Tax Laws Amendment (2009 Measures No. 5) Act 2009

No. 118, 2009

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

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

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Tax Laws Amendment (2009 Measures No. 5) Act 2009

No. 118, 2009

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

[*Assented to 4 December 2009*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2009 Measures No. 5) Act 2009*.

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 this Act receives the Royal Assent.	4 December 2009
2. Schedule 1, Part 1	1 July 2000.	1 July 2000
3. Schedule 1, Part 2	1 July 2006.	1 July 2006
4. Schedule 1, Parts 3 and 4	The day this Act receives the Royal Assent.	4 December 2009
5. Schedule 2, Part 1	The day this Act receives the Royal Assent.	4 December 2009
6. Schedule 2, Part 2	Immediately after the commencement of the provision(s) covered by table item 5.	
7. Schedule 3	The day this Act receives the Royal Assent.	4 December 2009
8. Schedule 4	1 July 2010.	1 July 2010
9. Schedule 5	The day after this Act receives the Royal Assent.	5 December 2009
10. Schedule 6, Part 1	The day this Act receives the Royal Assent.	4 December 2009
11. Schedule 6, item 5	The day this Act receives the Royal Assent.	4 December 2009
12. Schedule 6, items 6 and 7	30 June 2016.	30 June 2016

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments commencing on 1 July 2000

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

1 Section 9-69 (after table item 4A)

Insert:

4B	Representatives of incapacitated entities	Division 58

2 Section 11-99 (after table item 10)

Insert:

10A	Representatives of incapacitated entities	Division 58

3 Section 13-99 (after table item 3)

Insert:

4	Representatives of incapacitated entities	Division 58

4 Section 15-99 (after table item 3)

Insert:

3A	Representatives of incapacitated entities	Division 58

5 Section 17-99 (table item 10)

Omit “Division 147”, substitute “Divisions 58 and 147”.

6 Section 21-99 (after table item 2)

Insert:

2A	Representatives of incapacitated entities	Division 58

7 Section 29-39 (after table item 10)

Insert:

11	Representatives of incapacitated entities	Division 58

8 After Division 57 of Part 4-1

Insert:

Division 58—Representatives of incapacitated entities

58-1 What this Division is about

This Division sets out how to ascribe activities of a representative of an incapacitated entity between the representative and the incapacitated entity for GST purposes.

In particular, supplies, acquisitions and importations, and associated acts and omissions, by the representative are, in most cases, treated as having been by the incapacitated entity. This ensures that a transaction by the representative has the same consequences under the GST law as if the incapacitated entity had no representative.

However, in most cases, GST-related liabilities and entitlements are allocated to the representative for transactions that are within the scope of the representative's responsibility or authority.

58-5 General principle for the relationship between incapacitated entities and their representatives

(1) Subject to this Division, any supply, acquisition or importation by an entity in the capacity of a *representative of another entity that is an *incapacitated entity is taken to be a supply, acquisition or importation by the other entity.

(2) Subject to this Division, any other act, or any omission, of an entity in the capacity of a *representative of another entity that is an *incapacitated entity is taken to be an act or omission of the other entity, but only for the purposes of determining, for the purposes of the *GST law:

(a) whether a supply or importation is a *taxable supply or *taxable importation, or the amount of GST payable on the supply or importation; or

(b) whether an acquisition or importation is a *creditable acquisition or *creditable importation, or the amount of the input tax credit for the acquisition or importation; or

(c) whether an *adjustment arises in relation to a supply, acquisition or importation, or the amount of such an adjustment.

(3) To avoid doubt, if the other entity ceases to be an *incapacitated entity, this section continues to apply in relation to the supply, acquisition or importation, or to the act or omission, after the other entity ceases to be an incapacitated entity.

(4) To avoid doubt, to the extent that an act or omission referred to in subsection (2) relates to deciding to *account on a cash basis, that subsection does not apply for the purposes of determining, for the purposes of the *GST law, whether an *adjustment arises under Division 21 in relation to a supply or acquisition.

