Tax Laws Amendment (2009 Measures No. 6) Act 2010

No. 19, 2010

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

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

Contents

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

Schedule 1—Abolishing trust cloning and providing a CGT roll-over for certain trusts 4

Part 1—Removing trust cloning exception 4

Income Tax Assessment Act 1997 4

Part 2—Roll-over for certain trusts 5

Income Tax Assessment Act 1997 5

Part 3—Other amendments 18

A New Tax System (Goods and Services Tax) Act 1999 18

Income Tax Assessment Act 1997 18

Schedule 2—Loss relief for merging superannuation funds 20

Part 1—Main amendment 20

Income Tax Assessment Act 1997 20

Part 2—Other amendments 36

Income Tax Assessment Act 1997 36

Part 3—Application provision 40

Part 4—Repeals 41

Income Tax Assessment Act 1997 41

Part 5—Savings 42

Schedule 3—Exempt annuity business of life insurance companies 44

Part 1—Amendments applying from 30 June 2000 44

Division 1—Amendment of the Income Tax Assessment Act 1997 44

Division 2—Consequential amendment 45

Tax Laws Amendment (2006 Measures No. 2) Act 2006 45

Part 2—Amendments applying from the 2007-08 income year 46

Division 1—Amendment of the Income Tax Assessment Act 1997 46
Division 2—Consequential amendments 47
Superannuation Legislation Amendment (Simplification) Act 2007 47
Part 3—Application provision 48
Schedule 4—Deductible gift recipients 49
Part 1—Amendments commencing on 4 June 2009 49
Income Tax Assessment Act 1997 49
Part 2—Amendments commencing on Royal Assent 50
Income Tax Assessment Act 1997 50
Part 3—Application provision 51
Schedule 5—North Western Queensland floods 52
Part 1—Main amendments 52
Income Tax Assessment Act 1936 52
Income Tax Assessment Act 1997 52
Part 2—Sunsetting on 1 July 2011 53
Income Tax Assessment Act 1997 53
Part 3—Application provision 54
Schedule 6—Spirit blending 55
Excise Act 1901 55

Tax Laws Amendment (2009 Measures No. 6) Act 2010

No. 19, 2010

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

[*Assented to 24 March 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*.

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.	24 March 2010
2. Schedule 1	The day this Act receives the Royal Assent.	24 March 2010
3. Schedule 2, Parts 1, 2 and 3	The day after this Act receives the Royal Assent.	25 March 2010
4. Schedule 2, Parts 4 and 5	1 July 2013.	1 July 2013
5. Schedule 3, Part 1, Division 1	Immediately after the commencement of item 57 of Schedule 1 to the *Tax Laws Amendment (2004 Measures No. 2) Act 2004*.	30 June 2000
6. Schedule 3, Part 1, Division 2	Immediately after the commencement of item 214 of Schedule 7 to the *Tax Laws Amendment (2006 Measures No. 2) Act 2006*.	22 June 2006
7. Schedule 3, Part 2, Division 1	At the same time as Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007* commences.	15 March 2007
8. Schedule 3, Part 2, Division 2	Immediately after the start of the day on which the *Superannuation Legislation Amendment (Simplification) Act 2007* received the Royal Assent.	15 March 2007
9. Schedule 3, Part 3	The day this Act receives the Royal Assent.	24 March 2010
10. Schedule 4, Part 1	4 June 2009.	4 June 2009
11. Schedule 4,	The day this Act receives the Royal Assent.	24 March 2010

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
Parts 2 and 3		
12. Schedule 5, Part 1	25 February 2009.	25 February 2009
13. Schedule 5, Part 2	Immediately before the commencement of item 5 of Schedule 5 to the *Tax Laws Amendment (2008 Measures No. 6) Act 2009*.	1 July 2011
14. Schedule 5, Part 3	The day this Act receives the Royal Assent.	24 March 2010
15. Schedule 6	The day this Act receives the Royal Assent.	24 March 2010

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—Abolishing trust cloning and providing a CGT roll-over for certain trusts

Part 1—Removing trust cloning exception

Income Tax Assessment Act 1997

1 Subsection 104-55(5)

Repeal the subsection, substitute:

Exceptions

(5) ***CGT event E1*** does not happen if you are the sole beneficiary of the trust and:

(a) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and

(b) the trust is not a unit trust.

2 Subsection 104-60(5)

Repeal the subsection, substitute:

Exceptions

(5) ***CGT event E2*** does not happen if you are the sole beneficiary of the trust and:

(a) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and

(b) the trust is not a unit trust.

3 Application provision

The amendments made by this Part apply to CGT events happening on or after 1 November 2008.

Part 2—Roll-over for certain trusts

Income Tax Assessment Act 1997

4 Subsection 40-340(1) (at the end of the table)

Add:

5	*Disposal of asset between certain trusts	The trustees of the trusts choose to obtain a roll-over under Subdivision 126-G in relation to the disposal.

5 Section 109-55 (after table item 8F)

Insert:

8G	You hold a membership interest in the receiving trust involved in a roll-over under Subdivision 126-G	when you acquired the corresponding membership interest in the transferring trust involved in the roll-over	section 115-30

6 After section 112-54

Insert:

112-54A Transfer of assets between certain trusts

Transfer of assets between certain trusts

Item	In this situation:	Element affected:	See sections:
1	There is a roll-over under Subdivision 126-G relating to the transfer of a CGT asset between certain trusts	First element of cost base and reduced cost base of the CGT asset	126-240
2	There is a roll-over under Subdivision 126-G relating to the transfer of a CGT asset between certain trusts	Cost base and reduced cost base of membership interests in each trust	126-245 and 126-250

7 Section 112-150 (at the end of the table)

Add:

10	Transfer of a CGT asset between certain trusts	Subdivision 126-G

8 Subsection 115-30(1) (at the end of the table)

Add:

9	A *CGT asset that: (a) is a *membership interest in the receiving trust involved in a roll-over under Subdivision 126-G; and (b) is held by the acquirer just after the transfer time for the roll-over	(a) when the acquirer *acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the roll-over; or (b) if the roll-over asset for the roll-over has been involved in an unbroken series of roll-overs under Subdivision 126-G—when the acquirer acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the first roll-over in the series

9 At the end of Division 126

Add:

Subdivision 126-G—Transfer of assets between certain trusts

Guide to Subdivision 126-G

126-215 What this Subdivision is about

> Roll-overs may be available when CGT assets are transferred between certain trusts.

