



Tax Laws Amendment (Shipping Reform) Act 2012

No. 57, 2012

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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Tax Laws Amendment (Shipping Reform) Act 2012

No. 57, 2012

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

[Assented to 21 June 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Shipping Reform) Act 2012*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Exempt shipping income

Income Tax Assessment Act 1997

1 Section 11-15 (after table item headed “resale royalty collecting societies”)

Insert:

shipping

income from shipping activities 51-100

2 At the end of section 36-10

Add:

- (5) For subsection (3), if you have *exempt income under section 51-100 (about shipping), disregard 90% of so much of your *net exempt income as directly relates to that exempt income.

3 After subsection 36-17(4)

Insert:

- (4A) For subsection (3) or (4), if the entity has *exempt income under section 51-100 (about shipping) for the later income year, disregard 90% of so much of the entity’s *net exempt income for the later income year as directly relates to that exempt income.

4 At the end of Division 51

Add:

51-100 Shipping

- (1) An entity’s *ordinary income *derived during an income year (the *present year*), or *statutory income for the present year, is exempt from income tax to the extent that it is from *shipping activities that:
- (a) relate to a vessel for which the entity has a *shipping exempt income certificate for the present year; and
 - (b) take place on a day (a *certified day*) to which the certificate applies.

Schedule 1 Exempt shipping income

Note: For the days to which the certificate applies, see subsection 8(5) of the *Shipping Reform (Tax Incentives) Act 2012*.

- (2) Subsection (1) does not apply to *ordinary income *derived from, or *statutory income from, *incidental shipping activities relating to the vessel if:

Total incidental shipping income > 0.25% of total core shipping income
where:

total core shipping income means the sum of the entity's:

- (a) *ordinary income *derived from *core shipping activities relating to the vessel on the certified days (see paragraph (1)(b)); and
- (b) *statutory income from those activities on those days.

total incidental shipping income means the sum of the entity's:

- (a) *ordinary income *derived from *incidental shipping activities relating to the vessel on the certified days (see paragraph (1)(b)); and
- (b) *statutory income from those activities on those days.

51-105 *Shipping activities*

Shipping activities are *core shipping activities or *incidental shipping activities.

51-110 *Core shipping activities*

- (1) ***Core shipping activities*** are activities directly involved in operating a vessel to carry *shipping cargo or *shipping passengers for consideration.
- (2) Without limiting subsection (1), ***core shipping activities*** include the following:
 - (a) carrying the *shipping cargo or *shipping passengers on the vessel;
 - (b) crewing the vessel;
 - (c) carrying goods on board for the operation of the vessel (including for the enjoyment of shipping passengers);
 - (d) providing the containers that carry shipping cargo on the vessel;

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- (e) loading shipping cargo onto, and unloading it from, the vessel;
 - (f) repacking shipping cargo to be carried on the vessel;
 - (g) providing temporary storage for shipping cargo just before or after its carriage on the vessel;
 - (h) providing space on board the vessel for carrying shipping cargo or shipping passengers;
 - (i) activities generating onboard income from shipping passengers of the vessel;
 - (j) providing shore excursions to shipping passengers of the vessel;
 - (k) transporting shipping cargo, or shipping passengers, between the vessel and the shore;
 - (l) providing administration and insurance services that are directly related to carrying shipping cargo or shipping passengers on the vessel;
 - (m) onboard selling of tickets on behalf of other entities to shipping passengers of the vessel;
 - (n) onboard advertising to shipping passengers of the vessel;
 - (o) providing quay-side services to shipping passengers that:
 - (i) are similar to those provided on the vessel; and
 - (ii) are provided from a floor area that does not exceed that from which similar services are provided on the vessel;
 - (p) providing car parking to individuals while they are shipping passengers on the vessel;
 - (q) making contracts solely to reduce the risk of financial loss from currency exchange rate fluctuations that directly relate to the operation of the vessel;
 - (r) an activity specified in regulations made for the purposes of this paragraph.
- (3) Despite subsections (1) and (2), **core shipping activities** do not include an activity specified in regulations made for the purposes of this subsection.

51-115 Incidental shipping activities

Incidental shipping activities are activities incidental to *core shipping activities.

5 Subsection 995-1(1)

Insert:

core shipping activities has the meaning given by section 51-110.

6 Subsection 995-1(1)

Insert:

incidental shipping activities has the meaning given by section 51-115.

7 Subsection 995-1(1)

Insert:

shipping activities has the meaning given by section 51-105.

