





# **Tax Laws Amendment (2008 Measures No. 2) Act 2008**

**No. 38, 2008**

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

[Assented to 24 June 2008]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2008  
Measures No. 2) Act 2008*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	24 June 2008
2. Schedules 1 to 4	The day on which this Act receives the Royal Assent.	24 June 2008
3. Schedule 5	Immediately after the commencement of the provisions covered by table item 2.	
4. Schedules 6 and 7	The day on which this Act receives the Royal Assent.	24 June 2008
5. Schedule 8, Part 1	The day on which this Act receives the Royal Assent.	24 June 2008
6. Schedule 8, Part 2	1 July 2012.	1 July 2012
7. Schedules 9 to 13	The day on which this Act receives the Royal Assent.	24 June 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amounts misappropriated by an employee or agent

### Part 1—Capital allowances

#### *Income Tax Assessment Act 1997*

#### **1 Section 12-5 (after the table item headed “mining”)**

Insert:

**misappropriation**

by employee or agent ..... 25-47

#### **2 Subsection 20-30(1) (after table item 1.5)**

Insert:

1.5A 25-47

misappropriation by an employee or agent

#### **3 After section 25-45**

Insert:

#### **25-47 Misappropriation where a balancing adjustment event occurs**

(1) You can deduct an amount if:

- (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held; and
- (b) your employee or \*agent misappropriates (whether by theft, embezzlement, larceny or otherwise) all or part of the amount applicable to you under:
  - (i) item 8 of the table in subsection 40-300(2); or
  - (ii) item 1, 3, 4 or 6 of the table in subsection 40-305(1);in relation to the balancing adjustment event.

Note 1: The amount applicable to you under subsection 40-300(2) or 40-305(1) may be the market value of an asset or of a non-cash benefit.

Note 2: If you receive an amount as recoupment of the amount misappropriated, the amount may be included in your assessable income: see Subdivision 20-A.

- (2) The amount you can deduct is so much of the amount misappropriated as represents an amount applicable to you under item 8 of the table in subsection 40-300(2) or item 1, 3, 4 or 6 of the table in subsection 40-305(1) in relation to the \*balancing adjustment event.
- (3) You can deduct the amount for the income year in which the misappropriation happens.
- (4) You must reduce the amount you can deduct under this section if your deductions for the asset have been reduced under section 40-25 because of use for a purpose other than a \*taxable purpose. The reduction is by the same proportion you reduce the balancing adjustment amount for the asset under section 40-290.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
  - (a) you discover the misappropriation after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation.

#### **4 At the end of subsections 40-285(1) and (2)**

Add:

Note 3: There is a modification to the calculation in the case of misappropriation by your employee or agent: see section 25-47.

## Part 2—Capital gains and losses

### *Income Tax Assessment Act 1997*

#### **5 Subsection 104-190(1)**

After “subsection 116-45(2)”, insert “or 116-60(3)”.

#### **6 Subsection 104-190(1) (note)**

Repeal the note, substitute:

Note: Section 116-45 applies if you do not receive your capital proceeds despite having taken all reasonable steps to get them, and section 116-60 applies if your capital proceeds are misappropriated by your employee or agent.

#### **7 At the end of section 104-240**

Add:

- (3) In applying subsection (1) or (2), reduce the \*termination value of the \*depreciating asset by so much of an amount misappropriated by your employee or \*agent (whether by theft, embezzlement, larceny or otherwise) as represents an amount applicable to you under:
  - (a) item 8 of the table in subsection 40-300(2); or
  - (b) item 1, 3, 4 or 6 of the table in subsection 40-305(1);in relation to the \*balancing adjustment event.
- (4) If you later receive an amount as \*recoupment of all or part of the amount misappropriated, the amount applicable under subsection (3) is increased by the amount received.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
  - (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and

- (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

## **8 At the end of section 104-245**

Add:

- (3) In applying subsection (1) or (2), reduce the \*termination value of the \*depreciating asset by so much of an amount misappropriated by your employee or \*agent (whether by theft, embezzlement, larceny or otherwise) as represents an amount applicable to you under:
  - (a) item 8 of the table in subsection 40-300(2); or
  - (b) item 1, 3, 4 or 6 of the table in subsection 40-305(1);in relation to the \*balancing adjustment event.
- (4) If you later receive an amount as \*recoupment of all or part of the amount misappropriated, the amount applicable under subsection (3) is increased by the amount received.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
  - (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

## **9 Subsection 116-10(1)**

Omit “5 modifications”, substitute “6 modifications”.

## **10 At the end of section 116-10 (before the note)**

Add:

- (7) The sixth relates to misappropriation by an employee or agent. It is relevant if your employee or agent misappropriates all or part of the capital proceeds from a CGT event.