Table of sections

Operative provisions

126-220 Object of this Subdivision
126-225 When a roll-over may be chosen
126-230 Beneficiaries' entitlements not be discretionary etc.
126-235 Exceptions for roll-over

126-240 Consequences for the trusts
126-245 Consequences for beneficiaries—general approach for working out cost base etc.
126-250 Consequences for beneficiaries—other approach for working out cost base etc.
126-255 No other cost base etc. adjustment for beneficiaries
126-260 Giving information to beneficiaries

Operative provisions

126-220 Object of this Subdivision

The object of this Subdivision is to ensure that CGT considerations are not an impediment to the restructure of trusts, whilst ensuring that subsequent changes to the manner and extent to which beneficiaries can benefit from the trusts are subject to appropriate tax consequences.

126-225 When a roll-over may be chosen

(1) A roll-over may be chosen for a *CGT asset (the ***roll-over asset***) if:

(a) the trustee of a trust (the ***transferring trust***):

(i) creates a trust (the ***receiving trust***), by declaration or settlement, over one or more CGT assets that include the roll-over asset; or

(ii) transfers the roll-over asset to an existing trust (the ***receiving trust***);

at a particular time (the ***transfer time***); and

(b) if subparagraph (a)(ii) applies—the receiving trust has no CGT assets, other than small amounts of cash or debt, just before the transfer time; and

(c) just after the transfer time:

(i) each of the trusts has the same beneficiaries; and

(ii) the receiving trust has the same *classes of *membership interests that the transferring trust had just before, and has just after, the transfer time; and

(iii) the sum of the *market values of each beneficiary's membership interests of a particular class in both trusts is substantially the same as the sum of the market values, just before the transfer time, of the beneficiary's membership interests of that class in both trusts; and

(d) the requirement in section 126-230 is met; and
(e) the exceptions in section 126-235 do not apply.

Exception if other roll-over assets already transferred

(2) However, paragraph (1)(b) does not apply if:
(a) the roll-over asset is transferred to the receiving trust under an *arrangement; and
(b) the roll-over asset was an asset of the transferring trust just before the arrangement was made; and
(c) at least one other asset of the receiving trust:
(i) is an asset for which a roll-over was obtained under this Subdivision for the trusts; and
(ii) is an asset over which the receiving trust was created, or was transferred by the transferring trust to the receiving trust under the arrangement; and
(d) the transfer time is in the income year for the transferring trust that includes the earliest transfer time (the ***start time***) for the assets covered by paragraph (c).

Obtaining the roll-over

(3) The roll-over only happens if both the trustee of the transferring trust and the trustee of the receiving trust choose to obtain it.

126-230 Beneficiaries' entitlements not be discretionary etc.

(1) The conditions in subsections (2) and (3) must be met:
(a) if subsection 126-225(2) applies—at all times during the period:
(i) starting at the start time; and
(ii) ending at the transfer time; and
(b) otherwise—at the transfer time.

CGT event E4 is capable of happening

(2) The first condition is met at a particular time if, at that time, *CGT event E4 is capable of happening to all of the *membership interests in each of the trusts.

Note: A roll-over cannot be chosen if either trust is a discretionary trust.

Beneficiaries' entitlements not discretionary

(3) The second condition is met at a particular time if, at that time, the manner or extent to which each beneficiary of each trust can benefit from the trust is not capable of being significantly affected by the exercise, or non-exercise, of a power.

(4) However, if both trusts are *managed investment trusts, disregard a power if the power's existence at that time does not significantly affect the *market value at that time of each *membership interest in each of the trusts.

126-235 Exceptions for roll-over

Foreign trusts

(1) An exception applies for a *CGT asset if:
   (a) the receiving trust is a *foreign trust for CGT purposes for the income year that includes the transfer time; and
   (b) the roll-over asset is not *taxable Australian property just after the transfer time.

Corporate unit trusts and public trading trusts

(2) Another exception applies if either trust is a trust to which section 102K or 102S of the *Income Tax Assessment Act 1936* applies for the income year that includes the transfer time.

Choices

(3) Another exception applies if, just after the transfer time:
   (a) a choice (however described) under a provision of a *taxation law is in force for either of the trusts in relation to particular circumstances; and
   (b) the same choice (however described) under that provision for the other trust in relation to those circumstances (a ***mirror choice***) is not also in force; and
   (c) the absence of a mirror choice would or could have an ongoing effect on the calculation of an entity's *net income, or taxable income, for:
      (i) the entity's income year that includes the transfer time; or

(ii) a later income year.

(4) However, the exception in subsection (3) does not apply if:

(a) the other trust makes a mirror choice before the first time after the transfer time when the absence of the mirror choice would affect the calculation of an entity's *net income, or taxable income, for an income year; or

(b) it would not be reasonable for subsection (3) to apply.

Note: For paragraph (a), the other trust must still be able, under the relevant provision of the taxation law, to make the mirror choice.

(5) If, just after the transfer time:

(a) a choice (however described) referred to in paragraph (3)(a) is in force for either of the trusts (the ***first choice***); and

(b) a provision of a *taxation law:

(i) prevents the revocation or variation of that choice; or

(ii) sets out a consequence for an entity if that choice is revoked or varied;

that provision is taken to apply for a mirror choice, in force for the other trust at or after that time, in a way corresponding to the way in which it applies for the first choice.

Note: For example, if the provision sets out consequences that flow from the revocation of the first choice, then those consequences will also flow if the mirror choice is revoked.

126-240 Consequences for the trusts

Disregard any capital gain or loss

(1) If the roll-over is chosen, disregard any *capital gain or *capital loss the trustee of the transferring trust makes from:

(a) creating the receiving trust over the roll-over asset; or

(b) transferring the roll-over asset to the receiving trust;

at the transfer time.

Adjust roll-over asset's cost base and reduced cost base

(2) If the roll-over is chosen:

(a) the first element of the roll-over asset's *cost base, in the hands of the receiving trust, is its cost base just before the transfer time; and

(b) the first element of the roll-over asset's *reduced cost base is worked out similarly.

Any pre-transfer losses of receiving trust cannot be utilised

(3) If the roll-over is chosen:

(a) any *net capital loss of the receiving trust for an income year ending before the transfer time cannot be applied after the transfer time to reduce an amount of that trust's *capital gains; and

(b) the sum of the receiving trust's *capital losses for the income year that includes the transfer time (the ***transfer year***) is reduced by an amount equal to any net capital loss that the trust would have had for that year had that year ended just before the transfer time; and

(c) any *tax loss of the receiving trust for an income year ending before the transfer time cannot be deducted after the transfer time from an amount of that trust's assessable income or *net exempt income; and

(d) the sum of the receiving trust's deductions for the transfer year is reduced by an amount equal to any tax loss that the trust would have had for that year had that year ended just before the transfer time.

