Tax Laws Amendment (2006 Measures No. 3) Act 2006

No. 80, 2006

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

Contents

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[*Assented to 30 June 2006*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2006 Measures No. 3) Act 2006*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 June 2006
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent.	30 June 2006
3. Schedule 3	Immediately after the provision(s) covered by table item 2.	
4. Schedule 4, Parts 1 and 2	The day on which this Act receives the Royal Assent.	30 June 2006
5. Schedule 4, Part 3	30 June 2002.	30 June 2002
6. Schedule 4, Part 4	The day on which this Act receives the Royal Assent.	30 June 2006
7. Schedules 5 to 9	The day on which this Act receives the Royal Assent.	30 June 2006
8. Schedule 10	1 July 2005.	1 July 2005
9. Schedule 11, items 1 and 2	The day on which this Act receives the Royal Assent.	30 June 2006

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
10. Schedule 11, item 3	The later of: (a) immediately after the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 42 of Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2006*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
11. Schedule 11, items 4 to 24	The day on which this Act receives the Royal Assent.	30 June 2006
12. Schedule 12	The day on which this Act receives the Royal Assent.	30 June 2006
13. Schedule 13	Immediately after the commencement of the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*.	19 December 2005
14. Schedules 14 and 15	The day on which this Act receives the Royal Assent.	30 June 2006

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

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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

Schedule 1—Cyclone Larry and Cyclone Monica income support payments

Income Tax Assessment Act 1936

1 Subsection 160AAA(1) (at the end of the definition of *rebatable benefit*)

Add:

; or (e) paid by way of income support to farmers and small business owners affected by Cyclone Larry or Cyclone Monica.

Income Tax Assessment Act 1997

2 Section 13-1 (after table item headed "corporate unit trusts")

Insert:

Cyclone Larry or Cyclone Monica income support payment

see *social security and other benefit payments*

3 Section 13-1 (table item headed "social security and other benefit payments")

After:

children, assistance for isolated	**160AAA(3)**

insert:

Cyclone Larry or Cyclone Monica income support payment	**160AAA(3)**

4 Application

The amendments made by this Schedule apply to the 2005-06, 2006-07 and 2007-08 income years.

Schedule 2—Non-assessable, non-exempt income relating to Cyclones Larry and Monica

1 Certain Commonwealth payments relating to Cyclones Larry and Monica are non-assessable, non-exempt income

(1) Each of the following payments that you receive from the Commonwealth in your 2005-06 or 2006-07 income year is not assessable income and is not exempt income:

(a) a payment associated with what is known as the Cyclone Larry Business Assistance Fund and made because your business was adversely affected by Cyclone Larry;

(b) a payment known as fuel excise relief and connected with your use of fuel to generate electricity for your business while supply of electricity through the grid to your business was disrupted as a result of Cyclone Larry;

(c) a payment associated with what is known as the Cyclone Larry Business Assistance Fund, or with what is known as the Cyclones Monica and Larry Business Assistance Fund, and made because your business was adversely affected by flooding due to the combined impacts of Cyclones Monica and Larry.

Note: This item does not deal with payments of income support to farmers and small business owners affected by Cyclone Larry or Cyclone Monica that are rebatable benefits under section 160AAA of the *Income Tax Assessment Act 1936*.

(2) A term used in this item and in the *Income Tax Assessment Act 1997* has the same meaning in this item as it has in that Act.

Schedule 3—Interim income support payments

Income Tax Assessment Act 1936

1 Subsection 160AAA(1) (at the end of the definition of *rebatable benefit*)

Add:

; or (f) known as an interim income support payment and paid under section 33 of the *Financial Management and Accountability Act 1997*.

Income Tax Assessment Act 1997

2 Section 13-1 (after table item headed "interest")

Insert:

interim income support payment

see *social security* and *other benefit payments*

3 Section 13-1 (table item headed "primary production")

After:

farm household support see *social security and other benefit payments*

insert:

interim income support payments see *social security and other benefit payments*

4 Section 13-1 (table item headed "social security and other benefit payments")

After:

farm household support under the *Farm Household Support Act 1992* ..... **160AAA(3)**

insert:

interim income support payment ..... **160AAA(3)**

5 Application

The amendments made by this Schedule apply to payments received in the 2005-06 income year and later income years.

Schedule 4—Simplified imputation system (share capital tainting rules)

Part 1—The rewritten share capital tainting rules

Division 1—Amendment

Income Tax Assessment Act 1997

1 At the end of Part 3-5

Add:

Division 197—Tainted share capital accounts

Table of Subdivisions

Guide to Division 197

197-1 What this Division is about

This Division:

(a) applies to certain amounts transferred to a company's share capital account (see Subdivision 197-A); and

(b) provides for a franking debit to arise if such an amount is transferred to the share capital account (see Subdivision 197-B); and

(c) provides for the tainting of the share capital account if such an amount is transferred, for how the account may be untainted, and for consequences that flow from untainting the account (see Subdivision 197-C).

Subdivision 197-A—What transfers into a company's share capital account does this Division apply to?

Table of sections

197-5 Division generally applies to an amount transferred to share capital account from another account

(1) Subject to subsection (2), this Division applies to an amount (the ***transferred amount***) that is transferred to a company's *share capital account from another of the company's accounts, if the company was an Australian resident immediately before the time of the transfer.

Note: If a company has 2 or more share capital accounts, those accounts are taken to be a single account (see subsection 975-300(2)).

(2) The other provisions of this Subdivision may stop this Division from applying to some or all of the transferred amount. If those other provisions stop this Division from applying to only some of the transferred amount, this Division (other than this Subdivision) applies to the balance of the transferred amount as if only that balance of the amount had been transferred to the company's *share capital account.

197-10 Exclusion for amounts that could be identified as share capital

This Division does not apply to the transferred amount if it could, at all times before the transfer, be identified in the books of the company as an amount of share capital.

197-15 Exclusion for amounts transferred under debt/equity swaps

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the transfer is under an *arrangement under which:

(i) a person discharges, releases or otherwise extinguishes the whole or a part of a debt that the company owes to the person; and

(ii) the discharge, release or extinguishment is in return for the company issuing *shares (other than redeemable preference shares) in the company to the person; and

(b) the transfer is a credit to the *share capital account that is made because of the issue of the shares in return for the discharge, release or extinguishment of the debt.

(2) If the transferred amount exceeds the lesser of:

(a) the *market value of the *shares issued by the company; and

(b) so much of the debt as is discharged, released or extinguished in return for the shares;

subsection (1) does not stop this Division from applying to the amount of the excess.

197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies

This Division does not apply to the transferred amount if:

(a) immediately before the transfer of the amount, the company was not incorporated under the *Corporations Act 2001*; and

(b) the transfer is under, or in accordance with, a law of the Commonwealth, or of a State or Territory, that requires or allows either or both of the following to become part of the company's *share capital account:

(i) the company's share premium account;

(ii) the company's capital redemption reserve; and

(c) the transfer is made as part of a process that leads to there being no *shares in the company that have a par value; and

(d) the amount is transferred from the company's share premium account or capital redemption reserve.

197-25 Exclusion for transfers from option premium reserves

This Division does not apply to the transferred amount if:

(a) it is transferred from an option premium reserve of the company; and

(b) the transfer is because of the exercise of options to acquire *shares in the company; and

(c) premiums in respect of those options were credited to the option premium reserve.

197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the amount is transferred in connection with a demutualisation of the company; and

(b) Division 326 in Schedule 2H to the *Income Tax Assessment Act 1936* applies to the demutualisation; and

(c) the transfer occurs within the limitation period in relation to the demutualisation (see subsection 326-20(3) in that Schedule).

(2) If the sum of:

(a) the transferred amount; and

(b) any other amounts that were previously transferred to the company's *share capital account, from another account of the company, in connection with the demutualisation;

exceeds the total capital contributions amount described in whichever of subsections (3) and (4) applies, subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the company's share capital account in connection with the demutualisation, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) If the company was not formed by the merger of 2 or more mutual entities, the ***total capital contributions amount*** referred to in subsection (2) is the sum of all the capital amounts:

(a) that were contributed to the company by *members of the company before its demutualisation; and

(b) in respect of which deductions are not allowable to the members; and

(c) that were not payments for goods or services provided by the company.

