





# **Tax Laws Amendment (2011 Measures No. 7) Act 2011**

**No. 147, 2011**

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

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



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# **Tax Laws Amendment (2011 Measures No. 7) Act 2011**

**No. 147, 2011**

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

*[Assented to 29 November 2011]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2011 Measures No. 7) Act 2011*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 November 2011
2. Schedule 1	The day this Act receives the Royal Assent.	29 November 2011
3. Schedule 2, Part 1	The day this Act receives the Royal Assent.	29 November 2011
4. Schedule 2, Part 2	1 July 2016.	1 July 2016
5. Schedule 3	The day this Act receives the Royal Assent.	29 November 2011
6. Schedule 4	The day after this Act receives the Royal Assent.	30 November 2011
7. Schedules 5 to 7	The day this Act receives the Royal Assent.	29 November 2011
8. Schedule 8, Part 1, Division 1	1 January 2012.	1 January 2012
9. Schedule 8, Part 1, Division 2	1 July 2012.	1 July 2012
10. Schedule 8, Part 1, Division 3	1 January 2012.	1 January 2012
11. Schedule 8, Part 2	The day this Act receives the Royal Assent.	29 November 2011
12. Schedule 9	The day this Act receives the Royal Assent.	29 November 2011

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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule 1 (about special disability trusts) 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 Schedule.

## Schedule 1—Removing tax issues facing special disability trusts

### Part 1—Extending CGT main residence exemption to special disability trusts

#### *Income Tax Assessment Act 1997*

##### **1 Subsection 104-75(6)**

Repeal the subsection, substitute:

*Exceptions for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if:
- (a) the beneficiary \*acquired the \*CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or
  - (b) the beneficiary acquired it before 20 September 1985; or
  - (c) all or part of the capital gain or capital loss the trustee makes from the \*CGT event is disregarded under Subdivision 118-B (about main residence).

Expenditure can include giving property: see section 103-5.

Note 1: For provisions affecting the application of Subdivision 118-B to the trustee, see sections 118-215 to 118-230.

Note 2: There are also exceptions for employee share trusts: see sections 130-80 and 130-90.

##### **2 Subsection 104-85(6)**

Repeal the subsection, substitute:

*Exceptions for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if:
- (a) the beneficiary \*acquired the \*CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or

- (b) the beneficiary acquired it before 20 September 1985; or
- (c) all or part of the capital gain or capital loss the trustee makes from the \*CGT event is disregarded under Subdivision 118-B (about main residence).

Expenditure can include giving property: see section 103-5.

Note 1: For provisions affecting the application of Subdivision 118-B to the trustee, see sections 118-215 to 118-230.

Note 2: There is also an exception for employee share trusts: see section 130-90.

### **3 Section 118-105**

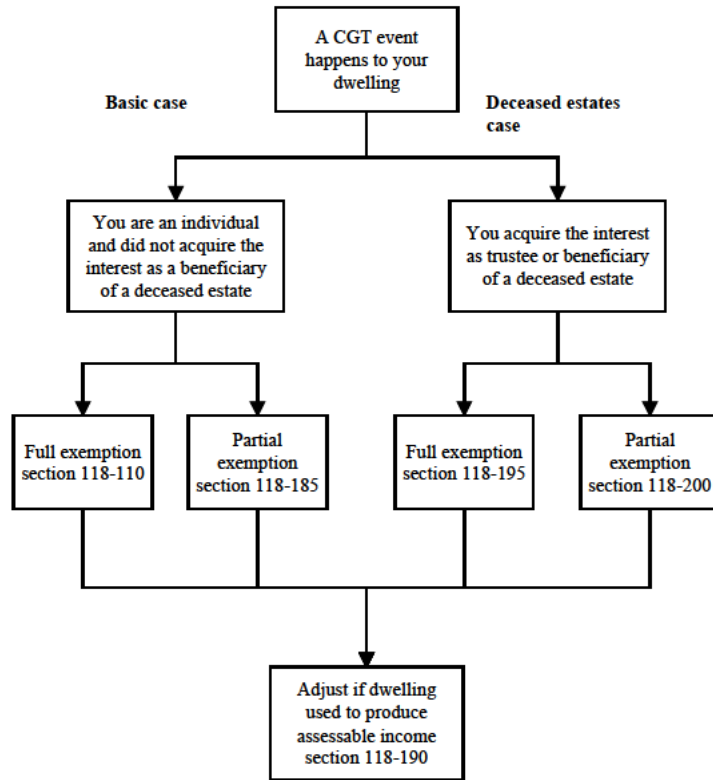
Repeal the section, substitute:

**118-105 Map of this Subdivision**

*Event that may attract exemption*

*The 2 different cases*

*Extent of exemption depends on whether dwelling is your main residence throughout ownership period (and on other factors for deceased estates)*



*Other rules that apply*



**4 After section 118-210**

Insert:

**Special disability trusts**

**118-215 What the following provisions are about**

The trustee of a trust that is or has been a special disability trust may be eligible for an exemption to the extent that a dwelling is the

main residence of the individual who is or has been the principal beneficiary of the trust.

Another beneficiary of the trust may be eligible for an exemption if the dwelling is distributed to that other beneficiary at or after the principal beneficiary's death.

Note: The following provisions also apply to the exemption about compulsory acquisitions of adjacent land (see section 118-245).

### **118-218 Exemption available to trustee—main case**

- (1) This section applies to you in relation to a \*CGT event if:
  - (a) the CGT event happens in relation to a \*CGT asset; and
  - (b) just before the CGT event happens, you hold the CGT asset as trustee of a trust; and
  - (c) the trust was a \*special disability trust on at least one of the days on which you held the CGT asset.
- (2) For the purposes of applying this Subdivision in relation to the \*CGT event, on each day to which paragraph (1)(c) applies:
  - (a) treat yourself as holding the \*CGT asset personally (and not as trustee of the trust); and
  - (b) if the \*principal beneficiary of the trust uses the applicable \*dwelling in a particular way on that day—treat yourself as using the dwelling in that way on that day.