References in this subsection to the transfer time are to be read as references to the start time if subsection 126-225(2) applies.

Note: Subsection 126-225(2) applies if the roll-over asset is transferred to the receiving trust after an earlier roll-over under this Subdivision, for another asset, was obtained for the trusts.

Pre-CGT assets

(4) If:

(a) the roll-over is chosen; and

(b) the transferring trust last *acquired the roll-over asset before 20 September 1985;

the receiving trust is taken to have acquired it before that day.

126-245 Consequences for beneficiaries—general approach for working out cost base etc.

(1) If the roll-over is chosen, each of the following:

(a) the *cost base and *reduced cost base of each of a beneficiary's *membership interests in each trust;

(b) the time each of the beneficiary's membership interests in the receiving trust is treated as having been *acquired;

is adjusted under this section for the transfer time unless the beneficiary has chosen for them to be adjusted under section 126-250.

Note: The beneficiary can choose for these things to be adjusted once for several consecutive transfer times (for multiple roll-over assets) if the beneficiary owned the interests at all of those times (see section 126-250).

First element of cost base of interests in transferring trust

(2) The first element of the *cost base, just after the transfer time, of each of the beneficiary's *membership interests in the transferring trust is an amount equal to such proportion of the interest's cost base just before the transfer time as is reasonable having regard to:

(a) the *market value of the interest just after the transfer time, or a reasonable approximation of that market value; and

(b) the market value of the interest just before the transfer time, or a reasonable approximation of that market value.

First element of cost base of interests in receiving trust

(3) The first element of the *cost base, just after the transfer time, of each of the beneficiary's *membership interests in the receiving trust is such amount so that the sum of:

(a) the cost base, just before the transfer time, of that membership interest in the receiving trust; and

(b) if, just after the transfer time, that interest in the receiving trust corresponds to at least one of the beneficiary's membership interests in the transferring trust—the cost base, just before the transfer time, of each of those corresponding membership interests in the transferring trust; and

(c) if, just after the transfer time, that interest in the receiving trust corresponds to a proportion of one of the beneficiary's membership interests in the transferring trust—that proportion of the cost base, just before the transfer time, of that corresponding membership interest in the transferring trust;

reasonably approximates:

(d) if paragraph (b) applies—the sum of the cost bases, just after the transfer time, of each of the interests referred to in paragraphs (a) and (b); and

(e) if paragraph (c) applies—the sum of:

(i) the cost base, just after the transfer time, of the interest referred to in paragraph (a); and

(ii) the proportion of the cost base, just after the transfer time, of the interest referred to in paragraph (c).

First element of reduced cost base of interests in each trust

(4) The first element of the *reduced cost base, just after the transfer time, of each of the beneficiary's *membership interests in each trust is worked out similarly.

Time of acquisition for interests in the receiving trust

(5) Each of the beneficiary's *membership interests in the receiving trust is treated as having been *acquired just after the transfer time.

Time of acquisition for pre-CGT interests in the receiving trust

(6) However, if one or more of the beneficiary's *membership interests in the transferring trust were *pre-CGT assets just before the transfer time, the beneficiary is treated as having *acquired before 20 September 1985 its interests in the receiving trust that correspond to those interests in the transferring trust.

126-250 Consequences for beneficiaries—other approach for working out cost base etc.

(1) This section applies if the beneficiary owns one or more *membership interests in the transferring trust at all times during the period:

(a) starting just before this time (the ***starting time***):

(i) the transfer time; or

(ii) the transfer time for an asset referred to in paragraph 126-225(2)(c) (assuming subsection 126-225(2) applies); and

(b) ending just after this time (the ***ending time***):

(i) the transfer time (assuming this is not also the starting time); or

(ii) a later time in the transfer year that is the transfer time for another asset for which a roll-over is obtained under this Subdivision for the trusts.

Note: Subsection 126-225(2) applies if the roll-over asset is transferred to the receiving trust after an earlier roll-over under this Subdivision, for another asset, was obtained for the trusts.

(2) The beneficiary may choose for each of the following:

(a) the *cost base and *reduced cost base of each of those *membership interests and of the beneficiary's corresponding membership interests in the receiving trust;

(b) the time each of those corresponding interests in the receiving trust is treated as having been *acquired;

to be adjusted under subsection (3) for the period.

(3) For each of the interests referred to in subsection (2), subsections 126-245(2), (3), (4), (5) and (6) apply as if:

(a) references in those subsections to just before the transfer time were references to just before the starting time; and

(b) references in those subsections to just after the transfer time were references to just after the ending time.

126-255 No other cost base etc. adjustment for beneficiaries

If a beneficiary of the trusts makes adjustments under section 126-245 or 126-250 to the *cost base and *reduced cost base of the beneficiary's *membership interests in relation to the *CGT event that is:

(a) the creation of the receiving trust over the roll-over asset; or

(b) the transfer of the roll-over asset to the receiving trust;

no other adjustment is to be made under this Act to those cost bases and reduced cost bases because of something that happens in relation to that event.

Note: This section prevents the general value shifting regime from applying in relation to the event because sections 126-245 and 126-250 deal with any value shift that might occur.

126-260 Giving information to beneficiaries

Beneficiaries must be given particulars of the roll-over

(1) If the roll-over is chosen, the trustee of the transferring trust must, within 3 months after the end of the transfer year, send written notice of the particulars set out in subsection (2) to each of the trust's beneficiaries:

(a) by post to the address most recently notified by the beneficiary as the beneficiary's address; or

(b) by any other means notified by the beneficiary for receiving correspondence from the trust.

Note: The trustee may also notify beneficiaries of other details of the roll-over.

The particulars that must be given

(2) The particulars are as follows:

(a) the roll-over asset's transfer time;

(b) sufficient information to enable a beneficiary to work out which of the beneficiary's *membership interests in the receiving trust correspond to each of the beneficiary's membership interests in the transferring trust;

(c) the *market value of each of the membership interests held by the beneficiary in the transferring trust just after the roll-over asset's transfer time, or a reasonable approximation of that market value;

(d) the market value of each of the membership interests held by the beneficiary in the transferring trust just before the roll-over asset's transfer time, or a reasonable approximation of that market value.

