





# **Tax Laws Amendment (2008 Measures No. 3) Act 2008**

**No. 91, 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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## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Shareholder and unitholder rights</b>		<b>3</b>
	<i>Income Tax Assessment Act 1997</i>	3
<b>Schedule 2—Collection and administration of indirect taxes</b>		<b>6</b>
Part 1—Overpayments of indirect tax and refunds		6
	<i>Taxation Administration Act 1953</i>	6
Part 2—Restriction on GST refunds		10
	<i>Taxation Administration Act 1953</i>	10





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

[Assented to 20 September 2008]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2008 Measures No. 3) Act 2008*.

## 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.	20 September 2008
2. Schedule 1	The day on which this Act receives the Royal Assent.	20 September 2008
3. Schedule 2	1 July 2008.	1 July 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Shareholder and unitholder rights

### *Income Tax Assessment Act 1997*

#### 1 Section 11-55 (after table item headed “repayable amounts”)

Insert:

rights to acquire shares or units

market value of at time of issue ..... 59-40

#### 2 At the end of Division 59

Add:

##### 59-40 Issue of rights

- (1) The \*market value, as at the time of issue (the *issue time*), of rights issued to you:
  - (a) by a company to \*acquire \*shares in that company; or
  - (b) by a trustee of a unit trust to acquire units in that trust;is not assessable income and is not \*exempt income as at the issue time if the conditions in subsection (2) are satisfied.
- (2) The conditions are as follows:
  - (a) at the issue time, you must already own \*shares in the company or units in the unit trust (the *original interests*);
  - (b) the rights must be issued to you because of your ownership of the original interests;
  - (c) the original interests and the rights must not be \*revenue assets or \*trading stock at the issue time;
  - (d) the rights must not have been acquired (within the meaning of section 139G of the *Income Tax Assessment Act 1936*) under an \*employee share scheme;
  - (e) the original interests and the rights must not be \*traditional securities;
  - (f) the original interests must not be \*convertible interests.

### 3 Paragraph 104-135(1)(b)

Omit “1936.”, substitute:

1936; and

(c) the payment is not included in your assessable income.

### 4 Before paragraph 104-135(1A)(a)

Insert:

(aa) \*non-assessable non-exempt income; or

### 5 After paragraph 104-155(5)(e)

Insert:

(ea) a company grants an option to dispose of \*shares in the company to the company; or

### 6 Subsection 112-20(3) (at the end of the table)

Add:

7	A right to *dispose of a *share in a company	it was issued to you by the company and was exercised by you or by another entity who became the owner of the right
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### 7 At the end of Subdivision 112-A

Add:

#### 112-37 Put options

The first element of the \*cost base and \*reduced cost base of a right to \*dispose of a \*share in a company that you \*acquire as a result of \*CGT event D2 happening to the company is the sum of:

- (a) the amount that is included in your assessable income as ordinary income as a result of your acquisition of the right; and
- (b) the amount (if any) that you paid to acquire the right.

### 8 Subsection 118-20(4)

After “a provision of this Act”, insert “(except section 59-40)”.

### 9 Application

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The amendments made by this Schedule apply to rights issued on or after 1 July 2001.

## **Schedule 2—Collection and administration of indirect taxes**

### **Part 1—Overpayments of indirect tax and refunds**

#### *Taxation Administration Act 1953*

##### **1 Section 105-50 in Schedule 1 (heading)**

Repeal the heading, substitute:

##### **105-50 Time limit on recovery by the Commissioner**

##### **2 Section 105-50 in Schedule 1**

Before “Any unpaid”, insert “(1)”.

##### **3 Section 105-50 in Schedule 1**

Omit “section 105-80”, substitute “this Act”.

##### **4 Section 105-50 in Schedule 1**

Omit all the words from and including “unless”.

##### **5 At the end of section 105-50 in Schedule 1**

Add:

(2) If:

(a) an amount was paid to you, or applied under Division 3 of Part IIB of this Act, as:

- (i) a refund in relation to a \*net amount, \*net fuel amount or amount of \*indirect tax; or
- (ii) an amount of indirect tax that was overpaid or wrongly paid; and

(b) that amount exceeded the amount (if any) that you were entitled to be paid, or to have applied under Division 3 of Part IIB of this Act;

the amount of the excess (together with any relevant \*general interest charge under this Act) ceases to be payable 4 years after it became payable by you.

- (3) However, subsection (1) does not apply to an amount, and subsection (2) does not apply to an amount of an excess, if:
- (a) within those 4 years the Commissioner has required payment of the amount or the amount of excess by giving a notice to you; or
  - (b) the Commissioner is satisfied that:
    - (i) the payment of the amount was avoided by fraud or evaded; or
    - (ii) the payment of the amount of excess, or its application under Division 3 of Part IIB of this Act, was brought about by fraud or evasion.

## **6 Section 105-55 in Schedule 1 (heading)**

Repeal the heading, substitute:

### **105-55 Time limit on refunds etc. from the Commissioner**

## **7 Subsection 105-55(1) in Schedule 1**

Omit “or credit” (first occurring), substitute “, other payment or credit”.

## **8 Paragraphs 105-55(1)(a) and (b) in Schedule 1**

Omit “or credit”, substitute “, other payment or credit”.

