Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009

No. 133, 2009

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

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

Contents

1 Short title 1
2 Commencement 2
3 Schedule(s) 2

Schedule 1—Employee share schemes 3

Part 1—Main amendments 3

Income Tax Assessment Act 1997 3

Taxation Administration Act 1953 24

Part 2—Consequential amendments 33

A New Tax System (Goods and Services Tax) Act 1999 33

Fringe Benefits Tax Assessment Act 1986 33

Income Tax Assessment Act 1936 33

Income Tax Assessment Act 1997 36

Income Tax (Transitional Provisions) Act 1997 50

Taxation Administration Act 1953 51

Part 3—Application provisions 52

Income Tax (Transitional Provisions) Act 1997 52

Schedule 2—Non-commercial losses 58

Income Tax Assessment Act 1997 58

Income Tax (Transitional Provisions) Act 1997 61

Schedule 3—Lost members' superannuation 63

Part 1—Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999 63

Part 2—Other amendments 80

Financial Transaction Reports Act 1988 80

Income Tax Assessment Act 1997 80

Taxation Administration Act 1953 82

Part 3—Application and saving provisions 83

Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009

No. 133, 2009

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

[*Assented to 14 December 2009*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2009 Budget Measures No. 2) 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.	14 December 2009
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the *Income Tax (TFN Withholding Tax (ESS)) Act 2009* receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	14 December 2009
3. Schedules 2 and 3	The day this Act receives the Royal Assent.	14 December 2009

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—Employee share schemes

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Part 2-40

Add:

Division 83A—Employee share schemes

Table of Subdivisions

Guide to Division 83A
83A-A Objects of Division and key concepts
83A-B Immediate inclusion of discount in assessable income
83A-C Deferred inclusion of gain in assessable income
83A-D Deduction for employer
83A-E Miscellaneous

Guide to Division 83A

83A-1 What this Division is about

Your assessable income includes discounts on shares, rights and stapled securities you (or your associate) acquire under an employee share scheme.

You may be entitled:

(a) to have the amount included in your assessable income reduced; or

(b) to have the income year in which it is included deferred.

Subdivision 83A-A—Objects of Division and key concepts

Table of sections

83A-5 Objects of Division
83A-10 Meaning of ***ESS interest*** and ***employee share scheme***

83A-5 Objects of Division

The objects of this Division are:

(a) to ensure that benefits provided to employees under *employee share schemes are subject to income tax at the employees' marginal rates under *income tax law (instead of being subject to *fringe benefits tax law); and

(b) to increase the extent to which the interests of employees are aligned with those of their employers, by providing a tax concession to encourage lower and middle income earners to acquire *shares under such schemes.

83A-10 Meaning of *ESS interest* and *employee share scheme*

(1) An ***ESS interest***, in a company, is a beneficial interest in:

(a) a *share in the company; or

(b) a right to acquire a beneficial interest in a share in the company.

(2) An ***employee share scheme*** is a *scheme under which *ESS interests in a company are provided to employees, or *associates of employees, (including past or prospective employees) of:

(a) the company; or

(b) *subsidiaries of the company;

in relation to the employees' employment.

Note: See section 83A-325 for relationships similar to employment.

Subdivision 83A-B—Immediate inclusion of discount in assessable income

Guide to Subdivision 83A-B

83A-15 What this Subdivision is about

Generally, a discount you receive on shares, rights or stapled securities you acquire under an employee share scheme is included in your assessable income when you acquire the beneficial interest in those shares, rights or securities.

You may be entitled to reduce the amount included in your assessable income if you meet certain conditions which seek to limit the concession to genuine schemes broadly available to all permanent employees who do not already have anything other than a minor interest in their employer.

The income year in which you are taxed may be deferred if there is a real risk of forfeiture, or you acquired the shares or securities under particular salary sacrifice arrangements (see Subdivision 83A-C).

If you are a foreign resident, only the part of the discount that relates to your employment in Australia is included in your assessable income.

Table of sections

Operative provisions

83A-20 Application of Subdivision
83A-25 Discount to be included in assessable income
83A-30 Amount for which discounted ESS interest acquired
83A-35 Reduction of amounts included in assessable income

Operative provisions

83A-20 Application of Subdivision

(1) This Subdivision applies to an *ESS interest if you acquire the interest under an *employee share scheme at a discount.

Note 1: This Subdivision does not apply if Subdivision 83A-C applies: see section 83A-105.

Note 2: If an associate of yours acquires an interest in relation to your employment, this Division applies as if you, rather than your associate, acquired the interest: see section 83A-305.

Note 3: Regulations made for the purposes of section 83A-315 may be relevant to working out whether you acquire the ESS interest at a discount.

(2) However, this Subdivision does not apply if the *ESS interest is a beneficial interest in a *share that you acquire as a result of exercising a right, if you acquired a beneficial interest in the right under an *employee share scheme.

83A-25 Discount to be included in assessable income

(1) Your assessable income for the income year in which you acquire the *ESS interest includes the discount given in relation to the interest.

(2) Treat an amount included in your assessable income under subsection (1) as being from a source other than an *Australian source to the extent that it relates to your employment outside Australia.

Note: For the CGT treatment of employee share schemes, see Subdivision 130-D.

83A-30 Amount for which discounted ESS interest acquired

For the purposes of this Act (other than this Division), the *ESS interest (and the *share or right of which it forms part) is taken to have been acquired for its *market value (rather than for its discounted value).

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

83A-35 Reduction of amounts included in assessable income

Reduction and income test

(1) Reduce the total amount included in your assessable income under subsection 83A-25(1) for an income year by the total of the amounts included in your assessable income under that subsection, for the income year, for *ESS interests to which subsections (3) to (9) of this section apply.

(2) However:
  (a) do not reduce the total amount by more than $1,000; and
  (b) only make the reduction if the sum of the following does not exceed $180,000:
    (i) your taxable income for the income year (including any amount that would be included in your taxable income if you disregarded this section);
    (ii) your *reportable fringe benefits total for the income year;
    (iii) your *reportable superannuation contributions (if any) for the income year;
    (iv) your *total net investment loss for the income year.

Employment

(3) This subsection applies to an *ESS interest in a company if, when you acquire the interest, you are employed by:
  (a) the company; or
  (b) a *subsidiary of the company.

Employee share scheme relates only to ordinary shares

(4) This subsection applies to an *ESS interest you acquire under an *employee share scheme if, when you acquire the interest, all the ESS interests available for acquisition under the scheme relate to ordinary *shares.

Integrity rule about share trading and investment companies.

(5) This subsection applies to an *ESS interest in a company unless, when you acquire the interest:

(a) the predominant business of the company (whether or not stated in its constituent documents) is the acquisition, sale or holding of *shares, securities or other investments (whether directly or indirectly through one or more companies, partnerships or trusts); and

(b) you are employed by the company; and

(c) you are also employed by any other company that is:

(i) a *subsidiary of the first company; or

(ii) a holding company (within the meaning of the *Corporations Act 2001*) of the first company; or

(iii) a subsidiary of a holding company (within the meaning of the *Corporations Act 2001*) of the first company.

Scheme must be non-discriminatory

(6) This subsection applies to an *ESS interest you acquire under an *employee share scheme if, when you acquire the interest, both:

(a) the employee share scheme; and

(b) any scheme for the provision of financial assistance in respect of acquisitions of ESS interests under the employee share scheme;

are operated on a non-discriminatory basis in relation to at least 75% of the permanent employees of your employer who have completed at least 3 years of service (whether continuous or non-continuous) with your employer and who are Australian residents.

No risk of losing interest or share under the conditions of the scheme

(7) This subsection applies to an *ESS interest you acquire under an *employee share scheme if, when you acquire the interest:

(a) if the ESS interest is a beneficial interest in a *share—there is no real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it); or

(b) if the ESS interest is a beneficial interest in a right to acquire a beneficial interest in a *share:

(i) there is no real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other

than by disposing of it, exercising the right or letting the right lapse); and

(ii) there is no real risk that, under the conditions of the scheme, if you exercise the right, you will forfeit or lose the beneficial interest in the share (other than by disposing of it).

Minimum holding period

(8) This subsection applies to an *ESS interest you acquire under an *employee share scheme if, at all times during the period that:

(a) starts when you acquire the interest; and

(b) ends at the earlier of:

(i) 3 years later; and

(ii) when you cease being employed by your employer;

the scheme is operated so that:

(c) you are not permitted to dispose of:

(i) any ESS interest (the ***scheme interest***) you acquire under the scheme; or

(ii) a beneficial interest in a *share you acquire as a result of a scheme interest;

before the earlier of:

(iii) the end of the period of 3 years after you acquire the scheme interest; and

(iv) when you cease being employed by your employer; and

(d) everyone else who acquires ESS interests under the scheme is subject to a corresponding restriction.

Note: This subsection is taken to apply in the case of a takeover or restructure: see subsection 83A-130(3).

5% limit on shareholding and voting power

(9) This subsection applies to an *ESS interest in a company if, immediately after you acquire the interest:

(a) you do not hold a beneficial interest in more than 5% of the *shares in the company; and

(b) you are not in a position to cast, or to control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the company.

Subdivision 83A-C—Deferred inclusion of gain in assessable income

Guide to Subdivision 83A-C

83A-100 What this Subdivision is about

> If there is a real risk you might forfeit the share, right or stapled security you acquired under an employee share scheme, you don't include the discount in your assessable income when you acquired it. Instead, in the first income year you are able to dispose of the share, right or security, your assessable income will include any gain you have made to that time. If you cease employment earlier, or if 7 years pass, the gain is included in that income year instead.
>
> A share or stapled security you acquire under salary sacrifice arrangements can also be subject to this deferred taxing point if you get no more than $5,000 worth of shares under those arrangements.

Table of sections

Main provisions

83A-105 Application of Subdivision
83A-110 Amount to be included in assessable income
83A-115 ESS deferred taxing point—shares
83A-120 ESS deferred taxing point—rights to acquire shares
83A-125 Tax treatment of ESS interests held after ESS deferred taxing points

Takeovers and restructures

83A-130 Takeovers and restructures

Main provisions

83A-105 Application of Subdivision

Scope of Subdivision

(1) This Subdivision applies, and Subdivision 83A-B does not apply, to an *ESS interest in a company if:

(a) Subdivision 83A-B would, apart from this section, apply to the interest (see section 83A-20); and

(b) subsections 83A-35(3), (4), (5) and (9) apply to the interest; and

(c) if the interest is a beneficial interest in a *share:

(i) subsection (2) of this section applies to the interest; and

(ii) subsection (3) or (4) applies to the interest; and

(d) if the interest is a beneficial interest in a right to acquire a beneficial interest in a share—subsection (3) applies to the interest.

Note: Subsections 83A-35(3), (4), (5), and (9) contain conditions relating to the following:

(a) your employment;

(b) the types of shares available under the employee share scheme;

(c) share trading and investment companies;

(d) your shareholding and voting power in the company.

Broad availability of schemes

(2) This subsection applies to an *ESS interest you acquire under an *employee share scheme if, when you acquire the interest, at least 75% of the permanent employees of your employer who have completed at least 3 years of service (whether continuous or non-continuous) with your employer and who are Australian residents are, or at some earlier time had been, entitled to acquire:

(a) ESS interests under the scheme; or

(b) ESS interests in:

(i) your employer; or

(ii) a holding company (within the meaning of the *Corporations Act 2001*) of your employer;

under another employee share scheme.