Offence

(3) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 30 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code.*

If the transferring trust has multiple trustees

(5) If the transferring trust has 2 or more trustees, the obligation imposed by subsection (1) is imposed on each of the trustees, but may be discharged by any of the trustees.

Note: Each of the trustees commits an offence against subsection (3) if none of them discharges the obligation imposed by subsection (1).

(6) In a prosecution of a trustee for an offence against subsection (3) for an act or omission contravening subsection (1), it is a defence if the trustee proves that the trustee:

(a) did not aid, abet, counsel or procure the act or omission; and

(b) was not in any way knowingly concerned in, or party to, the act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

Note: A defendant bears a legal burden in relation to the matters in subsection (6): see section 13.4 of the *Criminal Code*.

Obligations of beneficiary unaffected if not notified of roll-over

(7) A failure by a trustee to comply with subsection (1) does not affect the application of section 126-245 to the beneficiary.

10 Subsection 995-1(1) (definition of *class*) (second occurring)

After “company”, insert “or trust”.

11 Application provision

The amendments made by items 4 to 9 apply to CGT events happening on or after 1 November 2008.

12 Transitional: time for making mirror choices

(1) Subsection 126-235(3) of the *Income Tax Assessment Act 1997* does not apply if the other trust makes a mirror choice under a provision of a taxation law by:

(a) 6 months after the day this Act receives the Royal Assent; or

(b) a later day allowed by the Commissioner of Taxation.

Note: For this item to have effect, the other trust must still be able, under that provision of the taxation law, to make the mirror choice.

(2) This item has effect in addition to subsection 126-235(4) of the *Income Tax Assessment Act 1997*.

13 Transitional: deadline for giving information to beneficiaries

(1) This item applies in relation to a roll-over chosen under Subdivision 126-G of the *Income Tax Assessment Act 1997* if the transfer year for the roll-over is the transferring trust's 2008-09 income year.

(2) Subsection 126-260(1) of that Act has effect, in relation to the roll-over, as if the reference in that subsection to 3 months after the end of the transfer year were a reference to 6 months after the day this Act receives the Royal Assent.

Part 3—Other amendments

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

14 Subsection 184-1(2) (note)

Omit "Note", substitute "Note 1".

15 At the end of subsection 184-1(2)

Add:

Note 2: The entity that is the trustee of a trust or fund does not change merely because of a change in the person who is the trustee of the trust or fund, or persons who are the trustees of the trust or fund.

Income Tax Assessment Act 1997

16 Subsection 104-10(2)

Repeal the subsection, substitute:

(2) You ***dispose of*** a *CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or by operation of law. However, a change of ownership does not occur if you stop being the legal owner of the asset but continue to be its beneficial owner.

Note: A change in the trustee of a trust does not constitute a change in the entity that is the trustee of the trust (see subsection 960-100(2)). This means that CGT event A1 will not happen merely because of a change in the trustee.

17 At the end of subsection 104-55(1)

Add:

Note: A change in the trustee of a trust does not constitute a change in the entity that is the trustee of the trust (see subsection 960-100(2)). This means that CGT event E1 will not happen merely because of a change in the trustee.

18 At the end of subsection 104-60(1)

Add:

Note: A change in the trustee of a trust does not constitute a change in the entity that is the trustee of the trust (see subsection 960-100(2)). This

means that CGT event E2 will not happen merely because of a change in the trustee.

19 Subsection 960-100(2) (note)

Omit “Note”, substitute “Note 1”.

20 At the end of subsection 960-100(2)

Add:

Note 2: The entity that is the trustee of a trust or fund does not change merely because of a change in the person who is the trustee of the trust or fund, or persons who are the trustees of the trust or fund.

Schedule 2—Loss relief for merging superannuation funds

Part 1—Main amendment

Income Tax Assessment Act 1997

1 At the end of Part 3-30

Add:

Division 310—Loss relief for merging superannuation funds

Table of Subdivisions

Guide to Division 310
310-A Object of this Division
310-B Choice to transfer losses
310-C Consequences of choosing to transfer losses
310-D Choice for assets roll-over
310-E Consequences of choosing assets roll-over
310-F Choices

Guide to Division 310

310-1 What this Division is about

This Division sets out special rules for certain merging superannuation funds. These rules relate to the transfer of losses, the treatment of CGT events related to the merger and the treatment of assets related to the merger.

Note 1: This Division applies only to mergers happening between 24 December 2008 and 30 June 2011 (see Part 3 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*).

Note 2: This Division and associated provisions will be repealed on 1 July 2013 (see Parts 4 and 5 of that Schedule).

Operative provisions

Subdivision 310-A—Object of this Division

310-5 Object

The main object of this Division is to facilitate the consolidation of the superannuation industry by allowing certain merging *superannuation funds to retain the value, for income tax purposes, of certain losses that might otherwise cease to be able to be utilised as a result of the merger.

Subdivision 310-B—Choice to transfer losses

Table of sections

310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts
310-15 Original fund's assets include a complying superannuation/FHSA life insurance policy
310-20 Original fund's assets include units in a pooled superannuation trust

310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts

(1) A trustee of:
  (a) a *complying superannuation fund (the ***transferring entity*** or the ***original fund***); or
  (b) a *complying approved deposit fund (the ***transferring entity*** or the ***original fund***);

can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Transferring entity's assets include other assets

(2) The first condition is satisfied if, just before the *arrangement was made, the transferring entity's assets included assets other than:
  (a) a *complying superannuation/FHSA life insurance policy; or
  (b) units in a *pooled superannuation trust.

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the transferring entity holds a complying superannuation/FHSA life insurance policy or units in a pooled superannuation trust.

Original fund's members transfer to a continuing fund

(3) The second condition is satisfied if, under the *arrangement:

(a) the transferring entity ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the ***completion time***); and

(b) the individuals who cease to be members (within the meaning of that Act) of the transferring entity become members (within the meaning of that Act) of one or more *complying superannuation funds (the ***continuing funds***).

Continuing funds will usually not be able to be small funds

(4) The third condition is satisfied if either:

(a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or

(b) the following subparagraphs apply:

(i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;

(ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

(iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;

(v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

(5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

310-15 Original fund's assets include a complying superannuation/FHSA life insurance policy

(1) A *life insurance company (the ***transferring entity***) can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Original fund holds a complying superannuation/FHSA life insurance policy

(2) The first condition is satisfied if, just before the *arrangement was made, a *complying superannuation/FHSA life insurance policy issued by the transferring entity was held by:

(a) a *complying superannuation fund (the ***original fund***); or

(b) a *complying approved deposit fund (the ***original fund***).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

Original fund's members transfer to a continuing fund

(3) The second condition is satisfied if, under the *arrangement:

(a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the ***completion time***); and

(b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more *complying superannuation funds (the ***continuing funds***).

