



Tax Laws Amendment (Resale Royalty Right for Visual Artists) Act 2009

No. 126, 2009

**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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No. 126, 2009

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

[Assented to 9 December 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Resale Royalty Right for Visual Artists) 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.	9 December 2009
2. Schedule 1	At the same time as Part 2 of the <i>Resale Royalty Right for Visual Artists Act 2009</i> commences.	

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Income Tax Assessment Act 1997

1 Section 10-5 (after table item headed “child”)

Insert:

collecting societies

payments of royalties by copyright collecting societies 15-22

payments of royalties by resale royalty collecting
society..... 15-23

2 Section 10-5 (table item headed “payments to members of copyright collecting societies”)

Repeal the item.

3 Section 11-15 (table item headed “copyright collecting societies”)

Repeal the item, substitute:

copyright collecting societies 51-43

4 Section 11-15 (after table item headed “life insurance companies”)

Insert:

resale royalty collecting societies 51-45

5 Subsection 15-20(2)

After “section 15-22”, insert “or 15-23”.

6 Subsection 15-22(2)

Omit “tax”, substitute “*tax”.

7 After section 15-22

Insert:

15-23 Payments of resale royalties by resale royalty collecting society

- (1) This section, instead of Division 6 of Part III of the *Income Tax Assessment Act 1936*, applies to a payment that the *resale royalty collecting society makes to you under section 26 of the *Resale Royalty Right for Visual Artists Act 2009*.
- (2) Your assessable income includes the amount of the payment, except to the extent that the payment represents an amount on which the directors of the society are or have been assessed, and are liable to pay *tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*.

Note: Section 410-50 of this Act requires the resale royalty collecting society to give you a notice at the time of payment.

8 Section 51-43

Repeal the section, substitute:

51-43 Income collected or derived by copyright collecting society

- (1) This section applies to a *copyright collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.
- (2) The following are exempt from income tax:
 - (a) *royalties, and interest on royalties, collected or *derived by the society in an income year;
 - (b) any other amounts, relating to copyright, that are:
 - (i) derived by the society in an income year; and
 - (ii) prescribed by the regulations for the purposes of this paragraph;
 - (c) other *ordinary income and *statutory income derived by the society in an income year, to the extent that it does not exceed the lesser of:
 - (i) 5% of the total amount of the *ordinary income and *statutory income collected and derived by the society in the income year; and
 - (ii) \$5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

51-45 Income collected or derived by resale royalty collecting society

- (1) This section applies to the *resale royalty collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.
- (2) The following are exempt from income tax:
 - (a) *resale royalties, and interest on resale royalties, collected or *derived by the society in an income year;
 - (b) any other amounts, relating to *resale royalty rights, that are:
 - (i) derived by the society in an income year; and
 - (ii) prescribed by the regulations for the purposes of this paragraph;
 - (c) other *ordinary income and *statutory income derived by the society in an income year, to the extent that it does not exceed the lesser of:
 - (i) 5% of the total amount of the ordinary income and statutory income collected and derived by the society in the income year; and
 - (ii) \$5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

9 Transitional—regulations

- (1) Regulations:
 - (a) made for the purposes of paragraph (b) of the definition of **copyright income** in subsection 995-1(1) of the *Income Tax Assessment Act 1997*; and
 - (b) in force just before the commencement of this item;have effect, from that commencement, as if they had been made for the purposes of paragraph 51-43(2)(b) of that Act, as substituted by this Schedule.
- (2) Regulations:
 - (a) made for the purposes of subparagraph 51-43(2)(b)(ii) of the *Income Tax Assessment Act 1997*; and
 - (b) in force just before the commencement of this item;have effect, from that commencement, as if they had been made for the purposes of subparagraph 51-43(2)(c)(ii) of that Act, as substituted by this Schedule.

10 Division 410

Repeal the Division, substitute:

Division 410—Copyright and resale royalty collecting societies

Table of Subdivisions

Guide to Division 410

410-A Notice of payments

Guide to Division 410

410-1 What this Division is about

This Division sets out rules that apply whenever:

- (a) a copyright collecting society to which section 51-43 applies makes a payment to a member of the society; or
- (b) the resale royalty collecting society pays a resale royalty.

Subdivision 410-A—Notice of payments

Table of sections

410-5 Copyright collecting society must give notice to member of society

410-50 Resale royalty collecting society must give notice to holder of resale royalty right

410-5 Copyright collecting society must give notice to member of society

- (1) A *copyright collecting society must give a *member of the society notice of any payment it makes to the member, if section 51-43 applies to the society.
- (2) The society must give the notice at the time of the payment.

- (3) The notice must be in the *approved form.

Note: Under section 288-75 in Schedule 1 to the *Taxation Administration Act 1953* a society is liable to an administrative penalty for failing to give a notice required under this section.

410-50 Resale royalty collecting society must give notice to holder of resale royalty right

- (1) The *resale royalty collecting society must give an entity notice of any payment it makes to the entity under section 26 of the *Resale Royalty Right for Visual Artists Act 2009*, if section 51-45 of this Act applies to the society.
- (2) The society must give the notice at the time of the payment.
- (3) The notice must be in the *approved form.

Note: Under section 288-75 in Schedule 1 to the *Taxation Administration Act 1953* the society is liable to an administrative penalty for failing to give a notice required under this section.

11 Subsection 995-1(1) (subparagraph (b)(iii) of the definition of *copyright collecting society*)

After “subparagraph (ii)”, insert “or, if the company is the *resale royalty collecting society, relate to the company’s functions or duties as resale royalty collecting society”.

12 Subsection 995-1(1) (subparagraph (b)(iv) of the definition of *copyright collecting society*)

Omit “*copyright income”, substitute “income of a kind mentioned in paragraph 51-43(2)(a) or (b)”.

13 Subsection 995-1(1) (definition of *copyright income*)

Repeal the definition.

14 Section 995-1 (definition of *non-copyright income*)

Repeal the definition.

15 Subsection 995-1(1)

Insert:

resale royalty means resale royalty under the *Resale Royalty Right for Visual Artists Act 2009*.

16 Subsection 995-1(1)

Insert:

resale royalty collecting society means the collecting society, within the meaning given by the *Resale Royalty Right for Visual Artists Act 2009*.

17 Subsection 995-1(1)

Insert:

resale royalty right has the meaning given by the *Resale Royalty Right for Visual Artists Act 2009*.

Income Tax (Transitional Provisions) Act 1997

18 Subsection 410-1(1)

Omit “copyright income, and non-copyright income”, substitute “ordinary income, and statutory income”.

Taxation Administration Act 1953

19 Section 288-75 in Schedule 1

Repeal the section, substitute:

288-75 Administrative penalty for a copyright or resale royalty collecting society

- (1) A *copyright collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-5 of the *Income Tax Assessment Act 1997*.
- (2) The *resale royalty collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-50 of the *Income Tax Assessment Act 1997*.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

20 Application

The amendments made by this Schedule apply in relation to:

- (a) the 2009-10 income year; and
- (b) later income years.

*[Minister's second reading speech made in—
House of Representatives on 16 September 2009
Senate on 23 November 2009]*

(173/09)
