech made in—*
House of Representatives on 10 November 2005
Senate on 7 December 2005]

(180/05)