Continuing funds will usually not be able to be small funds

(4) The third condition is satisfied if either:

(a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or

(b) the following subparagraphs apply:

(i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;

(ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

(iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;

(v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

(5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

310-20 Original fund's assets include units in a pooled superannuation trust

(1) A trustee of a *pooled superannuation trust (the ***transferring entity***) can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Units in the trust were held by the original fund

(2) The first condition is satisfied if, just before the *arrangement was made, units in the transferring entity were held by:

(a) a *complying superannuation fund (the ***original fund***); or

(b) a *complying approved deposit fund (the ***original fund***).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

Original fund's members transfer to a continuing fund

(3) The second condition is satisfied if, under the *arrangement:

(a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the ***completion time***); and

(b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more *complying superannuation funds (the ***continuing funds***).

Continuing funds will usually not be able to be small funds

(4) The third condition is satisfied if either:

(a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or

(b) the following subparagraphs apply:

(i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;

(ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

(iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;

(v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

(5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

Subdivision 310-C—Consequences of choosing to transfer losses

Table of sections

310-25 Who losses can be transferred to
310-30 Losses that can be transferred
310-35 Effect of transferring a net capital loss
310-40 Effect of transferring a tax loss

310-25 Who losses can be transferred to

An entity choosing under Subdivision 310-B to transfer losses can choose to transfer any or all of the transferring entity's losses set out in section 310-30, in whole or in part, to one or more of the following entities (a ***receiving entity***):

(a) a continuing fund for the choice;

(b) a *pooled superannuation trust in which units are held by a continuing fund for the choice just after the completion time;

(c) a *life insurance company with which a *complying superannuation/FHSA life insurance policy is held by a continuing fund for the choice just after the completion time.

310-30 Losses that can be transferred

(1) The transferring entity's losses that can be transferred are:

(a) any of its *net capital losses for income years earlier than the income year for the transferring entity that includes the completion time (the ***transfer year***), to the extent that it was not *utilised before the completion time (an ***earlier year net capital loss***); and

(b) any net capital loss it would have made for the transfer year were the transfer year to have ended at the completion time (a ***transfer year net capital loss***); and

(c) any of its *tax losses for income years earlier than the transfer year, to the extent that it was not utilised before the completion time (an ***earlier year tax loss***); and

(d) any tax loss it would have incurred for the transfer year were the transfer year to have ended at the completion time (a ***transfer year tax loss***);

worked out subject to the modifications set out in this section.

Note: If the entity choosing to transfer losses also chooses an asset roll-over under Subdivision 310-D for the same arrangement, none of the transfer events for the roll-over will contribute towards a loss transferred under this Subdivision (see subsections 310-55(1), 310-60(3), 310-65(1) and 310-70(1)).

(2) For a choice under section 310-15 (life insurance companies), work out those losses by only considering the following to the extent that they relate to assets reasonably attributable to a *complying superannuation/FHSA life insurance policy issued by the transferring entity and held by the original fund:

(a) *capital gains from *complying superannuation/FHSA assets;

(b) *capital losses from complying superannuation/FHSA assets;

(c) assessable income covered by subsection 320-137(2) (about complying superannuation/FHSA assets);

(d) deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets).

(3) For a choice under section 310-20 (pooled superannuation trusts), work out those losses by only considering *capital gains, *capital losses, assessable income and deductions to the extent that they relate to assets reasonably attributable to units in the transferring entity held by the original fund.

310-35 Effect of transferring a net capital loss

(1) To the extent that an earlier year net capital loss is transferred to a receiving entity:
  (a) the transferring entity is taken not to have made the loss for that earlier income year; and
  (b) an amount equal to the transferred amount is taken to be:
    (i) if the receiving entity is a *life insurance company—a *capital loss from *complying superannuation/FHSA assets made by the receiving entity for that earlier year; and
    (ii) otherwise—a capital loss made by the receiving entity for that earlier year.

(2) To the extent that a transfer year net capital loss is transferred to a receiving entity:
  (a) if the transferring entity is a *life insurance company—the sum of the transferring entity's *capital losses from *complying superannuation/FHSA assets for the transfer year is reduced by an amount equal to the transferred amount; and
  (b) if the transferring entity is not a life insurance company—the sum of the transferring entity's capital losses for the transfer year is reduced by an amount equal to the transferred amount; and
  (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a capital loss from complying superannuation/FHSA assets made by the receiving entity for the transfer year; and
  (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a capital loss made by the receiving entity for the transfer year.

310-40 Effect of transferring a tax loss

(1) To the extent that an earlier year tax loss is transferred to a receiving entity:
  (a) the transferring entity is taken not to have incurred the loss for that earlier income year; and
  (b) an amount equal to the transferred amount is taken to be:

(i) if the receiving entity is a *life insurance company—a *tax loss of the *complying superannuation/FHSA class incurred by the receiving entity for that earlier year; and

(ii) otherwise—a tax loss incurred by the receiving entity for that earlier year.

(2) To the extent that a transfer year tax loss is transferred to a receiving entity:

(a) if the transferring entity is a *life insurance company—the sum of the transferring entity's deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets) for the transfer year is reduced by an amount equal to the transferred amount; and

(b) if the transferring entity is not a life insurance company—the sum of the transferring entity's deductions for the transfer year is reduced by an amount equal to the transferred amount; and

(c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a *tax loss of the *complying superannuation/FHSA class incurred by the receiving entity for the transfer year; and

(d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a tax loss incurred by the receiving entity for the transfer year.

Subdivision 310-D—Choice for assets roll-over

Table of sections

310-45 Choosing the assets roll-over
310-50 Choosing the form of the assets roll-over

310-45 Choosing the assets roll-over

(1) An entity can choose a roll-over under this Subdivision if:

(a) the entity makes or could make a choice under Subdivision 310-B (the ***losses choice***) to transfer the losses of an entity (the ***transferring entity***); and

(b) the conditions in this section are satisfied for the *arrangement to which the losses choice relates.

(2) The first condition is that, under the *arrangement, one or more *CGT events (the ***transfer events***) happen in relation to the following assets (the ***original assets***) of the transferring entity with the result that it ceases to own those assets:

(a) for a losses choice under section 310-10 (original funds)—all of its *CGT assets;

(b) for a losses choice under section 310-15 (life insurance companies)—all of its CGT assets reasonably attributable to the *complying superannuation/FHSA life insurance policy held by the original fund for the losses choice just before the arrangement was made;

(c) for a losses choice under section 310-20 (pooled superannuation trusts)—all of its CGT assets reasonably attributable to the units in that entity held by the original fund for the losses choice just before the arrangement was made.