Example: If the principal beneficiary uses the dwelling as his or her main residence on the day, then treat yourself as using the dwelling as your main residence on that day.

Note 1: The CGT asset need not be a dwelling (or an ownership interest in a dwelling) if it is land adjacent to a dwelling, an adjacent structure of a flat or home unit, or an ownership interest in such an asset.

Note 2: If the trustee is an individual, the individual's actual circumstances are ignored. Similarly, this subsection does not affect how this Subdivision applies for the individual's actual circumstances. See section 960-100.
- (3) If you are not an individual, treat yourself as being an individual for the purposes of applying this Subdivision in relation to the \*CGT event.
- (4) If the \*CGT asset, or your \*ownership interest in it, \*passed to you as a beneficiary in a deceased estate:

- (a) treat the deceased as never having used the applicable \*dwelling for the \*purpose of producing assessable income; and
  - (b) treat the dwelling as being the deceased's \*ownership period; and
- for the purposes of applying this Subdivision in relation to the \*CGT event.

**118-220 Exemption available to trustee—after the principal beneficiary's death**

This section applies to you in relation to a \*CGT event if:

- (a) the trustee of a trust holds a \*CGT asset on a particular day (the *transition day*); and
- (b) on the transition day, or on an earlier day on which the CGT asset was held by the trustee of the trust, the trust is a \*special disability trust; and
- (c) the individual who is or has been the \*principal beneficiary of the trust dies on the transition day; and
- (d) the CGT event happens in relation to the CGT asset at or after the deceased's death; and
- (e) the CGT event happens while you hold the CGT asset:
  - (i) as trustee of the trust; or
  - (ii) as trustee of an implied trust arising because of the deceased's death.

**118-222 Exemption available to other beneficiary who acquires the CGT asset after the principal beneficiary's death**

This section applies to you in relation to a \*CGT event if:

- (a) the CGT event happens in relation to a \*CGT asset; and
- (b) you \*acquired the CGT asset or your \*ownership interest in it:
  - (i) as a result of an earlier CGT event; and
  - (ii) as a beneficiary of a trust; and
- (c) section 118-220 applied to the trustee of the trust in relation to the earlier CGT event and the CGT asset.

**118-225 Amount of exemption available after the principal beneficiary's death—general**

*Full exemption for trustee unless sells asset for proceeds etc.*

- (1) A \*capital gain or \*capital loss you make from a \*CGT event is disregarded if:
- (a) section 118-220 applies to you in relation to the CGT event; and
  - (b) as a result of the CGT event, an entity \*acquires the \*CGT asset:
    - (i) as trustee of an implied trust arising because of the deceased's death; or
    - (ii) as a beneficiary of the relevant trust referred to in paragraph 118-220(e).

*Exemption for beneficiary, or trustee selling asset for proceeds etc.*

- (2) If:
- (a) section 118-220 applies to you in relation to a \*CGT event, but paragraph (1)(b) does not; or
  - (b) section 118-222 applies to you in relation to a CGT event; the amount of the \*capital gain or \*capital loss that you would have made apart from this section from the CGT event is decreased by an amount that is reasonable.
- (3) In determining what is a reasonable decrease:
- (a) if section 118-220 applies to you, but paragraph (1)(b) does not—treat yourself as being an individual who owned the \*CGT asset as the trustee of the deceased's estate; and
  - (b) if section 118-222 applies to you—treat yourself as being an individual and treat the CGT asset or your \*ownership interest in it as having \*passed to you as a beneficiary in the deceased's estate; and
  - (c) have regard to the principles in this Subdivision, and to:
    - (i) the extent that the applicable \*dwelling was the deceased's main residence for the relevant period; and
    - (ii) the extent that the dwelling was used for the \*purpose of producing assessable income during the relevant period.

- (4) For the purposes of subparagraph (3)(c)(i), assume the \*dwelling was not the deceased's main residence on each day the trust referred to in paragraph 118-220(b) was not a \*special disability trust.

**118-227 Amount of exemption available after the principal beneficiary's death—cost base and reduced cost base**

- (1) If section 118-220 applies to you and:
- (a) the applicable \*dwelling was the deceased's main residence just before the deceased's death; and
  - (b) that dwelling was not then being used for the \*purpose of producing assessable income; and
  - (c) the trust referred to in paragraph 118-220(b) was then a \*special disability trust;
- then:
- (d) the first element of the \*CGT asset's \*cost base, in your hands, is the CGT asset's \*market value just before the deceased's death; and
  - (e) the first element of the CGT asset's \*reduced cost base, in your hands, is worked out similarly.
- (2) However, if section 118-220 applies to you as trustee of an implied trust arising because of the deceased's death, but subsection (1) does not, then:
- (a) the first element of the \*CGT asset's \*cost base, in your hands, is the CGT asset's cost base just before the deceased's death; and
  - (b) the first element of the CGT asset's \*reduced cost base, in your hands, is worked out similarly.
- (3) If section 118-222 applies to you:
- (a) the first element of the \*CGT asset's \*cost base, in your hands, is the CGT asset's cost base just before the earlier \*CGT event happened that resulted in you \*acquiring the CGT asset or your \*ownership interest in it; and
  - (b) the first element of the CGT asset's \*reduced cost base, in your hands, is worked out similarly.

**118-230 Application of CGT events E5 and E7 in relation to main residence exemption and special disability trusts**

If \*CGT event E5 or E7 happens in relation to a \*CGT asset held by a trust that is or has been a \*special disability trust, treat the lists of CGT events in paragraphs 118-110(2)(a) and 118-195(2)(a) as including a reference to that CGT event.

**5 Application of amendments**

The amendments made by this Part apply to CGT events that happen on or after 1 July 2006.