8 Subsection 995-1(1)

Insert:

shipping cargo has the same meaning as in the *Shipping Reform (Tax Incentives) Act 2012*.

9 Subsection 995-1(1)

Insert:

shipping exempt income certificate has the same meaning as in the *Shipping Reform (Tax Incentives) Act 2012*.

10 Subsection 995-1(1)

Insert:

shipping passenger has the same meaning as in the *Shipping Reform (Tax Incentives) Act 2012*.

Note: Because of paragraph 8(4)(b) of the *Shipping Reform (Tax Incentives) Act 2012*, the amendments made by this Schedule apply in relation to shipping activities that take place on or after 1 July 2012.

Schedule 2—Capital allowances

Part 1—Statutory capped life

Income Tax Assessment Act 1997

1 Subsection 40-70(1) (note)

Omit “Note”, substitute “Note 1”.

2 At the end of subsection 40-70(1)

Add:

Note 2: The effective life of a vessel can change in some cases: see subsection 40-103(2).

3 After paragraph 40-75(2)(c)

Insert:

(d) in which the *remaining effective life of the asset is calculated under section 40-103; or

4 Subsection 40-102(4) (at the end of the table)

Add:

10 Vessel for which you have a certificate under Part 2 of the 10 years
Shipping Reform (Tax Incentives) Act 2012

5 After subsection 40-102(4)

Insert:

(4A) Item 10 of the table in subsection 40-102(4) does not apply to a vessel if:

(a) *ordinary income that you *derive, or your *statutory income, in relation to the vessel; or

(b) ordinary income that your *associate derives, or your associate’s statutory income, in relation to the vessel;

is exempt from income tax under section 51-100 for the income year for which you are working out the vessel’s decline in value.

6 After section 40-102

Insert:

40-103 Effective life and remaining effective life of certain vessels

- (1) If, at a particular time, item 10 of the table in subsection 40-102(4):
- (a) starts to apply to a vessel (whether or not that item has previously applied to the vessel); or
 - (b) ceases to apply to a vessel (whether or not that item subsequently applies to the vessel);
- at that time the *effective life* of the vessel changes accordingly.
- (2) If subsection (1) applies and the decline in value of the vessel is worked out using the *prime cost method, the *remaining effective life* of the vessel just after that time is:

$$\text{Unadjusted remaining effective life} \times \frac{\text{Alternative effective life}}{\text{Unadjusted effective life}}$$

where:

alternative effective life is:

- (a) if that item starts to apply to the vessel at that time—what would have been the *effective life of the vessel just before that time if that item had applied to the vessel; or
- (b) if that item ceases to apply to the vessel at that time—what would have been the effective life of the vessel just before that time if that item had not applied to the vessel.

unadjusted effective life is what was the *effective life of the vessel just before that time.

unadjusted remaining effective life is what was the *remaining effective life of the vessel just before that time.

Example: Assume that item 10 of the table in subsection 40-102(4) ceases to apply to a vessel after having applied to the vessel for 7 years, and again starts to apply after another 4 years. Assume further that the effective life of a vessel of that kind has been determined under section 40-100 to be 20 years.

The remaining effective life of the vessel just before that item ceases to apply to the vessel is 3 years. Its alternative effective life is 20 years, and its unadjusted effective life is 10 years. Its remaining effective life just after that time is therefore 6 years.

The remaining effective life of the vessel just before that item again starts to apply to the vessel is 2 years. Its alternative effective life is 10 years, and its unadjusted effective life is 20 years. Its remaining effective life just after that time is therefore 1 year.

7 Subsection 995-1(1) (definition of *effective life*)

After “40-102,”, insert “40-103,”.

8 Subsection 995-1(1) (definition of *remaining effective life*)

Repeal the definition, substitute:

remaining effective life of a *depreciating asset:

- (a) has the meaning given by section 40-75; and
- (b) if the asset is a vessel to which subsection 40-103(2) applies—includes the meaning given by that subsection.

9 Application provision

- (1) The amendments made by this Part apply to a vessel that you hold on or after 1 July 2012, even if you commenced to hold it before that day.
- (2) However, if you commenced to hold the vessel before that day, the amendments made by this Part apply to it as if you commenced to hold it on that day.

