



Tax Laws Amendment (2011 Measures No. 4) Act 2011

No. 43, 2011

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

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

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No. 43, 2011

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

[Assented to 27 June 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2011 Measures No. 4) Act 2011*.

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 4 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 27 June 2011 |
| 2. Schedule 1, Part 1 | The day after this Act receives the Royal Assent. | 28 June 2011 |
| 3. Schedule 1, Part 2 | 1 July 2016. | 1 July 2016 |
| 4. Schedule 1, Part 3 | The day after this Act receives the Royal Assent. | 28 June 2011 |
| 5. Schedule 2 | The day this Act receives the Royal Assent. | 27 June 2011 |
| 6. Schedule 3, Part 1 | The day this Act receives the Royal Assent. | 27 June 2011 |
| 7. Schedule 3, Part 2, Division 1 | The day this Act receives the Royal Assent. | 27 June 2011 |
| 8. Schedule 3, Part 2, Division 2 | 1 January 2017. | 1 January 2017 |
| 9. Schedule 4 | The day this Act receives the Royal Assent. | 27 June 2011 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of item 8 of Schedule 3 to this Act; and
- (b) the amendment is made within 2 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to that item.

Schedule 1—Reduction in 2011-12 PAYG instalments

Part 1—Main amendments

Division 1—Taxation Administration Act 1953

1 At the end of subsection 45-402(1) in Schedule 1

Add “(the *current year*)”.

2 Subsection 45-405(3) in Schedule 1 (after paragraph (a) of the definition of *GDP adjustment*)

Insert:

(aa) if the current year is the 2011-12 income year—4%; or

3 Subsection 45-405(3) in Schedule 1 (note at the end of the definition of *GDP adjustment*)

Omit “Note”, substitute “Note 1”.

4 Subsection 45-405(3) in Schedule 1 (at the end of the definition of *GDP adjustment*)

Add:

Note 2: Paragraph (aa) will be repealed on 1 July 2016: see Part 2 of Schedule 1 to the *Tax Laws Amendment (2011 Measures No. 4) Act 2011*.

Division 2—Tax Laws Amendment (2009 Measures No. 3) Act 2009

5 Item 3 of Schedule 1 (heading)

Omit “paragraphs (a) and (b)”, substitute “paragraph (a)”.

6 Item 3 of Schedule 1

Omit all the words after “Repeal the”, substitute “paragraph.”.

7 Item 4 of Schedule 1 (heading)

Omit “note”, substitute “note 1”.

8 Item 5 of Schedule 1

Repeal the item, substitute:

5 Subsection 45-405(3) in Schedule 1 (note 2 at the end of the definition of *GDP adjustment*)

Omit “Note 2”, substitute “Note”.

Part 2—Sunsetting on 1 July 2016

Taxation Administration Act 1953

9 Subsection 45-405(3) in Schedule 1 (paragraphs (aa) and (b) of the definition of *GDP adjustment*)

Repeal the paragraphs (not including the formula), substitute:

- (a) the percentage (rounded to the nearest whole number, rounding down a number ending in .5) worked out using the following formula; or
- (b) if the percentage worked out using the formula is negative—
0%:

10 Subsection 45-405(3) in Schedule 1 (note at the end of the definition of *GDP adjustment*)

Repeal the note.

11 Subsection 45-405(6) in Schedule 1

Omit “In a case covered by paragraph (b) of the definition of *GDP adjustment* in subsection (3), the”, substitute “The”.

Part 3—Application provision

12 Application of Part 1 amendments

The amendments made by Part 1 of this Schedule apply for the purposes of working out the amount of an instalment of yours, if:

- (a) the instalment becomes due on or after the commencement of this item; and
- (b) your 2011-12 income year starts on or after 1 April 2011.

Schedule 2—Low-income taxpayer rebate

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

basic income tax liability has the meaning given by section 4-10 of the *Income Tax Assessment Act 1997*.

2 Subsection 6(1)

Insert:

eligible taxable income has the meaning given by section 102AD.

3 At the end of section 159N

Add:

No rebate in respect of income of certain children

- (3) Subsections (4) and (5) apply if the taxpayer is a prescribed person in relation to the year of income for the purpose of Division 6AA of Part III.
- (4) Do not apply the rebate against the part (if any) of the taxpayer's basic income tax liability that is attributable to the taxpayer's eligible taxable income for the year of income.
- (5) If the taxpayer is entitled to the tax offset mentioned in item 15 of the table in subsection 63-10(1) of the *Income Tax Assessment Act 1997* (tax offset in respect of certain pensions) for the year of income, treat that tax offset as being applied, to the extent possible, against the part of the taxpayer's basic income tax liability mentioned in subsection (4) of this section.