**11 Section 116-25**

Omit “5 modifications”, substitute “6 modifications”.

**12 Section 116-25 (table items dealing with CGT events A1 and B1, column headed “Only these modifications can apply:”)**

After “, 5”, insert “, 6”.

**13 Section 116-25 (table items dealing with CGT events C1, C2, C3, D1, D2 and D3, column headed “Only these modifications can apply:”)**

After “, 4”, insert “, 6”.

**14 Section 116-25 (table items dealing with CGT events D4, E1, E2 and E8, column headed “Only these modifications can apply:”)**

After “, 5”, insert “, 6”.

**15 Section 116-25 (table items dealing with CGT events F1, F2, F4, F5 and H2, column headed “Only these modifications can apply:”)**

After “, 4”, insert “, 6”.

**16 Section 116-25 (table items dealing with CGT event K6, column headed “Only these modifications can apply:”)**

After “, 5”, insert “, 6”.

**17 Section 116-25 (table items dealing with CGT event K9, column headed “Only these modifications can apply:”)**

After “, 4”, insert “, 6”.

**18 After section 116-55**

Insert:

**116-60 Misappropriation rule: modification 6**

- (1) The \*capital proceeds from a \*CGT event are reduced if your employee or \*agent misappropriates (whether by theft, embezzlement, larceny or otherwise) all or part of those proceeds.

Note: This rule exists because the general rules treat you as having received an amount when you are entitled to receive it.

- (2) The \*capital proceeds are reduced by the amount misappropriated.
- (3) There is a further consequence if:
  - (a) those proceeds are reduced by the amount misappropriated;  
and
  - (b) you later receive an amount as \*recoupment of all or part of the amount misappropriated.  
Those proceeds are increased by the amount received.
- (4) This Part and Part 3-3 apply to the debt owed to you (the amount misappropriated) as if it were not a \*CGT asset.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
  - (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year;  
and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

## **Part 3—Application**

### **19 Application**

The amendments made by this Schedule apply to amounts misappropriated in the 2007-08 income year and later income years.

## **Schedule 2—Late payment offset for superannuation guarantee contributions**

### *Superannuation Guarantee (Administration) Act 1992*

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

Repeal the paragraph, substitute:

- (a) the contribution is made after the end of the period of 28 days after the end of a quarter; and

#### **2 Subsection 23A(2)**

Repeal the subsection, substitute:

- (2) The election must be made:
  - (a) in a statement having effect under section 35 as the employer's assessment for the quarter; or
  - (b) within 4 years after the employer's superannuation guarantee charge for the quarter became payable.

The election cannot be revoked.

#### **3 After subsection 23A(4)**

Insert:

- (4A) If the election happens after the employer's assessment for the quarter is made, then, for the offset to take effect, the assessment must be amended accordingly under section 37.

#### **4 Subsection 49(1)**

After "unpaid amount", insert "(the *original unpaid amount*)".

#### **5 Subsection 49(1) (note)**

Repeal the note, substitute:

- Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.
- Note 2: Subsections (2) and (3A) deal with reducing the original unpaid amount.

## 6 Subsection 49(2)

Before “unpaid amount”, insert “original”.

## 7 After subsection 49(3)

Insert:

(3A) For the purposes of this section and subsection 8AAC(3) of the *Taxation Administration Act 1953*, if:

- (a) the employer gives the Commissioner an election under section 23A at a time (the *election time*) after the time the superannuation guarantee charge is due to be paid; and
- (b) the effect of the election is to reduce the employer’s liability to pay the superannuation guarantee charge by an amount (the *offset amount*);

then, from the election time, the proportion of the original unpaid amount that remains unpaid immediately before that time is taken to be reduced by the offset amount.

Note: The original unpaid amount will not be reduced by the offset amount during the period when the charge is payable before the election time.

## 8 Transitional—charge remaining payable at commencement

(1) If, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, superannuation guarantee charge:

- (a) became payable under an assessment before the commencement of this Schedule; and
- (b) was not fully paid before that commencement;

this item applies in relation to the employer’s liability to pay the proportion of the charge (the *remaining charge*) remaining payable at that commencement.

(2) After that commencement, subsection 23A(2) of that Act applies as if the remaining charge became payable at that commencement.

(3) If it is proposed to amend the assessment to effect a reduction, as a result of an offset under section 23A of that Act, in the employer’s liability to pay the remaining charge, then:

- (a) subsection 37(3) of that Act applies as if the assessment were made at that commencement; and

(b) paragraph 37(5)(a) of that Act applies as if the remaining charge became payable under the assessment at that commencement.