(4) If the company was formed by the merger of 2 or more mutual entities, the ***total capital contributions amount*** referred to in subsection (2) is the sum of:

(a) all the capital amounts:

(i) that were contributed to the company, before its demutualisation, by persons who became *members of the company at or after the time when the merger took place; and

(ii) in respect of which deductions are not allowable to those members; and

(iii) that were not payments for goods or services provided by the company; and

(b) the *market values, at the time of the merger, of the entities that merged to form the company, as determined by a qualified valuer.

197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the amount is transferred in connection with the demutualisation of a company; and

(b) the demutualisation is implemented in accordance with a demutualisation method specified in Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and

(c) the transfer occurs within the listing period in relation to the demutualisation (see subsection 121AE(6) of that Act); and

(d) the company (the ***issuing company***) to whose *share capital account the amount is transferred is:

(i) if the demutualisation method is the method specified in section 121AF or 121AG of the *Income Tax Assessment Act 1936*—the demutualising company; or

(ii) if the demutualisation method is the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—the company issuing the ordinary shares referred to in that section.

(2) If the sum of:

(a) the transferred amount; and

(b) all amounts that were previously transferred to the issuing company's *share capital account, from another account of the company, in connection with the demutualisation; and

(c) all amounts that were previously transferred to the issuing company's retained profit account in connection with the demutualisation;

exceeds the listing day company valuation amount (see subsection (3)), subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the issuing company's share capital account, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) The ***listing day company valuation amount*** has the same meaning as it has for the purposes of table 1 in section 121AS of the *Income Tax Assessment Act 1936*, as that table applies in relation to the demutualising company (see note 3 to that table).

197-40 Exclusion for post-demutualisation transfers relating to life insurance companies

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) a *life insurance company (the ***demutualised company***) has demutualised; and

(b) the demutualisation was implemented in accordance with a demutualisation method specified in Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and

(c) the amount is transferred after the end of the listing period in relation to the demutualisation (see subsection 121AE(6) of that Act); and

(d) the company transferring the amount to its *share capital account is either:

(i) the demutualised company (whichever demutualisation method was used); or

(ii) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—the company (the ***issuing company***) that issued the ordinary shares referred to in that section; and

(e) if subparagraph (d)(i) applies—the following conditions are satisfied in relation to the transferred amount:

(i) the amount is transferred from an account of the demutualised company consisting of shareholders' capital (within the meaning of the *Life Insurance Act 1995*) in relation to a statutory fund (within the meaning of that Act);

(ii) the amount was part of such an account at the time of the demutualisation; and

(f) if subparagraph (d)(ii) applies—the amount is transferred from a capital reserve created at the time of or in connection with the demutualisation.

(2) If the sum of:

(a) the transferred amount; and

(b) all amounts that were previously transferred to the demutualised company's *share capital account, from another account of the demutualised company, as described in subsection (1); and

(c) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—all amounts that were previously transferred to the issuing company's share capital account, from another account of the issuing company, as described in subsection (1); and

(d) all amounts that were previously transferred, in connection with the demutualisation, to the share capital account of the issuing company (within the meaning of section 197-35) as described in subsection 197-35(1), or to its retained profit account as described in paragraph 197-35(2)(c);

exceeds the listing day company valuation amount (see subsection (3)), subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the share capital account of the demutualised company or the issuing company, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) The ***listing day company valuation amount*** has the same meaning as it has for the purposes of table 1 in section 121AS of the *Income Tax Assessment Act 1936*, as that table applies in relation to the demutualised company (see note 3 to that table).

Subdivision 197-B—Consequence of transfer: franking debit arises

Table of sections

197-45 A franking debit arises in relation to the transfer

(1) A *franking debit arises in a company's *franking account if an amount (the ***transferred amount***) to which this Division applies is transferred to the company's *share capital account. The debit arises immediately before the end of the *franking period in which the transfer of the amount occurs.

(2) The amount of the *franking debit is calculated in accordance with the formula:

$$\text{Transferred amount} \times \left(\frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right) \times \text{Applicable franking percentage}$$

where:

applicable franking percentage means:

(a) if, before the debit arises, the *benchmark franking percentage for the *franking period in which the transfer of the amount occurs has already been set by section 203-30—that percentage; or

(b) otherwise—100%.

Subdivision 197-C—Consequence of transfer: tainting of share capital account

Table of sections

197-50 The share capital account becomes tainted (if it is not already tainted)

(1) A company's *share capital account becomes ***tainted*** when an amount to which this Division applies is transferred to the account, if, at the time of the transfer, the account is not already tainted (because of the application of this section in relation to a previous transfer).

Note: If a company's share capital account is tainted, then a distribution from the account is taxed as a dividend in the hands of the shareholder. This is because a tainted share capital account does not count as a share capital account for the purposes of paragraph (d) of the definition of ***dividend*** in subsection 6(1) of the *Income Tax Assessment Act 1936* (see subsection 6D(3) of that Act). However, although the distribution is taxed as a dividend, the company cannot pass on to the shareholder the benefit of the tax it has paid, because a distribution from a share capital account (whether or not tainted) is not frankable (see subsections 46M(1), (3) and (4) of that Act).

(2) The *share capital account remains ***tainted*** until the company chooses to untaint the account (see section 197-55).

Note: If, after a choice to untaint is made, the company's share capital account becomes tainted again, the account remains tainted until a fresh choice to untaint is made.

(3) The ***tainting amount***, for a company's *share capital account that is *tainted at a particular time, means the sum of:

(a) the amount transferred to the company's share capital account that most recently caused the account to become tainted; and

(b) any other amounts to which this Division applies that have been transferred to the company's share capital account since the transfer referred to in paragraph (a) and before the particular time.

197-55 Choosing to untaint a tainted share capital account

(1) A company with a *share capital account that is *tainted may make a choice in the *approved form given to the Commissioner to untaint the account.

(2) The choice can be made at any time, but cannot be revoked.

Note: The choice has no effect in relation to a subsequent tainting of the share capital account that occurs after the choice is made.

197-60 Choosing to untaint—liability to untainting tax

Definitions

(1) For the purpose of this section:

(a) a company whose *share capital account is *tainted is a ***company with only lower tax members in relation to the tainting period*** if, throughout the tainting period, all *members of the company were covered by one, or a combination of 2 or more, of the following subparagraphs:

(i) other companies;

(ii) *complying superannuation entities;

(iii) foreign residents; and

(b) a company whose share capital account is tainted is a ***company with higher tax members in relation to the tainting period*** if it is not a company with only lower tax members in relation to the tainting period.

For this purpose, the ***tainting period*** is the period beginning when the share capital account most recently became tainted and ending when the company chooses to untaint the account.

Liability to untainting tax

(2) A company that chooses to untaint its *share capital account is liable to pay tax, known as ***untainting tax***, equal to the amount calculated in accordance with the formula:

$$\text{Applicable tax amount} - \left(\text{Section 197-45 franking debits} + \text{Section 197-65 franking debits} \right)$$

where:

applicable tax amount has the meaning given by subsection (3).

section 197-45 franking debits means the total *franking debits arising under section 197-45 because of the transfer of the amounts that made up the *tainting amount at the time of the choice.

section 197-65 franking debits means the total (if any) *franking debits arising under section 197-65 because of the choice to untaint.

Note: The payment of untainting tax does not give rise to a franking credit.

(3) In subsection (2), the ***applicable tax amount*** is the amount calculated in accordance with the formula:

$$\left(\text{*Tainting amount at time of choice to untaint} + \text{Notional franking amount} \right) \times \text{Applicable tax rate}$$

where:

applicable tax rate means:

(a) for a company with only lower tax members in relation to the tainting period—the *corporate tax rate; or

(b) for a company with higher tax members in relation to the tainting period—the sum of:

(i) the maximum rate specified in column 2 of the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* that applies for the income year in which the choice is made; and

(ii) 2.5%.