Real risk of losing interest or share under the conditions of the scheme

(3) This subsection applies to an *ESS interest you acquire under an *employee share scheme if, when you acquire the interest:

(a) if the ESS interest is a beneficial interest in a *share—there is a real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it); or

(b) if the ESS interest is a beneficial interest in a right to acquire a beneficial interest in a share:

(i) there is a real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it, exercising the right or letting the right lapse); or

(ii) there is a real risk that, under the conditions of the scheme, if you exercise the right, you will forfeit or lose the beneficial interest in the share (other than by disposing of it).

Salary sacrifice arrangement

(4) This subsection applies to an *ESS interest you acquire under an *employee share scheme during an income year at a discount if:

(a) the interest is provided:

(i) because you agreed to acquire the interest in return for a reduction in your salary or wages that would not have happened apart from the agreement; or

(ii) as part of your remuneration package, in circumstances where it is reasonable to conclude that your salary or wages would be greater if the interest was not made part of that package; and

(b) at the time you acquire the interest:

(i) the discount equals the *market value of the ESS interest; and

(ii) all of the ESS interests available for acquisition under the scheme are ESS interests to which subsection (3) applies, beneficial interests in *shares, or both; and

(iii) the governing rules of the scheme expressly state that this Subdivision applies to the scheme (subject to the requirements of this Act); and

(c) the total *market value of the *ESS interests in your employer and any holding company (within the meaning of the *Corporations Act 2001*) of your employer:

(i) that you acquire during the year under any employee share scheme or schemes; and

(ii) to which both this Subdivision and this subsection apply;

does not exceed $5,000.

(5) For the purposes of paragraph (4)(c), work out the *market value of each *ESS interest as at the time you acquire it.

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

83A-110 Amount to be included in assessable income

(1) Your assessable income for the income year in which the *ESS deferred taxing point for the *ESS interest occurs includes the *market value of the interest at the ESS deferred taxing point, reduced by the *cost base of the interest.

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

(2) Treat an amount included in your assessable income under subsection (1) as being from a source other than an *Australian source to the extent that it relates to your employment outside Australia.

Note: For the CGT treatment of employee share schemes, see Subdivision 130-D.

83A-115 ESS deferred taxing point—shares

Scope

(1) This section applies if the *ESS interest is a beneficial interest in a *share.

*Meaning of **ESS deferred taxing point***

(2) The ***ESS deferred taxing point*** for the *ESS interest is the earliest of the times mentioned in subsections (4) to (6).

(3) However, the ***ESS deferred taxing point*** for the *ESS interest is instead the time you dispose of the interest, if that time occurs within 30 days after the time worked out under subsection (2).

No restrictions on disposing of share

(4) The first possible taxing point is the earliest time when:

(a) there is no real risk that, under the conditions of the *employee share scheme, you will forfeit or lose the *ESS interest (other than by disposing of it); and

(b) if, at the time you acquired the interest, the scheme genuinely restricted you immediately disposing of the interest—the scheme no longer so restricts you.

Cessation of employment

(5) The 2nd possible taxing point is the time when the employment in respect of which you acquired the interest ends.

Maximum time period for deferral

(6) The 3rd possible taxing point is the end of the 7 year period starting when you acquired the interest.

83A-120 ESS deferred taxing point—rights to acquire shares

Scope

(1) This section applies if the *ESS interest is a beneficial interest in a right to acquire a beneficial interest in a *share.

*Meaning of **ESS deferred taxing point***

(2) The ***ESS deferred taxing point*** for the *ESS interest is the earliest of the times mentioned in subsections (4) to (7).

(3) However, the ***ESS deferred taxing point*** for the *ESS interest is:
(a) the time you dispose of the ESS interest (other than by exercising the right); or
(b) if you exercise the right—the time you dispose of the beneficial interest in the *share;
if that time occurs within 30 days after the time worked out under subsection (2).

No restrictions on disposing of right

(4) The first possible taxing point is the earliest time when:
(a) you have not exercised the right; and
(b) there is no real risk that, under the conditions of the *employee share scheme, you will forfeit or lose the *ESS interest (other than by disposing of it, exercising the right or letting the right lapse); and

(c) if, at the time you acquired the ESS interest, the scheme genuinely restricted you immediately disposing of the ESS interest—the scheme no longer so restricts you.

Cessation of employment

(5) The 2nd possible taxing point is the time when the employment in respect of which you acquired the interest ends.

Maximum time period for deferral

(6) The 3rd possible taxing point is the end of the 7 year period starting when you acquired the interest.

No restrictions on exercising right and disposing of share

(7) The 4th possible taxing point is the earliest time when:

(a) there is no real risk that, under the conditions of the scheme, you will forfeit or lose the *ESS interest (other than by disposing of it, exercising the right or letting the right lapse); and

(b) if, at the time you acquired the ESS interest, the scheme genuinely restricted you immediately exercising the right—the scheme no longer so restricts you; and

(c) there is no real risk that, under the conditions of the scheme, if you exercise the right, you will forfeit or lose the beneficial interest in the *share (other than by disposing of it); and

(d) if, at the time you acquired the ESS interest, the scheme genuinely restricted you immediately disposing of the beneficial interest in the share if you exercised the right—the scheme no longer so restricts you.

83A-125 Tax treatment of ESS interests held after ESS deferred taxing points

For the purposes of this Act (other than this Division), the *ESS interest (and the *share or right of which it forms part) is taken to have been acquired immediately after the *ESS deferred taxing point for the interest for its *market value, unless the ESS deferred taxing point occurs at the time the interest is disposed of.

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

Takeovers and restructures

83A-130 Takeovers and restructures

Object and scope

(1) The object of this section is to allow this Division to continue to apply if:
  (a) at least one of the following applies:
    (i) an *arrangement (the ***takeover***) is entered into that is intended to result in a company (the ***old company***) becoming a *100% subsidiary of another company;
    (ii) *ESS interests in a company (the ***old company***) acquired under *employee share schemes can reasonably be regarded as having been replaced, wholly or partly, by ESS interests in one or more other companies as a result of a change (the ***restructure***) in the ownership (including the structure of the ownership) of the old company; and
  (b) just before the takeover or restructure, you held ESS interests (the ***old interests***) in the old company that you acquired under an employee share scheme.

Treat new interests as continuations of old interests

(2) For the purposes of this Division, treat any *ESS interests (the ***new interests***) in a company (the ***new company***) that you acquire in connection with the takeover or restructure as a continuation of the old interests, to the extent that:
  (a) as a result of the arrangement or change, you stop holding the old interests; and
  (b) the new interests can reasonably be regarded as matching any of the old interests.

Note: In determining to what extent something can reasonably be regarded as matching any of the old interests, one of the factors to consider is the respective market values of that thing and of the old interests.

(3) Subsection 83A-35(8) (about the 3 year rule) is taken to apply to the *ESS interests.

(4) Subsections (2) and (3) only apply if the new interests relate to ordinary *shares.

Old interest not matched by new interests

(5) For the purposes of this Division, treat yourself as having disposed of the old interests to the extent that, in connection with the takeover or restructure, you acquire anything that:
  (a) can reasonably be regarded as matching any of the old interests; but
  (b) is not treated by subsection (2) as a continuation of those interests.

Continuation of your employment

(6) For the purposes of this Division, treat your employment by:
  (a) the new company; or
  (b) a *subsidiary of the new company; or
  (c) a holding company (within the meaning of the *Corporations Act 2001*) of the new company; or
  (d) a subsidiary of a holding company (within the meaning of the *Corporations Act 2001*) of the new company;

as a continuation of the employment in respect of which you acquired the old interests.

Apportionment of cost base of old interests

(7) Treat yourself as having given, as consideration for the assets mentioned in subsection (8), the amount worked out by apportioning among those assets, according to their respective *market values immediately after the takeover or restructure, the total of:
  (a) the *cost bases of the old interests when you stop holding them; and
  (b) the cost bases of the assets mentioned in paragraph (8)(b) immediately after the takeover or restructure (ignoring the effect of this subsection).

(8) The assets are:
  (a) the things that:
    (i) you acquired in connection with the takeover or restructure; and
    (ii) can reasonably be regarded as matching the old interests;

(including all of the new interests); and

(b) in a case covered by subparagraph (1)(a)(ii)—any *ESS interests in the old company that:

(i) you held just before, and continue to hold just after, the restructure; and

(ii) that can reasonably be regarded as matching the old interests.

Exceptions

(9) This section only applies if:

(a) at or about the time you acquire the new interests, you are employed as mentioned in subsection (6); and

(b) at the time you acquire the new interests:

(i) you do not hold a beneficial interest in more than 5% of the *shares in the new company; and

(ii) you are not in a position to cast, or to control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the new company.

Subdivision 83A-D—Deduction for employer

Guide to Subdivision 83A-D

83A-200 What this Subdivision is about

> You can deduct an amount for shares, rights or stapled securities you provide to your employees under an employee share scheme if they are eligible for a reduction in their assessable income under section 83A-35. The amount you can deduct is equal to that reduction.
>
> You must defer any deduction you are entitled to for amounts you provide to finance your employees acquiring interests in shares, rights or stapled securities under an employee share scheme until the employees have actually acquired those interests.

Table of sections

Operative provisions

83A-205 Deduction for employer
83A-210 Timing of general deductions

Operative provisions

83A-205 Deduction for employer

(1) You can deduct an amount for an income year if:
  (a) during the year you provided one or more *ESS interests to an individual under an *employee share scheme; and
  (b) you did so as:
    (i) the employer of the individual; or
    (ii) a holding company (within the meaning of the *Corporations Act 2001*) of the employer of the individual; and
  (c) section 83A-35 applies to reduce the amount included in the individual's assessable income under subsection 83A-25(1) in relation to some or all of the interests.

(2) Disregard paragraph 83A-35(2)(b) (income test) for the purposes of paragraph (1)(c) of this section.

(3) The amount of the deduction is the amount of the reduction mentioned in paragraph (1)(c).

Deduction to be apportioned if interest provided by multiple entities

(4) The amount of the deduction worked out under subsection (3) must be apportioned between 2 or more entities on a reasonable basis if the entities jointly provide an *ESS interest for which an amount can be deducted under subsection (1).

83A-210 Timing of general deductions

If:
  (a) at a particular time, you provide another entity with money or other property:
    (i) under an *arrangement; and
    (ii) for the purpose of enabling an individual (the ***ultimate beneficiary***) to acquire, directly or indirectly, an *ESS interest under an *employee share scheme in relation to

the ultimate beneficiary's employment (including past or prospective employment); and

(b) that particular time occurs before the time (the ***acquisition time***) the ultimate beneficiary acquires the *ESS interest;

then, for the purpose of determining the income year (if any) in which you can deduct an amount in respect of the provision of the money or other property, you are taken to have provided the money or other property at the acquisition time.

Subdivision 83A-E—Miscellaneous

Table of sections

83A-305 Acquisition by associates
83A-310 Forfeiture etc. of ESS interest
83A-315 Market value of ESS interest
83A-320 Interests in a trust
83A-325 Application of Division to relationships similar to employment
83A-330 Application of Division to ceasing employment
83A-335 Application of Division to stapled securities
83A-340 Application of Division to indeterminate rights

83A-305 Acquisition by associates

If an *associate (other than an *employee share trust) of an individual acquires an *ESS interest in relation to the individual's employment (including past or prospective employment), then, for the purposes of this Division:

(a) treat the interest as having being acquired by the individual (instead of the associate); and

(b) treat any circumstance, right or obligation existing or not existing in relation to the interest in relation to the associate as existing or not existing in relation to the individual; and

(c) treat anything done or not done by or in relation to the associate in relation to the interest as being done or not done by or in relation to the individual.