## Part 2—CGT exemption for assets transferred to special disability trusts

### *Income Tax Assessment Act 1997*

#### 6 After section 118-80

Insert:

#### Special disability trusts

##### 118-85 Special disability trusts

- (1) A \*capital gain or \*capital loss you make is disregarded if you make it from transferring a \*CGT asset for no consideration to:
  - (a) a \*special disability trust; or
  - (b) a trust that becomes a special disability trust as soon as practicable after the transfer.
- (2) In working out whether the transfer was for consideration, disregard any interest in the trust.

##### 7 Subsection 128-15(4) (table item 1)

Omit “or 3A”, substitute “, 3A or 3B”.

##### 8 Subsection 128-15(4) (after table item 3A)

Insert:

3B	One that *passes to a trustee of a *special disability trust	the *market value of the asset on the day you died	the market value of the asset on the day you died
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##### 9 Application of amendments

The amendments made by this Part apply to CGT events that happen on or after 1 July 2006.

## **Part 3—Extending definitions to cover veterans' special disability trusts**

### ***Income Tax Assessment Act 1997***

#### **10 Subsection 995-1(1) (definition of *principal beneficiary*)**

Repeal the definition, substitute:

*principal beneficiary* of a \*special disability trust has the meaning given by:

- (a) for a special disability trust within the meaning of the *Social Security Act 1991*—subsection 1209M(1) of that Act; or
- (b) for a special disability trust within the meaning of the *Veterans' Entitlements Act 1986*—subsection 52ZZZWA(1) of that Act.

#### **11 Subsection 995-1(1) (definition of *special disability trust*)**

Repeal the definition, substitute:

*special disability trust* means:

- (a) a special disability trust within the meaning of the *Social Security Act 1991*; or
- (b) a special disability trust within the meaning of the *Veterans' Entitlements Act 1986*.

#### **12 Application of amendments**

The amendments made by this Part apply to assessments for the 2006-07 income year and later income years.

## **Schedule 2—Pacific Seasonal Worker Pilot Scheme**

### **Part 1—Amendments commencing on Royal Assent**

#### ***Income Tax Rates Act 1986***

##### **1 After clause 1 of Part II of Schedule 7**

Insert:

- 1A. Treat the reference in item 1 of the table in clause 1 to 29% as being a reference to 15%, if:
- (a) the year of income is the 2011-12 year of income; and
  - (b) at a time during the year of income, the non-resident taxpayer:
    - (i) holds a Special Program Visa (subclass 416); and
    - (ii) is employed by an Approved Employer under the Pacific Seasonal Worker Pilot Scheme.

Note: This clause will be repealed on 1 July 2016. See Part 2 of Schedule 2 to the *Tax Laws Amendment (2011 Measures No. 7) Act 2011*.

## **Part 2—Amendments commencing on 1 July 2016**

### ***Income Tax Rates Act 1986***

#### **2 Clause 1A of Part II of Schedule 7**

Repeal the clause.

## Schedule 3—TOFA and PAYG instalments

### Part 1—Amendments

#### *Taxation Administration Act 1953*

##### **1 After subsection 45-120(2B) in Schedule 1**

Insert:

*Effect of Division 230 of the Income Tax Assessment Act 1997 on instalment income*

- (2C) Your instalment income for a period also includes the difference between:
- (a) a gain (or gains) you make from a \*financial arrangement to the extent to which it is (or they are):
    - (i) assessable under Division 230 of the *Income Tax Assessment Act 1997*; and
    - (ii) reasonably attributable to that period; and
  - (b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):
    - (i) allowable to you as a deduction under Division 230 of the *Income Tax Assessment Act 1997*; and
    - (ii) reasonably attributable to that period.
- This is so only if the gain (or gains) referred to in paragraph (a) equals or exceeds the loss (or losses) referred to in paragraph (b).
- (2D) However, your instalment income for a period is worked out disregarding subsection (2C) if any of the following apply:
- (a) you are an individual;
  - (b) the only gains and losses that would be taken into account under subsection (2C) for the period are from \*financial arrangements that are \*qualifying securities.
- (2E) A gain or loss that is taken into account under subsection (2C) in working out an amount (including a nil amount) to be included in your instalment income for a period is not to be, to any extent, taken into account again under another provision of this section in calculating your instalment income for the same or any other

period.

## Part 2—Application of amendments

### 2 Definitions

In this Part:

**amended instalment income definition** means section 45-120 in Schedule 1 to the *Taxation Administration Act 1953* as amended by this Schedule.

**first TOFA year** means the first income year commencing on or after 1 July 2010 for which:

- (a) either or both of the following applies:
  - (i) a gain (or gains) from a financial arrangement is included in your assessable income under Division 230 of the *Income Tax Assessment Act 1997*;
  - (ii) a loss (or losses) from a financial arrangement is allowable to you as a deduction under that Division; and
- (b) at least one gain or loss referred to in paragraph (a) is from a financial arrangement other than a qualifying security.

### 3 Application of amendments

#### *Main rule*

- (1) Subitem (2) applies to you if:
  - (a) the Commissioner gives you an instalment rate under section 45-15 in Schedule 1 to the *Taxation Administration Act 1953* at a time that is:
    - (i) after this Act receives the Royal Assent; and
    - (ii) in the first instalment quarter in an income year (the **commencing year**); and
  - (b) the base year that applies in working out that rate is your first TOFA year, or a later year.
- (2) Subject to subitems (4) and (6), the amended instalment income definition applies to you in working out:
  - (a) your base assessment instalment income for the base year mentioned in paragraph (1)(b), and later years; and
  - (b) your instalment income for periods in the commencing year, and later years.

### *Partnerships*

- (3) Subitem (4) applies in relation to your instalment income for a period if:
- (a) the period starts after this Act receives the Royal Assent; and
  - (b) you are a partner in a partnership at any time during the period; and
  - (c) in working out the amount to be included in your instalment income for the period under section 45-260 in Schedule 1 to the *Taxation Administration Act 1953*, the last income year mentioned in the numerator of the formula in subsection 45-260(1) in that Schedule is:
    - (i) the first TOFA year for the partnership; or
    - (ii) a later year.
- (4) For the purpose of working out the amount to be included in your instalment income for the period (the **current period**) under section 45-260 in Schedule 1 to the *Taxation Administration Act 1953*, the amended instalment income definition applies in working out the instalment income of the partnership for:
- (a) the last income year mentioned in the numerator of the formula in subsection 45-260(1) in that Schedule; and
  - (b) the current period.