Note: The 2.5% referred to in subparagraph (b)(ii) relates to rates of Medicare levy and surcharge.

notional franking amount has the meaning given by subsection (4).

(4) In subsection (3), the ***notional franking amount*** is the amount calculated in accordance with the formula:

$$\text{*Tainting amount at time of choice to untaint} \times \left(\frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right)$$

197-65 Choosing to untaint—further franking debits may arise

When this section applies

(1) This section applies if:

(a) a company chooses to untaint its *share capital account; and

(b) the applicable franking percentage (within the meaning of subsection (3)) is higher than the percentage that was the *benchmark franking percentage in relation to the *franking period in which the transfer of an amount (the ***transferred amount***) that is, or is part of, the *tainting amount occurred.

Note: If paragraph (b) is satisfied in relation to 2 or more amounts, this section is to be applied separately in relation to each of those amounts (so a separate franking debit will arise in relation to each of those amounts).

Franking debit arises in relation to making the choice

(2) A *franking debit arises in the company's *franking account in relation to the transferred amount. The debit arises immediately before the end of the *franking period in which the choice to untaint is made.

(3) The amount of the *franking debit is the amount by which the amount calculated in accordance with the following formula exceeds the amount of the franking debit that arose under section 197-45 in relation to the transferred amount:

$$\text{Transferred amount} \times \left(\frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right) \times \text{Applicable franking percentage}$$

where:

applicable franking percentage means:

(a) if, before the debit arises, the *benchmark franking percentage for the *franking period in which the choice to untaint is made has already been set by section 203-30—that percentage; or

(b) otherwise—100%.

197-70 Due date for payment of untainting tax

*Untainting tax is due and payable at the end of 21 days after the end of the *franking period in which the choice to untaint was made.

Note: For provisions about collection and recovery of untainting tax, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

197-75 General interest charge for late payment of untainting tax

If any of the *untainting tax that a company is liable to pay remains unpaid 60 days after the day by which it is due to be paid, the company is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(a) started at the beginning of the 60th day after the day by which the untainting tax was due to be paid; and

(b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the untainting tax;

(ii) general interest charge on any of the untainting tax.

197-80 Notice of liability to pay untainting tax

(1) The Commissioner may give a company, by post or otherwise, a notice specifying:

(a) the amount of any *untainting tax that the Commissioner has ascertained is payable by the company; and

(b) the day on which that tax became or will become due and payable.

Effect of notice on liability etc.

(2) Subject to section 197-85, the amount of the liability of a company to *untainting tax, and the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice.

Amendment of notice

(3) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

Inconsistency between notices

(4) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

Objections

(5) A company that is dissatisfied with a notice made in relation to the company may object against the notice in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

197-85 Evidentiary effect of notice of liability to pay untainting tax

(1) The production of:

(a) a notice given under section 197-80; or

(b) a document that is signed by the Commissioner and appears to be a copy of such a notice;

is conclusive evidence that:

(c) the notice was duly given; and

(d) the amount of *untainting tax specified in the notice became due and payable by the company to which it was given on the day specified in the notice.

(2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

Division 2—Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

2 At the end of Part 3-5

Add:

Division 197—Tainted share capital accounts

Table of Subdivisions

Subdivision 197-A—Definitions

Table of sections

197-1 Definitions

In this Part:

introduction day means the day on which the Bill for the Act that added this Division was introduced into the Parliament.

new Division 197 means Division 197 of the *Income Tax Assessment Act 1997*.

old Division 7B means Division 7B of Part IIIAA of the *Income Tax Assessment Act 1936*.

old Division 7B close-off day means 1 July 2002.

Subdivision 197-B—General application provision

Table of sections

197-5 Application of new Division 197

Subject to Subdivision 197-C of this Division, new Division 197 applies to transfers made into a company's share capital account after the introduction day.

Subdivision 197-C—Special provisions about companies whose share capital accounts were tainted when old Division 7B was closed off

Table of sections

197-10 Subdivision applies to companies whose share capital accounts were tainted when old Division 7B was closed off

This Subdivision applies to a company if, immediately before the old Division 7B close-off day, the company's share capital account was tainted under old Division 7B.

197-15 Account taken to have ceased to be tainted when old Division 7B was closed off

(1) The company's share capital account is taken to have ceased to be tainted under old Division 7B at the start of the Division 7B close-off day.

(2) No liability to untainting tax, and no franking debit, arises under old Division 7B in relation to the share capital account being taken to have ceased to be tainted.

197-20 After introduction day, account taken to have become tainted under new Division 197 to extent of previous tainting

(1) Immediately after the introduction day, the company's share capital account is taken to become tainted under new Division 197 as if:

(a) the company had, at that time, transferred an amount (the ***notionally transferred amount***) to its share capital account from another of its accounts that equalled the tainting amount (the ***old Division 7B tainting amount***), within the meaning of

old Division 7B, in relation to the share capital account immediately before the old Division 7B close-off day; and

(b) none of the exclusions in sections 197-10 to 197-40 of new Division 197 applied, to any extent, in relation to the notionally transferred amount.

(2) No franking debit arises under Subdivision 197-B of new Division 197 in relation to the notionally transferred amount.

197-25 Special provisions if company chooses to untaint after introduction day

(1) This section applies if, after the introduction day, the company chooses under section 197-55 of new Division 197 to untaint its share capital account.

Working out the amount of section 197-60 untainting tax

(2) For the purpose of section 197-60 of new Division 197, the ***tainting amount*** at the time of the choice to untaint is taken to consist of:

(a) the amounts (the ***old Division 7B tainting amount components***) that made up the old Division 7B tainting amount; and

(b) any amounts to which new Division 197 applies that have been transferred to the company's share capital account since the introduction day and before the choice to untaint is made.

Note 1: The company will not be liable to untainting tax if it is covered by subsection (5).

Note 2: If the company is covered by subsection (6), the old Division 7B tainting amount components will not be included in the tainting amount for the purpose of section 197-60.

(3) For the purpose of section 197-60 of new Division 197, a reference to the section 197-45 franking debit that arose in relation to an old Division 7B tainting amount component is taken to be a reference to the tax-paid-basis franking debit amount in relation to that component (see subsection (4)).

(4) For the purpose of subsection (3), the ***tax-paid-basis franking debit amount***, in relation to an old Division 7B tainting amount component, is the amount worked out in accordance with the formula:

$$\left(\text{Class A franking debit} \times \frac{39}{61}\right) + \left(\text{Class C franking debit} \times \frac{30}{70}\right)$$

where:

class A franking debit means the class A franking debit (if any) that arose under section 160ARDV of old Division 7B in relation to the old Division 7B tainting amount component.

class C franking debit means the class C franking debit that arose under section 160ARDQ or 160ARDV of old Division 7B in relation to the old Division 7B tainting amount component.

(5) The company is not liable to untainting tax under section 197-60 of new Division 197 in relation to the choice to untaint if:

(a) during the period from the time when the company's share capital account became tainted under old Division 7B to the time when the choice to untaint is made, the company was a company with only lower tax shareholders (as defined in subsection 197-60(1) of new Division 197); and

(b) the tainting amount for the purpose of section 197-60 of new Division 197 does not include any amounts of the kind mentioned in paragraph (2)(b) of this section.

(6) If:

(a) the tainting amount for the purpose of section 197-60 of new Division 197 consists of or includes an amount or amounts of the kind mentioned in paragraph (2)(b) of this section; and

(b) during the period from the time when the company's share capital account became tainted to the time when the amount, or the first of the amounts, referred to in paragraph (a) of this subsection was transferred into the company's share capital account, the company was a company with only lower tax shareholders (as defined in subsection 197-60(1) of new Division 197);

then, despite subsection (2) of this section, for the purpose of section 197-60 of new Division 197, the tainting amount at the time of the choice to untaint does not include the old Division 7B tainting amount components.