- (4) If the assessment was of superannuation guarantee charge payable in relation to a year (instead of a quarter), then that Act also applies as if references in that Act to a quarter were references to a year.

**9 Transitional—charge for a year that becomes payable after commencement**

If, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, superannuation guarantee charge:

- (a) is payable in relation to a year (instead of a quarter) happening before the commencement of this Schedule; and  
(b) does not become payable until after that commencement;

then that Act applies, in relation to the employer's liability to pay the charge, as if references in that Act to a quarter were references to a year.

## Schedule 3—CGT market value substitution rule for interests in widely held entities

### *Income Tax Assessment Act 1997*

#### **1 After subsection 116-30(2A)**

Insert:

(2B) Despite paragraph (2)(b), subsection (2) does not apply if the \*CGT event is \*CGT event C2 (about cancellation, surrender and similar endings) and the \*CGT asset that is the subject of the event is:

- (a) a \*share in a company that has at least 300 \*members and is not a company that is covered by section 116-35; or
- (b) a unit in a unit trust that has at least 300 unit holders and is not a trust that is covered by section 116-35.

Note: So, for one of these assets, the capital proceeds for the cancellation will be what you actually received.

#### **2 After section 116-30**

Insert:

#### **116-35 Companies and trusts that are not widely held**

##### *Coverage*

- (1) A company is covered by this section if subsection (3) or (5) applies to the company.
- (2) A unit trust is covered by this section if subsection (4) or (5) applies to the trust.

##### *Concentrated ownership*

- (3) This subsection applies to a company if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
  - (a) carrying \*fixed entitlements to at least 75% of the company's income or at least 75% of the company's capital; or

- (b) carrying at least 75% of the voting power in the company.
- (4) This subsection applies to a trust if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, units in the trust:
  - (a) carrying \*fixed entitlements to at least 75% of the trust's income or at least 75% of the trust's capital; or
  - (b) if unit holders of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of the voting power in the trust.

*Possible variation of rights*

- (5) This subsection applies to a company or trust if, because of:
  - (a) any provision in the entity's constituent document, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares or units in the entity; or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or units; or
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those shares or units; or
  - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or units;

it is reasonable to conclude that the rights attaching to any of those shares or units are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, subsection (3) or (4) would apply to the entity.

*Single individual*

- (6) For the purposes of subsections (3) and (4), all of the following are taken to be a single individual:
  - (a) an individual, whether or not the individual holds \*shares or units in the entity concerned;
  - (b) the individual's \*associates;
  - (c) for any shares or units in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

### **3 Application**

The amendments made by this Schedule apply to CGT events happening after the start of the 2006-07 income year.

## **Schedule 4—Endeavour Research Fellowships and Executive Awards**

### *Income Tax Assessment Act 1997*

#### **1 Section 11-15 (table item headed “education”)**

After “education” (first occurring), insert “and training”.

#### **2 Section 11-15 (table item headed “education”)**

After:

CRAFT scheme, employer’s income from ..... 51-10

insert:

Endeavour Awards, research fellowship under ..... 51-10

Endeavour Executive Award ..... 51-10

#### **3 Section 11-15 (table item headed “student”)**

Omit:

see *education*

substitute:

see *education and training*

#### **4 Section 51-10 (at the end of the table)**

Add:

- |     |  |                         |      |
|-----|--|-------------------------|------|
| 2.5 | a recipient of:  | the fellowship or award | none |
|     | (a) a research fellowship under the Endeavour Awards; or |                         |      |
|     | (b) an Endeavour Executive Award                         |                         |      |

#### **5 Application**

The amendments of the *Income Tax Assessment Act 1997* made by items 2 and 4 of this Schedule apply in relation to fellowships and awards received in the 2007-08 income year and later income years.

## Schedule 5—Early completion bonuses for apprentices

### *Income Tax Assessment Act 1997*

#### **1 Section 11-15 (table item headed “education and training”)**

After:

CRAFT scheme, employer’s income from ..... 51-10

insert:

early completion bonuses for apprentices ..... 51-10 and 51-42

#### **2 Section 51-10 (at the end of the table)**

Add:

- |     |  |   |                   |
|-----|--|---|-------------------|
| 2.6 | a recipient of a bonus for early completion of an apprenticeship | so much of the bonus as does not exceed \$1,000 | see section 51-42 |
|-----|--|---|-------------------|

#### **3 After section 51-40**

Insert:

#### **51-42 Bonuses for early completion of an apprenticeship**

- (1) The bonus must be provided under a scheme provided by a State or Territory, and the scheme must be specified in the regulations for the purposes of this section.
- (2) The apprenticeship:
  - (a) must be for an occupation of a kind specified in the regulations; and
  - (b) must be completed within a time frame specified in the regulations for apprenticeships of that kind.