58-10 Circumstances in which representatives have GST-related liabilities and entitlements

General rule

(1) A *representative of an *incapacitated entity:

(a) is liable to pay any GST that the incapacitated entity would, but for this section or section 48-40, be liable to pay on a *taxable supply or a *taxable importation; and

(b) is entitled to any input tax credit that the incapacitated entity would, but for this section or section 48-45, be entitled to for a *creditable acquisition or a *creditable importation; and

(c) has any *adjustment that the incapacitated entity would, but for this section or section 48-50, have;

to the extent that the making of the supply, importation or acquisition to which the GST, input tax credit or adjustment relates is within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs.

Exceptions for certain taxable supplies

(2) This section does not apply to the GST payable on a *taxable supply to the extent that one or more of the following apply:

(a) the *incapacitated entity received the *consideration for the supply before the *representative became a representative of the incapacitated entity;

(b) if, under Division 83 or 84, the GST is payable by the recipient of the supply—the incapacitated entity provided the consideration for the supply before the representative became a representative of the incapacitated entity;

(c) if:

(i) the supply is a supply for which a *voucher to which Division 100 applies is redeemed; and

(ii) the incapacitated entity supplied the voucher before the representative became a representative of the incapacitated entity;

the consideration for the supply referred to in subparagraph (i) does not exceed the consideration provided for the incapacitated entity's supply of the voucher.

Exception for certain creditable acquisitions

(3) This section does not apply to an input tax credit for a *creditable acquisition to the extent that the *incapacitated entity provided the *consideration for the acquisition before the *representative became a representative of the incapacitated entity.

Exceptions for certain adjustments

(4) This section does not apply to an *adjustment to the extent that one or more of the following apply:

(a) if the adjustment relates to a supply—the *incapacitated entity received the *consideration for the supply before the *representative became a representative of the incapacitated entity;

(b) if the adjustment relates to an acquisition—the incapacitated entity provided the consideration for the supply before the representative became a representative of the incapacitated entity;

(c) the adjustment would not be attributable to a tax period applying to the representative in the capacity of a representative of the incapacitated entity.

Incapacitated entity not liable to pay GST etc.

(5) An *incapacitated entity or, if the incapacitated entity is a *member of a *GST group, the *representative member of that group:

(a) is not liable to pay the GST on a *taxable supply or a *taxable importation to the extent that a *representative of the incapacitated entity is liable under this section to pay the GST on the supply or importation; and

(b) is not entitled to the input tax credit for a *creditable acquisition or a *creditable importation to the extent that a representative of the incapacitated entity is entitled under this section to the input tax credit for the acquisition or importation; and

(c) does not have an *adjustment to the extent that a representative of the incapacitated entity has the adjustment under this section.

Other

(6) This section has effect despite sections 9-40, 11-20, 13-15, 15-15, 83-5 and 84-10 and subsections 48-40(1), 48-45(1) and 48-50(1) (which are about who is liable for GST, and who is entitled to input tax credits).

58-15 Adjustments for bad debts

(1) For the purposes of determining whether an *adjustment arises under section 21-5 or 21-15 for the whole or a part of a debt relating to a *taxable supply or *creditable acquisition for which a *representative of an *incapacitated entity is liable to pay GST, or is entitled to an input tax credit, under section 58-10:

(a) the adjustment cannot arise if, when the whole or part of the debt is written off, or has been *overdue for 12 months, the representative *accounts on a cash basis; but

(b) it does not matter whether the incapacitated entity accounts on a cash basis at that or any other time.

(2) This section has effect despite subsections 21-5(2) and 21-15(2) (which preclude adjustments for bad debts when accounting on a cash basis).

58-40 Effect on attribution rules of not accounting on a cash basis

(1) If:

(a) a *representative of an *incapacitated entity does not *account on a cash basis; and

(b) because of section 58-10, all or part of the amount of GST payable on a *taxable supply is payable by the representative, or the representative is entitled to all or part of the input tax credit for a *creditable acquisition;

then, to the extent that, but for this section, the GST or input tax credit would be attributable to a tax period that ended before the representative became a representative of the incapacitated entity, the GST or input tax credit is instead attributable to the first tax period applying to the representative in that capacity.

(2) This section has effect despite sections 29-5 and 29-10 (which are about attribution of GST on taxable supplies and of input tax credits for creditable acquisitions).