Part 2—Balancing adjustment events and roll-over relief

Income Tax Assessment Act 1997

10 Section 40-175 (note)

After:

- subsection 40-90(2);

insert:

- paragraph 40-362(3)(c);

11 At the end of section 40-285

Add:

- (5) Despite subsection (1), an amount included in your assessable income under that subsection is included for the second income year after the income year in which the *balancing adjustment event occurs if:

- (a) the *depreciating asset is a vessel; and
- (b) you have a certificate for the vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* that:
 - (i) applies to the day that the balancing adjustment event occurs; and
 - (ii) is not a *shipping exempt income certificate.

Note: An amount will not be included in your assessable income in relation to the balancing adjustment event if you choose roll-over relief under section 40-362.

12 After section 40-360

Insert:

40-362 Roll-over relief for holders of vessels covered by certificates under the *Shipping Reform (Tax Incentives) Act 2012*

Circumstances giving rise to roll-over relief

- (1) There is roll-over relief if:

- (a) there is a *balancing adjustment event under section 40-295 because you cease to *hold a *depreciating asset that is a vessel (the **original vessel**); and
- (b) on the day that the balancing adjustment event occurs, you have a certificate for the vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* that:
 - (i) applies to that day; and
 - (ii) is not a *shipping exempt income certificate; and
- (c) there is no roll-over relief under section 40-340 relating to the original vessel; and
- (d) on the day occurring 2 years after the day you cease to hold the original vessel, you are the holder of another depreciating asset that is a vessel (the **other vessel**):
 - (i) for which you choose to apply roll-over relief in relation to the original vessel; and
 - (ii) for which you have a certificate under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* (other than a shipping exempt income certificate) that applies to the day of that choice; and
- (e) you became the holder of the other vessel during the period starting 1 year before the day you cease to hold the original vessel and ending 2 years after that day.

Choosing to apply roll-over relief

- (2) The choice must:
 - (a) be in writing; and
 - (b) be made within 6 months after the end of the second income year after the income year in which the *balancing adjustment event occurs, or within a longer period allowed by the Commissioner.

The effect of roll-over relief

- (3) If there is roll-over relief under this section:
 - (a) subsection 40-285(1) does not apply to the *balancing adjustment event in relation to the original vessel; and
 - (b) an amount is included in your assessable income if the original vessel's *termination value exceeds the sum of:

Schedule 2 Capital allowances

Part 2 Balancing adjustment events and roll-over relief

- (i) the original vessel's *adjustable value just before the balancing adjustment event occurred; and
- (ii) the *cost of the other vessel (disregarding paragraph (3)(c)); and
- (c) for the purpose of applying this Act to the other vessel, its cost is reduced (but not below zero) by the difference between:
 - (i) the original vessel's termination value; and
 - (ii) the original vessel's adjustable value just before the balancing adjustment event occurred.
- (4) The amount included in your assessable income under paragraph (3)(b) is the amount of the excess mentioned in that paragraph. It is included in the second income year after the income year in which the *balancing adjustment event occurs.

13 After subsection 104-235(1A)

Insert:

- (1AA) Without limiting subsection (1A), if the asset is a vessel for which:
 - (a) you have a *shipping exempt income certificate; or
 - (b) you have at any time had such a certificate;subsection (1) does not apply in relation to the asset to the extent that you are using, or at any time have used, it to produce income that is exempt under section 51-100.

Schedule 3—Seafarer tax offset

Income Tax Assessment Act 1997

1 Section 13-1 (after table item headed “winding-up of non-resident trust estates”)

Insert:

withholding payments

made by companies to Australian seafarers Subdivision 61-N

2 At the end of Division 61

Add:

Subdivision 61-N—Seafarer tax offset

Guide to Subdivision 61-N

61-695 What this Subdivision is about

A company may get a refundable tax offset for withholding payments made to Australian seafarers for overseas voyages if:

- (a) the voyage is made by a vessel for which the company, or another entity, has a certificate under the *Shipping Reform (Tax Incentives) Act 2012*; and
- (b) the company employs or engages the seafarer on such voyages for at least 91 days in the income year.

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61-710	Amount of the seafarer tax offset

Operative provisions

61-700 Object of this Subdivision

The object of this Subdivision is to stimulate opportunities for Australian seafarers to:

- (a) be employed or engaged on overseas voyages; and
- (b) acquire maritime skills.