Working out the amount of section 197-65 franking debit

(7) For the purpose of section 197-65 of new Division 197, the ***tainting amount*** at the time of the choice to untaint is taken to consist of:

(a) the amounts (the ***old Division 7B tainting amount components***) that made up the old Division 7B tainting amount; and

(b) any amounts to which new Division 197 applies that have been transferred to the company's share capital account since the introduction day and before the choice to untaint is made.

Note: In relation to amounts described in paragraph (b), section 197-65 applies without any notional modifications.

(8) Paragraph 197-65(1)(b) of new Division 197 has effect in relation to each old Division 7B tainting amount component as if the following paragraph (the ***notionally substituted paragraph***) were substituted for it:

(b) the tax-paid-basis franking debit amount in relation to the old Division 7B tainting amount component is less than the amount calculated by the formula in subsection 197-65(3) in relation to the component.

(9) Subsection 197-65(3) of new Division 197 has effect in relation to each old Division 7B tainting amount component as if the reference to the amount of the franking debit that arose under section 197-45 in relation to the transferred amount were instead a reference to the tax-paid-basis franking debit amount in relation to the old Division 7B tainting amount component.

(10) For the purpose of the notionally substituted paragraph, and of subsection (9) of this section, the ***tax-paid-basis franking debit amount***, in relation to an old Division 7B tainting amount component, is the amount worked out in accordance with the formula:

$$\left(\text{Class A franking debit} \times \frac{39}{61}\right) + \left(\text{Class C franking debit} \times \frac{30}{70}\right)$$

where:

class A franking debit means the class A franking debit (if any) that arose under section 160ARDV of old Division 7B in relation to the old Division 7B tainting amount component.

class C franking debit means the class C franking debit that arose under section 160ARDQ or 160ARDV of old Division 7B in relation to the old Division 7B tainting amount component.

Part 2—Consequential amendments relating to rewritten share capital tainting rules

Division 1—Amendments

Income Tax Assessment Act 1936

3 Subsection 6(1)

Insert:

> ***tainted***, in relation to a company's share capital account, has the same meaning as in the *Income Tax Assessment Act 1997*.

4 Subsection 6(1) (definition of *tainting amount*)

Repeal the definition, substitute:

> ***tainting amount*** has the same meaning as in the *Income Tax Assessment Act 1997*.

Income Tax Assessment Act 1997

5 Section 205-30 (after table item 7)

Insert:

7A	a *franking debit arises under subsection 197-45(1) because an amount to which Division 197 applies is transferred to a company's *share capital account	the amount of the debit specified in subsection 197-45(2)	at the time provided by subsection 197-45(1)
7B	a *franking debit arises under subsection 197-65(2) because a company chooses to untaint its *share capital account	the amount of the debit specified in subsection 197-65(3)	at the time provided by subsection 197-65(2)

6 Subsection 721-10(2) (table item 5)

Repeal the item, substitute:

5	section 197-70 (untainting tax)	the *franking period of the *head company in which the *untainting tax became due and payable

7 Subsection 995-1(1)

Insert:

tainted: for when a company's *share capital account is ***tainted***, see subsections 197-50(1) and (2).

8 Subsection 995-1(1)

Insert:

tainting amount has the meaning given by subsection 197-50(3).

9 Subsection 995-1(1)

Insert:

untainting tax has the meaning given by subsection 197-60(2).

Taxation Administration Act 1953

10 Subsection 8AAB(4) (table item 1A)

Repeal the item.

11 Subsection 8AAB(5) (after table item 2)

Insert:

2AA	197-75	*Income Tax Assessment Act 1997*

12 Subsection 250-10(1) in Schedule 1 (table item 25)

Repeal the item.

13 Subsection 250-10(2) in Schedule 1 (before table item 38)

Insert:

37A	untainting tax	197-70	*Income Tax Assessment Act 1997*

Division 2—Application provision

14 Application of amendments

The amendments made by Division 1 apply in relation to transfers made into a company's share capital account after the day on which the Bill for this Act was introduced into the Parliament.

Part 3—Amendment of the old share capital tainting rules

Division 1—Amendments

Income Tax Assessment Act 1936

15 Paragraph 160ARDM(2)(b)

Repeal the paragraph.

16 After subsection 160ARDM(2A)

Insert:

(2B) If the transfer of an amount as mentioned in subsection (1) is a transfer under a debt/equity swap (as defined in subsection (5)), the following provisions have effect:

(a) if the transferred amount does not exceed the lesser of:

(i) the market value of the shares referred to in subsection (5); and

(ii) so much of the debt referred to in subsection (5) as is discharged, released or extinguished in return for the shares;

subsection (1) does not apply to the transferred amount;

(b) if the transferred amount exceeds the lesser of the amounts referred to in paragraph (a), subsection (1) applies only to the excess.

(2C) Subsection (1) does not apply to an amount transferred as mentioned in that subsection if:

(a) it is transferred from an option premium reserve of the company; and

(b) the transfer is because of the exercise of options to acquire shares in the company; and

(c) premiums in respect of those options were credited to the option premium reserve.

17 After subsection 160ARDM(4)

Insert:

(4A) If:

(a) an amount is transferred as mentioned in subsection (1); and

(b) the amount is transferred in connection with the demutualisation of a company; and

(c) the demutualisation is implemented in accordance with a demutualisation method specified in Division 9AA of Part III; and

(d) the transfer occurs within the listing period in relation to the demutualisation (see subsection 121AE(6)); and

(e) the company (the ***issuing company***) to whose share capital account the amount is transferred is:

(i) if the demutualisation method is the method specified in section 121AF or 121AG—the demutualising company; or

(ii) if the demutualisation method is the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL—the company issuing the ordinary shares referred to in that section;

the following provisions have effect:

(f) if the sum of:

(i) the transferred amount; and

(ii) all amounts that were previously transferred to the issuing company's share capital account, from another account of the company, in connection with the demutualisation; and

(iii) all amounts that were previously transferred to the issuing company's retained profit account in connection with the demutualisation;

does not exceed the listing day company valuation amount (as defined in subsection (6)), subsection (1) does not apply to the transferred amount;

(g) if the sum of the amounts referred to in paragraph (f) exceeds the listing day company valuation amount (as defined in subsection (6)), subsection (1) applies only to the excess.

Note: If there are several transfers of amounts to the issuing company's share capital account, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(4B) If:

(a) a life assurance company (the ***demutualised company***) has demutualised; and

(b) the demutualisation was implemented in accordance with a demutualisation method specified in Division 9AA of Part III; and

(c) an amount is transferred as mentioned in subsection (1); and

(d) the amount is transferred after the end of the listing period in relation to the demutualisation (see subsection 121AE(6)); and

(e) the company transferring the amount to its share capital account is either:

(i) the demutualised company (whichever demutualisation method was used); or

(ii) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL—the company (the ***issuing company***) that issued the ordinary shares referred to in that section; and

(f) if subparagraph (e)(i) applies—the following conditions are satisfied in relation to the transferred amount:

(i) the amount is transferred from an account of the demutualised company consisting of shareholders' capital (within the meaning of the *Life Insurance Act 1995*) in relation to a statutory fund (within the meaning of that Act);

(ii) the amount was part of such an account at the time of the demutualisation; and

(g) if subparagraph (e)(ii) applies—the amount is transferred from a capital reserve created at the time of or in connection with the demutualisation;

the following provisions have effect:

(h) if the sum of:

(i) the transferred amount; and

(ii) all amounts that were previously transferred to the demutualised company's share capital account, from another account of the demutualised company, as described in paragraphs (c) to (g); and

(iii) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL—all amounts that were previously transferred to the

issuing company's share capital account, from another account of the issuing company, as described in paragraphs (c) to (g); and

(iv) all amounts that were previously transferred, in connection with the demutualisation, to the share capital account of the issuing company (within the meaning of subsection (4A)) as described in paragraphs (4A)(b) to (e), or to its retained profit account as described in subparagraph (4A)(f)(iii);

does not exceed the listing day company valuation amount (as defined in subsection (6)), subsection (1) does not apply to the transferred amount;

(i) if the sum of the amounts referred to in paragraph (h) exceeds the listing day company valuation amount (as defined in subsection (6)), subsection (1) applies only to the excess.