#### **4 Application**

The amendments made by this Schedule apply to assessments for the 2007-08 income year and later income years.

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## Schedule 6—Deductible gift recipients

### *Income Tax Assessment Act 1997*

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

Add:

2.2.36	The Spirit of Australia Foundation	the gift must be made after 10 September 2007
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#### **2 Subsection 30-45(2) (at the end of the table)**

Add:

4.2.40	Ian Thorpe's Fountain for youth Limited	the gift must be made after 28 February 2008
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#### **3 Subsection 30-50(2) (table item 5.2.25)**

Omit "28 August 2007", substitute "1 July 2009".

#### **4 Subsection 30-50(2) (at the end of the table)**

Add:

5.2.29	AE 2 Commemorative Foundation Ltd	the gift must be made after 28 February 2008 and before 1 March 2010
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5.2.30	Memorials Development Committee Ltd	the gift must be made after 4 September 2007 and before 1 July 2010
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#### **5 Subsection 30-70(2) (at the end of the table)**

Add:

8.2.12	Playgroup Australia Incorporated	the gift must be made after 2 August 2006
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#### **6 Subsection 30-80(2) (after table item 9.2.8)**

Insert:

9.2.10	Australia for UNHCR	the gift must be made after 27 June 2007 and before 28 June 2012
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**7 Subsection 30-80(2) (table item 9.2.17)**

Omit “21 July 2007”, substitute “21 July 2009”.

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

Add:

9.2.19	WHEELCHAIRS FOR KIDS Incorporated	the gift must be made after 28 February 2008 and before 1 March 2010
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9.2.20	World Youth Day 2008 Trust	the gift must be made after 4 September 2007 and before 1 July 2009
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**9 Section 30-90 (at the end of the table)**

Add:

10.2.8	Amy Gillett Foundation	the gift must be made after 13 September 2007
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**10 Section 30-105 (before table item 13.2.2)**

Insert:

13.2.1	the Council for Jewish Community Security	the gift must be made after 9 August 2007
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**11 Section 30-105 (table item 13.2.6)**

Omit “1 January 2008”, substitute “1 January 2009”.

**12 Subsection 30-315(2) (after table item 2AC)**

Insert:

2ACA	AE 2 Commemorative Foundation Ltd	item 5.2.29
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**13 Subsection 30-315(2) (after table item 3)**

Insert:

3A	Amy Gillett Foundation	item 10.2.8
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**14 Subsection 30-315(2) (before table item 10)**

Insert:

9A	Australia for UNHCR	item 9.2.10
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**15 Subsection 30-315(2) (after table item 39)**

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Insert:

39A Council for Jewish Community Security item 13.2.1

**16 Subsection 30-315(2) (after table item 72)**

Insert:

72AA Memorials Development Committee Ltd item 5.2.30

**17 Subsection 30-315(2) (after table item 86A)**

Insert:

86AA Playgroup Australia Incorporated item 8.2.12

**18 Subsection 30-315(2) (after table item 111B)**

Insert:

111C Spirit of Australia Foundation item 2.2.36

**19 Subsection 30-315(2) (after table item 124)**

Insert:

124A WHEELCHAIRS FOR KIDS Incorporated item 9.2.19

**20 Subsection 30-315(2) (after table item 127)**

Insert:

127AA World Youth Day 2008 Trust item 9.2.20

## Schedule 7—Superannuation lump sum paid to a member having a terminal medical condition

### Part 1—Amendments

#### *Income Tax Assessment Act 1997*

#### **1 Section 11-55 (table item headed “superannuation”)**

After:

roll-over superannuation benefits ..... 306-5

insert:

superannuation lump sum for recipient having terminal medical condition ..... 303-10

#### **2 At the end of Division 303**

Add:

#### **303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition**

- (1) This section applies to a \*superannuation member benefit that:
  - (a) is a \*superannuation lump sum; and
  - (b) is:
    - (i) paid from a \*complying superannuation plan; or
    - (ii) a \*superannuation guarantee payment, a \*small superannuation account payment, an \*unclaimed money payment, a \*superannuation co-contribution benefit payment or a \*superannuation annuity payment.
- (2) The lump sum is not assessable income and is not \*exempt income if a \*terminal medical condition exists in relation to you when you receive the lump sum or within 90 days after you receive it.

Note: For a lump sum you receive in the 2007-08 financial year, the period of 90 days may be extended until 30 June 2008: see section 303-10 of the *Income Tax (Transitional Provisions) Act 1997*.

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### **3 Subsection 995-1(1)**

Insert:

*terminal medical condition* has the meaning given by the regulations.