9 Section 147-20 (heading)

Repeal the heading, substitute:

147-20 Effect of representative failing to notify the Commissioner of certain adjustments

10 Subsection 147-20(1)

Repeal the subsection, substitute:

(1) If:

(a) an *increasing adjustment relates to a supply, acquisition or importation that an *incapacitated entity made before a *representative of the incapacitated entity was appointed; and

(b) the adjustment arises after that appointment; and

(c) the representative fails to give the Commissioner written notice that:

(i) states that the adjustment has arisen in these circumstances; and

(ii) specifies the amount of the adjustment;

the adjustment is to be treated as if:

(d) the representative had the adjustment; and

(e) the incapacitated entity did not have the adjustment.

Part 2—Amendment commencing on 1 July 2006

Fuel Tax Act 2006

11 Section 70-25

Omit “Division 147”, substitute “Divisions 58 and 147”.

Part 3—Amendments commencing on Royal Assent

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

12 Section 17-99 (table item 10)

Omit "Divisions 58 and 147", substitute "Division 58".

13 Section 23-99 (table item 1)

Omit "Division 147", substitute "Division 58".

14 Section 25-99 (table item 2)

Omit "Division 147", substitute "Division 58".

15 After section 27-38

Insert:

27-39 Tax periods of incapacitated entities

(1) If an entity becomes an *incapacitated entity, the entity's tax period at the time is taken to have ended at the end of the day before the entity became incapacitated.

(2) If a tax period (the ***first tax period***) ends on a particular day because of subsection (1), the next tax period starts on the day after that day and ends when the first tax period would have ended but for that subsection.

16 Subsection 27-40(1)

Repeal the subsection, substitute:

(1) If:
  (a) an individual dies; or
  (b) another entity for any reason ceases to exist;

the individual's or entity's tax period at the time is taken to have ceased at the end of the day before the death or cessation.

17 Section 27-99 (table item 1AA)

Repeal the item, substitute:

1AA	GST groups	Division 48
1AB	Payment of GST by instalments	Division 162

18 Section 27-99 (table item 1A)

Omit "Division 147", substitute "Division 58".

19 Section 31-99 (after table item 4A)

Insert:

4B	Representatives of incapacitated entities	Division 58

20 Section 37-1 (table item 25)

Omit "Division 147", substitute "Division 58".

21 After subsection 48-70(1)

Insert:

(1A) The Commissioner must revoke the approval of one of the *members of a *GST group if:

(a) the member becomes an *incapacitated entity; and

(b) the *representative of the incapacitated entity applies to the Commissioner in the *approved form for the member's approval to be revoked.

22 After section 48-70

Insert:

48-72 Effect of representative member becoming an incapacitated entity

(1) The *representative member of a *GST group ceases to be the representative member of the group if the representative member becomes an *incapacitated entity.

(2) Subsection (1) does not apply if, when the *representative member of the group becomes an *incapacitated entity, all the other *members of the group are incapacitated entities.

(3) The *representative member of a *GST group ceases to be the representative member of the group if:

(a) all the *members of the group are *incapacitated entities; and

(b) a member of the group who is not the representative member ceases to be an incapacitated entity.

(4) If a *member of a *GST group ceases, because of this section, to be the *representative member of the group, the Commissioner must approve another member of the group to replace that member as the representative member of the group if:

(a) any member of the group applies to the Commissioner in the *approved form for that other member to be so approved; and

(b) that other member is not an *incapacitated entity.

48-73 Tax periods of GST groups with incapacitated members

(1) If a *member of a *GST group becomes an *incapacitated entity, the *representative member of that group may, by notifying the Commissioner in the *approved form, elect for the tax period that applies at the time to the members of the group to end at the same time as the incapacitated entity's tax period ends under subsection 27-39(1).

Note 1: Section 31-10 provides for when a GST return must be given to the Commissioner for a tax period other than a quarterly tax period.

Note 2: If the representative member does not make an election under this section when a member of the group becomes an incapacitated entity, it is likely that the member would no longer satisfy paragraph 48-10(1)(d), and that the Commissioner would revoke its approval as a member of the group under subsection 48-70(2).

(2) If a tax period (the ***first tax period***) ends on a particular day because of subsection (1), the next tax period starts on the day after that day and ends when the first tax period would have ended but for that subsection.

(3) This section has effect despite Division 27 (which is about how to work out the tax periods that apply).