### *Trusts*

- (5) Subitem (6) applies in relation to your instalment income for a period if:
- (a) the period starts after this Act receives the Royal Assent; and
  - (b) you are a beneficiary of a trust at any time during the period; and
  - (c) in working out the amount to be included in your instalment income for the period under section 45-280 in Schedule 1 to the *Taxation Administration Act 1953*, the last income year mentioned in the numerator of the formula in subsection 45-280(1) in that Schedule is:
    - (i) the first TOFA year for the trust; or
    - (ii) a later year.
- (6) For the purpose of working out the amount to be included in your instalment income for the period (the **current period**) under section 45-280 in Schedule 1 to the *Taxation Administration Act 1953*,

the amended instalment income definition applies in working out the instalment income of the trust for:

- (a) the last income year mentioned in the numerator of the formula in subsection 45-280(1) in that Schedule; and
- (b) the current period.

*Early opt-in for amended instalment income definition*

- (7) Subitem (8) applies to you if:
  - (a) the Commissioner gives you an instalment rate under section 45-15 in Schedule 1 to the *Taxation Administration Act 1953* at a time that is:
    - (i) after this Act receives the Royal Assent; and
    - (ii) in the first instalment quarter in an income year (the **commencing year**); and
  - (b) the base year that applies in working out that rate is an income year before your first TOFA year; and
  - (c) you elect to have subitem (8) apply to you; and
  - (d) the Commissioner, having regard to the object of Part 2-10 in Schedule 1 to the *Taxation Administration Act 1953*, is of the opinion that it is reasonable for that subitem to apply to you.
- (8) Despite subitems (1) and (2), the amended instalment income definition applies to you in working out:
  - (a) your base assessment instalment income for the base year mentioned in paragraph (7)(b), and later years; and
  - (b) your instalment income for periods in the commencing year, and later years.
- (9) If subitem (8) applies to you, in working out your base assessment instalment income for the base year (or a later income year that ends before your first TOFA year) (a **pre-TOFA year**), the financial arrangement amendments (within the meaning of Part 3 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*) are taken to apply:
  - (a) to you in a pre-TOFA year in the same way they apply to you in your first TOFA year; and
  - (b) to financial arrangements you have in a pre-TOFA year in the same way they apply to financial arrangements you have in your first TOFA year.

## **Schedule 4—Notification of TOFA transitional elections**

### ***Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009***

#### **1 At the end of subitem 104(5) of Schedule 1**

Add:

Note: The Commissioner may, in limited circumstances, extend the time on or before which the election must be notified to the Commissioner. See item 104A.

#### **2 After item 104 of Schedule 1**

Insert:

#### **104A Application of financial arrangement amendments (financial arrangements)—late notices**

- (1) A reference in paragraph 104(5)(b) to the lodgment date is to be treated, in relation to an election under subitem 104(2), as being a reference to a later date specified in a notice the Commissioner gives to you under this item, if the Commissioner gives you such a notice in relation to the election.
- (2) The Commissioner may give you a notice in relation to the election if:
  - (a) the Commissioner is satisfied that the election was not notified to the Commissioner on or before the lodgment date because of:
    - (i) an honest mistake of yours; or
    - (ii) an inadvertence of yours; or
  - (b) the Commissioner is satisfied that:
    - (i) the election was not notified to the Commissioner on or before the lodgment date because of circumstances outside of your control; and
    - (ii) you took all reasonable steps to notify the Commissioner of the election on or before the lodgment date, or there were no such steps you could have taken.

- (3) The later date specified in the notice must be a date that occurred no later than 3 months after the lodgment date mentioned in paragraph 104(5)(b) (disregarding this item).

**3 Subitem 105(1) of Schedule 1**

Omit “item 104 applies to arrangements that are not financial arrangements in the same way that it applies”, substitute “items 104 and 104A apply to arrangements that are not financial arrangements in the same way that those items apply”.

**4 Application of amendments**

The amendments made by this Schedule apply in relation to lodgment dates mentioned in paragraph 104(5)(b) of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*, whether the lodgment dates occur before, on or after the commencement of this item.

## **Schedule 5—Farm management deposits**

### **Part 1—Early repayments in the event of applicable natural disasters**

#### *Income Tax Assessment Act 1997*

##### **1 Section 393-1**

After “exceptional circumstances”, insert “or in the event of an applicable natural disaster”.

##### **2 Paragraph 393-15(2)(d)**

Repeal the paragraph, substitute:

- (d) subsections 393-40(3), (3A) and (4) (about repayment of a farm management deposit in exceptional circumstances or in the event of an applicable natural disaster).

##### **3 Subsection 393-40(1) (note 1)**

After “subsection (3)”, insert “, (3A)”.

##### **4 Subsection 393-40(2) (note 1)**

After “subsection (3)”, insert “, (3A)”.

##### **5 After subsection 393-40(3)**

Insert:

#### *Repayment in the event of an applicable natural disaster*

- (3A) Subsections (1) and (2) do not apply to a repayment of the whole or a part of a \*farm management deposit if:
  - (a) natural disaster relief and recovery arrangements made by or on behalf of the Commonwealth apply, in a way specified in regulations made for the purposes of this subsection, to a \*primary production business of the \*owner of the deposit; and
  - (b) all of the other circumstances specified in those regulations are satisfied.

**6 Subsection 393-40(4)**

Repeal the subsection, substitute:

*Any later deposit not a farm management deposit*

- (4) If subsection (3) or (3A) applies to an \*owner and a repayment, any later deposit that is made by, or on behalf of, the owner in the income year in which the repayment is made is not, and is taken never to have been, a *farm management deposit*.