### ***Income Tax (Transitional Provisions) Act 1997***

#### **4 After Division 302**

Insert:

### **Division 303—Superannuation benefits paid in special circumstances**

#### **Table of sections**

303-10 Superannuation lump sum paid to member having a terminal medical condition

#### **303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition**

- (1) This section applies to a superannuation member benefit that you receive during the 2007-08 financial year and that:
  - (a) is a superannuation lump sum; and
  - (b) is:
    - (i) paid from a complying superannuation plan; or
    - (ii) a superannuation guarantee payment, a small superannuation account payment, an unclaimed money payment, a superannuation co-contribution benefit payment or a superannuation annuity payment.
- (2) The lump sum is not assessable income and is not exempt income if a terminal medical condition exists in relation to you at a time in the period:
  - (a) starting when you receive the lump sum; and
  - (b) ending at the later of:
    - (i) 90 days after you receive it; and
    - (ii) 30 June 2008.

**Schedule 7** Superannuation lump sum paid to a member having a terminal medical condition

**Part 2** Application

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## **Part 2—Application**

### **5 Application**

The amendments made by this Schedule apply to payments made on or after 1 July 2007.

## **Schedule 8—Capital expenditure for the establishment of trees in carbon sink forests**

### **Part 1—Income years 2007-08 to 2011-12**

#### *Income Tax Assessment Act 1997*

#### **1 Section 12-5 (table item headed “capital allowances”)**

After:

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

insert:

trees in carbon sink forests ..... Subdivision 40-J

#### **2 Section 12-5 (after table item headed “travel expenses”)**

Insert:

**trees in carbon sink forests**

*see capital allowances*

#### **3 Section 40-10 (at the end of the table)**

Add:

2.4 *Capital expenditure for establishing trees in carbon sink forests* Subdivision 40-J

You can deduct amounts for capital expenditure for the establishment of trees in carbon sink forests.

#### **4 Subsection 40-50(1)**

Omit “or 40-G (about capital expenditure of primary producers and other landholders)”, substitute “, 40-G (about capital expenditure of primary producers and other landholders) or 40-J (about capital expenditure for the establishment of trees in carbon sink forests)”.

#### **5 After subsection 40-630(2B)**

Insert:

*Exception: deduction available under Subdivision 40-J*

- (2C) You cannot deduct an amount under this Subdivision for capital expenditure if any entity can deduct an amount for that expenditure for any income year under Subdivision 40-J.

## **6 At the end of Division 40**

Add:

### **Subdivision 40-J—Capital expenditure for the establishment of trees in carbon sink forests**

#### **Guide to Subdivision 40-J**

#### **40-1000 What this Subdivision is about**

You can deduct amounts for capital expenditure incurred for establishing trees that meet the requirements for constituting a carbon sink forest.

#### **Table of sections**

##### **Operative provisions**

- 40-1005 Deduction for expenditure for establishing trees in carbon sink forests
- 40-1010 Expenditure for establishing trees in carbon sink forests
- 40-1015 Carbon sequestration by trees
- 40-1020 Certain expenditure disregarded
- 40-1025 Non-arm's length transactions

#### **Operative provisions**

##### **40-1005 Deduction for expenditure for establishing trees in carbon sink forests**

- (1) You can deduct an amount for an income year if:
- (a) you incur capital expenditure that is covered under section 40-1010 in relation to particular trees established in the income year; and
  - (b) you satisfy a condition in subsection (5) for the trees when they are established.

- (2) The amount of the deduction is the amount of the expenditure.
- (3) You can deduct an amount for an income year if:
- (a) you incur capital expenditure in the income year or an earlier income year for establishing particular trees; and
  - (b) that expenditure is not covered under section 40-1010 in relation to the trees, because some or all of the trees are established after the end of the income year; and
  - (c) the trees established after the end of the income year are established within 4 months after the end of the income year; and
  - (d) you could deduct the amount for the income year under subsection (1) in respect of the expenditure, assuming that, for the purposes of paragraphs 40-1010(1)(a) and (2)(a), the income year ended 4 months after it actually ended.
- (4) If:
- (a) you can deduct an amount for an income year under subsection (3) in relation to particular trees; and
  - (b) you incur capital expenditure in the *next* income year for establishing *other* trees;
- in determining whether you can deduct an amount under subsection (1) for the next income year in respect of the other trees, for the purposes of paragraph 40-1010(2)(a), disregard the trees mentioned in paragraph (a).
- (5) The conditions are as follows:

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<b>Conditions for deduction for establishing trees in carbon sink forest</b>	
<b>Item</b>	<b>Condition</b>
1	You own the trees and any holder of a lease, lesser interest or licence relating to the land occupied by the trees does not use the land for the primary and principal purpose of * carbon sequestration by the trees.