Note: If there are several transfers of amounts to the share capital account of the demutualised company or the issuing company, this subsection must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

18 Subsection 160ARDM(6)

Insert:

listing day company valuation amount has the same meaning as it has for the purposes of table 1 in section 121AS, as that table applies in relation to the demutualising company referred to in subsection (4A), or the demutualised company referred to in subsection (4B), as the case requires (see note 3 to that table).

Division 2—Application provision

19 Application of amendments

The amendments made by Division 1 apply in relation to transfers of amounts made during the period starting on 1 July 1998 and ending immediately before 1 July 2002.

Part 4—Relocating the definition of share capital account

Division 1—Main amendment

Income Tax Assessment Act 1997

20 After Subdivision 975-A

Insert:

Subdivision 975-G—What is a company's share capital account?

Table of sections

975-300 Meaning of *share capital account*

(1) A company's ***share capital account*** is:

(a) an account that the company keeps of its share capital; or

(b) any other account (whether or not called a share capital account) that satisfies the following conditions:

(i) the account was created on or after 1 July 1998;

(ii) the first amount credited to the account was an amount of share capital.

(2) If a company has more than one account covered by subsection (1), the accounts are taken, for the purposes of this Act, to be a single account.

Note: Because the accounts are taken to be a single account (the ***combined share capital account***), tainting of any of the accounts has the effect of tainting the combined share capital account.

(3) However, if a company's *share capital account is *tainted, that account is taken not to be a share capital account for the purposes this Act, other than:

(a) subsection 118-20(6); and

(b) Division 197; and

(c) the definition of ***paid-up share capital*** in subsection 6(1) of the *Income Tax Assessment Act 1936*; and

(d) subsection 44(1B) of the *Income Tax Assessment Act 1936*; and

(e) section 46H of the *Income Tax Assessment Act 1936*; and

(f) subsection 159GZZZQ(5) of the *Income Tax Assessment Act 1936*.

Division 2—Consequential amendments

Income Tax Assessment Act 1936

21 Subsection 6(1) (definition of *share capital account*)

Repeal the definition, substitute:

> ***share capital account*** has the same meaning as in the *Income Tax Assessment Act 1997*.

22 Section 6D

Repeal the section.

Income Tax Assessment Act 1997

23 Paragraph 118-20(6)(a)

Omit "share capital account", substitute "*share capital account".

24 Subsection 164-15(1) (definition of *share capital account credit*)

Omit "share capital account", substitute "*share capital account".

25 Subsection 164-15(2) (definition of *share capital account credit*)

Omit "share capital account", substitute "*share capital account".

26 Subsection 164-15(4) (definition of *share capital account credit*)

Omit "share capital account", substitute "*share capital account".

27 Paragraph 974-120(2)(b)

Omit "share capital account", substitute "*share capital account".

28 Subsection 995-1(1) (definition of *paid-up share capital*)

Omit "share capital account", substitute "*share capital account".

29 Subsection 995-1(1)

Insert:

share capital account has the meaning given by section 975-300.

Division 3—Application provision

30 Application of amendments

The amendments made by Divisions 1 and 2 apply for the purpose of determining whether an account is a share capital account when applying a provision of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* in relation to a time that is after the commencement of the amendments, even if the account was in existence before that commencement.

Schedule 5—Government grants

Income Tax Assessment Act 1997

1 Subsection 118-37(2)

Repeal the subsection, substitute:

(2) A *capital gain or *capital loss is disregarded if you make it as a result of receiving a payment or property as reimbursement or payment of your expenses, or receiving or using a voucher or certificate, under:

(a) a scheme established by an *Australian government agency, a *local governing body or a *foreign government agency under an enactment or an instrument of a legislative character; or

(b) the General Practice Rural Incentives Program or the Rural and Remote General Practice Program; or

(c) the Sydney Aircraft Noise Insulation Project; or

(d) the M4/M5 Cashback Scheme; or

(e) the Unlawful Termination Assistance Scheme or the Alternative Dispute Resolution Assistance Scheme.

2 Application

The amendment made by item 1 of this Schedule applies to assessments for the 2005-06 income year and later income years.

Schedule 6—Tax offset for Medicare levy surcharge (lump sum payments in arrears)

A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999

1 At the end of subsection 10(1)

Add:

Note: Subdivision 61-L (tax offset for Medicare levy surcharge (lump sum payments in arrears)) of the *Income Tax Assessment Act 1997* might provide a tax offset for a person if Medicare levy surcharge is payable by the person.

Income Tax Assessment Act 1936

2 At the end of subsection 251S(1)

Add:

Note: Subdivision 61-L (tax offset for Medicare levy surcharge (lump sum payments in arrears)) of the *Income Tax Assessment Act 1997* might provide a tax offset for a person if Medicare levy surcharge (within the meaning of that Act) is payable by the person.

Income Tax Assessment Act 1997

3 Section 13-1 (table item headed "lump sum income arrears")

Repeal the item, substitute:

lump sum income arrears	
receipt of	**159ZRA, 159ZRB**, Subdivision 61-L

4 At the end of Division 61

Add:

Subdivision 61-L—Tax offset for Medicare levy surcharge (lump sum payments in arrears)

Guide to Subdivision 61-L

61-575 What this Subdivision is about

You may get a tax offset under this Subdivision if:

(a) Medicare levy surcharge is payable by you for the current year; and

(b) a substantial lump sum was paid to you in the current year; and

(c) the lump sum accrued in whole or in part in a previous year.

The amount of the offset is the amount of additional Medicare levy surcharge payable by you for the current year because of your lump sums and your spouse's lump sums.

Alternatively, you may get a tax offset under this Subdivision if your spouse gets a tax offset under this Subdivision. The amount of the offset is the amount of additional Medicare levy surcharge payable by you for the current year because of your spouse's lump sums.

Table of sections

Operative provisions

Operative provisions

61-580 Entitlement to a tax offset

Tax offset for MLS lump sums paid to you

(1) You are entitled to a *tax offset for the *current year if:

(a) you are an individual; and

(b) *Medicare levy surcharge is payable by you for the current year because of:

(i) section 8B, 8C or 8D of the *Medicare Levy Act 1986*; or

(ii) the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*; and

(c) your assessable income or *exempt foreign employment income for the current year includes one or more *MLS lump sums paid to you; and

(d) the total of the MLS lump sums paid to you is greater than or equal to one-eleventh of the total of the following amounts:

(i) your normal taxable income (within the meaning of section 159ZR of the *Income Tax Assessment Act 1936*) for the current year;

(ii) your exempt foreign employment income for the current year;

(iii) your *reportable fringe benefits total for the current year;

(iv) the amounts that would be included in your assessable income for the current year if, and only if, subsection 271-105(1) (family trust distribution tax) in Schedule 2F to the *Income Tax Assessment Act 1936* were ignored.

Note: The test in paragraph (d) is similar to the 10% test in paragraph 159ZRA(1)(b) of the *Income Tax Assessment Act 1936*, which also deals with a tax offset for lump sum payments in arrears.

Tax offset for MLS lump sums paid to your spouse

(2) You are also entitled to a *tax offset for the *current year if:

(a) during all or part of the current year, you were married to an individual (within the meaning of section 3 of the *Medicare Levy Act 1986* or section 7 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*); and

(b) the individual is entitled to a tax offset for the current year under subsection (1); and

(c) *Medicare levy surcharge is payable by you for the current year because of:

(i) section 8D of the *Medicare Levy Act 1986*; or

(ii) Division 4 of Part 3 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*;

(which are about Medicare Levy surcharge for individuals who are married); and

(d) you are not entitled to a tax offset for the current year under subsection (1); and

(e) less of the Medicare levy surcharge referred to in paragraph (c) would be payable by you for the current year if the *MLS lump sums paid to the individual referred to in paragraph (a) were disregarded.