**7 Subsection 393-55(2) (paragraph (d) of note 1)**

Omit “(3) and (4) (about repayment in exceptional circumstances)”, substitute “(3), (3A) and (4) (about repayment in exceptional circumstances or in the event of an applicable natural disaster)”.

**8 Application of amendments**

The amendments made by this Part apply in relation to repayments made on or after 1 July 2010.

## **Part 2—Providers must report monthly**

### *Income Tax Assessment Act 1997*

#### **9 Section 393-1 (note)**

Omit “quarter”, substitute “calendar month”.

### *Taxation Administration Act 1953*

#### **10 Subsection 398-5(1) in Schedule 1 (heading)**

Repeal the heading, substitute:

*FMD provider must provide monthly information*

#### **11 Subsection 398-5(1) in Schedule 1**

Omit “within 60 days after the end of a \*quarter”, substitute “before the 11th day after the end of a calendar month”.

#### **12 Subsection 398-5(1) in Schedule 1**

Omit “any month in the quarter”, substitute “that month”.

#### **13 Paragraph 398-5(3)(a) in Schedule 1**

Omit “each month in the \*quarter”, substitute “that month”.

#### **14 Paragraphs 398-5(3)(b) and (c) in Schedule 1**

Omit “each month in the quarter”, substitute “that month”.

#### **15 Paragraph 398-5(3)(d) in Schedule 1**

Omit “the quarter”, substitute “that month”.

#### **16 Application of amendments**

The amendments made by this Part apply in relation to information to be given for calendar months in the 2012-13 financial year and each later financial year.

Note: Section 398-5 in Schedule 1 to the *Taxation Administration Act 1953*, as in force before the commencement of this Part, continues to apply in relation to information to be given for quarters ending before 1 July 2012.

### **Part 3—Owners may have farm management deposits with more than one FMD provider**

#### ***Income Tax Assessment Act 1997***

##### **17 Section 393-35 (table item 5)**

Repeal the item.

##### **18 Section 393-35 (table item 10)**

Omit “the \*FMD provider”, substitute “\*FMD providers”.

##### **19 Subsections 393-55(4) and (5)**

Repeal the subsections.

##### **20 Application of amendments**

The amendments made by this Part apply in relation to agreements made before, on or after 1 July 2012.

## **Part 4—Contacting owners before forfeiting FMD deposits as unclaimed money**

### ***Banking Act 1959***

#### **21 After subsection 69(1)**

Insert:

- (1A) However, farm management deposits (within the meaning of the *Income Tax Assessment Act 1997*) of an owner (within the meaning of that Act) are ***unclaimed moneys*** if, and only if:
- (a) they are to the credit of an account with an ADI; and
  - (b) the account has not been operated on either by deposit or withdrawal for a period of not less than 7 years; and
  - (c) after the first 7 years of that period, the ADI has been unable to contact the owner about those farm management deposits after making reasonable efforts.

#### **22 Subsection 69(2)**

Omit “subsection (1)”, substitute “subsections (1) and (1A)”.

#### **23 Application of amendments**

The amendments made by this Part apply in relation to statements to be delivered:

- (a) within 3 months after 31 December 2012; and
- (b) within 3 months after the 31 December in each later year.

## Schedule 6—Temporary loss relief for merging superannuation funds

### *Income Tax Assessment Act 1997*

#### **1 Section 310-1 (note 1)**

After “30 June 2011”, insert “(or, in certain circumstances, 30 September 2011)”.

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

#### **2 Item 11 of Schedule 2**

Before “The amendments”, insert “(1)”.

#### **3 Item 11 of Schedule 2 (note 1)**

Omit “paragraph (a) is that”, substitute “paragraph (1)(a) is that, subject to subitem (2),”.

#### **4 Item 11 of Schedule 2 (note 2)**

Omit “paragraph (b) is that”, substitute “paragraph (1)(b) is that, subject to subitem (2),”.

#### **5 At the end of item 11 of Schedule 2**

Add:

- (2) The amendments also 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 during the period starting on 24 December 2008 and ending at the end of 30 September 2011; 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 1 July 2010 and ending at the end of 30 September 2011.

## **6 Transitional provision—completion times and transfer events**

For the purposes of subsection 310-45(3) of the *Income Tax Assessment Act 1997*, as in force just after the commencement of item 1 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*:

- (a) treat the completion time for a losses choice as occurring in the 2010-11 income year, if the completion time happens during the period:
  - (i) starting on 1 July 2010; and
  - (ii) ending on 30 September 2011; and
- (b) treat a transfer event as happening in that income year for the transferring entity, if the transfer event happens during that period.

## Schedule 7—Penalty notice validation

### 1 Validation of notices

- (1) This item applies if the Commissioner gave (or purported to give) a notice under former section 222AOE on or after 10 December 2007 by sending it by pre-paid post in accordance with section 28A of the *Acts Interpretation Act 1901*.
- (2) For the purpose of former section 222AOE, treat the notice as having been given at the time the Commissioner sent it by pre-paid post in accordance with section 28A of the *Acts Interpretation Act 1901*.
- (3) This item applies despite section 29 of the *Acts Interpretation Act 1901*.
- (4) This item does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this item, to the extent that those rights or liabilities arose from, or were affected by, a notice referred to in subitem (1).
- (5) In this item:  
**former section 222AOE** means former section 222AOE of the *Income Tax Assessment Act 1936* (as that section was in force before the commencement of Schedule 1 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010*).

## **Schedule 8—Ancillary funds**

### **Part 1—Public ancillary funds**

#### **Division 1—Main amendments**

#### *A New Tax System (Australian Business Number) Act 1999*

##### **1 Paragraph 26(3)(ga)**

After “section 426-65”, insert “, 426-104”.

#### *Income Tax Assessment Act 1997*

##### **2 Subsection 30-15(2) (cell at table item 2, column headed “Recipient”)**

Omit “A public fund, or a \*private ancillary fund,”, substitute “An \*ancillary fund”.