23 Subsection 48-75(2)

Repeal the subsection, substitute:

(2) The Commissioner must revoke the approval of a *GST group if:

(a) the Commissioner is satisfied that none of its *members, or only one of its members, *satisfies the membership requirements for that GST group; or

(b) the Commissioner is satisfied that:

(i) a member of the GST group has ceased, because of section 48-72, to be the *representative member of the group; and

(ii) in the period of 21 days since the cessation, the Commissioner has not been required under subsection 48-72(4) to approve another member of the group to replace that member as the representative member of the group.

Note: Revoking under this subsection the approval of a GST group is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

24 After section 58-15

Insert:

58-20 Representatives are required to be registered

(1) A *representative of an *incapacitated entity is ***required to be registered*** in that capacity if the incapacitated entity is *registered or *required to be registered.

(2) This section has effect despite section 23-5 (which is about who is required to be registered).

58-25 Cancellation of registration of a representative

(1) The Commissioner must cancel the *registration of a *representative of an *incapacitated entity if the Commissioner is satisfied that the representative is not *required to be registered in that capacity.

Note: Cancelling the registration of a representative under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

(2) The Commissioner must notify the *representative of the cancellation.

(3) Sections 25-50 and 25-55 do not apply to the cancellation of the *registration of a *representative of an *incapacitated entity.

58-30 Notice of cessation of representation

A *representative who ceases to be a representative of an *incapacitated entity must notify the Commissioner of that cessation, in the *approved form, within 21 days after so ceasing.

58-35 Tax periods of representatives

(1) If a *representative of an *incapacitated entity is *required to be registered in that capacity, the tax periods applying to the representative in that capacity are the same tax periods that apply to the incapacitated entity.

(2) This section has effect despite Division 27 (which is about how to work out the tax periods that apply).

25 At the end of Division 58

Add:

58-45 GST returns for representatives of incapacitated entities

(1) If an individual is appointed as a *representative of 2 or more *incapacitated entities, the individual may give to the Commissioner one *GST return for a tax period in respect of the entities if the entities are *members of the same *GST group.

(2) This section has effect despite section 31-5 (which is about who must give GST returns).

58-50 Representatives to give GST returns for incapacitated entities

(1) A *representative of an *incapacitated entity must give to the Commissioner a *GST return for a tax period applying to the incapacitated entity if:

(a) the incapacitated entity has failed to give to the Commissioner a GST return for a tax period; and

(b) the Commissioner, in writing, directs the representative to give to the Commissioner a GST return.

Note: Deciding to direct a representative of an incapacitated entity to give to the Commissioner a GST return is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

(2) The tax period may be any tax period applying to the *incapacitated entity, including:

(a) a tax period that ends before the *representative became a representative of the incapacitated entity; and

(b) a tax period that starts after the representative became a representative of the incapacitated entity.

(3) The *GST return by the *representative:

(a) must be in accordance with the requirements of Division 31 as they would apply in relation to the *incapacitated entity except to the extent that the direction under paragraph (1)(b) modifies those requirements; and

(b) must be given to the Commissioner within the period specified in the direction.

(4) Without limiting the matters that the Commissioner may take into account in deciding whether to give a direction under paragraph (1)(b), the Commissioner must take into account:

(a) the likelihood of a dividend to unsecured creditors of the *incapacitated entity being declared, and the likely amounts of any such dividend; and

(b) the likelihood that, if the Commissioner were given the *GST return, it would reveal a liability to pay an amount to the Commissioner under the *GST law; and

(c) the availability of books and records that would make it possible to prepare the GST return; and

(d) the likelihood that the cost to the *representative of preparing the GST return would be covered by the incapacitated entity's assets without resulting in an unreasonable impact on the other creditors of the incapacitated entity.

(5) The *incapacitated entity is taken to have complied with Division 31 in relation to giving a *GST return for a tax period if the *representative gives to the Commissioner a return for the tax period in accordance with this section.

(6) A direction under paragraph (1)(b) is not a legislative instrument.

(7) This section has effect despite section 31-5 (which is about who must give GST returns).

58-55 Incapacitated entities not required to give GST returns in some cases

(1) An *incapacitated entity is not required to give a *GST return for a tax period if:

(a) the entity's *net amount for the tax period is zero; and

(b) the entity does not have an *increasing adjustment that is attributable to the tax period; and

(c) the entity is not liable for GST that is attributable to the tax period.

(2) This section has effect despite section 31-5 (which is about who must give GST returns).