61-585 The amount of a tax offset

(1) The amount of a *tax offset under subsection 61-580(1) is the amount worked out using the following formula:

$$\text{Total Medicare levy surcharge} - \begin{matrix}\text{Total non-arrears}\\ \text{Medicare levy surcharge}\end{matrix}$$

where:

total Medicare levy surcharge means the total of the *Medicare levy surcharge referred to in paragraph 61-580(1)(b) that is payable by you for the *current year.

total non-arrears Medicare levy surcharge means the amount that would be the total Medicare levy surcharge if the *MLS lump sums paid to you (and the MLS lump sums paid to the individual referred to in paragraph 61-580(2)(a)) were disregarded.

(2) The amount of a *tax offset under subsection 61-580(2) is the amount worked out using the following formula:

$$\begin{matrix}\text{Total family}\\ \text{Medicare levy surcharge}\end{matrix} - \begin{matrix}\text{Total non-arrears family}\\ \text{Medicare levy surcharge}\end{matrix}$$

where:

total family Medicare levy surcharge means the total of the *Medicare levy surcharge referred to in paragraph 61-580(2)(c) that is payable by you for the *current year.

total non-arrears family Medicare levy surcharge means the amount that would be the total family Medicare levy surcharge if the *MLS lump sums referred to in paragraph 61-580(2)(e) were disregarded.

61-590 Definition of *MLS lump sums*

Both of the following are ***MLS lump sums*** paid to an individual:

(a) a lump sum payment of eligible income (within the meaning of section 159ZR of the *Income Tax Assessment Act 1936*) that is included in the individual's assessable income for the *current year (but only to the extent that it accrued in an earlier income year);

(b) a lump sum payment that is included in the individual's *exempt foreign employment income for the current year (but only to the extent that it accrued during a period ending more than 12 months before the date on which it was paid).

5 Subsection 995-1(1)

Insert:

exempt foreign employment income means amounts that are exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936*.

6 Subsection 995-1(1)

Insert:

Medicare levy surcharge means:

(a) an amount (other than a nil amount) of Medicare levy (within the meaning of Part VIIB of the *Income Tax Assessment Act 1936*) that is payable by you only because of section 8B, 8C, 8D, 8E, 8F or 8G of the *Medicare Levy Act 1986*; or

(b) surcharge within the meaning of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

7 Subsection 995-1(1)

Insert:

MLS lump sums has the meaning given by section 61-590.

Income Tax (Transitional Provisions) Act 1997

8 After Part 2-15

Insert:

Part 2-20—Tax offsets

Division 61—Generally applicable tax offsets

Table of Subdivisions

Subdivision 61-L—Tax offset for Medicare levy surcharge (lump sum payments in arrears)

Table of Sections

61-575 Application of Subdivision 61-L of the *Income Tax Assessment Act 1997*

Subdivision 61-L (Tax offset for Medicare levy surcharge (lump sum payments in arrears)) of the Income Tax Assessment Act 1997 applies to assessments for the 2005-06 income year and later income years.

Medicare Levy Act 1986

9 At the end of section 5

Add:

Note: Subdivision 61-L (tax offset for Medicare levy surcharge (lump sum payments in arrears)) of the *Income Tax Assessment Act 1997* might provide a tax offset for a person if Medicare levy surcharge (within the meaning of that Act) is payable by the person.

Taxation Administration Act 1953

10 Section 45-340 in Schedule 1 (method statement, step 1, after paragraph (d))

Insert:

> (da) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); or

11 Section 45-375 in Schedule 1 (method statement, step 1, after paragraph (c))

Insert:

> (ca) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); or

Schedule 7—Reporting superannuation contributions

Superannuation Guarantee (Administration) Act 1992

1 Subsection 6(1)

Insert:

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

2 Subsection 6(1)

Insert:

superannuation provider has the same meaning as in the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

3 After section 77

Insert:

78 Reporting superannuation contributions

(1) A superannuation provider in relation to a fund or RSA is liable to an administrative penalty if:

(a) a person is a member of the fund (or holder of the RSA) at the end of a year; and

(b) contributions are made or transferred to the fund or RSA for the benefit of the person in the year; and

(c) the provider fails to give the Commissioner a statement in the approved form setting out the information mentioned in subsection (3) in respect of the person for the year.

(2) The amount of the penalty is 5 penalty units.

Note: Division 298 in Schedule 1 to the *Taxation Administration Act 1953* contains machinery provisions relating to administrative penalties.

(3) The regulations may specify information in relation to:

(a) the total of all contributions made by an employer to a fund or RSA for the benefit of an employee in a year; and

Note: Contributions made by an employer include contributions made on behalf of the employer (see subsection 6(2)).

(b) the total of all contributions made to a fund or RSA for the benefit of an employee in a year.

(4) The superannuation provider must give the statement to the Commissioner within the period specified in the regulations.

Note: Section 388-55 in Schedule 1 to the *Taxation Administration Act 1953* allows the Commissioner to defer the time for giving an approved form.

(5) Regulations made for the purposes of this section may specify different information and periods for different kinds of superannuation providers.

78A Reporting where contributions transferred between superannuation providers

(1) A superannuation provider in relation to a fund or RSA is liable to an administrative penalty if:

(a) the superannuation provider transfers to another superannuation provider any contributions of a kind mentioned in section 78 in relation to a member of the fund (or holder of the RSA) during a year; and

(b) the superannuation provider fails to give the other superannuation provider a statement in the approved form setting out the information mentioned in subsection (3) within 30 days after the day on which the amount is transferred.

Note: Section 388-55 in Schedule 1 to the *Taxation Administration Act 1953* allows the Commissioner to defer the time for giving an approved form.

(2) The amount of the penalty is 5 penalty units.

Note: Division 298 in Schedule 1 to the *Taxation Administration Act 1953* contains machinery provisions relating to administrative penalties.

(3) The regulations may specify information in relation to:

(a) the total of all contributions made by an employer to a fund or RSA for the benefit of an employee in a year; and

Note: Contributions made by an employer include contributions made on behalf of the employer (see subsection 6(2)).

(b) the total of all contributions made to a fund or RSA for the benefit of an employee in a year.

(4) Regulations made for the purposes of this section may specify different information and periods for different kinds of superannuation providers.

Taxation Administration Act 1953

4 Paragraph 298-5(b) in Schedule 1

Omit "Act.", substitute "Act; or".

5 At the end of section 298-5 in Schedule 1

Add:

(c) a penalty is imposed on an entity by subsection 78(1) or 78A(1) of the *Superannuation Guarantee (Administration) Act 1992*.

6 Application

(1) The amendments made by this Schedule apply in relation to financial years starting on or after 1 July 2005.

(2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, the first regulations made for the purposes of sections 78 and 78A of the *Superannuation Guarantee (Administration) Act 1992* may be expressed to take effect from 1 July 2005.

Schedule 8—Exclusion for fringe benefits to address personal security concern

Fringe Benefits Tax Assessment Act 1986

1 At the end of subsection 5E(3)

Add:

; or (l) that is provided to address a security concern:

(i) relating to the personal safety of an employee, or an associate of an employee; and

(ii) that arises in respect of the employee's employment.

2 At the end of section 5E

Add:

Security concerns relating to employees or associates

(6) A fringe benefit referred to in paragraph (3)(l) is an ***excluded fringe benefit*** only to the extent that its provision is consistent with a threat assessment in relation to the employee or associate made by a person who is recognised by:

(a) a relevant industry body or government body; or

(b) the Commissioner;

as competent to make threat assessments.

3 Application

The amendments made by this Schedule apply to the FBT year starting on 1 April 2004 and to all later FBT years.

Schedule 9—Pre-1 July 88 funding credits

Income Tax Assessment Act 1936

1 Paragraph 275B(2)(b)

Repeal the paragraph, substitute:

(b) contributions covered by subparagraph 274(1)(a)(i) paid to the fund in the year of income that are used to fund liabilities that accrued before 1 July 1988.

2 Subsection 275B(3)

Repeal the subsection, substitute:

(3) The regulations may prescribe either or both of the following:

(a) the manner in which the trustee of a superannuation fund is to work out the amount applicable to the fund under paragraph (2)(b) for a year of income;

(b) methods (other than the method specified in subsection (2)) of working out how the trustee of a superannuation fund can apply pre-1 July 88 funding credits.