##### **3 Subsection 30-15(2) (cell at table item 2, column headed “Special conditions”)**

Before “fund” (wherever occurring), insert “ancillary”.

##### **4 Paragraph 30-125(1)(d)**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

##### **5 Subparagraph 30-125(1)(d)(i)**

Omit “\*private ancillary fund guidelines”, substitute “\*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable)”.

##### **6 Paragraph 31-10(1)(b)**

Omit “a public fund, or a \*private ancillary fund,”, substitute “an \*ancillary fund”.

##### **7 Subsection 995-1(1)**

Insert:

*ancillary fund* means:

- (a) a \*public ancillary fund; or
- (b) a \*private ancillary fund.

### 8 Subsection 995-1(1)

Insert:

*public ancillary fund* has the meaning given by section 426-102 in Schedule 1 to the *Taxation Administration Act 1953*.

### 9 Subsection 995-1(1)

Insert:

*public ancillary fund guidelines* has the meaning given by section 426-103 in Schedule 1 to the *Taxation Administration Act 1953*.

## *Taxation Administration Act 1953*

### 10 Subsection 355-65(8) in Schedule 1 (table item 6, column headed “and the record or disclosure ...”)

Omit “private ancillary fund”, substitute “\*ancillary fund”.

### 11 Section 426-1 in Schedule 1

Omit:

Subdivision 426-D deals with a type of private philanthropic trust fund known as a *private ancillary fund*.

substitute:

Subdivision 426-D deals with types of philanthropic trust funds known as *public ancillary funds* and *private ancillary funds*.

### 12 Subdivision 426-D in Schedule 1 (heading)

Repeal the heading, substitute:

## **Subdivision 426-D—Public and private ancillary funds**

### **13 Section 426-100 in Schedule 1**

Omit:

This Subdivision deals with a type of private philanthropic trust fund known as a *private ancillary fund*.

substitute:

This Subdivision deals with types of philanthropic trust funds known as *public ancillary funds* and *private ancillary funds*.

### **14 Section 426-100 in Schedule 1**

Omit “when private”, substitute “when”.

### **15 Section 426-100 in Schedule 1**

Omit “private ancillary fund guidelines”, substitute “public ancillary fund guidelines or private ancillary fund guidelines (whichever are applicable)”.

### **16 Before the group heading before section 426-105 in Schedule 1**

Insert:

## **Public ancillary funds**

### **426-102 Public ancillary funds**

- (1) A trust is a *public ancillary fund* if:
- (a) at least one of the following subparagraphs applies:
    - (i) each trustee of the trust is a \*constitutional corporation;
    - (ii) the only trustee of the trust is the Public Trustee of a State or Territory, or is prescribed by the regulations for the purposes of this subparagraph; and
  - (b) each trustee of the trust has agreed, in the \*approved form given to the Commissioner, to comply with the rules in the \*public ancillary fund guidelines, as in force from time to time; and

- (c) none of the trustees has revoked that agreement in accordance with subsection (2).
- (2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the \*approved form.
- (3) Sections 426-125 to 426-165 do not apply to a \*public ancillary fund if subparagraph (1)(a)(ii) of this section applies to the fund.

#### **426-103 Public ancillary fund guidelines**

The Minister must, by legislative instrument, formulate guidelines (the *public ancillary fund guidelines*) setting out:

- (a) rules that \*public ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as \*deductible gift recipients; and
- (b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to public ancillary funds.

#### **426-104 Australian Business Register must show public ancillary fund status**

- (1) If a \*public ancillary fund has an \*ABN, the \*Australian Business Registrar may enter in the \*Australian Business Register in relation to the fund a statement that it is a public ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a public ancillary fund.

Note 2: The Australian Business Register will also show if a public ancillary fund is endorsed as a deductible gift recipient: see section 30-229 of the *Income Tax Assessment Act 1997*.

- (2) The \*Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the \*Australian Business Register under this section is true. For this purpose, the Registrar may:
  - (a) change the statement; or
  - (b) remove the statement from the Register if the statement is not true.

#### **17 At the end of paragraph 426-110(b) in Schedule 1**

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Add “in relation to private ancillary funds”.

**18 Section 426-120 in Schedule 1 (heading)**

Repeal the heading, substitute:

**426-120 Administrative penalties for trustees of ancillary funds**

**19 Paragraph 426-120(1)(a) in Schedule 1**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

**20 Subparagraph 426-120(2)(b)(ii) in Schedule 1**

Omit “not a registered trustee company”, substitute “neither a licensed trustee company (within the meaning of Chapter 5D of the *Corporations Act 2001*) nor the Public Trustee of a State or Territory”.

**21 Paragraph 426-120(3)(a) in Schedule 1**

Repeal the paragraph, substitute:

- (a) the amount specified in the \*public ancillary fund guidelines under paragraph 426-103(b), or the \*private ancillary fund guidelines under paragraph 426-110(b), whichever are applicable; or

**22 Subsection 426-120(3) in Schedule 1**

Omit “private ancillary fund guidelines may”, substitute “guidelines may”.

**23 Subsection 426-125(1) in Schedule 1**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

**24 Paragraph 426-125(1)(a) in Schedule 1**

Repeal the paragraph, substitute:

- (a) the \*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable); or

**25 Subsection 426-125(6) in Schedule 1**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

**26 Paragraph 426-125(6)(a) in Schedule 1**

Repeal the paragraph, substitute:

(a) the \*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable); or

**27 Subsections 426-130(1) and (2) in Schedule 1**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

**28 Subsection 426-130(5) in Schedule 1**

Omit “paragraph 426-105(1)(b), agreed to comply with the rules in the \*private ancillary fund guidelines,”, substitute “paragraph 426-102(1)(b) or 426-105(1)(b), agreed to comply with the rules in the \*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable)”.

**29 Paragraph 426-135(1)(b) in Schedule 1**

Omit “\*private ancillary fund’s”, substitute “\*ancillary fund’s”.