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**Schedule 8** Capital expenditure for the establishment of trees in carbon sink forests  
**Part 1** Income years 2007-08 to 2011-12

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**Conditions for deduction for establishing trees in carbon sink forest**

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<b>Item</b>	<b>Condition</b>
2	The trees occupy land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and: (a) the lease or quasi-ownership right enables you to use the land for the primary and principal purpose of *carbon sequestration by the trees; and (b) any holder of a lesser interest or licence relating to the land does not use the land for the primary and principal purpose of carbon sequestration by the trees.
3	You: (a) hold a licence relating to the land occupied by the trees; and (b) use the land for the primary and principal purpose of *carbon sequestration by the trees, as a result of holding the licence.

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**40-1010 Expenditure for establishing trees in carbon sink forests**

- (1) Expenditure is covered under this section in relation to particular trees if:
- (a) the trees are established in an income year; and
  - (b) you incur the expenditure in the income year or an earlier income year for establishing the trees; and
  - (c) you are carrying on a \*business in the income year; and
  - (d) your primary and principal purpose for establishing the trees is \*carbon sequestration by the trees (see section 40-1015); and
  - (e) your purposes for establishing the trees do not include any of the following:
    - (i) felling the trees;
    - (ii) using the trees for \*commercial horticulture; and
  - (f) you do not incur the expenditure under:
    - (i) a \*managed investment scheme; or
    - (ii) a \*forestry managed investment scheme; and
  - (g) all of the conditions in subsection (2) are satisfied for the trees; and

- (h) you give the Commissioner, in accordance with subsection (4), a statement that:
- (i) sets out all information necessary to determine whether all of the conditions in subsection (2) are satisfied for the trees; and
  - (ii) is in the \*approved form.
- (2) The conditions are as follows:
- (a) at the end of the income year, the trees occupy a continuous land area in Australia of 0.2 hectares or more;
  - (b) at the time the trees are established, it is more likely than not that they will:
    - (i) attain a crown cover of 20% or more; and
    - (ii) reach a height of at least 2 metres;
  - (c) on 1 January 1990, the area occupied by the trees was clear of other trees that:
    - (i) attained, or were more likely than not to attain, a crown cover of 20% or more; and
    - (ii) reached, or were more likely than not to reach, a height of at least 2 metres;
  - (d) the establishment of the trees meets the requirements of the guidelines mentioned in subsection (3).
- (3) The \*Climate Change Minister must, by legislative instrument, make guidelines about environmental and natural resource management in relation to the establishment of trees for the purposes of \*carbon sequestration.
- (4) The statement mentioned in paragraph (1)(h) is to be given to the Commissioner no later than:
- (a) if you lodge your \*income tax return for the income year within 5 months after the end of the income year—the day you lodge that income tax return; or
  - (b) otherwise—5 months after the end of the income year.
- (5) However, expenditure is *not* covered under this section if the \*Climate Change Secretary gives the Commissioner a notice under subsection (6) in relation to the trees.
- (6) The \*Climate Change Secretary must give the Commissioner a notice in writing under this subsection if the Climate Change

Secretary is satisfied that one or more of the conditions in subsection (2) have not been satisfied for the trees.

- (7) A person may apply to the \*AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*) of the \*Climate Change Secretary to give a notice under subsection (6).
- (8) The Commissioner may give the \*Climate Change Secretary a copy of the statement mentioned in paragraph (1)(h), for the purposes of subsections (5), (6) and (7).

#### **40-1015 Carbon sequestration by trees**

*Carbon sequestration* by trees means the process by which trees absorb carbon dioxide from the atmosphere.

#### **40-1020 Certain expenditure disregarded**

In working out a deduction under this Subdivision in relation to the establishment of trees, disregard expenditure incurred:

- (a) in draining swamp or low-lying land; or
- (b) in clearing land.

#### **40-1025 Non-arm's length transactions**

If an entity incurred capital expenditure under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom the entity did not deal at \*arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the \*market value of what it was for;

the amount of expenditure taken into account under this Subdivision is that market value.

### **7 After subsection 70-120(5)**

Insert:

*No deduction for carbon sink forests*

- (5A) You cannot deduct under this section so much of an amount you paid or incurred as is attributable to the establishment of trees for

which any entity has deducted, or can deduct, an amount for any income year under Subdivision 40-J.

**8 Subsection 995-1(1)**

Insert:

*carbon sequestration* has the meaning given by section 40-1015.

**9 Subsection 995-1(1)**

Insert:

*Climate Change Minister* means the Minister administering the *National Greenhouse and Energy Reporting Act 2007*.

**10 Subsection 995-1(1)**

Insert:

*Climate Change Secretary* means the Secretary of the Department that administers the *National Greenhouse and Energy Reporting Act 2007*.