(3A) Methods prescribed under paragraph (3)(b) may be applicable to particular superannuation funds or to a class or classes of superannuation funds.

3 Subsections 275B(6) and (7)

Repeal the subsections.

4 Section 275C

Repeal the section.

5 Application

The amendments made by this Schedule apply to the use, on or after 9 May 2006, of pre-1 July 88 funding credits under section 275B of the *Income Tax Assessment Act 1936*, including use on or after that day as a result of:

(a) an objection or a request for amendment lodged on or after 9 May 2006; or

(b) an objection or a request for amendment lodged before 9 May 2006 and pending on that day.

Schedule 10—Allowing certain funds to obtain an ABN

A New Tax System (Australian Business Number) Act 1999

1 At the end of subsection 38(1)

Add:

; or (h) by a trustee of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN.

2 Paragraph 38(2)(c)

After "charitable fund", insert ", or of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN".

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3 At the end of subsection 9-20(1)

Add:

; or (h) by a trustee of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN.

4 Paragraph 9-20(2)(c)

After "charitable fund", insert ", or of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN".

5 Application

The amendments made by this Schedule apply, and are taken to have applied, in relation to tax periods starting, or that started, on or after 1 July 2005.

Schedule 11—Deductible gift categories

Part 1—Amendments

Income Tax Assessment Act 1997

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

Add:

2.1.13	a public fund: (a) that is established for charitable purposes; and (b) that is established and maintained solely for providing money for scholarships, bursaries or prizes to which section 30-37 applies	see section 30-37

2 After section 30-35

Insert:

30-37 Scholarship etc. funds

For the purposes of item 2.1.13 of the table in subsection 30-25(1), a scholarship, bursary or prize is one to which this section applies if:

(a) it may only be awarded to Australian citizens, or permanent residents of Australia, within the meaning of the *Australian Citizenship Act 1948*; and

(b) it is open to individuals or groups of individuals throughout a region of at least 200,000 people, or throughout at least an entire State or Territory; and

(c) it promotes recipients' education in either or both of the following:

(i) *pre-school courses, *primary courses, *secondary courses or *tertiary courses;

(ii) educational institutions overseas, by way of study of a component of a course covered by subparagraph (i); and

(d) it is awarded on merit or for reasons of equity.

3 Paragraph 30-37(a)

Omit "*1948*", substitute "*2006*".

4 Subsection 30-45(1) (at the end of the table)

Add:

4.1.5	a public fund: (a) that is established for charitable purposes; and (b) that is established and maintained solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in Australia in distress as a result of a disaster to which subsection 30-46(1) applies	see section 30-46
4.1.6	a charitable institution whose principal activity is one or both of these: (a) providing short-term direct care to animals (but not only native wildlife) that have been lost or mistreated or are without owners; (b) rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost or mistreated or are without owners	none
4.1.7	a charitable institution that would be a public benevolent institution, but for one or both of these: (a) it also promotes the prevention or the control of diseases in human beings (but not as a principal activity); (b) it also promotes the prevention or the control of *behaviour that is harmful or abusive to human beings (but not as a principal activity)	none

5 After section 30-45

Insert:

30-46 Australian disaster relief funds

(1) For the purposes of item 4.1.5 of the table in subsection 30-45(1), a disaster is one to which this subsection applies if:

(a) it is declared to be a disaster, or it gives rise to a declaration of a state of emergency, by or with the approval of a Minister of a State or Territory under the law of the State or Territory; and

(b) it developed rapidly; and

(c) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.

(2) You can deduct a gift that you make to a public fund covered by item 4.1.5 of the table in subsection 30-45(1) only within the 2 years beginning:

(a) if the day (or the first day) on which the event occurred is specified in the declaration mentioned in paragraph (1)(a)—on that day; or

(b) otherwise—on the day of the declaration.

Note: Public funds under item 4.1.5 of the table in subsection 30-45(1) are for disaster relief of people in Australia. Public funds may also be established for disaster relief of people in other countries. See items 9.1.1 (which is not limited to disaster relief) and 9.1.2 of the table in section 30-80.

6 Subsection 30-50(1) (at the end of the table)

Add:

5.1.3	a public fund established and maintained solely for providing money to reconstruct, or make critical repairs to, a particular war memorial that: (a) is located in Australia; and (b) commemorates events in a conflict in which Australia was involved, or people who are mainly Australians and who participated on Australia's behalf in a conflict; and (c) is a focus for public commemoration of the events or people mentioned in paragraph (b); and (d) is solely or mainly used for that public commemoration	the gift must be made within the 2 years beginning on the day on which: (a) the fund; or (b) if the fund is legally owned by an entity that is endorsed for the operation of the fund—the entity;	is endorsed as a *deductible gift recipient under Subdivision 30-BA

7 Subsection 30-80(1) (table item 9.1.1)

Omit "a relief fund", substitute "a developing country relief fund".

8 Subsection 30-80(1) (at the end of the table)

Add:

9.1.2	a public fund established and maintained by a public benevolent institution solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in a country other than: (a) Australia; and (b) a country declared by the Minister for Foreign Affairs to be a developing country; who are in distress as a result of a disaster to which subsection 30-86(1) applies	see section 30-86

9 Subsection 30-85(2)

Omit "to be a relief fund", substitute "to be a developing country relief fund".

Note: The heading to section 30-85 is replaced by the heading "**Developing country relief funds**".

10 Subsection 30-85(4)

Omit "is a relief fund", substitute "is a developing country relief fund".

11 After section 30-85

Insert:

30-86 Developed country disaster relief funds

(1) For the purposes of item 9.1.2 of the table in subsection 30-80(1), a disaster is one to which this subsection applies if the Minister has recognised it as a disaster. The Minister may do so if satisfied that:

(a) it developed rapidly; and

(b) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.

(2) The Minister's recognition of an event as a disaster:

(a) must be in writing; and

(b) must specify the day (or the first day) of the event; and

(c) must be published on the Internet or by another method determined by the Minister.

(3) The Minister's recognition of an event as a disaster is not a legislative instrument.

(4) You can deduct a gift that you make to a public fund covered by item 9.1.2 of the table in subsection 30-80(1) only within the 2 years beginning on the day specified in the declaration as the day (or the first day) of the event for which the fund is to provide relief.

Note: A public fund may also be established for disaster relief of people in Australia (see item 4.1.5 of the table in section 30-45).

12 Subsection 30-315(2) (after table item 4)

Insert:

4A	Animal welfare	item 4.1.6

13 Subsection 30-315(2) (after table item 44)

Insert:

44AA	Disaster relief—public fund for relief of people in Australia	item 4.1.5
44AB	Disaster relief—public fund for relief of people in developing countries	item 9.1.1
44AC	Disaster relief—public fund for relief of people in developed countries	item 9.1.2

14 Subsection 30-315(2) (table item 44A)

Omit "item 1.1.6", substitute "items 1.1.6 and 4.1.7".

15 Subsection 30-315(2) (table item 46)

Omit "Education bodies", substitute "Education—education bodies".

16 Subsection 30-315(2) (after table item 46)

Insert:

46AA	Education—public fund for scholarships, bursaries and prizes	item 2.1.13

17 Subsection 30-315(2) (table item 53B)

Omit "item 4.1.4", substitute "items 4.1.4 and 4.1.7".

18 Subsection 30-315(2) (table item 93)

Omit "and 4.1.2", substitute ", 4.1.2 and 4.1.7".

19 Section 995-1

Insert:

pre-school course has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

20 Section 995-1

Insert:

primary course has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

21 Section 995-1

Insert:

secondary course has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

22 Section 995-1

Insert:

tertiary course has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Part 2—Application and transitional provisions

23 Application of amendments

The amendments made by this Schedule apply to gifts made on or after 1 July 2006.

24 Transitional provision for item 7

If, immediately before the commencement of item 7 of this Schedule, there is a declaration in force by the Treasurer under section 30-85 that a public fund is a relief fund, the declaration is taken to be a declaration that the public fund is a developing country relief fund.