**30 Subsections 426-135(2) and 426-150(1) in Schedule 1**

Omit “\*private ancillary fund”, substitute “\*ancillary fund”.

**31 Subsection 426-150(3) in Schedule 1**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

**32 Paragraph 426-155(b) in Schedule 1**

Omit “\*private ancillary fund’s”, substitute “\*ancillary fund’s”.

**33 Subsection 426-160(1) in Schedule 1**

Omit “\*private ancillary fund”, substitute “\*ancillary fund”.

**34 Paragraphs 426-165(1)(a) and (2)(a) in Schedule 1**

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

**35 At the end of Subdivision 426-D in Schedule 1**

Add:

## **Transfers between ancillary funds**

### **426-170 Ancillary funds must not provide funds to other ancillary funds**

An \*ancillary fund must not provide money, property or benefits to another ancillary fund unless permitted to do so by the \*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable).

## **Division 2—Amendments commencing on 1 July 2012**

### ***Taxation Administration Act 1953***

#### **36 Subsection 426-104(1) in Schedule 1**

Omit “may”, substitute “must”.

## **Division 3—Transitional provisions**

### **37 Definitions**

In this Division:

***commencement time*** means the time at which this item commences.

***constitutional corporation*** has the meaning given by the *Income Tax Assessment Act 1997*.

***private ancillary fund*** has the meaning given by section 426-105 in Schedule 1 to the *Taxation Administration Act 1953*.

***public ancillary fund*** has the meaning given by section 426-102 in Schedule 1 to the *Taxation Administration Act 1953*.

***public ancillary fund guidelines*** has the meaning given by section 426-103 in Schedule 1 to the *Taxation Administration Act 1953*.

### **38 Application of Division**

This Division applies to a trust if, just before the commencement time, the trust was:

- (a) a public fund covered by item 2 of the table in subsection 30-15(2) of the *Income Tax Assessment Act 1997*; and
- (b) endorsed as a deductible gift recipient under section 30-120 of that Act; and

(c) not a private ancillary fund.

### **39 Transitional provision—trustees need not be constitutional corporations**

Paragraph 426-102(1)(a) (trustees of public ancillary funds must be constitutional corporations, Public Trustees or prescribed) and sections 426-125 to 426-165 (Suspension and removal of trustees) in Schedule 1 to the *Taxation Administration Act 1953* do not apply to the trust during the period:

- (a) starting at the commencement time; and
- (b) ending at the earlier of the following:
  - (i) the time (at or after the commencement time) the trust first satisfies the requirements of that paragraph (disregarding this item);
  - (ii) the first time any of the trustees of the trust revoke the agreement mentioned in item 40 in accordance with subsection 426-102(2) in that Schedule.

### **40 Transitional provision—agreement to comply with public ancillary fund guidelines**

- (1) For the purposes of Subdivision 426-D in Schedule 1 to the *Taxation Administration Act 1953*, each of the trustees of the trust is taken to have agreed, at the commencement time and in accordance with paragraph 426-102(1)(b) in that Schedule, to comply with the rules in the public ancillary fund guidelines, as in force from time to time.
- (2) To avoid doubt, subitem (1) does not prevent a trustee from revoking that agreement at a later time as mentioned in paragraph 426-102(1)(c) in that Schedule.

### **41 Transitional provision—transfer of property**

For the purposes of item 2 of the column headed “Recipient” of the table in subsection 30-15(2) of the *Income Tax Assessment Act 1997*, disregard a transfer of all of the property of the trust to another public ancillary fund if:

- (a) the other fund is a deductible gift recipient; and
- (b) at least one of the following subparagraphs applies:
  - (i) every trustee of the other fund is a \*constitutional corporation;

- (ii) the only trustee of the other fund is the Public Trustee of a State or Territory, or is prescribed by the regulations for the purposes of subparagraph 426-102(1)(a)(ii) in Schedule 1 to the *Taxation Administration Act 1953*; and
- (c) the transfer happens during the period mentioned in item 39.

## Part 2—Minor amendments

### *Income Tax Assessment Act 1936*

#### **42 Subsection 6(1) (definition of *private ancillary fund*)**

Repeal the definition.

Note: This item repeals a redundant definition.

### *Taxation Administration Act 1953*

#### **43 Subsection 2(1) (definition of *private ancillary fund*)**

Repeal the definition.

Note: This item repeals a redundant definition.

## **Schedule 9—Film tax offsets**

### *Income Tax Assessment Act 1997*

**1 Paragraph 376-2(3)(b)**

Omit “15%”, substitute “16.5%”.

**2 Paragraph 376-2(3)(c)**

Omit “15%”, substitute “30%”.

**3 Section 376-15**

Omit “15%”, substitute “16.5%”.

**4 Section 376-40**

Omit “15%”, substitute “30%”.

**5 Subparagraph 376-55(2)(b)(i)**

Omit “65th episode is first in a state”, substitute “episode in which the 65th commercial hour is reached is first in a state”.

**6 Subparagraph 376-55(2)(c)(i)**

Omit “65th episode of the series is first in a state”, substitute “episode in which the 65th commercial hour is reached is first in a state”.

**7 At the end of subsection 376-55(4)**

Add:

; or (g) the \*film authority’s Producer Equity Program has provided financial assistance to the company or anyone else for the making of the film.

**8 Subparagraph 376-65(2)(c)(v)**

Omit “drama”, substitute “film”.

**9 Subsection 376-65(4) (heading)**

Repeal the heading, substitute:

*Short form animated film*

**10 Subsection 376-65(4)**

Omit “drama”, substitute “film”.

**11 Paragraph 376-65(4)(a)**

Omit “drama”.