58-60 Representative to notify Commissioner of certain liabilities etc.

(1) A *representative of an *incapacitated entity must notify the Commissioner, in the *approved form, of an amount of GST for which the entity is liable, or an *increasing adjustment that the entity has, if:

(a) the representative becomes aware, or could reasonably be expected to have become aware, of the amount of GST, or the adjustment; and

(b) the amount of GST, or the adjustment, has not been taken into account in any *GST return that has been given to the Commissioner; and

(c) the Commissioner has not been previously notified of the amount of GST, or the adjustment, under this section.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

(2) The notification must be given to the Commissioner before the day on which the *representative declares a dividend to unsecured creditors of the *incapacitated entity.

(3) This section does not apply if the *representative is a representative of a kind that does not have the capacity to declare dividends to unsecured creditors of the *incapacitated entity.

(4) This section does not apply in circumstances determined by the Commissioner under subsection (5).

(5) The Commissioner may, by legislative instrument, determine circumstances in which this section does not apply.

58-65 Money available to meet representative's liabilities

A *representative of an *incapacitated entity who is liable to pay an amount because of this Division is authorised and required to apply any money which the representative receives in his or her capacity as that representative in order to pay the liability.

58-70 Protection for actions of representative

A *representative of an *incapacitated entity is not liable to civil or criminal proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the representative's duties or powers under, or in relation to, the *GST law.

26 Subsection 129-20(1)

After "under section", insert "27-39 or".

27 Subsection 129-20(1) (note)

Before "Section 27-40", insert "Section 27-39 deals with an incapacitated entity's tax periods."

28 Subsection 131-60(3)

After "under section", insert "27-39 or".

29 Before paragraph 138-10(1)(a)

Insert:

(aa) if you are an *incapacitated entity—your tax period under section 27-39; or

30 Division 147

Repeal the Division.

31 Subsection 151-25(1)

After "at the end of your", insert "tax period under subsection 27-39(1), at the end of your".

32 Subsection 151-55(3)

Repeal the subsection, substitute:

(3) However, this section does not affect the application of:
  (a) section 27-39; or
  (b) if an entity for any reason ceases to exist—section 27-40.

33 Section 151-60 (heading)

Repeal the heading, substitute:

151-60 The effect of incapacitation or cessation

34 Subsection 151-60(1)

Repeal the subsection, substitute:

(1) If an entity becomes an *incapacitated entity, or the entity for any reason ceases to exist, the entity must give the *GST return, for the *annual tax period that ends as a result, to the Commissioner:
  (a) on or before the 21st day of the month following the end of the annual tax period; or
  (b) within such further period as the Commissioner allows.

35 After section 156-15

Insert:

156-17 Application of Division 58 to progressive or periodic supplies and acquisitions

(1) A supply that is made:
  (a) for a period or on a progressive basis; and
  (b) for *consideration that is to be provided on a progressive or periodic basis;

  is treated, for the purposes of Division 58 (which is about representatives of incapacitated entities), as if each progressive or periodic component of the supply were a separate supply.

(2) An acquisition that is made:
  (a) for a period or on a progressive basis; and
  (b) for *consideration that is to be provided on a progressive or periodic basis;

is treated, for the purposes of Division 58 (which is about representatives of incapacitated entities), as if each progressive or periodic component of the acquisition were a separate acquisition.

36 Section 156-25

Omit "section 156-15", substitute "sections 156-15 and 156-17".

37 Subsection 162-30(1)

After "at the end of your", insert "tax period under subsection 27-39(1), at the end of your".

38 Subsection 162-85(4)

Repeal the subsection, substitute:

(4) However, this section does not affect the application of:
  (a) section 27-39; or
  (b) if a *GST instalment payer for any reason ceases to exist—section 27-40.

39 Section 162-90 (heading)

Repeal the heading, substitute:

162-90 The effect of incapacitation or cessation

40 Subsection 162-90(1)

Repeal the subsection, substitute:

(1) If a *GST instalment payer becomes an *incapacitated entity, or for any reason ceases to exist, the GST instalment payer must give the *GST return, for the *instalment tax period that ends as a result, to the Commissioner:
  (a) on or before the 21st day of the month following the end of the instalment tax period; or
  (b) within such further period as the Commissioner allows.