Example 1: The following are attributed to the employee, rather than to the associate:

(a) the associate's voting rights;

(b) the associate's ability or inability to dispose of the ESS interest;

(c) whether there is a real risk that the associate may lose the ESS interest;

(d) the associate's cost base for the ESS interest.

Example 2: If the associate disposes of the ESS interest, the employee is taken to have disposed of the ESS interest instead.

83A-310 Forfeiture etc. of ESS interest

This Division (apart from this Subdivision) is taken never to have applied in relation to an *ESS interest acquired by an individual under an *employee share scheme if:

(a) disregarding this section, an amount is included in the individual's assessable income under this Division in relation to the interest; and

(b) either:

(i) the individual forfeits the interest; or

(ii) in the case of an ESS interest that is a beneficial interest in a right—the individual forfeits or loses the interest (without having disposed of the interest or exercised the right); and

(c) the forfeiture or loss is not the result of:

(i) a choice made by the individual (other than a choice by that individual to cease particular employment); or

(ii) a condition of the scheme that has the direct effect of protecting (wholly or partly) the individual against a fall in the *market value of the interest.

83A-315 Market value of ESS interest

(1) Whenever this Division uses the *market value of an *ESS interest, instead use the amount specified in the regulations for the purposes of this section in relation to the interest, if the regulations specify such an amount.

(2) To avoid doubt, apply the rule in subsection (1) to the *market value component of any calculation for the purposes of this Division that involves market value.

Example: If the regulations specify an amount in relation to an ESS interest, use that amount instead of the market value of the interest in working out:

(a) whether there is a discount given in relation to interest; and

(b) if so—the amount of the discount.

83A-320 Interests in a trust

(1) This section applies if, at a time:

(a) you hold an interest in a trust whose assets include *shares; and

(b) that interest corresponds to a particular number of the shares (even if the interest does not correspond to particular shares).

(2) For the purposes of this Division, treat yourself as holding at that time a beneficial interest in each of a number of the *shares included in the assets of the trust equal to the number mentioned in paragraph (1)(b).

(3) If there are 2 or more classes of *shares included in the assets of the trust, this section operates separately in relation to each class as if the shares in that class were all the shares included in the assets of the trust.

(4) This section applies to rights to acquire beneficial interests in *shares in the same way it applies to shares.

Note: For the CGT treatment of employee share schemes, see Subdivision 130-D.

83A-325 Application of Division to relationships similar to employment

This Division applies to an individual covered by column 1 of an item in the table as if:

(a) he or she were employed by the entity referred to in column 2 of that item; and

(b) the thing referred to column 3 of that item constituted that employment.

Application of Division to relationships similar to employment

Item	Column 1 This Division applies to an individual who:	Column 2 as if he or she were employed by:	Column 3 and this constituted that employment:
1	receives, or is entitled to receive, *work and income support withholding payments	the entity that pays or provides the work and income support withholding	the relationship because of which the entity pays or provides the work and income support

Application of Division to relationships similar to employment			
Item	**Column 1** **This Division applies to an individual who:**	**Column 2** **as if he or she were employed by:**	**Column 3** **and this constituted that employment:**
	(otherwise than as an employee)	payments (or is liable to do so)	withholding payments to the individual (or is liable to do so).
2	is engaged in service in a foreign country as the holder of an office	the entity by whom the individual is so engaged	the holding of the office.
3	provides services to an entity (other than services covered by a previous item in this table and services provided as an employee)	the entity	the *arrangement between the individual and the entity under which those services are provided.

83A-330 Application of Division to ceasing employment

For the purposes of this Division, you are treated as ceasing employment when you are no longer employed by any of the following:

(a) your employer in that employment;

(b) a holding company (within the meaning of the *Corporations Act 2001*) of your employer;

(c) a *subsidiary of your employer;

(d) a *subsidiary of a holding company (within the meaning of the *Corporations Act 2001*) of your employer.

83A-335 Application of Division to stapled securities

(1) This Division applies in relation to a stapled security in the same way as it applies in relation to a *share in a company, if at least one of the *ownership interests that are stapled together to form the stapled security is a share in the company.

Note: This means the Division also applies to rights to acquire such a stapled security in the same way it applies to rights to acquire a share.

(2) This Division applies in relation to a stapled security in the same way as it applies in relation to an ordinary *share in a company, if

at least one of the *ownership interests that are stapled together to form the stapled security is an ordinary share in the company.

(3) For the purposes of this Division, in relation to a stapled security or right to acquire a beneficial interest in a stapled security, a company is taken to include (as part of the company) each *stapled entity for the stapled security, if at least one of the *ownership interests that are stapled together to form the stapled security is a *share in the company.

83A-340 Application of Division to indeterminate rights

(1) This section applies if:
  (a) you acquire a beneficial interest in a right; and
  (b) the right later becomes a right to acquire a beneficial interest in a *share.

Example 1: You acquire a right to acquire, at a future time:
  (a) shares with a specified total value, rather than a specified number of shares; or
  (b) an indeterminate number of shares.

Example 2: You acquire a right under which the provider must provide you with either ESS interests or cash, whichever the provider chooses.

(2) This Division applies as if the right had always been a right to acquire the beneficial interest in the *share.

Taxation Administration Act 1953

2 At the end of Division 14 in Schedule 1

Add:

Subdivision 14-C—Shares and rights under employee share schemes

Table of sections

14-155 Liability for TFN withholding tax (ESS)
14-160 Employer may give individual tax file numbers to provider
14-165 Provider may recover TFN withholding tax (ESS) from individual
14-170 Application of rules in Division 18
14-175 Overpayment of TFN withholding tax (ESS)

14-180 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

14-155 Liability for TFN withholding tax (ESS)

(1) Tax (***TFN withholding tax (ESS)***) imposed by the *Income Tax (TFN Withholding Tax (ESS)) Act 2009* is payable if:

(a) a company (the ***provider***) provides one or more *ESS interests to an individual under an *employee share scheme; and

(b) as a result, an amount is included in the individual's assessable income under Division 83A of the *Income Tax Assessment Act 1997* for an income year (taking into account subsection (2) of this section); and

(c) the individual has quoted neither of the following to the provider before the end of the income year:

(i) if the individual acquired the interests in relation to any services provided to the provider, or to a *subsidiary of the provider, in the course or furtherance of an *enterprise *carried on by the individual—the individual's *ABN;

(ii) in any case—the individual's *tax file number.

(2) For the purposes of paragraph (1)(b), disregard section 83A-35 of the *Income Tax Assessment Act 1997* (about reducing the amount included in the individual's assessable income).

Note: Disregard the 30 day rule in subsections 83A-115(3) and 83A-120(3) of the *Income Tax Assessment Act 1997* for the purposes of this Subdivision: see subsection 392-5(6) in this Schedule.

(3) The *TFN withholding tax (ESS) is payable by the provider.

(4) The *TFN withholding tax (ESS) is due and payable at the end of 21 days after the end of the income year referred to in paragraph (1)(b).

Note 1: When it is due and payable, the TFN withholding tax (ESS) is payable to the Commissioner: see paragraph 255-5(1)(b).

Note 2: The provider must pay the TFN withholding tax (ESS) to the Commissioner in accordance with Subdivision 16-B: see subsection 16-70(4). If any of it remains unpaid, the provider is liable to pay general interest charge: see section 16-80.

Note 3: The Commissioner may defer the time at which TFN withholding tax (ESS) becomes due and payable: see section 255-10.

14-160 Employer may give individual tax file numbers to provider

(1) The individual is taken to have authorised a *subsidiary (the ***employer***) of the provider to inform the provider of the individual's *tax file number if:

(a) the individual has made a *TFN declaration in relation to the employer; and

(b) some or all of the *ESS interests mentioned in paragraph 14-155(1)(a) were provided to the individual in relation to the individual's employment by the employer.

(2) If the employer does so, the individual is taken, for the purposes of this Subdivision and Division 392 (Employee share scheme reporting), to have quoted his or her *tax file number to the provider.

14-165 Provider may recover TFN withholding tax (ESS) from individual

(1) The provider may recover from the individual as a debt any of the *TFN withholding tax (ESS) the provider pays.

(2) The provider is entitled to set off an amount that the provider can recover from the individual under this section against a debt due by the provider to the individual.

14-170 Application of rules in Division 18

These provisions:

(a) subsection 18-15(1) (about credits for amounts withheld from withholding payments); and

(b) sections 18-65 and 18-70 (about refunds of amounts withheld in error);

apply as if any of the *TFN withholding tax (ESS) that has been paid were an amount withheld under section 12-35 from a *withholding payment made to the individual and covered by that section.

14-175 Overpayment of TFN withholding tax (ESS)

If *TFN withholding tax (ESS) has been overpaid:

(a) the Commissioner must refund the amount overpaid; and

(b) the individual is not entitled to a credit under section 18-15 in respect of the amount overpaid.

14-180 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

The following provisions of the *Income Tax Assessment Act 1997* have effect for the purposes of this Subdivision in the same way as they have for the purposes of Division 83A of that Act:

(a) section 83A-130 (about takeovers and restructures);
(b) section 83A-305 (about associates);
(c) section 83A-320 (about trusts);
(d) section 83A-325 (about relationships similar to employment);
(e) section 83A-335 (about stapled securities);
(f) section 83A-340 (about indeterminate rights).

3 After subsection 16-70(3) in Schedule 1 (before the note)

Insert:

(4) An entity that must pay an amount to the Commissioner under Subdivision 14-C must do so in accordance with sections 16-80 and 16-85.

4 Section 16-80 in Schedule 1

Omit “or (3)”, substitute “, (3) or (4)”.

5 After Division 391 in Schedule 1

Insert:

Division 392—Employee share scheme reporting

Table of Subdivisions

Guide to Division 392
392-A Statements
392-B Miscellaneous

Guide to Division 392

392-1 What this Division is about

A company that provides ESS interests to an individual under an employee share scheme during a year must, at the end of the year (and, in certain cases, at the end of a later year), give certain information to the Commissioner and to the individual.

Note: For the tax treatment of employee share schemes, see Division 83A of the *Income Tax Assessment Act 1997*.

Subdivision 392-A—Statements

Table of sections

392-5 Statements by providers
392-10 Change or omission in information given to the Commissioner

392-5 Statements by providers

Statements

(1) An entity (the ***provider***) must give a statement to the Commissioner and to an individual for a *financial year if:

(a) both of the following subparagraphs apply:

(i) the provider provides *ESS interests to the individual during the year;

(ii) Subdivision 83A-B or 83A-C of the *Income Tax Assessment Act 1997* (about employee share schemes) applies to the interests; or

(b) all of the following subparagraphs apply:

(i) the provider has provided ESS interests to the individual (whether during the year or during an earlier year);

(ii) Subdivision 83A-C of the *Income Tax Assessment Act 1997* (about employee share schemes) applies to the interests;

(iii) the *ESS deferred taxing point for the interests occurs during the year.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

Form of statements

(2) The statement must be in the *approved form.