**12 Subsection 376-65(6) (cell at table item 1, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)**

Repeal the cell, substitute:

\$500,000

**13 Subsection 376-65(6) (cell at table item 2, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)**

Repeal the cell, substitute:

\$500,000

**14 Subsection 376-65(6) (cell at table item 2, column headed “and the amount for the film worked out under subsection (7) is at least ...”)**

Repeal the cell, substitute:

not applicable

**15 Subsection 376-65(6) (cell at table item 3, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)**

Repeal the cell, substitute:

\$500,000

**16 Subsection 376-65(6) (cell at table item 4, column headed “For this type of film ...”)**

Omit “drama”, substitute “film”.

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**17 Subsection 376-65(6) (cell at table item 6, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)**

Repeal the cell, substitute:

\$500,000

**18 Subsection 376-65(6) (cell at table item 8, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)**

Repeal the cell, substitute:

\$500,000

**19 Paragraph 376-125(4)(c)**

Omit “film; or”, substitute “film (other than the activities listed in paragraphs (a) to (e) of item 7 of the table in subsection 376-170(2)); or”.

**20 Section 376-135 (cell at table item 1, column headed “except to the extent to which the expenditure is ...”)**

Repeal the cell, substitute:

\*qualifying  
Australian  
production  
expenditure under  
item 6 of the table  
in subsection  
376-150(1) and  
paragraph (a) of  
item 5 of the table  
in subsection  
376-170(2)

**21 Section 376-135 (cell at table item 5, column headed “except to the extent to which the expenditure is ...”)**

Repeal the cell, substitute:

\*qualifying  
Australian

production  
expenditure under  
item 3 or 4 of the  
table in subsection  
376-150(1) or  
item 6 of the table  
in subsection  
376-170(2)

**22 Subsection 376-150(1) (at the end of the table)**

Add:

- 6 *Certain financing expenditure*  
expenditure incurred in Australia prior to the end of the income year in which \*completion of the \*film occurs in respect of any of the following:
- (a) insurance related to making the film;
  - (b) fees for audit services and legal services provided in Australia in relation to raising and servicing the financing of the film which are incurred by the company that makes, or is responsible for making, the film;
  - (c) fees for incorporation and liquidation of the company that makes or is responsible for making the film.

**23 Subsection 376-170(2) (at the end of the table)**

Add:

- 5 *Other expenditure*  
expenditure incurred in Australia in respect of any of the following:
- (a) obtaining an independent opinion of the amount of a film's \*qualifying Australian production expenditure required for use in relation to the financing of the film;
  - (b) offset carbon emissions created during the making of the film.
- 
- 6 *Expenditure incurred in producing Australian copyright promotional material*  
expenditure incurred in Australia in the income year of the \*completion of the \*film or an earlier year in respect of any of the following:
- (a) producing material for publicising or otherwise promoting the film where the copyright in the material is held or partially held by a company that is an Australian resident;
  - (b) unit publicist fees.
- 
- 7 *Expenditure incurred in delivering or distributing the film*  
expenditure incurred by the applicant company in delivering or
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distributing the film prior to the end of the income year in which the \*film is complete to the extent to which it is incurred for, or reasonably attributable to, any of the following:

- (a) acquiring Australian classification certificates;
- (b) sound mix mastering licenses;
- (c) re-versioning the film in Australia;
- (d) freight services provided by a company in Australia for delivery of contracted deliverables in relation to the film;
- (e) storing the film in a film vault in Australia.

**24 Paragraph 376-170(4)(b)**

Omit “the following”, substitute “subject to subsection (4A), the following”.

**25 Paragraph 376-170(4)(c)**

Omit “65th episode of the series”, substitute “episode in which the 65th commercial hour of the series is reached”.

**26 After subsection 376-170(4)**

Insert:

(4A) Paragraph (4)(b) does not apply to a \*film that is a documentary.

**27 Subsection 376-170(5)**

Omit “2007”, substitute “2011”.

**28 At the end of Subdivision 376-C**

Add:

**376-185 Expenditure to be worked out excluding GST**

In determining an amount of expenditure for the purpose of this Division, the expenditure is taken to exclude \*GST.

**29 Subsection 960-50(6) (cell at table item 9B, column headed “In this case ...”)**

Omit “an amount that is relevant”, substitute “subject to item 9C, an amount that is relevant”.

**30 Subsection 960-50(6) (after table item 9B)**

Insert:

- 9C an amount that is relevant for the purposes of quantifying:
- (a) the total of all of a company's \*production expenditure on a \*film; or
  - (b) the total of the company's \*qualifying Australian production expenditure on a film; or
  - (c) the company's \*total film expenditure on a film;
- to the extent to which the total of the company's qualifying Australian production expenditure on a film is less than \$15 million and the amount is relevant for the purposes of calculating an amount of a \*tax offset under section 376-60
- the amount is to be translated to Australian currency at the exchange rate applicable at the time when expenditure is incurred on the film

### 31 Application of amendments

- (1) The amendments made by items 1 and 3 apply in respect of the location offset to films commencing principal photography or production of the animated image on or after 10 May 2011.
- (2) The amendments made by items 2 and 4 apply in respect of the PDV offset to post, digital and visual effects production that commences on or after 1 July 2011.
- (3) The amendments made by items 5 to 19, 21, 23 to 28 and 30 apply in respect of the producer offset to:
  - (a) films for which production assistance (other than development assistance) has been approved by the film authority on or after 1 July 2011; or
  - (b) in any other case, films for which production expenditure is first incurred in, or in relation to, pre-production of the film on or after 1 July 2011.
- (4) The amendments made by items 20, 22 and 29 apply:

- (a) in respect of the location offset to films commencing principal photography or production of the animated image on or after 10 May 2011; and
  - (b) in respect of the PDV offset to post, digital and visual effects production that commences on or after 1 July 2011; and
  - (c) in respect of the producer offset to films for which production assistance (other than development assistance) has been approved by the film authority on or after 1 July 2011; or
  - (d) in any other case, in respect of the producer offset to films for which production expenditure is first incurred in, or in relation to, pre-production of the film on or after 1 July 2011.
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*[Minister's second reading speech made in—  
House of Representatives on 21 September 2011  
Senate on 31 October 2011]*

(200/11)

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