41 Section 195-1 (at the end of the definition of *GST return*)

Add ", and includes a return given in accordance with section 58-50 of this Act".

42 Section 195-1 (after paragraph (c) of the definition of *representative*)

Insert:

(ca) a controller (within the meaning of section 9 of the *Corporations Act 2001*); or

43 Section 195-1 (at the end of the definition of *representative member*)

Add "or subsection 48-72(4)".

44 Section 195-1 (definition of *required to be registered*)

Omit "144-5 and 147-5", substitute "58-20 and 144-5".

45 Section 195-1 (definition of *tax period*)

Omit "57-35, 147-25 or 151-40", substitute "48-73, 57-35, 58-35 or 151-40".

Fuel Tax Act 2006

46 Section 70-25

Omit "Divisions 58 and 147", substitute "Division 58".

Taxation Administration Act 1953

47 Subsection 110-50(2) in Schedule 1 (after table item 49)

Insert:

49A	cancelling the registration of a *representative of an *incapacitated entity	subsection 58-25(1)
49B	deciding to direct a *representative of an *incapacitated entity to give to the Commissioner a *GST return	paragraph 58-50(1)(b)

48 Subsection 110-50(2) in Schedule 1 (table item 54)

Repeal the item.

49 Subsections 444-70(1) and (2) in Schedule 1

Repeal the subsections, substitute:

(1) If:

(a) there are, at the same time, 2 or more *representatives of the same *incapacitated entity; and

(b) the representatives were not appointed to act in different capacities as representatives;

the representatives are jointly and severally liable to pay any amount that is payable under an *indirect tax law by any of the representatives in relation to that same incapacitated entity.

(2) If:

(a) there are, at the same time, 2 or more *representatives of the same *incapacitated entity; and

(b) the representatives were not appointed to act in different capacities as representatives;

any offence against an *indirect tax law that is committed by one of the representatives is taken to have been committed by each of the representatives.

Part 4—Transitional provisions

50 Application of Division 72

(1) Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* does not apply in relation to a supply or acquisition that an incapacitated entity made to or from an associate of the incapacitated entity if:

(a) making the supply or acquisition was within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs; and

(b) the supply or acquisition was made before the day this Act received the Royal Assent.

(2) Division 72 of that Act does not apply in relation to a supply or acquisition that an incapacitated entity made to or from an associate of the incapacitated entity if:

(a) making the supply or acquisition was within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs; and

(b) the incapacitated entity is being wound up under a members' voluntary winding up (within the meaning of the *Corporations Act 2001*); and

(c) the resolution for voluntary winding up (within the meaning of the *Corporations Act 2001*) was passed before the day on which the Bill that became this Act was introduced into the House of Representatives.

51 Cancellations of registration under section 147-10

(1) If:

(a) before the commencement of this item, the Commissioner cancelled the registration of an incapacitated entity; and

(b) but for the enactment of this Schedule, the cancellation would have continued to have effect under section 147-10 of the *A New Tax System (Goods and Services Tax) Act 1999*;

the cancellation continues to have effect after that commencement as a cancellation under section 58-25 of that Act as inserted by this Schedule.

(2) If:

(a) before the commencement of this item, an objection had been made under section 110-50 in Schedule 1 to the *Taxation Administration Act 1953* against a decision under section 147-10 of the *A New Tax System (Goods and Services Tax) Act 1999*; and

(b) as at that commencement, the objection had not been finally determined;

Part IVC of the *Taxation Administration Act 1953* continues to apply after that commencement in relation to the objection as if the decision were a decision under section 58-25 of the *A New Tax System (Goods and Services Tax) Act 1999* as inserted by this Schedule.

52 Notices under section 147-15

If:

(a) before this Act received the Royal Assent, a representative who ceased to be a representative of an incapacitated entity notified the Commissioner of that cessation; and

(b) but for the enactment of this Schedule, the notice would have met the requirements of section 147-15 of the *A New Tax System (Goods and Services Tax) Act 1999*;

the notice has effect as a notice under section 58-30 of that Act as inserted by this Schedule.