(3) The *approved form may require the statement to contain the following information:

(a) the provider's *ABN;

(b) the following information about the individual:

(i) the individual's name and address;

(ii) if the individual has quoted his or her*tax file number to the provider—that tax file number;

(iii) if the individual acquired the interests in relation to any services provided to the provider, or to a *subsidiary of the provider, in the course or furtherance of an *enterprise *carried on by the individual, and the individual has *quoted his or her ABN to the provider—that ABN;

(c) the following information about any interests to which both paragraph (1)(a) of this section and Subdivision 83A-B of the *Income Tax Assessment Act 1997* apply:

(i) the number of the interests;

(ii) the amount paid, at or before the time of acquisition, towards acquiring the interests;

(iii) the provider's estimate of the *market value of the interests at the time of acquisition;

(iv) the amount of *TFN withholding tax (ESS) paid or payable by the provider in respect of the interests during the year;

(d) the following information about any interests to which both paragraph (1)(a) of this section and Subdivision 83A-C of the *Income Tax Assessment Act 1997* apply:

(i) the number of the interests;

(ii) the amount paid, at or before the time of acquisition, towards acquiring the interests;

(e) the following information about any interests to which paragraph (1)(b) applies:

(i) the number of the interests;

(ii) the amount paid, after the time of acquisition but not after the *ESS deferred taxing point, towards acquiring the interests;

(iii) the provider's estimate of the market value of the interests at the ESS deferred taxing point;

(iv) the amount of TFN withholding tax (ESS) paid or payable by the provider in respect of the interests during the year.

Note: Regulations made for the purposes of section 83A-315 of the *Income Tax Assessment Act 1997* may substitute different amounts for the market values of the ESS interests: see section 392-15 in this Schedule.

(4) Subsection (3) does not limit the information that the *approved form may require the statement to contain.

When statements must be given

(5) The statement must be given:

(a) to the individual no later than 14 July after the end of the year; and

(b) to the Commissioner no later than 14 August after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Disregard 30 day rule for ESS deferred taxing point if provider does not know when shares are disposed of etc.

(6) For the purposes of Subdivision 14-C (about TFN withholding tax (ESS)) and this Division, in working out the *ESS deferred taxing point for an *ESS interest, disregard subsection 83A-115(3) or 83A-120(3) (whichever is applicable) of the *Income Tax Assessment Act 1997* (about the 30 day rule) if the provider does not know the time worked out under that subsection at the earlier of:

(a) the time (if any) the provider gives a statement to the relevant individual under this section for the *financial year mentioned in subsection (7); and

(b) the later of:

(i) 14 July after the end of the financial year mentioned in subsection (7); and

(ii) if, under section 388-55, the Commissioner defers to a later time the time within which the statement under this

section for that financial year is required to be given to the individual—that later time.

(7) The *financial year is the financial year in which the *ESS deferred taxing point for the *ESS interest occurs, disregarding subsection 83A-115(3) or 83A-120(3) (whichever is applicable) of the *Income Tax Assessment Act 1997* (about the 30 day rule).

392-10 Change or omission in information given to the Commissioner

(1) If the provider becomes aware of a material change or material omission in any information given to the individual or the Commissioner under this Division, the provider must:
  (a) tell the individual or the Commissioner, as applicable, of the change in the *approved form; or
  (b) give the omitted information to the individual or the Commissioner, as applicable, in the approved form.

(2) Information required by subsection (1) must be given no later than 30 days after the provider becomes aware of the change or omission.

Note 1: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

Note 2: Section 286-75 provides an administrative penalty for breach of this section.

Subdivision 392-B—Miscellaneous

Table of sections

392-15 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

392-15 Application of certain provisions of Division 83A of the *Income Tax Assessment Act 1997*

The following provisions of the *Income Tax Assessment Act 1997* have effect for the purposes of this Division in the same way as they have for the purposes of Division 83A of that Act:
  (a) section 83A-130 (about takeovers and restructures);
  (b) section 83A-305 (about associates);

(c) section 83A-315 (about market values and discounts);
(d) section 83A-320 (about trusts);
(e) section 83A-325 (about relationships similar to employment);
(f) section 83A-335 (about stapled securities);
(g) section 83A-340 (about indeterminate rights).

Part 2—Consequential amendments

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

6 Paragraphs 84-14(a) and (b)

Repeal the paragraphs, substitute:

(a) the *recipient of the supply is not an entity that has acquired, or may in the future acquire, an ESS interest (within the meaning of the *ITAA 1997) under the scheme; and

(b) Subdivision 83A-B or 83A-C of the ITAA 1997 applies to any ESS interest (within the meaning of that Act) acquired under the scheme; and

7 Section 195-1 (definition of *employee share scheme*)

Omit "section 139C (including as affected by Subdivision DB of Division 13A of Part III) of the *ITAA 1936", substitute "the *ITAA 1997".

Fringe Benefits Tax Assessment Act 1986

8 Subsection 136(1) (paragraphs (h) to (hc) of the definition of *fringe benefit*)

Repeal the paragraphs, substitute:

(h) a benefit constituted by the acquisition of an ESS interest under an employee share scheme (within the meaning of the *Income Tax Assessment Act 1997*) to which Subdivision 83A-B or 83A-C of that Act applies; or

(ha) a benefit constituted by the acquisition of money or property by an employee share trust (within the meaning of the *Income Tax Assessment Act 1997*); or

Income Tax Assessment Act 1936

9 Subsection 6(1) (paragraph (n) of the definition of *passive income*)

Omit "Division 13A", substitute "Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes)".

10 Subsection 6BA(3)

Omit "(other than section 26AAC)".

11 At the end of section 21A

Add:

(7) This section does not apply to an ESS interest (within the meaning of the *Income Tax Assessment Act 1997*) to which Subdivision 83A-B or 83A-C of that Act (about employee share schemes) applies.

12 Subsection 23AF(18) (paragraph (a) of the definition of *eligible foreign remuneration*)

Omit "Division 13A", substitute "Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes)".

13 Subsection 23AF(18) (paragraph (b) of the definition of *eligible foreign remuneration*)

Omit "Division 13A", substitute "that Division".

14 Subsection 23AG(7) (definition of *foreign earnings*)

Omit "Division 13A", substitute "Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes)".

15 Sections 26AAC and 26AAD

Repeal the sections.

16 Section 109H

Omit "shares, rights or stapled securities", substitute "ESS interests".

17 Section 109NB

Repeal the section, substitute:

109NB Loans to purchase shares under employee share schemes not treated as dividends

A private company is not taken under section 109D to pay a dividend because of a loan made solely for the purpose of enabling the shareholder, or an associate of the shareholder, to acquire an ESS interest under an employee share scheme (within the meaning of the *Income Tax Assessment Act 1997*) to which:

(a) Subdivision 83A-B and subsections 83A-35(3) to (9) of that Act apply; or

(b) Subdivision 83A-C of that Act applies.

18 Division 13A of Part III

Repeal the Division.

19 Subsection 170(10AA) (after table item 25)

Insert:

30	Section 83A-310	Forfeiture of ESS interests acquired under an employee share scheme
35	Section 83A-340	Rights that become rights to acquire shares

20 Section 530A

Repeal the section, substitute:

530A Reduction of foreign investment fund income because of employee share scheme

(1) This section applies if a taxpayer acquires an ESS interest (within the meaning of the *Income Tax Assessment Act 1997*) to which Subdivision 83A-C of that Act (about employee share schemes) applies.

(2) The foreign investment fund income of the taxpayer for a notional accounting period of the FIF, to the extent that the income relates to the interest, is zero if, for the whole of the period, the following conditions are satisfied:

(a) the taxpayer holds the interest;

(b) the interest is an interest in the FIF;

(c) the ESS deferred taxing point (within the meaning of the *Income Tax Assessment Act 1997*) for the interest has not occurred.

(3) The foreign investment fund income of the taxpayer for a notional accounting period of the FIF is to be reduced by an amount equal to any increase in the market value of the interest during a period (if any):

(a) that forms part of the notional accounting period; and

(b) for the whole of which, the following conditions are satisfied:

(i) the taxpayer holds the interest;

(ii) the interest is an interest in the FIF;

(iii) the ESS deferred taxing point (within the meaning of the *Income Tax Assessment Act 1997*) for the interest has not occurred.

(4) Section 83A-315 of the *Income Tax Assessment Act 1997* (about market values of ESS interests) applies to subsection (3) of this section in the same way as it applies to Division 83A of that Act.

Income Tax Assessment Act 1997

21 Section 10-5 (table item headed "shares")

Repeal:

employee share acquisition schemes	**26AAC, 139 to 139GH**

Substitute:

employee share schemes	Subdivisions 83A-B and 83A-C

22 Section 12-5 (table item headed "shares")

Repeal:

employee share acquisition schemes, deduction for provider of qualifying shares or rights	**139DC**

Substitute:

employee share schemes, deduction for provider of ESS interests	Subdivision 83A-D

23 At the end of subsection 15-2(3)

Add:

; (e) *ESS interests to which Subdivision 83A-B or 83A-C (about employee share schemes) applies.

24 Paragraph 59-40(2)(d)

Repeal the paragraph, substitute:

(d) if you acquired a beneficial interest in the rights under an *employee share scheme—neither Subdivision 83A-B nor 83A-C (about employee share schemes) applies to the beneficial interest;

25 Paragraph 82-135(m)

Omit "Division 13A of Part III of the *Income Tax Assessment Act 1936*", substitute "Division 83A of this Act".

26 Subsections 104-60(5) and 104-75(4) and (6) (notes)

Omit "section 130-90", substitute "section 130-80".

27 Subsections 104-145(7) and (8)

Repeal the subsections, substitute:

(7) You cannot choose to make a *capital loss for a *share, or a right to acquire a beneficial interest in a share, if:

(a) you acquired the beneficial interest (the ***ESS interest***) in the share or right under an *employee share scheme; and

(b) subsequent to an amount being included in your assessable income under Division 83A (about employee share schemes) in relation to the ESS interest, section 83A-310 (about forfeiture) applies in relation to ESS interest.

28 Subsection 104-160(6)

Repeal the subsection.

29 Section 109-55 (table item 12)

Repeal the item.

30 Section 109-60 (after table item 11)

Insert:

11A	You acquire an *ESS interest	at the *ESS deferred	section 83A-125

	and Subdivision 83A-C (about employee share schemes) applies to the interest	taxing point for the interest

31 Subsection 112-20(3) (note)

After "Note", insert "(1)".

32 At the end of subsection 112-20(3)

Add:

Note 2: This section does not apply to ESS interests acquired under employee share schemes: see subsection 130-80(4).

33 Section 112-75

Repeal the section.

34 Section 112-97 (at the end of the table)

Add:

32	You acquire an *ESS interest and Subdivision 83A-B or 83A-C (about employee share schemes) applies to the interest	First element of cost base and reduced cost base	sections 83A-30 and 83A-125

35 Subsection 115-30(1) (table item 8)

Repeal the item.

36 Subsections 115-30(1A) and (1B)

Repeal the subsections.

37 At the end of section 116-30

Add:

Note: This section does not apply to ESS interests acquired under employee share schemes: see subsection 130-80(4).

38 Subsections 125-75(2) and (3)

Repeal the subsections, substitute:

(2) An *ownership interest, in a company, that is owned by an entity is disregarded under subsection (1) if:

(a) the entity acquired a beneficial interest in the ownership interest under an *employee share scheme; and

(b) either Subdivision 83A-B and subsections 83A-35(3) to (9), or Subdivision 83A-C, applies to the beneficial interest; and

(c) the ownership interest is not a fully-paid ordinary *share.