Income Tax Assessment Act 1997

4 Subsection 63-10(1) (after table item 15)

Insert:

- 17 *Tax offset under section 159N of the *Income Tax Assessment Act 1936* (rebate for certain low-income taxpayers) You cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year

5 At the end of subsection 63-10(1)

Add:

- Note 6: Rules about applying the rebate for certain low-income taxpayers are set out in subsection 159N(4) of the *Income Tax Assessment Act 1936*.

6 Application

The amendments made by this Schedule apply to assessments for the 2011-12 income year and later income years.

Schedule 3—Disability superannuation benefits

Part 1—Deductible percentage of insurance premiums

Division 1—Deductions for insurance premiums

Income Tax Assessment Act 1997

1 Before subsection 295-465(1)

Insert:

Deductions for insurance premiums

2 After subsection 295-465(1)

Insert:

- (1A) If item 5 of the table applies to part, but not all, of an insurance policy premium, item 6 of the table applies to the rest of the premium as if item 5 did not apply to the premium.
- (1B) For the purposes of item 6 of the table, the regulations may provide that a specified proportion of a specified insurance policy premium may be treated as being attributable to the *complying superannuation fund's liability to provide benefits referred to in section 295-460.

Note: The fund may deduct a proportion other than that specified in the regulations for the premium, but must obtain an actuary's certificate in accordance with subsection (3) in order to do so. The same applies if the insurance policy premium is not specified in the regulations.

3 After subsection 295-465(3)

Insert:

- (3A) Subsection (3) does not apply to an amount referred to in item 6 of the table in relation to an insurance policy premium, if the trustee deducts, under that item, only the proportion (if any) of the

premium specified in the regulations made for the purposes of subsection (1B).

4 Application provision

The amendments made by this Division apply to insurance policy premiums paid in the 2011-12 income year and later income years.

Division 2—Deductions for self-insurance

Income Tax Assessment Act 1997

5 Before subsection 295-465(2)

Insert:

Deductions for self-insurance

6 After subsection 295-465(2)

Insert:

- (2A) For the purposes of subsection (2), the regulations may provide that a specified proportion of an amount mentioned in subsection (2B) may be treated as being the amount the fund could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy to cover it for its current or contingent liabilities to provide benefits referred to in section 295-460.

Example: If:

- (a) an actuary certifies the amount a fund could reasonably be expected to pay in an arm's length transaction to obtain an insurance policy; and
- (b) the insurance policy covers liabilities of the fund to provide a class of total and permanent disability benefits broader than that covered by section 295-460; and
- (c) the insurance policy is specified in the regulations; and
- (d) the fund does not have insurance coverage for the liabilities;

the fund may deduct, under subsection (2), so much of that certified amount as is specified in the regulations.

- (2B) The amount is the amount a *complying superannuation fund could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy specified in the regulations.

7 Application provision

Schedule 3 Disability superannuation benefits

Part 1 Deductible percentage of insurance premiums

The amendments made by this Division apply to a complying superannuation fund's current or contingent liabilities if the fund has the liabilities in the 2011-12 income year or later income years.

Part 2—Definition of disability superannuation benefits

Division 1—Main provisions

8 Complying funds—deductions for self-insurance for disability benefits

Scope

- (1) This item applies if:
- (a) during the whole or a part of a year of income, a complying superannuation fund is subject to a current or contingent liability to provide benefits for members of the fund; and
 - (b) the year of income is:
 - (i) the 2004-05 year of income; or
 - (ii) the 2005-06 year of income; or
 - (iii) the 2006-07 year of income.

Note: For liabilities during the 2007-08 to 2010-11 years of income, see section 295-467 of the *Income Tax (Transitional Provisions) Act 1997*.

Entitlement to deduction

- (2) Treat the benefits mentioned in paragraph (1)(a) as being ***death or disability benefits***, in relation to the members mentioned in that paragraph, to the extent that:
- (a) the benefits are conditional on the disability of the members; and
 - (b) the disability is described as a permanent disability in regulations made for the purposes of section 295-466 of the *Income Tax (Transitional Provisions) Act 1997*.