(3) The second condition is that the transfer events all happen in the income year (the ***transfer year***) for the transferring entity that includes the completion time for the losses choice.

(4) The third condition is that, for each transfer event, an asset (the ***received asset***) becomes an asset of one of the following (the ***receiving entity***) as a result of the event:

(a) a continuing fund for the losses choice;

(b) a *pooled superannuation trust in which units are held by a continuing fund for the losses choice just after the completion time;

(c) a *life insurance company with which a *complying superannuation/FHSA life insurance policy is held by a continuing fund for the losses choice just after the completion time.

(5) For the purposes of subsection (2), ignore any *CGT assets retained by the transferring entity:

(a) to pay its existing or expected debts relating to the *arrangement; or

(b) to meet its liabilities relating to individuals who have remained members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the original fund because of circumstances beyond the control of the trustee of that fund.

310-50 Choosing the form of the assets roll-over

(1) For those of the original assets that are not *revenue assets, the form of the roll-over is worked out as follows:

Method statement

Step 1. For the transfer events relating to those original assets:

(a) add up any *capital losses of the transferring entity for the events; and

(b) subtract any *capital gains of the transferring entity for the events.

Step 2. If the result of step 1 is more than zero, the entity choosing the roll-over can choose either section 310-55 (global asset approach) or 310-60 (individual asset approach) to apply to those assets and the corresponding received assets.

Step 3. Otherwise, section 310-60 (individual asset approach) applies to those original assets and the corresponding received assets.

(2) For those of the original assets that are *revenue assets, the form of the roll-over is worked out as follows:

Method statement

Step 1. For the transfer events relating to those original assets:

(a) add up any amounts the transferring entity would be able to deduct as a result of the events; and

(b) subtract any amounts that would be included in the transferring entity's assessable income as a result of the events.

Step 2. If the result of step 1 is more than zero, the entity choosing the roll-over can choose either section 310-65 (global asset approach) or 310-70 (individual asset

	approach) to apply to those assets and the corresponding received assets.
Step 3.	Otherwise, section 310-70 (individual asset approach) applies to those original assets and the corresponding received assets.

Subdivision 310-E—Consequences of choosing assets roll-over

Table of sections

310-55 CGT assets—if global asset approach chosen
310-60 CGT assets—individual asset approach
310-65 Revenue assets—if global asset approach chosen
310-70 Revenue assets—individual asset approach
310-75 Further consequences for roll-overs involving life insurance companies

310-55 CGT assets—if global asset approach chosen

Consequences for transferring entity

(1) For each of the original assets to which this section applies, the transferring entity's *capital proceeds from the relevant transfer event are taken to be an amount equal to:

(a) if, apart from this subsection, the event would result in a *capital gain—the asset's *cost base just before the event; or

(b) if, apart from this subsection, the event would result in a *capital loss—the asset's *reduced cost base just before the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(1).

Consequences for receiving entity

(2) For each of the received assets to which this section applies, the first element of the *cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the corresponding original asset just before the relevant transfer event.

(3) For each of the received assets to which this section applies, the first element of the *reduced cost base of the asset (in the hands of

the receiving entity) is taken to be an amount equal to the reduced cost base of the corresponding original asset just before the relevant transfer event.

310-60 CGT assets—individual asset approach

Consequences for transferring entity

(1) The transferring entity may disregard any *capital loss for a transfer event relating to an original asset to which this section applies.

Note: This section does not apply if section 310-55 (global asset approach) is chosen to apply under subsection 310-50(1).

(2) Subsections (3), (4) and (5) apply if under subsection (1) the transferring entity disregards a *capital loss for a transfer event relating to an original asset.

(3) The transferring entity's *capital proceeds from the transfer event are taken to be an amount equal to the *reduced cost base of the original asset just before the event.

Consequences for receiving entity

(4) The first element of the *cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the original asset just before the event.

(5) The first element of the *reduced cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the original asset just before the event.

310-65 Revenue assets—if global asset approach chosen

Consequences for transferring entity

(1) For each of the original assets to which this section applies, the transferring entity's gross proceeds for the relevant transfer event are taken to be the amount (the ***deemed proceeds***) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

Consequences for receiving entity

(2) For each of the received assets to which this section applies, the receiving entity is taken, for the purposes of this Act, to have paid an amount for that asset at the time of the transfer event that is equal to the deemed proceeds for the corresponding original asset.

310-70 Revenue assets—individual asset approach

Consequences for transferring entity

(1) If the transferring entity incurs a *tax loss for a transfer event relating to an original asset to which this section applies, the entity choosing the roll-over can choose for the transferring entity's gross proceeds for the event to be taken to be the amount (the ***deemed proceeds***) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section does not apply if section 310-65 (global asset approach) is chosen to apply under subsection 310-50(2).

Consequences for receiving entity

(2) If a choice is made under subsection (1), the receiving entity is taken to have paid an amount for the corresponding received asset at the time of the transfer event that is equal to the deemed proceeds for the event.

310-75 Further consequences for roll-overs involving life insurance companies

(1) Section 320-200 (about consequences of transferring assets to or from a complying superannuation/FHSA asset pool) does not apply for a transfer event for the roll-over if either the transferring entity or the receiving entity is a *life insurance company.

(2) If the receiving entity for the roll-over is a *life insurance company, each received asset of that entity is taken:
   (a) to be a *complying superannuation/FHSA asset of that entity; and
   (b) not to be, in whole or in part, a *life insurance premium.

Subdivision 310-F—Choices

Table of sections

310-85 Choices

310-85 Choices

(1) A choice under this Division must be made:

(a) by the day the transferring entity's *income tax return is lodged for the transfer year for the entity; or

(b) within a further time allowed by the Commissioner.

(2) The way the transferring entity's *income tax return is prepared is sufficient evidence of the making of the choice.

Part 2—Other amendments

Income Tax Assessment Act 1997

2 Subsection 40-340(1) (at the end of the table)

Add:

6	Disposal of asset as part of merger of superannuation funds	The transferor chooses a roll-over under Subdivision 310-D in relation to the disposal.