(3) An *ownership interest, in a trust, that is owned by an entity is disregarded under subsection (1) if:

(a) both of the following would apply if Division 83A (about employee share schemes) applied to ownership interests in trusts in the same way as it applies to *shares:

(i) the entity acquired a beneficial interest in the ownership interest under an *employee share scheme;

(ii) either Subdivision 83A-B and subsections 83A-35(3) to (9), or Subdivision 83A-C, applies to the beneficial interest; and

(b) the ownership interest is not a fully-paid unit.

39 Subsection 130-40(1) (note)

Repeal the note, substitute:

Note: For rights acquired under employee share schemes, see Division 83A, Subdivision 130-D and Division 134.

40 Subdivision 130-D

Repeal the Subdivision, substitute:

Subdivision 130-D—Employee share schemes

Table of sections

130-75 Objects of Subdivision
130-80 ESS interests acquired under employee share schemes
130-85 Interests in employee share trusts
130-90 Shares held by employee share trusts
130-95 Shares and rights in relation to ESS interests
130-100 Application of certain provisions of Division 83A

130-75 Objects of Subdivision

The objects of this Subdivision are:

(a) to recognise that:

(i) Division 83A contains the primary rules for taxing gains on *ESS interests acquired under *employee share schemes; and

(ii) *capital gains and *capital losses on such interests should usually be disregarded during the period in which Division 83A applies to them; and

(b) to align the treatment of ESS interests under Division 83A and the CGT provisions by, for example:

(i) turning off certain special CGT rules; and

(ii) extending some of the deeming provisions of that Division into the CGT provisions; and

(c) to disregard *employee share trusts for most CGT purposes, by treating ESS interests owned by such trusts as being directly owned by the beneficiaries of the trusts.

130-80 ESS interests acquired under employee share schemes

Capital gains and losses

(1) Disregard any *capital gain or *capital loss to the extent that it results from a *CGT event if:

(a) the CGT event happens in relation to an *ESS interest you *acquire under an *employee share scheme; and

(b) the CGT event is not CGT event E4, G1 or K8; and

(c) if Subdivision 83A-B applies to the interest—the time of the acquisition is the time when the CGT event happens; and

(d) if Subdivision 83A-C applies to the interest:

(i) the time of the acquisition is the time when the CGT event happens; or

(ii) the CGT event happens on or before the *ESS deferred taxing point for the ESS interest.

(2) Subsection (1) does not apply if:

(a) Subdivision 83A-C applies to the *ESS interest; and

(b) the *CGT event happens because you forfeit or lose the ESS interest (other than by disposing of it) on or before the *ESS deferred taxing point for the interest.

General acquisition rule

(3) Subsection 109-5(2) (about when you acquire a CGT asset) does not apply to a *CGT asset and a *CGT event if:
  (a) the CGT asset is:
    (i) a *share; or
    (ii) a right to acquire a beneficial interest in a share; and
  (b) the CGT event is CGT event A1; and
  (c) you acquire an *ESS interest; and
  (d) the ESS interest is a beneficial interest in the share or right; and
  (e) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.

Market value substitution rule

(4) Sections 112-20 and 116-30 (about the market value substitution rule) do not apply to the extent that they relate to:
  (a) you acquiring an *ESS interest to which Subdivision 83A-C (about employee share schemes) applies; or
  (b) you:
    (i) forfeiting an ESS interest; or
    (ii) forfeiting or losing an ESS interest that is a beneficial interest in a right (without you having disposed of the interest or exercised the right);

  if Subdivision 83A-B or 83A-C applies to the ESS interest (ignoring section 83A-310).

130-85 Interests in employee share trusts

Scope

(1) This section applies if:
  (a) you *acquire an *ESS interest under an *employee share scheme; and
  (b) Subdivision 83A-B or 83A-C applies to the ESS interest; and
  (c) the ESS interest is, or arises because of, an interest you hold in an *employee share trust.

Application of Division 83A, Part 3-1 and this Part

(2) Division 83A (Employee share schemes), Part 3-1 (Capital gains and losses: general topics) and this Part apply as if you were absolutely entitled to the relevant *share or right:

(a) from the time of acquisition of the *ESS interest; and

(b) until you no longer have an ESS interest in the share or right.

Note 1: An interest you hold in an employee share trust may give rise to an ESS interest because of the operation of section 83A-320.

Note 2: As a result of subsection (2) of this section, CGT event E5 might happen at the time of acquisition. This may result in the trustee making a capital gain. However, any capital gain made by the beneficiary would be disregarded under section 130-80.

(3) However, if this section applies to you because an *associate of yours *acquired the *ESS interest, Division 83A, this Part and Part 3-3 apply as if your associate were absolutely entitled to the relevant *share or right (instead of you):

(a) either:

(i) if Subdivision 83A-B applies to the ESS interest—from the time of acquisition; or

(ii) if Subdivision 83A-C applies to the ESS interest—from immediately after the *ESS deferred taxing point for the ESS interest; and

(b) until your associate no longer has an ESS interest in the share or right.

Note: Once the ESS interest has been taxed to you under Subdivision 83A-B or 83A-C, section 83A-305 (which treats the interest as having been acquired by you, rather than your associate) is no longer relevant. Subsection (3) of this section ensures that your associate then gets the same tax treatment as you would have, had you originally acquired the interest. This does not, however, imply a disposal from you to your associate.

*Meaning of **employee share trust***

(4) An ***employee share trust***, for an *employee share scheme, is a trust whose sole activities are:

(a) obtaining *shares or rights in a company; and

(b) ensuring that *ESS interests in the company that are beneficial interests in those shares or rights are provided under the employee share scheme to employees, or to *associates of employees, of:

(i) the company; or
(ii) a *subsidiary of the company; and
(c) other activities that are merely incidental to the activities mentioned in paragraphs (a) and (b).

130-90 Shares held by employee share trusts

(1) Disregard any *capital gain or *capital loss made by an *employee share trust, or a beneficiary of the trust, to the extent that it results from a *CGT event, if:
(a) the CGT event is CGT event E5 or E7; and
(b) the CGT event happens in relation to a *share; and
(c) the beneficiary had acquired a beneficial interest in the share by exercising a right; and
(d) the beneficiary's beneficial interest in the right was an *ESS interest to which Subdivision 83A-B or 83A-C (about employee share schemes) applied.

(2) Subsection (1) does not apply if the beneficiary acquired the beneficial interest in the *share for more than its *cost base in the hands of the *employee share trust at the time the *CGT event happens.

130-95 Shares and rights in relation to ESS interests

For the purposes of Part 3-1 (Capital gains and losses: general topics) and this Part, treat a *CGT event that happens in relation to a *share or right in the same way as a CGT event that happens in relation to an *ESS interest, if:
(a) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest; and
(b) the ESS interest forms part of the share or right.

130-100 Application of certain provisions of Division 83A

The following provisions have effect for the purposes of this Subdivision in the same way as they have for the purposes of Division 83A:
(a) section 83A-130 (about takeovers and restructures);
(b) section 83A-305 (about associates);
(c) section 83A-320 (about trusts);

(d) section 83A-325 (about relationships similar to employment);
(e) section 83A-335 (about stapled securities);
(f) section 83A-340 (about indeterminate rights).

41 Section 134-1 (note 3)

Repeal the note, substitute:

Note 3: Item 1 in the table is modified for ESS interests acquired under employee share schemes: see Division 83A and section 112-97.

Note 4: This Division has no operation in relation to an option acquired under an employee share scheme if the option is exercised before the ESS deferred taxing point for the option: see Subdivision 130-D. Division 83A applies instead.

42 Section 208-190

After "hold shares", insert "acquired".

43 Sections 208-205 to 208-215

Repeal the sections, substitute:

208-205 Distributions to employees acquiring shares under eligible employee share schemes

Division 207 also applies to a *franked distribution made by an *exempting entity if:

(a) the distribution is made to an individual who, at the time the distribution is made, is an employee of:
  (i) the exempting entity; or
  (ii) a *subsidiary of the exempting entity; and
(b) the employee acquired a beneficial interest in the *share on which the distribution is made:
  (i) under an *employee share scheme; and
  (ii) in circumstances specified as relevant in section 208-215; and
(c) the employee does not hold that beneficial interest as a trustee.

208-215 Eligible employee share schemes

(1) An individual acquires a beneficial interest in a *share in a company under an *employee share scheme in circumstances that

are relevant for the purposes of paragraphs 208-205(b) and 208-235(b) if:

(a) all the *ESS interests available for acquisition under the scheme relate to:

(i) ordinary shares; or

(ii) preference shares to which are attached substantially the same rights as are attached to ordinary shares; and

(b) immediately after the individual acquires the interest:

(i) he or she does not hold a beneficial interest in more than 5% of the shares in the company; and

(ii) he or she is not in a position to control, or to control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the company; and

(c) the share is not a *non-equity share.

(2) An individual also acquires a beneficial interest in a *share in a company under an *employee share scheme in circumstances that are relevant for the purposes of paragraphs 208-205(b) and 208-235(b) if:

(a) the share is part of a stapled security; and

(b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the beneficial interest in the stapled security.

44 Section 208-235

Repeal the section, substitute:

208-235 Distributions to employees acquiring shares under eligible employee share schemes

Division 207 also applies to a *distribution *franked with an exempting credit made by a *former exempting entity as if it were a *franked distribution if:

(a) the distribution is made to an individual who, at the time the distribution is made, is an employee of:

(i) the former exempting entity; or

(ii) a *subsidiary of the former exempting entity; and

(b) the employee acquired a beneficial interest in the *share on which the distribution is made:

(i) under an *employee share scheme; and
(ii) in circumstances specified as relevant in section 208-215; and
(c) the employee does not hold that beneficial interest as a trustee.

45 Paragraph 208-240(b)

Omit “natural persons”, substitute “individuals”.

46 Paragraphs 208-240(c) and (d)

Omit “persons mentioned in paragraph (b)”, substitute “individuals”.

47 Paragraph 208-240(e)

Omit “a person”, substitute “an individual”.

48 Paragraph 208-240(f)

Omit “the person” (first occurring), substitute “the individual mentioned in paragraph (e)”.

49 Paragraph 208-240(f)

Omit “the person mentioned in paragraph (b)”, substitute “that individual”.

50 Paragraph 208-240(g)

Omit “the person”, substitute “the individual”.

51 Subsection 247-15(3)

Repeal the subsection, substitute:

(3) This Division does not apply to a *capital protected borrowing if:
(a) an *ESS interest is acquired under the borrowing; and
(b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.

52 Paragraph 703-35(4)(b)

Omit “subsection (7)”, substitute “subsection (5)”.

53 Subsections 703-35(5), (6) and (7)

Repeal the subsections, substitute:

(5) A *share or *membership interest in a company may be disregarded under subsection (4) if:

(a) the entity who holds the beneficial interest in the share or membership interest acquired that beneficial interest:

(i) under an *employee share scheme; or

(ii) by exercising a right, a beneficial interest in which was acquired under an employee share scheme; and

(b) paragraphs 83A-105(1)(a) and (b) and subsection 83A-105(2) apply to the beneficial interest acquired under the scheme; and

(c) in the case of a membership interest—the interest is part of a stapled security.

54 Paragraph 707-325(5)(b)

Repeal the paragraph, substitute:

(b) in association with the acquisition of a *share in a company in relation to which the conditions in subsection 703-35(5) are met; or

55 Subsection 707-325(5) (note)

Omit "and section 139CD of the *Income Tax Assessment Act 1936* deal", substitute "deals".

56 Subsection 709-80(1) (note 1)

Omit "held", substitute "acquired".