## **9 Paragraph 105-55(1)(c) in Schedule 1**

Repeal the paragraph, substitute:

- (c) in the case of a credit—the credit is taken into account in working out:
  - (i) a \*net amount or \*net fuel amount that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(i); or
  - (ii) an amount of excess referred to in subsection 105-50(2) that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(ii).

## **10 Paragraph 105-55(2)(a) in Schedule 1**

Repeal the paragraph, substitute:

- (a) a refund in relation to a \*net amount or \*net fuel amount in respect of a particular \*tax period; or
- (aa) another payment that represents some or all of an amount:

- (i) that you paid as an amount of \*indirect tax payable by you in respect of a particular tax period; and
- (ii) that exceeded the amount (if any) of such tax that you were liable to pay in respect of that tax period; or

**11 Subsection 105-55(3) in Schedule 1**

After “a refund”, insert “, other payment”.

**12 Paragraphs 105-55(3)(a) and (b) in Schedule 1**

After “the refund”, insert “, other payment”.

**13 Paragraph 105-55(3)(c) in Schedule 1**

Repeal the paragraph, substitute:

- (c) in the case of a fuel tax credit—the credit is taken into account in working out:
  - (i) a \*net fuel amount that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(i); or
  - (ii) an amount of excess referred to in subsection 105-50(2) that the Commissioner may recover from you only because of subparagraph 105-50(3)(b)(ii).

**14 Paragraph 105-55(4)(a) in Schedule 1**

Omit “, under section 61-5 of the *Fuel Tax Act 2006*, of”, substitute “in relation to”.

**15 Subsection 105-55(5) in Schedule 1**

Omit “under section 61-5 of the *Fuel Tax Act 2006*”, substitute “or other payment”.

**16 Application**

- (1) The amendments made to section 105-50 of Schedule 1 to the *Taxation Administration Act 1953* by this Schedule apply in relation to an amount that:
  - (a) is:
    - (i) an unpaid net amount, net fuel amount or amount of indirect tax of a kind referred to in subsection 105-50(1) of Schedule 1 to that Act as amended by this Schedule; or

- (ii) an amount of excess of a kind referred to in subsection 105-50(2) of Schedule 1 to that Act as amended by this Schedule; or
  - (iii) an amount of any relevant general interest charge under that Act that relates to an amount referred to in subparagraph (i) or (ii); and
- (b) became payable by you before the commencement of this Schedule;

unless, before that commencement, the Commissioner notified you in writing that the amount was payable.

- (2) The amendments made to section 105-55 of Schedule 1 to the *Taxation Administration Act 1953* by this Schedule apply in relation to a refund, other payment or credit:
- (a) that is of a kind referred to in subsection 105-55(1) or (3) of Schedule 1 to that Act as amended by this Schedule; and
  - (b) to which you became entitled before the commencement of this Schedule;

unless, before that commencement, you notified the Commissioner in writing, or the Commissioner notified you in writing, that you were entitled to the refund, other payment or credit.

- (3) To avoid doubt, this item does not prevent amendments made by this Schedule from applying to amounts that become payable, or entitlements that arise, on or after the commencement of this Schedule.

## Part 2—Restriction on GST refunds

### *Taxation Administration Act 1953*

#### **17 Section 105-65 in Schedule 1**

Repeal the section, substitute:

#### **105-65 Restriction on GST refunds**

- (1) The Commissioner need not give you a refund of an amount to which this section applies, or apply (under Division 3 or 3A of Part IIB) an amount to which this section applies, if:
- (a) you overpaid the amount, or the amount was not refunded to you, because a \*supply was treated as a \*taxable supply, or an \*arrangement was treated as giving rise to a taxable supply, to any extent; and
  - (b) the supply is not a taxable supply, or the arrangement does not give rise to a taxable supply, to that extent (for example, because it is \*GST-free); and
  - (c) one of the following applies:
    - (i) the Commissioner is not satisfied that you have reimbursed a corresponding amount to the recipient of the supply or (in the case of an arrangement treated as giving rise to a taxable supply) to an entity treated as the recipient;
    - (ii) the recipient of the supply, or (in the case of an arrangement treated as giving rise to a taxable supply) the entity treated as the recipient, is \*registered or \*required to be registered.
- Note: Divisions 3 and 3A of Part IIB deal with payments, credits and RBA surpluses.
- (2) This section applies to the following amounts:
- (a) in the case of a \*supply:
    - (i) so much of any \*net amount or amount of \*GST as you have overpaid (as mentioned in paragraph (1)(a)); or
    - (ii) so much of any net amount that is payable to you under section 35-5 of the \*GST Act as the Commissioner has

not refunded to you (as mentioned in paragraph (1)(a)),  
either by paying it to you or by applying it under  
Division 3 of Part IIB of this Act;

- (b) in the case of an \*arrangement:
- (i) so much of any net amount or amount of GST to which  
subparagraph (a)(i) would apply if the arrangement were  
a supply; or
  - (ii) so much of any net amount to which  
subparagraph (a)(ii) would apply if the arrangement  
were a supply.

Note: Division 3 of Part IIB deals with payments, credits and RBA  
surpluses.

## 18 Application

The amendment made by item 17 of this Schedule applies to amounts  
overpaid or not refunded:

- (a) to which section 105-65 of the *Taxation Administration Act  
1953* (as amended by this Part) applies; and
- (b) that are in respect of tax periods starting on or after 1 July  
2008.

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[Minister's second reading speech made in—  
*House of Representatives on 29 May 2008*  
*Senate on 16 June 2008*]

(117/08)

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