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

Add:

33	An entity chooses a roll-over under Subdivision 310-D and the entity chooses section 310-55 to apply to assets	First element of cost base and reduced cost base	section 310-55
34	An entity chooses a roll-over under Subdivision 310-D, but the entity does not choose section 310-55 to apply to assets	First element of cost base and reduced cost base	section 310-60

4 Subsection 115-30(1) (at the end of the table)

Add:

10	A *CGT asset that the acquirer *acquired as a received asset for a roll-over under Subdivision 310-D	(a) when the transferring entity for the roll-over acquired the corresponding original asset for the roll-over; or (b) if that original asset (or any asset corresponding to it) has been involved in an unbroken series of roll-overs—when the entity that owned the applicable asset before the first roll-over in the series acquired it

5 Section 116-25 (table item dealing with CGT event A1)

Repeal the item, substitute:

A1	Disposal of a CGT asset	1, 2, 3, 4, 5, 6	If the *disposal is because another entity exercises an option: see section 116-65 If the disposal is of *shares or an interest in a trust: see section 116-80 If the disposal is a gift for which a section 30-212 valuation is obtained: see section 116-100 If a roll-over under Subdivision 310-D applies: see section 116-110

6 Section 116-25 (table item dealing with CGT event C2)

Omit "and 116-80", substitute ", 116-80 and 116-110".

7 Section 116-25 (table item dealing with CGT event E2)

Repeal the item, substitute:

E2	Transferring a CGT asset to a trust	1, 2, 3, 4, 5, 6	If a roll-over under Subdivision 310-D applies: see section 116-110

8 At the end of Division 116

Add:

116-110 Roll-overs for merging superannuation funds

If a roll-over is chosen under Subdivision 310-D in relation to *CGT event A1, C2 or E2, the *capital proceeds of the transferring entity (within the meaning of that Division) from the event are the amount worked out under subsection 310-55(1) or 310-60(3).

9 At the end of section 290-170

Add:

Application to merging superannuation funds

(5) If:

(a) after making your contribution, a choice is made under Subdivision 310-B in relation to the *superannuation fund (the ***original fund***), another superannuation fund (the ***continuing fund***) and an *arrangement; and

(b) under the arrangement, you became a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the continuing fund; and

(c) you did not give a notice under subsection (1) in relation to the contribution while you were a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the original fund;

then subsections (1) to (4), and section 290-180, apply as if:

(d) references in those provisions to the fund were references to the continuing fund; and

(e) references in those provisions to the trustee were references to the trustee of the continuing fund.

10 At the end of section 290-180

Add:

Application to merging superannuation funds

(5) If:

(a) after a valid notice is given, a choice is made under Subdivision 310-B in relation to the *superannuation fund (the ***original fund***), another superannuation fund (the ***continuing fund***) and an *arrangement; and

(b) under the arrangement, you became a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the continuing fund; and

(c) you seek to vary the valid notice after you cease to be a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the original fund;

then subsections (2) and (3A) apply as if:

(d) the reference in subsection (3A) to the fund were a reference to the continuing fund; and

(e) references in those subsections to the trustee were references to the trustee of the continuing fund.

Part 3—Application provision

11 Application provision

The amendments made by Parts 1 and 2 of this Schedule apply in relation to a transferring entity and a receiving entity if:

(a) the condition in subsection 310-10(3), 310-15(3) or 310-20(3) of the *Income Tax Assessment Act 1997* (as amended by this Schedule) for those entities is satisfied; and

(b) all the transfer events (if any) referred to in subsection 310-45(2) of that Act for those entities happen;

during the period starting on 24 December 2008 and ending at the end of 30 June 2011.

Note 1: The effect of paragraph (a) is that all of the members of the original fund will need to become members of a continuing fund during this period.

Note 2: The effect of paragraph (b) is that the transferring fund needs to cease to hold all relevant assets during this period.

Part 4—Repeals

Income Tax Assessment Act 1997

12 Subsection 40-340(1) (table item 6)

Repeal the item.

13 Section 112-97 (table items 33 and 34)

Repeal the items.

14 Subsection 115-30(1) (table item 10)

Repeal the item.

15 Section 116-25 (table item dealing with CGT event A1)

Omit "If a roll-over under Subdivision 310-D applies: see section 116-110".

16 Section 116-25 (table item dealing with CGT event C2)

Omit ", 116-80 and 116-110", substitute "and 116-80".

17 Section 116-25 (table item dealing with CGT event E2)

Omit "If a roll-over under Subdivision 310-D applies: see section 116-110", substitute "None".

18 Section 116-110

Repeal the section.

19 Subsection 290-170(5)

Repeal the subsection.

20 Subsection 290-180(5)

Repeal the subsection.

21 Division 310

Repeal the Division.

Part 5—Savings

22 Object

The object of this Part is to ensure that, despite the repeals made by Part 4, the full legal and administrative consequences of:

(a) any act done or omitted to be done; or

(b) any state of affairs existing; or

(c) any period ending;

before such a repeal, can continue to arise and flow, directly or indirectly, through an indefinite number of steps, even if some or all of those steps are taken after the repeal.

23 Making and amending assessments, and doing other things, in relation to past matters

Even though a provision is repealed by Part 4, the repeal is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

(a) making or amending an assessment;

(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal.

24 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed by Part 4 affects an assessment, the repeal is disregarded in relation to assessments made, before or after the repeal, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal.

25 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the ***subject provision***) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on a provision that is repealed by Part 4 of this Schedule, the repeal is disregarded so far as it affects the operation of the subject provision.

26 Part does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Part does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Schedule 3—Exempt annuity business of life insurance companies

Part 1—Amendments applying from 30 June 2000

Division 1—Amendment of the Income Tax Assessment Act 1997

1 Subparagraphs 320-246(1)(e)(ii) and (iii)

Omit "the conditions in subsections (3), (4) and (5)", substitute "whichever of the conditions in subsection (3) are applicable".