57 Subsection 713-140(5) (table item 3)

Repeal the item, substitute:

3	*Income Tax Assessment Act 1997*	Division 83A	The Division does not apply in relation to an *ESS interest acquired under an *employee share scheme before the day specified in the choice if the Division did not apply in relation to the interest before that day.

58 Subsections 719-30(3), (4) and (5)

Repeal the subsections, substitute:

(3) A *share or *membership interest in a company is covered by this subsection if:

(a) the entity who holds the beneficial interest in the share or membership interest acquired that beneficial interest:
  (i) under an *employee share scheme; or
  (ii) by exercising a right, a beneficial interest in which was acquired under an employee share scheme; and
(b) paragraphs 83A-105(1)(a) and (b) and subsection 83A-105(2) apply to the beneficial interest acquired under the scheme; and
(c) in the case of a membership interest—the interest is part of a stapled security.

59 Paragraph 768-910(3)(c)

Omit "Division 86;", substitute "Division 86.".

60 Paragraph 768-910(3)(d)

Repeal the paragraph.

61 Subsections 768-910(4), (5) and (6)

Repeal the subsections.

62 Sections 768-920 to 768-945

Repeal the sections.

63 Subsection 768-955(2) (2nd sentence)

Repeal the sentence.

64 Subsection 768-955(4)

Repeal the subsection, substitute:

(4) This section does not apply to an *ESS interest if:
  (a) Subdivision 83A-C (about employee share schemes) applies to the interest; and
  (b) the *ESS deferred taxing point for the interest has not yet occurred.

65 Subsection 855-45(4)

Repeal the section, substitute:

(4) This section does not apply to an *ESS interest if:

(a) Subdivision 83-C (about employee share schemes) applies to the interest; and

(b) the *ESS deferred taxing point for the interest has not yet occurred.

66 At the end of Division 960

Add:

960-415 Amounts that depend on market value

To avoid doubt, apply the rules in this Subdivision to the *market value component of any calculation that involves market value.

67 Subsection 995-1(1) (definition of *cessation time*)

Repeal the definition.

68 Subsection 995-1(1) (definition of *employee share scheme*)

Repeal the definition, substitute:

employee share scheme has the meaning given by subsection 83A-10(2).

69 Subsection 995-1(1) (definition of *employee share trust*)

Repeal the definition, substitute:

employee share trust has the meaning given by subsection 130-85(4).

70 Subsection 995-1(1)

Insert:

ESS deferred taxing point, for an *ESS interest, has the meaning given by sections 83A-115 and 83A-120.

Note 1: ESS is short for employee share scheme.

Note 2: For ESS interests acquired before 1 July 2009, see subsection 83A-5(4) of the *Income Tax (Transitional Provisions) Act 1997*.

71 Subsection 995-1(1)

Insert:

ESS interest, in a company, has the meaning given by subsection 83A-10(1).

Note: ESS is short for employee share scheme.

72 Subsection 995-1(1) (definition of *qualifying right*)

Repeal the definition.

73 Subsection 995-1(1) (definition of *qualifying share*)

Repeal the definition.

74 Subsection 995-1(1) (definition of *subsidiary*)

Repeal the definition, substitute:

subsidiary: the question whether a company is a ***subsidiary*** of another company is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the *Corporations Act 2001*.

Note: The expression ***100% subsidiary*** has the meaning given by section 975-505.

75 Subsection 995-1(1)

Insert:

TFN withholding tax (ESS) means tax payable in accordance with section 14-155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: ESS is short for employee share scheme.

76 Subsection 995-1(1)

Insert:

work and income support withholding payments means work and income support related withholding payments and benefits, within the meaning given by the *Income Tax Assessment Act 1936*.

Income Tax (Transitional Provisions) Act 1997

77 Subdivisions 130-DA and 130-D

Repeal the Subdivisions.

Taxation Administration Act 1953

78 Paragraphs 14-5(3)(d) and (e) in Schedule 1

Repeal the paragraphs, substitute:

(d) a benefit constituted by the acquisition of an *ESS interest *under an employee share scheme to which Subdivision 83A-B or 83A-C of the *Income Tax Assessment Act 1997* applies.

79 Subsection 250-10(2) in Schedule 1 (after table item 95)

Insert:

100	TFN withholding tax (ESS)	14-155 in Schedule 1	*Taxation Administration Act 1953*

80 After subsection 286-75(2B) in Schedule 1

Insert:

(2BA) You are also liable to an administrative penalty if:

(a) you are required under Division 392 (Employee share scheme reporting) to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and

(b) you do not give the statement in the approved form to the entity by that day.

81 Paragraph 286-80(2)(a) in Schedule 1

After “(2B)”, insert “, (2BA)”.

82 Subsection 446-5(6) in Schedule 1 (table item 5)

Omit “section 130-90”, substitute “section 130-80”.

Part 3—Application provisions

Income Tax (Transitional Provisions) Act 1997

83 At the end of Part 2-40

Add:

Division 83A—Employee share schemes

Table of Subdivisions

83A-A Application of Division 83A of the Income Tax Assessment Act 1997

83A-B Application of former provisions of the Income Tax Assessment Act 1936

Subdivision 83A-A—Application of Division 83A of the Income Tax Assessment Act 1997

Table of sections

83A-5 Application of Division 83A of the *Income Tax Assessment Act 1997*

83A-5 Application of Division 83A of the *Income Tax Assessment Act 1997*

(1) Division 83A of the *Income Tax Assessment Act 1997* applies in relation to an ESS interest if:

(a) the interest was acquired on or after 1 July 2009; and

(b) the relevant share or right (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*, as in force at the time (the ***pre-Division 83A time***) occurring just before Schedule 1 to the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009* commenced, (***former Division 13A***)) was *not* acquired (within the meaning of former Division 13A) before 1 July 2009.

(2) Furthermore, Subdivision 83A-C of the *Income Tax Assessment Act 1997* (and the rest of Division 83A of that Act, to the extent

that it relates to that Subdivision) also applies in relation to an ESS interest if:

(a) all of the following subparagraphs apply:

(i) at the pre-Division 83A time, subsection 139B(3) of the *Income Tax Assessment Act 1936* applied in relation to the interest;

(ii) the interest was acquired (within the meaning of former Division 13A) before 1 July 2009;

(iii) the cessation time mentioned in subsection 139B(3) of the *Income Tax Assessment Act 1936*, as in force at the pre-Division 83A time, for the interest did not occur before 1 July 2009; or

(b) all of the following subparagraphs apply:

(i) at the pre-Division 83A time, section 26AAC of the *Income Tax Assessment Act 1936*, as in force at that time, (***former section 26AAC***) applied in relation to the interest;

(ii) the interest was acquired (within the meaning of former section 26AAC) before 1 July 2009;

(iii) an amount has not been included in a person's assessable income under former section 26AAC in relation to the interest before 1 July 2009.

(3) Subsection (2) applies despite section 83A-105 of the *Income Tax Assessment Act 1997*.

(4) If Subdivision 83A-C of the *Income Tax Assessment Act 1997* applies in relation to an ESS interest because of subsection (2):

(a) do not include an amount in your assessable income under subsection 83A-110(1) of that Act in relation to the ESS interest to the extent that the amount relates to your employment outside Australia; and

(b) subject to subsection 83A-115(3) or 83A-120(3) of that Act, whichever is applicable, treat the ***ESS deferred taxing point*** for the interest as being:

(i) if paragraph (2)(a) of this section applies—the cessation time mentioned in subparagraph (2)(a)(iii); or

(ii) if paragraph (2)(b) applies—the earliest time at which an amount is included in a person's assessable income under former section 26AAC in relation to the interest; and

(c) treat the reference in subsection 83A-115(3) or 83A-120(3) (30 day rule for ESS deferred taxing point), whichever is applicable, of that Act to the time worked out under subsection 83A-115(2) or 83A-120(2) of that Act as being a reference to the time worked out under paragraph (b) of this subsection; and

(d) treat the requirements in paragraphs 83A-310(a), (b) and (c) of that Act as being satisfied in relation to the interest if, and only if:

(i) if paragraph (2)(a) applies—the 2 requirements mentioned in section 139DD of the *Income Tax Assessment Act 1936* (as in force at the pre-Division 83A time) are satisfied in relation to the interest; or

(ii) if paragraph (2)(b) applies—the requirements in paragraphs (8D)(a), (b) and (c) of former section 26AAC are satisfied in relation to the interest; and

(e) Subdivision 14-C in Schedule 1 to the *Taxation Administration Act 1953* (about TFN withholding tax (ESS)) does not apply to the ESS interest; and

(f) if paragraph (2)(a) applies:

(i) for the purposes of Division 115 of the *Income Tax Assessment Act 1997* (Discount capital gains and trusts' net capital gains), treat the ESS interest as having been acquired by an individual when the individual acquired the legal title in the share or right of which the ESS interest forms part; and

(ii) for the purposes of Division 392 in Schedule 1 to the *Taxation Administration Act 1953* (Statements), disregard any election made under former section 139E of the *Income Tax Assessment Act 1936*; and

(g) if paragraph (2)(b) applies—paragraph 82-135(m) of the *Income Tax Assessment Act 1997* does not apply in relation to the ESS interest.

Subdivision 83A-B—Application of former provisions of the Income Tax Assessment Act 1936

Table of sections

83A-10 Savings—continued operation of former provisions
83A-15 Indeterminate rights

83A-10 Savings—continued operation of former provisions

(1) This section applies if:

(a) at the time (the ***pre-Division 83A time***) occurring just before Schedule 1 to the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009* commenced:

(i) Division 13A of Part III of the *Income Tax Assessment Act 1936*, as in force at that time, (***former Division 13A***) applied in relation to a share or right (within the meaning of former Division 13A); or

(ii) section 26AAC of that Act, as in force at that time, applied in relation to a share or right (within the meaning of that section as in force at that time); and

(b) if there is a beneficial interest in the share or right that is an ESS interest—Division 83A of the *Income Tax Assessment Act 1997* does not apply in relation to the interest under section 83A-5.

(2) If subparagraph (1)(a)(i) applies, to avoid doubt, former Division 13A continues to apply (in spite of its repeal) to the share or right.

(3) If subparagraph (1)(a)(ii) applies, to avoid doubt, sections 26AAC and 26AAD of the *Income Tax Assessment Act 1936*, as in force at the pre-Division 83A time, continue to apply (in spite of their repeal) to the share or right.

83A-15 Indeterminate rights

(1) This section applies if:

(a) you acquired a beneficial interest in a right before 1 July 2009; and

(b) on or after 1 July 2009, the right becomes a right to acquire a beneficial interest in a share.

(2) Division 13A of the *Income Tax Assessment Act 1936* is taken to have applied as if the right had always been a right to acquire the beneficial interest in the share.

84 At the end of Division 703

Add:

703-35 Employee share schemes

Despite the amendments of section 703-35 of the *Income Tax Assessment Act 1997* made by Schedule 1 to the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*, subsection (4) of that section continues to apply, from the commencement of that Schedule, to each share and membership interest that it applied to just before that commencement.

85 At the end of Subdivision 719-B

Add:

719-30 Employee share schemes

Despite the amendment of section 719-30 of the *Income Tax Assessment Act 1997* made by Schedule 1 to the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*, subsection (2) of that section continues to apply, from the commencement of that Schedule, to each share and membership interest that it applied to just before that commencement.

86 Application of other amendments

The amendments made by this Schedule (other than items 1, 83, 84 and 85) apply in relation to the ESS interests mentioned in subsections 83A-5(1) and (2) of the *Income Tax (Transitional Provisions) Act 1997*, as inserted by this Schedule.