Note: Other events might have to occur after the event of the disability of the members before the fund pays the benefits to the members. For example, the members might have to satisfy a condition of release of benefits specified in a standard made under paragraph 31(2)(h) of the *Superannuation Industry (Supervision) Act 1993*, such as by reaching a certain age.

- (3) Subitem (2) applies:

- (a) for the purposes of applying former subsection 279(2) of the *Income Tax Assessment Act 1936* to the liability mentioned in paragraph (1)(a) of this item; and
- (b) without limiting that former subsection.

Income Tax Assessment Act 1997

9 Paragraph 295-460(b) (note)

Omit “subsection 295-465(1): see section 295-466”, substitute “subsections 295-465(1) and (2): see sections 295-466 and 295-467”.

Income Tax (Transitional Provisions) Act 1997

10 At the end of section 295-466

Add:

Note: This section will be repealed on 1 January 2017: see Division 2 of Part 2 of Schedule 2 to the *Superannuation Legislation Amendment Act 2010*.

11 After section 295-466

Insert:

295-467 Complying funds—deductions for self-insurance for disability superannuation benefits

Scope

- (1) This section applies if:
 - (a) during an income year, a complying superannuation fund is subject to current or contingent liabilities to provide superannuation benefits for members of the fund; and
 - (b) the income year is:
 - (i) the 2007-08 income year; or
 - (ii) the 2008-09 income year; or
 - (iii) the 2009-10 income year; or
 - (iv) the 2010-11 income year.

Note: For liabilities during the 2004-05 to 2006-07 income years, see item 8 of Schedule 3 to the *Tax Laws Amendment (2011 Measures No. 4) Act 2011*.

Entitlement to deduction

- (2) Treat the superannuation benefits mentioned in paragraph (1)(a) as being ***disability superannuation benefits***, to the extent that:
- (a) the superannuation benefits are conditional on the disability of the members mentioned in that paragraph; and
 - (b) the disability is described as a permanent disability in regulations made for the purposes of section 295-466.

Note: Other events might have to occur after the event of the disability of the members before the fund pays the benefits to the members. For example, the members might have to satisfy a condition of release of benefits specified in a standard made under paragraph 31(2)(h) of the *Superannuation Industry (Supervision) Act 1993*, such as by reaching a certain age.

- (3) Subsection (2) applies:
- (a) for the purposes of applying:
 - (i) subsection 295-465(2) of the *Income Tax Assessment Act 1997*; and
 - (ii) paragraph 295-460(b) of that Act, to the extent that it relates to subsection 295-465(2) of that Act; to the liabilities mentioned in paragraph (1)(a) of this section; and
 - (b) without limiting subsection 295-465(2) and paragraph 295-460(b) of that Act.

Amendment of assessments

- (4) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:
- (a) the assessment was made before the commencement of this section; and
 - (b) the amendment is made within 2 years after that commencement; and
 - (c) the amendment is made for the purpose of giving effect to this section.

Note: This section will be repealed on 1 January 2017: see Division 2 of Part 2 of Schedule 3 to the *Tax Laws Amendment (2011 Measures No. 4) Act 2011*.

Division 2—Sunsetting on 1 January 2017

Income Tax (Transitional Provisions) Act 1997

12 Section 295-467

Repeal the section.

Schedule 4—Reportable employer superannuation contributions

Taxation Administration Act 1953

1 Subsection 16-182(1) in Schedule 1

Omit “amount contributed”, substitute “amount that has been, is, or will be contributed in respect of the income year”.

2 Paragraph 16-182(1)(a) in Schedule 1

Omit “in respect of the income year”.

3 Paragraph 16-182(1)(d) in Schedule 1

Omit “is contributed”, substitute “was, is or will be contributed”.

4 At the end of section 16-182 in Schedule 1

Add:

- (5) For the purposes of paragraph (1)(c), treat the individual as neither having, nor being able reasonably to be expected to have, the capacity to influence the size of the amount if:
- (a) the employer or *associate is required to contribute the amount by:
 - (i) an *industrial instrument; or
 - (ii) the rules of a *superannuation fund; and
 - (b) the individual does not and did not have, and is not able reasonably to be expected to have or have had, the capacity to influence the content of that instrument or those rules, to the extent that the instrument or rules relate to:
 - (i) the requirement to contribute the amount; or
 - (ii) the size of the amount.

5 Application provision

The amendments made by this Schedule apply in relation to income years starting on or after 1 July 2009.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2011
Senate on 14 June 2011]*

(99/11)