2 Subsections 320-246(3) to (5)

Repeal the subsections, substitute:

(3) The following table sets out the conditions mentioned in subparagraphs (1)(e)(ii) and (iii):

Annuity conditions		
Item	**Column 1** **The condition in column 2 applies in the following circumstances ...**	**Column 2** **The condition is that ...**
1	there is a residual capital value (within the meaning of section 27A of the *Income Tax Assessment Act 1936*) in relation to the *immediate annuity.	the contract under which the annuity is payable does not permit the residual capital value to exceed the annuity's purchase price (within the meaning of that section).
2	the contract under which the *immediate annuity is payable provides that the annuity is payable until the end of a term of years certain.	the contract does not permit the total of the amounts paid for the annuity's commutation (whether in whole or in part) to exceed the annuity's reduced purchase price (within the meaning of that section).
3	the contract under which the *immediate annuity is payable: (a) provides that the annuity is payable until the later of: (i) the death of a person (or	the contract does not permit the total of the commutation payments that may become payable before the end of the term of years certain to exceed the annuity's reduced

Annuity conditions		
Item	**Column 1** **The condition in column 2 applies in the following circumstances ...**	**Column 2** **The condition is that ...**
	the death of the last of 2 or more persons to die); or (ii) the end of a term of years certain; and (b) permits one or more amounts (***commutation payments***) to become payable before the end of the term of years certain for the annuity's commutation (whether in whole or in part).	purchase price (within the meaning of that section).
4	all circumstances.	there is no unreasonable deferral of the payments of the *immediate annuity, having regard to: (a) to the extent to which the payments depend on the returns of the investment of the assets of the *life insurance company paying the annuity—when the payments are made and when those returns are *derived; and (b) to the extent to which the payments do not depend on those returns—the relative sizes of the annual totals of the payments from year to year; and (c) any other relevant factors.

Division 2—Consequential amendment

Tax Laws Amendment (2006 Measures No. 2) Act 2006

3 Item 214 of Schedule 7 (table item 30)

Repeal the item.

Part 2—Amendments applying from the 2007-08 income year

Division 1—Amendment of the Income Tax Assessment Act 1997

4 Subparagraphs 320-246(1)(e)(i) to (iii)

Repeal the subparagraphs, substitute:

(i) was purchased on or before 9 December 1987; or

(ii) is a *superannuation income stream; or

(iii) satisfies whichever of the conditions in subsection (3) are applicable; or

5 Subsection 320-246(3)

Omit "subparagraphs (1)(e)(ii) and (iii)", substitute "subparagraph (1)(e)(iii)".

6 Subsection 320-246(3) (cell at table item 1, column 1)

Omit "section 27A", substitute "section 27H".

7 Subsection 320-246(3) (cell at table item 2, column 2)

Omit "reduced purchase price (within the meaning of that section)", substitute "purchase price (within the meaning of that section), reduced by the sum of the deductible amounts excluded from assessable income under that section".

8 Subsection 320-246(3) (cell at table item 3, column 2)

Omit "reduced purchase price (within the meaning of that section)", substitute "purchase price (within the meaning of that section), reduced by the sum of the deductible amounts excluded from assessable income under that section".

Division 2—Consequential amendments

Superannuation Legislation Amendment (Simplification) Act 2007

9 Items 237, 238, 239 and 241 of Schedule 1

Repeal the items.

10 Item 51 of Schedule 3

Repeal the item.

Part 3—Application provision

11 Application of Part 2 amendments

The amendments made by Division 1 of Part 2 of this Schedule apply to:

(a) the 2007-08 income year; and

(b) later income years.

12 Effect of repeal

To avoid doubt, the following provisions are taken never to have had effect:

(a) item 30 of the table in item 214 of Schedule 7 to the *Tax Laws Amendment (2006 Measures No. 2) Act 2006*;

(b) items 237, 238, 239 and 241 of Schedule 1, and item 51 of Schedule 3, to the *Superannuation Legislation Amendment (Simplification) Act 2007*.

Note 1: The provision mentioned in paragraph (a) is repealed by Division 2 of Part 1 of this Schedule.

Note 2: The provisions mentioned in paragraph (b) are repealed by Division 2 of Part 2 of this Schedule.

Schedule 4—Deductible gift recipients

Part 1—Amendments commencing on 4 June 2009

Income Tax Assessment Act 1997

1 Subsection 30-25(2) (table item 2.2.21)

Omit "Dymocks Literacy Foundation Limited", substitute "Dymocks Children's Charities Limited".

2 Section 30-315 (table item 45A)

Omit "Dymocks Literacy Foundation Limited", substitute "Dymocks Children's Charities Limited".

Part 2—Amendments commencing on Royal Assent

Income Tax Assessment Act 1997

3 Subsection 30-40(2) (at the end of the table)

Add:

3.2.12	The Green Institute Limited	the gift must be made after 23 June 2009
3.2.13	United States Studies Centre	the gift must be made after 26 July 2009

4 Section 30-315 (after table item 53)

Insert:

53AA	Green Institute Limited	item 3.2.12

5 Section 30-315 (after table item 118A)

Insert:

118B	United States Studies Centre	item 3.2.13

Part 3—Application provision

6 Application provision

The amendments made by this Schedule apply in relation to assessments for:

(a) the 2008-09 income year; and

(b) later income years.

Schedule 5—North Western Queensland floods

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Subsection 159J(6) (after paragraph (bb) of the definition of *separate net income*)

Insert:

(bc) does not include an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Western Queensland floods of January and February 2009; and

Income Tax Assessment Act 1997

2 Section 11-15 (table item headed "welfare")

After:

Income Recovery Subsidy for the North Queensland floods of January and February 2009 51-30

Insert:

Income Recovery Subsidy for the North Western Queensland floods of January and February 2009 51-30

3 Section 51-30 (at the end of the table)

Add:

5.4	an individual in receipt of an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Western Queensland floods of January and February 2009	the payment	the payment must be claimed: (a) after 24 February 2009; and (b) before 13 April 2009

Part 2—Sunsetting on 1 July 2011

Income Tax Assessment Act 1997

4 Section 11-15 (table item headed "welfare")

Omit:

Income Recovery Subsidy for the North Western Queensland floods of January and February 2009 51-30

5 Section 51-30 (table item 5.4)

Repeal the item.

Part 3—Application provision

6 Application provision

The amendments made by Part 1 of this Schedule apply in relation to the 2008-09 income year.

Schedule 6—Spirit blending

Excise Act 1901

1 At the end of Part VIIAA

Add:

77FM Spirit blending is to be treated as manufacture

(1) Subject to subsection (2), for greater certainty so far as concerns the application of the provisions of this Act, spirit blending to produce spirit is taken to constitute the manufacture of that spirit.

(2) For the purposes of this Act, spirit blending to produce spirit is taken not to constitute the manufacture of that spirit if the spirit blending occurred in circumstances specified in an instrument under subsection (3).

(3) The CEO may, by legislative instrument, specify circumstances for the purposes of subsection (2).

(4) Subsection (1) does not imply that, in the absence of such a provision, the blending of substances (whether spirit or not) would not constitute the manufacture of the substance produced by the blending.

[*Minister's second reading speech made in—*
House of Representatives on 25 November 2009
Senate on 22 February 2010]