53 Time limit on recovery by the Commissioner

If:

(a) because of the amendments made by this Schedule, you are liable to pay a net amount, net fuel amount or amount of indirect tax that you would not have been liable to pay if the amendments had not been made; and

(b) the net amount, net fuel amount or amount of indirect tax corresponds to an amount paid to you as a refund, or applied under Division 3 of Part IIB of the *Taxation Administration Act 1953*:

(i) on or after 12 December 2008 and before this Act received the Royal Assent; and

(ii) in relation to the net amount, net fuel amount or amount of indirect tax;

that Act applies in relation to the net amount, net fuel amount or amount of indirect tax as if the reference in subsection 105-50(1) in Schedule 1 to that Act to 4 years after the net amount, net fuel amount or amount of indirect tax became payable by you were a reference to 4 years after the payment of the refund or application of the amount under that Division.

54 Refunds of amounts wrongly paid by incapacitated entities

If:

(a) before this Act received the Royal Assent, an incapacitated entity paid an amount of indirect tax (including any relevant general interest charge under the *Taxation Administration Act 1953*) that was payable by a representative of an incapacitated entity; and

(b) but for this item, the Commissioner would be liable to refund the amount to the incapacitated entity;

the Commissioner is not liable to refund the amount unless the representative has also paid the amount to the Commissioner.

55 Liability of representatives of incapacitated entities

A representative of an incapacitated entity is not liable to make a payment to the Commissioner relating to a net amount if:

(a) but for this item, the representative would be liable, because of amendments made by this Schedule, to make the payment; and

(b) the liability arose as a result of acts or omissions that were within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs; and

(c) the liability arose before 6 February 2009; and

(d) the net amount has been disclosed in a GST return given to the Commissioner in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*:

(i) before 6 February 2009; or

(ii) within the period required under that Act for giving the return; and

(e) either the incapacitated entity has paid the net amount to the Commissioner, or both of the following apply:

(i) the incapacitated entity was unable to pay the net amount to the Commissioner before 6 February 2009;

(ii) the representative did not, on that day, have access to assets of the incapacitated entity, or to an indemnity, through which the net amount could be paid to the Commissioner; and

(f) the representative acted in good faith in relation to the net amount.

Schedule 2—Taxation of financial arrangements

Part 1—Amendment commencing on Royal Assent

Taxation Administration Act 1953

1 Subsection 45-120(2B) in Schedule 1

Repeal the subsection (including the heading).

2 Application

The amendment made by this Part applies to you for the first applicable income year (within the meaning of item 102 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*) and later income years.

3 Transitional

(1) This item applies to you if:

(a) you are a quarterly payer who pays on the basis of instalment income at the end of the first instalment quarter ending after the commencement of this item; and

(b) an amount is included in your instalment income under subsection 45-120(2B) in Schedule 1 to the *Taxation Administration Act 1953* (disregarding the amendment made by this Part) for an instalment quarter starting on or after 1 July 2009 and ending before the commencement of this item.

(2) For each instalment quarter mentioned in paragraph (1)(b), work out:

(a) your instalment income for the quarter (taking into account the amendment made by this Part); and

(b) your instalment income for the quarter (disregarding the amendment made by this Part).

(3) Next:

(a) work out the total of every amount worked out under paragraph (2)(a); and

(b) work out the total of every amount worked out under paragraph (2)(b); and

(c) subtract the amount worked out under paragraph (b) of this subitem from the amount worked out under paragraph (a) of this subitem.

(4) If the amount worked out under paragraph (3)(c) is more than nil, increase your instalment income for the first instalment quarter ending after the commencement of this item by that amount.

Part 2—Amendment commencing immediately after Royal Assent

Taxation Administration Act 1953

4 After subsection 45-120(2A) in Schedule 1

Insert:

Net gains under Subdivision 250-E of the Income Tax Assessment Act 1997 included in instalment income

(2B) Your instalment income for a period also includes the difference between:

(a) a gain (or gains) you make from a *financial arrangement to the extent to which it is (or they are):

(i) assessable under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and

(ii) reasonably attributable to that period; and

(b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):

(i) allowable to you as a deduction under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and

(ii) reasonably attributable to that period.

This is so only if the gain (or gains) referred to in paragraph (a) exceeds the loss (or losses) referred to in paragraph (b).

5 Application

The amendment made by this Part applies to you for the first applicable income year (within the meaning of item 102 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*) and later income years.