87 Transitional—regulations

Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations that:

(a) are made for the purposes of Division 83A of the *Income Tax Assessment Act 1997*, added by this Schedule; or

(b) are made for the purposes of a taxation law (within the meaning of that Act) and relate to the amendments made by this Schedule;

may take effect from any time on or after 1 July 2009, if the regulations are made before the end of the period of 3 months commencing on the day this Schedule commences.

Schedule 2—Non-commercial losses

Income Tax Assessment Act 1997

1 Section 35-1

Omit:

> It sets out a series of tests to determine whether a business activity is treated as being non-commercial.
>
> The deferred losses may be offset in later years against profits from the activity or, if one of the tests is satisfied or the Commissioner exercises a discretion, against other income.

Substitute:

> It sets out an income requirement and a series of tests to determine whether a business activity is treated as being non-commercial.
>
> The deferred losses may be offset in later years against profits from the activity. They may also be offset against other income if the income requirement and one of the other tests are satisfied, or if the Commissioner exercises a discretion.

2 Paragraph 35-10(1)(a)

Repeal the paragraph, substitute:

(a) you satisfy subsection (2E) for that year, and one of the tests set out in any of the following provisions is satisfied for the business activity for that year:

(i) section 35-30 (assessable income test);

(ii) section 35-35 (profits test);

(iii) section 35-40 (real property test);

(iv) section 35-45 (other assets test); or

3 Subsection 35-10(2) (note)

Repeal the note, substitute:

Note 1: There are modifications of this rule if you have exempt income (see section 35-15) or you become bankrupt (see section 35-20).

Note 2: This rule does not apply if your excess is solely due to deductions under Division 41 (see section 35-10 of the *Income Tax (Transitional Provisions) Act 1997*).

4 Paragraph 35-10(2A)(a)

Repeal the paragraph, substitute:

(a) you satisfied subsection (2E), and one of the tests set out in any of the following provisions was satisfied for the business activity:

(i) section 35-30 (assessable income test);

(ii) section 35-35 (profits test);

(iii) section 35-40 (real property test);

(iv) section 35-45 (other assets test); or

5 After subsection 35-10(2D)

Insert:

Income requirement

(2E) You satisfy this subsection for an income year if the sum of the following is less than $250,000:

(a) your taxable income for that year;

(b) your *reportable fringe benefits total for that year;

(c) your *reportable superannuation contributions for that year;

(d) your *total net investment losses for that year.

For the purposes of paragraph (a), when working out your taxable income, disregard any excess mentioned in subsection (2) for any *business activity for that year that you could otherwise deduct under this Act for that year.

6 Subsection 35-55(1)

After “may”, insert “, on application,”.

7 Subsection 35-55(1)

After “one or more income years”, insert “(the ***excluded years***)”.

8 Paragraph 35-55(1)(a)

Omit “that or those income years”, substitute “the excluded years”.

9 Paragraph 35-55(1)(b)

Omit “the business activity has started to be carried on and, for that or those income years:”, substitute “for an applicant who carries on the business activity who satisfies subsection 35-10(2E) (income requirement) for the most recent income year ending before the application is made—the business activity has started to be carried on and, for the excluded years:”.

10 Paragraph 35-55(1)(b) (note)

Repeal the note.

11 At the end of subsection 35-55(1)

Add:

; or (c) for an applicant who carries on the business activity who does not satisfy subsection 35-10(2E) (income requirement) for the most recent income year ending before the application is made—the business activity has started to be carried on and, for the excluded years:

(i) because of its nature, it has not produced, or will not produce, assessable income greater than the deductions attributable to it; and

(ii) there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

Note: Paragraphs (b) and (c) are intended to cover a business activity that has a lead time between the commencement of the activity and the production of any assessable income. For example, an activity involving the planting of hardwood trees for harvest, where many years would pass before the activity could reasonably be expected to produce income.

12 Subsection 35-55(2)

After “may”, insert “, on application,”.

13 At the end of section 35-55

Add:

(3) An application for a decision by the Commissioner under this section must be made in the *approved form.

Income Tax (Transitional Provisions) Act 1997

14 After Division 34

Insert:

Division 35—Deferral of losses from non-commercial business activities

Table of sections

35-10 Deductions for certain new business investment
35-20 Application of Commissioner's decisions

35-10 Deductions for certain new business investment

The rule in subsection 35-10(2) of the *Income Tax Assessment Act 1997* does not apply for an income year to a business activity if:

(a) apart from that rule, you could otherwise deduct amounts under Division 41 of that Act for that income year; and

(b) the total of those amounts is more than or equal to the excess worked out under that subsection for the business activity for the income year.

35-20 Application of Commissioner's decisions

A decision of the Commissioner made under section 35-55 of the *Income Tax Assessment Act 1997*:

(a) before the commencement of Schedule 2 to the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*; and

(b) for one or more income years;

continues to have effect, after that commencement, for those income years despite the amendments made by that Schedule.

15 Application

The following apply in relation to the 2009-2010 income year and later income years:

(a) the amendments made by items 1 to 13 of this Schedule;

(b) section 35-10 of the *Income Tax (Transitional Provisions) Act 1997* (as inserted by this Schedule).

Schedule 3—Lost members' superannuation

Part 1—Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999

1 Paragraph 6(a)

Repeal the paragraph, substitute:

(a) the keeping of registers of details relating to:

(i) unclaimed money; and

(ii) certain amounts relating to superannuation of persons (***former temporary residents***) who used to be holders of temporary visas under the *Migration Act 1958* and have left Australia; and

(iii) certain amounts relating to superannuation of persons who used to be lost members;

so that the money and amounts can be claimed by persons entitled to them; and

2 Paragraph 6(ca)

Repeal the paragraph.

3 Paragraphs 6(e) and (ea)

Repeal the paragraphs, substitute:

(e) the payment to the Commissioner of:

(i) unclaimed money; and

(ii) certain amounts relating to superannuation of former temporary residents; and

(iii) certain amounts relating to superannuation of lost members; and

(ea) the safekeeping of such money and amounts paid to the Commissioner until the Commissioner can pay the money and amounts to persons entitled to them; and

4 Section 7

Omit:

> Superannuation providers must pay to the Commissioner of Taxation any unclaimed money they hold. If the Commissioner is satisfied he or she has received such a payment in respect of a person, the Commissioner must pay the amount he or she has received to the person, to a fund identified by the person or, if the person has died, to the person's death beneficiaries or legal personal representative.

Substitute:

> Superannuation providers must pay to the Commissioner of Taxation any unclaimed money they hold. Later, the Commissioner must, if satisfied that it is possible to do so, pay the amount he or she has received in respect of a person to:
>
> (a) the person; or
>
> (b) to a fund identified by the person; or
>
> (c) if the person has died—to the person's death beneficiaries or legal personal representative.

5 At the end of section 7

Add:

> *Superannuation of lost members*
>
> At the times determined by the Commissioner, superannuation providers must give the Commissioner of Taxation details relating to:
>
> (a) small accounts of lost members; and
>
> (b) inactive accounts of unidentifiable lost members.
>
> Superannuation providers must pay to the Commissioner of Taxation the value of any such accounts. Later, the Commissioner must, if satisfied that it is possible to do so, pay an amount he or she has received in respect of a person:
>
> (a) to a fund identified by the person; or

(b) if the person has reached eligibility age or the amount is less than $200—to the person; or

(c) if the person has died—to the person's death beneficiaries or legal personal representative.

6 Section 8

Insert:

account, in a fund, has a meaning affected by subsection 24B(3).

7 Section 8

Insert:

lost member account has the meaning given by section 24B.

8 Section 8

Insert:

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

9 Section 8

Insert:

payment split means a payment split under Part VIIIB of the *Family Law Act 1975*.

10 Section 8 (paragraph (a) of the definition of *scheduled statement day*)

After "Part 3", insert "or 4A".

11 Section 8

Insert:

splittable payment has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

12 Paragraph 12(1)(c)

Omit "for at least 2 years", substitute "within the last 2 years".

13 Subsections 12(3) and 13(1B)

Repeal the subsections.

14 Paragraph 14(c)

Omit "for at least 2 years", substitute "within the last 2 years".

15 Paragraph 15A(a)

After "this Part", insert "and Part 4A".

16 Paragraph 15A(b)

After "this Part, insert "or Part 4A".

17 At the end of subsection 19(1)

Add:

; and (e) amounts paid to the Commissioner under section 24E (lost member accounts); and

(f) each person in respect of whom there is an amount referred to in paragraph (e) of this subsection.

18 At the end of subparagraph 20H(1)(b)(ii)

Add "and".

19 After subparagraph 20H(1)(b)(ii)

Insert:

(iia) the amounts (if any) paid to the Commissioner under section 24E in respect of the person;

20 At the end of paragraph 20H(1)(b)

Add:

; and (vi) the amounts (if any) paid by the Commissioner under section 24G in respect of the person.

21 Paragraph 20H(2B)(a)

After "section 17", insert ", 24E or 24G".

22 Subsection 20H(3)

Omit "and (ii)", substitute ", (ii) and (iia)".

23 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Information about lost members

24 After Part 4

Insert:

Part 4A—Payment of lost member accounts to the Commissioner

Division 1—Preliminary

24A Object of Part

The object of this Part is to set out a procedure for dealing with:

(a) small accounts of lost members; and

(b) inactive accounts of unidentifiable lost members.

24B Meaning of *lost member account*

Small accounts

(1) An account in a fund is taken to be a ***lost member account*** if:

(a) the member on whose behalf the account is held is a lost member; and

(b) the balance of the account is less than $200; and

(c) the account does not support or relate to a defined benefit interest (within the meaning of section 292-175 of the *Income Tax Assessment Act 1997*).

Note: The balance of an account does not reflect any earnings, fees or charges that have not yet been credited to, or debited from, the account.

Inactive accounts of unidentifiable members

(2) An account in a fund is also taken to be a ***lost member account*** if:

(a) the member on whose behalf the account is held is a lost member; and

(b) the superannuation provider has not received an amount in respect of the member within the last 5 years; and

(c) the superannuation provider is satisfied that it will never be possible for the provider, having regard to the information reasonably available to the provider, to pay an amount to the member; and

(d) the account does not support or relate to a defined benefit interest (within the meaning of section 292-175 of the *Income Tax Assessment Act 1997*).

RSAs

(3) A reference to an ***account*** in a fund that is an RSA is a reference to:

(a) if the RSA is an account—that account; or

(b) if the RSA is a policy (within the meaning of the RSA Act)—that policy.

Division 2—Statement of lost member accounts

24C Statement of lost member accounts

Superannuation provider must give statement to Commissioner

(1) A superannuation provider must, for each unclaimed money day, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:

(a) each lost member account as at the end of the day;

(b) the administration of any of the following in connection with each lost member account:

(i) this Part;

(ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;

(iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

Note 1: For State or Territory public sector superannuation schemes, see section 24H.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement required under subsection (1) includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act and Division 284 in Schedule 1 to that Act.

Note 3: The approved form may also require the statement to include certain tax file numbers: see subsection 25(4) of this Act.

(2) If, at the end of the unclaimed money day, there are no lost member accounts, the statement must say so.

Note: If the fund is a regulated superannuation fund that has fewer than 5 members, see subsection (4).

(3) The statement must also contain information, required by the approved form, relevant to any account that ceases to be a lost member account because the member ceases to be a lost member during the period that:

(a) starts on the unclaimed money day; and

(b) ends on the day on which the statement is given to the Commissioner.