**11 Application**

The amendments made by this Part of this Schedule apply to the 2007-08 income year and later income years.

## Part 2—Income year 2012-13 and later income years

### *Income Tax Assessment Act 1997*

#### 12 Subsections 40-1005(1), (2), (3) and (4)

Repeal the subsections, substitute:

- (1) You can deduct an amount for an income year if:
  - (a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and
  - (b) you satisfy a condition in subsection (5) for the trees for at least part of the income year; and
  - (c) you are carrying on a \*business in the income year; and
  - (d) you use the land occupied by the trees for the primary and principal purpose of \*carbon sequestration by the trees (see section 40-1015); and
  - (e) your purposes in using the land occupied by the trees do not include any of the following:
    - (i) felling the trees;
    - (ii) using the trees for \*commercial horticulture; and
  - (f) you do not use the land in connection with:
    - (i) a \*managed investment scheme; or
    - (ii) a \*forestry managed investment scheme.
- (2) The amount of the deduction is worked out under this formula:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

***establishment expenditure*** is the amount of expenditure mentioned in subsection (1).

***write-off days in income year*** is the number of days in the income year:

- (a) that occur within the period:

- (i) starting on the first day of the income year in which the trees are established; and
- (ii) ending 14 years and 105 days after that day; and
- (b) on which you use the land occupied by the trees for the primary and principal purpose of \*carbon sequestration by the trees; and
- (c) on which you satisfy a condition in subsection (5) for the trees.

*write-off rate* is 7%.

- (3) You cannot deduct more in total than the amount of capital expenditure incurred for establishing the trees up to the time at which they are established.

**13 Paragraph 40-1010(1)(b)**

After “you incur”, insert “or another entity incurs”.

**14 Paragraph 40-1010(1)(c)**

Omit “you are”, substitute “the entity incurring the expenditure (the *establishing entity*) is”.

**15 Paragraph 40-1010(1)(d)**

Omit “your”, substitute “the establishing entity’s”.

**16 Paragraph 40-1010(1)(e)**

Omit “your”, substitute “the establishing entity’s”.

**17 Paragraph 40-1010(1)(f)**

Omit “you do”, substitute “the establishing entity does”.

**18 Paragraph 40-1010(1)(h)**

Omit “you give”, substitute “the establishing entity gives”.

**19 Paragraph 40-1010(4)(a)**

Repeal the paragraph, substitute:

- (a) if the establishing entity lodges its \*income tax return for the income year within 5 months after the end of the income year—the day the establishing entity lodges that income tax return; or

## **20 At the end of Subdivision 40-J**

Add:

### **40-1030 Extra deduction for destruction of trees in carbon sink forest**

- (1) You can deduct the amount worked out under subsection (2) for an income year if:
  - (a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and
  - (b) you use the land occupied by the trees for the primary and principal purpose of \*carbon sequestration by the trees; and
  - (c) the trees are destroyed during the income year; and
  - (d) you satisfy a condition in subsection 40-1005(5) for the trees just before they are destroyed.
- (2) Work out the amount of the deduction as follows:

*Method statement*

Step 1. Work out the total of the amounts you could have deducted under this Subdivision in relation to the trees for the period:

- (a) starting on the first day of the income year in which the trees are established; and
- (b) ending when the trees were destroyed;

assuming that, during that period, you satisfied a condition in the table in subsection 40-1005(5).

Step 2. Subtract from the expenditure that is covered under section 40-1010 in relation to the trees:

- (a) the result from step 1; and
- (b) any amount you received (under an insurance policy or otherwise) for the destruction.

The remaining amount (if positive) is your deduction under subsection (1).

- (3) This deduction is in addition to any deduction for the income year under section 40-1005.

#### **40-1035 Getting information if you acquire a carbon sink forest**

- (1) This section applies if:
- (a) you or another entity incurred capital expenditure; and
  - (b) the expenditure is covered under section 40-1010 in relation to particular trees; and
  - (c) you begin to satisfy a condition in the table in subsection 40-1005(5) for the trees.
- (2) You may give the last entity (if any) that satisfied a condition mentioned in subsection 40-1005(5) for the trees a written notice requiring the entity to give you any or all of the following information:
- (a) the amount of the expenditure covered under section 40-1010 in relation to the trees;
  - (b) the income year in which the trees were established.
- (3) The notice must:
- (a) be given within 60 days of your beginning to satisfy the condition mentioned in paragraph (1)(c); and
  - (b) specify a period of at least 60 days within which the information must be given; and
  - (c) set out the effect of subsection (4).

Note: Subsections (5), (6) and (7) explain how this subsection operates if the entity to which the notice is to be given is a partnership.