Schedule 12—GST treatment of gift-deductible entities

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

1 Subsections 29-40(2) and (2A)

Repeal the subsections.

2 Saving provision

(1) If:

(a) you made a choice under subsection 29-40(2) of the *A New Tax System (Goods and Services Tax) Act 1999*; and

(b) the choice was in force immediately before the start of the first tax period applying to you that is a tax period referred to in item 16 of this Schedule;

the choice continues in force after the start of that tax period as if it had been made under section 157-5 of that Act as amended by this Act.

(2) However, this item does not apply, and the choice ceases to be in force from the start of that tax period, if the choice could not have been made after the start of that tax period because of subsection 157-5(3) of that Act as amended by this Act.

3 Subsections 29-50(5) and (6)

Repeal the subsections (including the example).

4 At the end of Subdivision 29-B

Add:

29-69 Special rules relating to accounting on a cash basis

Chapter 4 contains special rules relating to accounting on a cash basis, as follows:

Checklist of special rules		
Item	**For this case ...**	**See:**
1	Accounting basis of charitable institutions etc.	Division 157

5 Section 37-1 (before table item 1)

Insert:

1AA	Accounting basis of charitable institutions etc.	Division 157

6 At the end of section 38-250

Add:

(4) Subsections (1) and (2) do not apply to a supply by a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless:

(a) the supplier is:

(i) a charitable institution or a trustee of a charitable fund; or

(ii) a *government school; or

(iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or

(b) each purpose to which the supply relates is a *gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

7 At the end of section 38-255

Add:

(3) Subsection (1) does not apply to a supply by a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless:

(a) the supplier is:

(i) a charitable institution or a trustee of a charitable fund; or

(ii) a *government school; or

(iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or

(b) each purpose to which the supply relates is a *gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

8 Paragraph 38-260(a)

Omit "a charitable institution, or a trustee", substitute "an *endorsed charitable institution, or an *endorsed trustee".

9 At the end of section 38-270

Add:

(3) Subsection (1) does not apply to a supply by a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless:

(a) the supplier is:

(i) a charitable institution or a trustee of a charitable fund; or

(ii) a *government school; or

(iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or

(b) each purpose to which the supply relates is a *gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

10 At the end of section 40-160

Add:

(3) Subsection (1) does not apply to a supply by a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning

of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless:

(a) the supplier is:

(i) a charitable institution or a trustee of a charitable fund; or

(ii) a *government school; or

(iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or

(b) each purpose to which the supply relates is a *gift-deductible purpose of the supplier.

Note: This subsection denies input taxed status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be input taxed under this section if they relate to the principal purpose of the fund, authority or institution.

11 Paragraph 63-5(2)(a)

Repeal the paragraph, substitute:

(a) a charitable institution, a trustee of a charitable fund or a *government school; or

(aa) a *gift-deductible entity that is a non-profit body; or

12 At the end of section 111-18

Add:

(3) Subsection (1) does not apply in relation to a reimbursement by a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless:

(a) the entity is:

(i) a charitable institution or a trustee of a charitable fund; or

(ii) a *government school; or

(iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or

(b) each purpose to which the expense relates is a *gift-deductible purpose of the entity.

Note: This subsection excludes from this section reimbursements by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, reimbursements

can be covered by this section if they relate to the principal purpose of the fund, authority or institution.

13 At the end of section 129-45

Add:

(3) Subsection (1) does not apply in relation to a thing that you supply to a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless:

(a) the entity is:

(i) a charitable institution or a trustee of a charitable fund; or

(ii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or

(b) each purpose to which the supply relates is a *gift-deductible purpose of the entity.

Note: This subsection excludes from this section supplies to certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be covered by this section if they relate to the principal purpose of the fund, authority or institution.

14 After Division 156

Insert:

Division 157—Accounting basis of charitable institutions etc.

157-1 What this Division is about

The choice available to a charitable institution, trustee of a charitable fund, gift-deductible entity or government school to account on a cash basis is not restricted as it is for other entities, but other restrictions may apply.

157-5 Charitable institutions etc. choosing to account on a cash basis

(1) A charitable institution, a trustee of a charitable fund, a *gift-deductible entity or a *government school may choose to

*account on a cash basis, with effect from the first day of the tax period that the institution, trustee or entity chooses.

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

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

(3) This section does not apply in relation to a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the *ITAA 1997) under section 30-120 of the ITAA 1997, unless the entity is:

(a) a charitable institution or a trustee of a charitable fund; or

(b) a *government school; or

(c) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997.

Note: This subsection excludes from this section certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution.

(4) This section has effect despite section 29-40 (which is about choosing to account on a cash basis).

157-10 Charitable institutions etc. ceasing to account on a cash basis

(1) Paragraph 29-50(1)(a) and subsection 29-50(3) do not apply in relation to any charitable institution, any trustee of a charitable fund, any *gift-deductible entity or any *government school.

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

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

(3) This section does not apply in relation to a *gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the

*ITAA 1997) under section 30-120 of the ITAA 1997, unless the entity is:

(a) a charitable institution or a trustee of a charitable fund; or

(b) a *government school; or

(c) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997.

Note: This subsection excludes from this section certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution.

15 Section 195-1

Insert:

gift-deductible purpose, of an entity, means a purpose that is the principal purpose of:

(a) if the entity legally owns a fund for the operation of which the entity is entitled, under subsection 30-125(2) of the *ITAA 1997, to be so endorsed—that fund; or

(b) if the entity includes an authority or institution for the operation of which the entity is entitled, under subsection 30-125(2) of the ITAA 1997, to be so endorsed—that authority or institution.

16 Application

The amendments made by this Schedule apply in relation to net amounts for tax periods starting on or after the day on which this Act receives the Royal Assent.

Schedule 13—Technical correction

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

1 Item 68 of Schedule 1

Omit "items 66 and 67", substitute "items 64 to 67".

2 Assessments

An amendment of an assessment made on or after 19 December 2005 and before the day on which this Act receives the Royal Assent under section 170 of the *Income Tax Assessment Act 1936* relying on subsection 177G(1) of that Act (as in force immediately before 19 December 2005) is as valid as it would have been if that subsection were in force on the day the amendment was made.

Schedule 14—Wine equalisation tax

A New Tax System (Wine Equalisation Tax) Act 1999

1 Subsections 19-15(2) and (3)

Omit "$290,000", substitute "$500,000".

2 Subsection 19-25(2)

Omit "$290,000", substitute "$500,000".

3 Application

The amendments made by this Schedule apply to dealings in wine made on or after 1 July 2006.

Schedule 15—GST treatment of residential premises

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

1 Paragraph 40-35(1)(a)

Omit "(other than *commercial residential premises)", substitute "(other than a supply of *commercial residential premises or a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises)".

2 Paragraph 40-35(2)(a)

After "residential accommodation", insert "(regardless of the term of occupation)".

3 Subsection 40-65(1)

After "residential accommodation", insert "(regardless of the term of occupation)".

4 Paragraph 40-65(2)(b)

After "residential accommodation", insert "(regardless of the term of occupation)".

5 Paragraph 40-70(1)(a)

After "residential accommodation", insert "(regardless of the term of occupation)".

6 Paragraph 40-70(2)(b)

After "residential accommodation", insert "(regardless of the term of occupation)".

7 Paragraph 40-75(1)(a)

After "residential premises", insert "(other than *commercial residential premises)".

8 Section 195-1 (definition of *floating home*)

After "occupied", insert "(regardless of the term of occupation)".

9 Section 195-1 (definition of *residential premises*)

Repeal the definition, substitute:

residential premises means land or a building that:

(a) is occupied as a residence or for residential accommodation; or

(b) is intended to be occupied, and is capable of being occupied, as a residence or for residential accommodation;

(regardless of the term of the occupation or intended occupation) and includes a *floating home.

10 Application

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

[*Minister's second reading speech made in—*
House of Representatives on 25 May 2006
Senate on 15 June 2006]

(67/06)