61-705 Who is entitled to the seafarer tax offset

- (1) A company is entitled to a *tax offset for an income year if:
 - (a) the company is a corporation to which paragraph 51(xx) of the Constitution applies; and
 - (b) there is at least one individual in respect of whom the company has 91 days or more in the income year that qualify for the tax offset as mentioned in subsection (2).
- (2) A particular day qualifies for the *tax offset under this Subdivision for a company for an individual if:
 - (a) on the day, the individual is an Australian resident who:
 - (i) is employed by the company; or
 - (ii) performs work or services under an *arrangement under which the company makes, at any time, a payment that is a *withholding payment covered by subsection 12-60(1) in Schedule 1 to the *Taxation Administration Act 1953* (about labour hire arrangements); and
 - (b) on the day, the individual is so employed, or performs the work or services, on a voyage of a vessel as master, deck officer, integrated rating, steward or engineer; and
 - (c) the company, or another entity, has a certificate for the vessel that applies to the day under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012*; and
 - (d) in the course of the voyage, the vessel travels between:
 - (i) a port in Australia and a port outside Australia; or
 - (ii) a port in Australia and a place in the waters of the sea above the continental shelf of a country other than Australia; or
 - (iii) a port outside Australia and a place in the waters of the sea above the continental shelf of Australia; or

- (iv) a place in the waters of the sea above the continental shelf of Australia and a place in the waters of the sea above the continental shelf of a country other than Australia; or
- (v) ports outside Australia; or
- (vi) places beyond the continental shelf of Australia; whether or not the ship travels between 2 or more ports in Australia in the course of the voyage.

Note 1: An entity may be entitled to a certificate for a vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* if it meets the requirements (relating to such things as tonnage, registration and usage) in that Act.

Note 2: An entity cannot be entitled to a certificate for a vessel under Part 2 of that Act for a day before 1 July 2012: see paragraph 8(4)(b) of that Act.

- (3) For the purposes of paragraph (2)(b), the voyage of a vessel is taken to:
- (a) start on the earliest day on which one or more of the following occurs:
 - (i) *shipping cargo to be carried on the voyage, or any part of the voyage, is first loaded into the vessel;
 - (ii) *shipping passengers to be carried on the voyage, or any part of the voyage, first board the vessel;
 - (iii) the voyage begins; and
 - (b) end on the latest day on which any of the following occurs:
 - (i) all shipping cargo carried on the voyage, or any part of the voyage, is completely unloaded from the vessel;
 - (ii) all shipping passengers carried on the voyage, or any part of the voyage, finally disembark from the vessel;
 - (iii) the voyage ends.

61-710 Amount of the seafarer tax offset

The amount of the company's *tax offset for the income year is the amount (rounded up to the nearest whole dollar) worked out using the formula:

Gross payment amounts × 30%

where:

gross payment amounts means the total amount of *withholding payments covered by section 12-35 or subsection 12-60(1) in Schedule 1 to the *Taxation Administration Act 1953* payable by the company in the income year:

- (a) to individuals in respect of whom the company has 91 days or more in the income year that qualify for the offset as mentioned in subsection 61-705(2); and
- (b) in respect of any of the following:
 - (i) the employment of, or the work or services performed by, such individuals in relation to which the company so qualifies for the offset;
 - (ii) leave accrued by such individuals during such employment, work or services;
 - (iii) training of such individuals that relates to such employment, work or services.

3 Section 67-23 (after table item 12)

Insert:

13	seafarers	the *tax offset available under Subdivision 61-N
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Schedule 4—Exempting bareboat charters from royalty withholding tax

Income Tax Assessment Act 1936

1 At the end of subsection 128B(3)

Add:

- ; or (m) income that consists of a royalty that is paid to the non-resident by a person (the *lessee*) as consideration for the lease, by the lessee from the non-resident, of a vessel if:
 - (i) the lessee is an Australian resident company; and
 - (ii) the vessel is not an excluded vessel (within the meaning of the *Shipping Reform (Tax Incentives) Act 2012*); and
 - (iii) under the lease, the lessee has whole possession and control of the vessel (including the right to appoint the master and crew of the ship); and
 - (iv) during the period of the lease, the vessel is used, or is available for use, as mentioned in paragraph 8(1)(c) of the *Shipping Reform (Tax Incentives) Act 2012*.

1A Section 128D

Omit “or (jb)”, substitute “, (jb) or (m)”.

2 Application

The amendments made by this Schedule apply in relation to payments made on or after 1 July 2012.

Schedule 5—Shipping information

Taxation Administration Act 1953

1 Subsection 355-65(4) in Schedule 1 (after table item 6)

Insert:

- 6A the Secretary of the Department is for the purpose of administering that
 administered by the Minister Act.
 administering the *Shipping*
 Reform (Tax Incentives) Act
 2012

*[Minister's second reading speech made in—
House of Representatives on 22 March 2012
Senate on 18 June 2012]*