##### *Requirement to comply with notice*

- (4) The entity to whom the notice is given must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

##### *Giving the notice to a partnership*

- (5) If the entity to whom the notice is given is a partnership:
- (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and

(b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

(6) A partner must not intentionally refuse or fail to comply with that obligation.

Penalty: 10 penalty units.

(7) Subsection (6) does not apply if another partner has already complied with that obligation.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7), see subsection 13.3(3) of the *Criminal Code*.

*Limits on giving a notice*

(8) Only one notice can be given in relation to the same trees.

## **21 Application**

The amendments made by this Part of this Schedule apply to the 2012-13 income year and later income years.

## **Schedule 9—Tax offset for Equine Workers Hardship Wage Supplement Payments**

### *Income Tax Assessment Act 1936*

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

Add:

; or (g) known as the Equine Workers Hardship Wage Supplement  
Payment.

### *Income Tax Assessment Act 1997*

#### **2 Section 13-1 (after table item headed “entrepreneurs’ tax offset”)**

Insert:

**Equine Workers Hardship Wage Supplement Payment**

*see social security and other benefit payments*

#### **3 Section 13-1 (table item headed “social security and other benefit payments”)**

After:

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

insert:

Equine Workers Hardship Wage Supplement Payment .... **160AAA(3)**

#### **4 Application**

The amendments made by this Schedule apply in relation to Equine  
Workers Hardship Wage Supplement Payments received in the 2007-08  
income year and later income years.

## Schedule 10—Tobacco industry exit grants

### *Income Tax Assessment Act 1997*

#### **1 Section 11-10 (table item headed “sugar industry exit grants”)**

Repeal the item.

#### **2 Section 11-15 (before table item headed “copyright collecting societies”)**

Insert:

##### **agricultural industry exit grants**

sugar industry exit grants.....	53-10
tobacco industry exit grants.....	53-10

#### **3 Section 53-10 (after table item 4B)**

Insert:

4C	<b>Tobacco industry exit grant</b>	The program known as the Tobacco Growers Adjustment Assistance Programme 2006	As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant
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#### **4 At the end of subsection 118-37(1)**

Add:

; (g) a tobacco industry exit grant that you receive under the program known as the Tobacco Growers Adjustment Assistance Programme 2006 if, as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural \*enterprise within 5 years after receiving the grant.

#### **5 Application of amendments**

The amendments made by this Schedule apply to tobacco industry exit grants received in the 2006-07 income year and later income years.

## **Schedule 11—Farm management deposits**

### ***Income Tax Assessment Act 1936***

#### **1 Paragraphs 393-37(3)(b) and (c) in Schedule 2G**

Repeal the paragraphs, substitute:

- (b) at the time of the withdrawal, that owner is eligible for the issue of an exceptional circumstances certificate (within the meaning of subsection 8A(2) of the *Farm Household Support Act 1992*) that relates to a primary production business of that owner;
- (c) by the end of 3 months after the end of the year of income in which the withdrawal is made, such an exceptional circumstances certificate is issued in respect of that owner;
- (d) a declaration of exceptional circumstances (as referred to in paragraph 8(c) of the *Rural Adjustment Act 1992*) was not in force in relation to that primary production business when the deposit was made.

#### **2 Application**

The amendment made by this Schedule applies to assessments for the 2002-03 year of income and later years of income.

## **Schedule 12—Austudy rent assistance**

### ***Income Tax Assessment Act 1997***

#### **1 Section 52-15 (cell at table item 4, column headed “the supplementary amount is the total of:”)**

Repeal the cell, substitute:

- (a) so much of the payment as is included by way of rental assistance; and
- (b) so much of the payment as is included by way of remote area allowance; and
- (c) so much of the payment as is included by way of pharmaceutical allowance

#### **2 Application**

The amendment made by this Schedule applies to assessments for the 2007-08 income year and later income years.

## Schedule 13—Carer adjustment payments

### *Income Tax Assessment Act 1997*

#### **1 Section 11-15 (table item headed “social security or like payments”)**

After:

ABSTUDY scheme, payment under..... Subdivision 52-E

insert:

carer adjustment payment..... 53-10

#### **2 Section 53-10 (table item 1)**

Repeal the item, substitute:

1	<b>Carer adjustment payment</b>	The power of the Commonwealth to make ex-gratia payments	None
2	<b>Disability services payment</b>	Part III of the <i>Disability Services Act 1986</i>	None

#### **3 Application**

The amendments made by this Schedule apply to assessments for the 2007-08 income year and later years.

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*[Minister's second reading speech made in—  
House of Representatives on 20 March 2008  
Senate on 16 June 2008]*

(62/08)

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