Schedule 3—Helping Children with Autism package

Income Tax Assessment Act 1997

1 Section 11-15 (table item headed "social security or like payments")

After:

farm help income support ..... 53-10 and 53-15

Insert:

Helping Children with Autism package, Outer Regional and Remote payment under 52-170

2 At the end of Subdivision 52-H

Add:

52-170 Outer Regional and Remote payments under the Helping Children with Autism package are exempt

Payments known as Outer Regional and Remote payments under the Helping Children with Autism package are exempt from income tax.

3 Application

The amendments made by this Schedule apply in relation to payments made in:

(a) the 2008-09 income year; and

(b) later income years.

Schedule 4—Continence Aids Payment Scheme

Income Tax Assessment Act 1997

1 Section 11-15 (after table item headed "foreign aspects of income taxation")

Insert:

health

Continence Aids Payment Scheme, payments under 52-175

2 At the end of Subdivision 52-H

Add:

52-175 Continence aids payments are exempt

Payments under the scheme known as the Continence Aids Payment Scheme are exempt from income tax.

3 Application

The amendments made by this Schedule apply in relation to payments made in:

(a) the 2010-11 income year; and

(b) later income years.

Schedule 5—Exempting Commonwealth Government Securities from interest withholding tax

Income Tax Assessment Act 1936

1 Subsections 128F(5A) and (5B)

Repeal the subsections.

2 Subsection 128F(7)

Repeal the subsection, substitute:

Australian public bodies are treated as Australian resident companies

(7) This section applies in relation to a debenture or debt interest issued by:

(a) the Commonwealth, a State or a Territory; or

(b) an authority of the Commonwealth, of a State or of a Territory;

as if the Commonwealth, State, Territory or authority were a company and a resident of Australia.

3 Application

The amendments made by this Schedule apply to interest paid on or after the commencement of this Schedule.

Schedule 6—2009 Victorian Bushfire Appeal Trust Account

Part 1—Main provisions

1 Interpretation

Expressions used in this Part that are also used in the *Income Tax Assessment Act 1997* have the same meaning as in that Act.

2 2009 Victorian Bushfire Appeal Trust Account

This Part applies if the 2009 Victorian Bushfire Appeal Trust Account mentioned in item 4.2.41 of the table in subsection 30-45(2) of the *Income Tax Assessment Act 1997* is used only for one or more of the following purposes for the benefit of communities and individuals affected by the Victorian bushfires of January and February 2009:

(a) purposes consistent with those described in item 4.1.5 of the table in subsection 30-45(1) of that Act for Australian disaster relief funds covered by that item;

(b) providing broad public benefits that:

(i) are consistent with the purposes of one or more exempt entities; and

(ii) are widely and publicly accessible; and

(iii) are commercial or private only to an incidental and ancillary extent, if at all;

(c) reimbursing payments made by individuals or organisations for purposes covered by paragraph (a) or (b);

(d) providing long-term assistance to orphans who are less than 18 years old;

(e) providing:

(i) assistance to individuals whose main residences were destroyed in the bushfires, if the residences had the characteristics of being the owner-occupied main residences of the individuals (ignoring the actual legal ownership of the residences); or

(ii) assistance to individuals who, because of the bushfires, have lived or are living in transitional housing, up to $15,000 for each individual;

(f) providing assistance to individuals who:

(i) carry on primary production businesses; or

(ii) are partners in partnerships that carry on primary production businesses; or

(iii) are beneficiaries of trusts that carry on primary production businesses;

up to $10,000 for each individual.

3 Australian Red Cross Society

For the purposes of a taxation law, in determining whether the Australian Red Cross Society is a public benevolent institution or a charitable institution, disregard any payments from the Society to the 2009 Victorian Bushfire Appeal Trust Account.

4 Application

Item 3 applies in relation to payments made:

(a) after 28 January 2009; and

(b) before 6 February 2014.

Part 2—Consequential amendments

Income Tax Assessment Act 1997

5 At the end of subsection 30-45(1)

Add:

Note: In determining whether the Australian Red Cross Society is a public benevolent institution or a charitable institution, see Part 1 of Schedule 6 to the *Tax Laws Amendment (2009 Measures No. 5) Act 2009*.

6 Subsection 30-45(1) (note)

Repeal the note.

7 Subsection 30-45(2) (table item 4.2.41)

Repeal the item.

[*Minister's second reading speech made in—*
House of Representatives on 16 September 2009
Senate on 16 November 2009]