(4) This section does not apply if, at the end of the unclaimed money day:

(a) the fund is a regulated superannuation fund that has fewer than 5 members; and

(b) there are no lost member accounts.

When statement must be given

(5) The superannuation provider must give the Commissioner the statement by the end of the scheduled statement day for the unclaimed money day.

Note 1: The Commissioner may defer the time for giving the statement: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

Relationship to rest of Act

(6) This section does not apply in relation to:

(a) an amount that is unclaimed money at the end of the unclaimed money day; or

(b) amounts payable to a person identified in a notice the Commissioner has given the superannuation provider under section 20C.

Note: Section 16 requires the superannuation provider to give the Commissioner a statement about unclaimed money.

Note 2: Section 20E requires the superannuation provider to give the Commissioner a statement about the superannuation interest of a person identified in a notice given to the provider under section 20C (which is about notices identifying former temporary residents).

24D Error or omission in statement

Scope

(1) This section applies if:

(a) a superannuation provider gives the Commissioner a statement under section 24C; and

(b) the superannuation provider becomes aware of a material error, or material omission, in any information in the statement.

Superannuation provider must give information

(2) The superannuation provider must, in the approved form, give the Commissioner the corrected or omitted information.

(3) Information required by subsection (2) must be given no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

Division 3—Payment in respect of lost member accounts

24E Payment in respect of lost member accounts

Provider must pay Commissioner

(1) A superannuation provider must pay the Commissioner (for the Commonwealth) the amount worked out under subsection (2) in respect of a person if:
  (a) an account is a lost member account as at the end of an unclaimed money day; and
  (b) the account is held by the provider on behalf of the person; and
  (c) the person is still a lost member at the time (the ***calculation time***) immediately before the earlier of:
    (i) the time (if any) the payment is made; and
    (ii) the time at which the payment is due and payable, (assuming that the payment must be made).

The amount is due and payable at the end of the scheduled statement day for the unclaimed money day.

Note 1: For State or Territory public sector superannuation schemes, see section 24H.

Note 2: Subsection 24F(2) makes it an offence not to comply with a requirement under this subsection.

Note 3: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 4: The Commissioner may defer the time at which the amount is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 5: Section 24J provides for refunds of overpayments by the superannuation provider to the Commissioner.

Amount of payment

(2) The amount payable in respect of the lost member is the amount that would have been payable by the superannuation provider if the lost member had requested that the balance of the account be rolled

over or transferred to a complying superannuation fund (within the meaning of the SIS Act).

(3) For the purposes of subsection (2):
  (a) work out the amount that would have been payable at the calculation time; and
  (b) assume that the request were made before the calculation time; and
  (c) assume that the lost member had not died before the calculation time.

Family Law payment splits

(4) If, as a result of a payment split that applies in relation to the account, the non-member spouse (or his or her legal personal representative if he or she has died) is, or could in the future be, entitled to be paid an amount, then:
  (a) for the purposes of subsection (2), take account only of the lost member's entitlement to payment remaining after any reduction by the payment split (disregarding subsection 90MB(3) of the *Family Law Act 1975*); and
  (b) the superannuation provider must also pay an amount (the ***non-member spouse amount***) to the Commissioner in respect of the non-member spouse; and
  (c) the non-member spouse amount is due and payable at the same time as the amount payable under subsection (1); and
  (d) the amount of the non-member spouse amount is the amount of the reduction mentioned in paragraph (a).

Note 1: Part VIIIB of the *Family Law Act 1975* is about splitting amounts payable in respect of a superannuation interest between the parties to a marriage. Subsection 90MB(3) of that Act provides that the Part has effect subject to this Act.

Note 2: Subsection 24F(2) makes it an offence not to comply with a requirement under this subsection.

Miscellaneous

(5) This section does not require the superannuation provider to pay the Commissioner:
  (a) an amount that is unclaimed money at the end of the unclaimed money day; or

(b) an amount payable to a person identified in a notice the Commissioner has given the provider under section 20C.

Note 1: Unclaimed money is payable to the Commissioner under section 17.

Note 2: An amount mentioned in paragraph (5)(b) is payable to the Commissioner under section 20F.

(6) Upon payment to the Commissioner of an amount as required under this section, the superannuation provider is discharged from further liability in respect of that amount.

(7) For the purposes of this section, ignore accounts with nil balances, or balances below nil, as at the calculation time mentioned in subsection (1).

24F Payment in respect of lost member accounts—late payments

General interest charge on late payment

(1) If any of the amount a superannuation provider must pay under section 24E remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
  (a) starts at the time it is due and payable; and
  (b) ends at the end of the last day on which either of the following remains unpaid:
    (i) the amount unpaid when it is due and payable;
    (ii) general interest charge on any of the amount.

Offence of failing to make payment to Commissioner

(2) A person commits an offence if:
  (a) the person is subject to a requirement under subsection 24E(1) or (4); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

Penalty for an offence against subsection (2): 100 penalty units.

24G Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner

(1) This section applies in relation to a person if:

(a) a superannuation provider paid an amount to the Commissioner under section 24E in respect of the person; and

(b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the amount in accordance with subsection (2).

(2) The Commissioner must pay the amount:

(a) to a single fund if:

(i) the person has not died; and

(ii) the person directs the Commissioner to pay to the fund; and

(iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or

(b) in accordance with subsection (3) if:

(i) the person has died; and

(ii) the Commissioner is satisfied that, if the superannuation provider had not paid the amount to the Commissioner, the provider would have been required to pay an amount or amounts (death benefits) to one or more other persons (death beneficiaries) because of the deceased person's death; or

(c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or

(d) to the person if:

(i) subparagraph (a)(ii) does not apply; and

(ii) the person has reached the eligibility age or the amount is less than $200; and

(iii) the person has not died.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(3) In a case covered by paragraph (2)(b), the Commissioner must pay the amount under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

$$\text{Amount payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

Note: If there is only one death beneficiary, the whole of the amount is payable to that beneficiary.

(4) This section does not apply to an amount that is to be, is or has been, taken into account in determining whether the Commissioner must make a payment under section 20H.

Note: Section 20H provides for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under subsections 17(1), 20F(1) and 24E(1) in respect of a person who:
(a) is identified in a notice under section 20C; or
(b) used to be the holder of a temporary visa.

Division 4—Various rules for special cases

24H Payment in respect of lost member accounts—State or Territory public sector superannuation schemes

Sections 24C and 24E do not apply to a superannuation provider in relation to an unclaimed money day if, because of section 18, the superannuation provider does not have to comply with subsection 16(1) or 17(1) in relation to the unclaimed money day.

24J Refund of overpayment made by superannuation provider

(1) This section applies if:
(a) a superannuation provider for a fund (the ***first fund***) has made a payment to the Commissioner under section 24E in respect of a person; and
(b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that section in respect of the person.

(2) The Commissioner must pay the excess:
(a) to the superannuation provider; or
(b) to a superannuation provider for another fund if the Commissioner is satisfied that:
(i) the first fund no longer exists; and
(ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

24K Commissioner may recover overpayment

(1) This section applies if:
  (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person.

(2) The Commissioner may recover all or part of the excess from a person (the ***debtor***) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.

(3) The persons from whom the Commissioner may recover are as follows:
  (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);
  (b) the superannuation provider for the fund to which the payment was made;
  (c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.

(4) The conditions for recovery are that:
  (a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and
  (b) at least 28 days have passed since the notice was given; and
  (c) the amount recovered is not more than the amount specified in the notice.

(5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.

(6) The Commissioner may revoke a notice described in paragraph (4)(a).

(7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.

(8) A notice described in paragraph (4)(a) is not a legislative instrument.

24L Superannuation provider to return payment from Commissioner that cannot be credited

Scope

(1) This section applies if:
  (a) a payment (the ***Commissioner's payment***) is made to a fund under section 24G in accordance with a person's direction; and
  (b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the ***repayment time***) that is the end of the 28th day after the day on which the Commissioner's payment was made.

Repayment

(2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

(3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

General interest charge

(4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is

liable to pay general interest charge on the unpaid amount for each day in the period that:

(a) starts at the repayment time; and

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

(i) the amount unpaid at the repayment time;

(ii) general interest charge on any of the amount.

24M Compensation for acquisition of property

(1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

25 At the end of section 25

Add:

Lost member accounts statements

(4) The approved form of statement by a superannuation provider for the purposes of section 24C may require the statement to contain the tax file number of:

(a) the superannuation provider; and

(b) the fund; and

(c) a member of the fund if:

(i) the statement relates to an account, in the fund, held on behalf of the member; and

(ii) the member has quoted his or her tax file number to the superannuation provider.

26 Paragraph 29(1)(aa)

After "subsection 20H(1)", insert "or 24G(1)".

Part 2—Other amendments

Financial Transaction Reports Act 1988

27 Paragraph 18(4B)(ca)

Omit "Part 3 or 3A", substitute "Part 3, 3A or 4A".

Income Tax Assessment Act 1997

28 Section 301-125

After "section 20H", insert "or 24G".

29 Section 301-225

Before "Despite", insert "(1)".

30 At the end of section 301-225

Add:

(2) Despite anything else in this Division (apart from Subdivision 301-D), a *superannuation member benefit that you receive is not assessable income and is not *exempt income if:

(a) the benefit is a *superannuation lump sum; and

(b) the benefit is paid to you under subsection 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in a case covered by paragraph (d) of that subsection; and

(c) the amount of the benefit is less than $200.

31 Subsection 307-5(1) (cell at table item 5, column 2)

After "section 20H", insert ", 24E or 24G".

32 Subsection 307-5(1) (cell at table item 5, column 3)

Omit "or 20H", substitute ", 20H or 24G".

33 Paragraph 307-120(2)(e)

After "section 20H", insert "or 24G".

34 Subsection 307-142(1)

After "section 20H", insert "or 24G".

35 Subsection 307-142(2) (method statement, at the end of the note to step 1)

Add:

> A payment made under section 24G of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

36 Subsection 307-142(3) (at the end of the table)

Add:

4	an amount paid to the Commissioner under section 24E of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

37 Subsection 307-300(1)

After "section 20H", insert "or 24G".

38 Subsection 307-300(2) (method statement, at the end of the note to step 1)

Add:

> A payment made under section 24G of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

39 Subsection 307-300(3) (at the end of the table)

Add:

4	an amount paid to the Commissioner under section 24E of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

40 Subsection 307-350(2B)

Omit "section 20H", substitute "sections 20H and 24G".

Taxation Administration Act 1953

41 Subsection 8AAB(5) (after table item 13C)

Insert:

13D	24F	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
13E	24L	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

42 Subsection 250-10(2) in Schedule 1 (table items 68 and 69)

Omit "section".

43 Subsection 250-10(2) in Schedule 1 (after table item 69)

69A	payment of value of lost member accounts to the Commissioner	24E	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69B	payment from Commissioner that cannot be credited	24L	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

Part 3—Application and saving provisions

44 Application

The amendments made by this Schedule apply in relation to:

(a) the last unclaimed money day (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*) occurring before 1 July 2010; and

(b) later unclaimed money days.

45 Saving—regulations

If, just before the commencement of this item, regulations made for the purposes of paragraph 18B(4)(a) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* were in force, the regulations have effect, from that commencement, as if they had also been made for the purposes of paragraph 24K(4)(a) of that Act, as inserted by this Schedule.

[*Minister's second reading speech made in—*
House of Representatives on 21 October 2009
Senate on 17 November 2009]