Tax Laws Amendment (2012 Measures No. 3) Act 2012

No. 58, 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 (2012 Measures No. 3) Act 2012

No. 58, 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 (2012 Measures No. 3) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 June 2012
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the *Income Tax (Seasonal Labour Mobility Program Withholding Tax) Act 2012* receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	21 June 2012
3. Schedules 2 to 4	The day this Act receives the Royal Assent.	21 June 2012
4. Schedule 5	1 July 2012.	1 July 2012

Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Seasonal Labour Mobility Program

Income Tax Assessment Act 1936

1 Subsection 170(10AA) (after table item 5)

Insert:

15	Subsection 26-25A(2)	Deduction for salary, wages etc. if Seasonal Labour Mobility Program withholding tax paid

Income Tax Assessment Act 1997

2 Section 11-55 (table item headed "foreign aspects of income taxation")

After:

managed investment trust withholding tax, amount subject to 840-815

insert:

Seasonal Labour Mobility Program withholding tax, amount subject to 840-915

3 Section 12-5 (table item headed "employees")

After:

pensions, gratuities or retiring allowances for ex-employees 25-50

insert:

Seasonal Labour Mobility Program, delayed deduction for salary, wages etc. paid to employees under program until Seasonal Labour Mobility Program withholding tax payable has been paid 26-25A

4 After section 26-25

Insert:

26-25A Seasonal Labour Mobility Program

No deduction to extent amount not withheld

(1) You cannot deduct under this Act salary, wages, commission, bonuses or allowances from which Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953* (about the Seasonal Labour Mobility Program) requires you to withhold an amount, to the extent that:

(a) you fail to withhold the amount; or

(b) after withholding the amount, you fail to comply with section 16-70 in that Schedule in relation to that amount.

Note: Section 16-70 in that Schedule requires you to pay the amount to the Commissioner.

Deduction to extent amount not withheld but withholding tax paid

(2) You can deduct, for an income year, salary, wages, commission, bonuses or allowances to the extent that:

(a) you cannot deduct the salary, wages, commission, bonuses or allowances for that income year only because of subsection (1) of this section; and

(b) the *Seasonal Labour Mobility Program withholding tax payable for the salary, wages, commission, bonuses or allowance is paid.

5 At the end of Division 840

Add:

Subdivision 840-S—Seasonal Labour Mobility Program withholding tax

Guide to Subdivision 840-S

840-900 What this Subdivision is about

If you are a foreign resident who is employed under the Seasonal Labour Mobility Program, you may be liable to pay income tax on the salary, wages etc. paid to you under that program.

Amounts on which there is a liability to pay the tax are non-assessable non-exempt income.

Table of sections

Operative provisions

840-905 Liability for Seasonal Labour Mobility Program withholding tax
840-910 When Seasonal Labour Mobility Program withholding tax is payable
840-915 Certain income is non-assessable non-exempt income
840-920 Overpayment of Seasonal Labour Mobility Program withholding tax

Operative provisions

840-905 Liability for Seasonal Labour Mobility Program withholding tax

You are liable to pay income tax at the rate declared by the Parliament on income:

(a) that is salary, wages, commission, bonuses or allowances paid to you as an employee of an Approved Employer under the Seasonal Labour Mobility Program; and

(b) that you *derive at a time when:

(i) you are a foreign resident; and

(ii) you hold a Special Program Visa (subclass 416).

Note 1: The tax, which is called Seasonal Labour Mobility Program withholding tax, is imposed by the *Income Tax (Seasonal Labour Mobility Program Withholding Tax) Act 2012* and the rate of the tax is set out in that Act.

Note 2: See Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953* for provisions dealing with withholding from the salary, wages etc. You are entitled to a credit under section 18-33 in that Schedule for amounts withheld from your salary, wages etc. under that Subdivision.

840-910 When Seasonal Labour Mobility Program withholding tax is payable

(1) *Seasonal Labour Mobility Program withholding tax is due and payable by you at the end of 21 days after the end of the income year in which you *derived the income to which the tax relates.

(2) If any of the *Seasonal Labour Mobility Program withholding tax that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(a) starts at the beginning of the day by which the withholding tax was due to be paid; and

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

(i) the withholding tax;

(ii) general interest charge on any of the withholding tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

(3) The Commissioner may give you a notice specifying:

(a) the amount of any *Seasonal Labour Mobility Program withholding tax that the Commissioner has ascertained is payable by you; and

(b) the day on which that tax became due and payable.

(4) The ascertainment of an amount of *Seasonal Labour Mobility Program withholding tax is not an assessment for the purposes of this Act.

(5) The production of a notice given under subsection (3), or of a copy of it certified by or on behalf of the Commissioner, is, except in proceedings under Part IVC of this Act on a review or appeal relating to the notice, conclusive evidence that the notice was given and of the particulars in it.

(6) You may object, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, against a notice given to you under subsection (3) of this section, if you are dissatisfied with the notice.

840-915 Certain income is non-assessable non-exempt income

An amount on which *Seasonal Labour Mobility Program withholding tax is payable is not assessable income and is not *exempt income.

840-920 Overpayment of Seasonal Labour Mobility Program withholding tax

If *Seasonal Labour Mobility Program withholding tax has been overpaid:

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

(b) the employee is not entitled to a credit under section 18-33 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the amount overpaid.

6 Subsection 995-1(1)

Insert:

Seasonal Labour Mobility Program withholding tax means income tax payable under Subdivision 840-S.

Income Tax (Transitional Provisions) Act 1997

7 At the end of Division 840

Add:

Subdivision 840-S—Seasonal Labour Mobility Program withholding tax

Table of sections

840-905 Application of Subdivision 840-S of the *Income Tax Assessment Act 1997*

840-905 Application of Subdivision 840-S of the *Income Tax Assessment Act 1997*

Subdivision 840-S of the *Income Tax Assessment Act 1997* applies to income derived on or after 1 July 2012.

Taxation Administration Act 1953

8 Subsection 8AAB(4) (after table item 18)

Insert:

18A	840-910	*Income Tax Assessment Act 1997*	payment of Seasonal Labour Mobility Program withholding

		tax

9 Subsection 10-5(1) in Schedule 1 (after table item 22C)

Insert:

22D	A payment of salary, wages etc. to an employee under the Seasonal Labour Mobility Program	12-319A

10 After Subdivision 12-FB in Schedule 1

Insert:

Subdivision 12-FC—Seasonal Labour Mobility Program

Table of sections

12-319A Payment to employee

12-319A Payment to employee

An entity must withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual:

(a) as an employee of an Approved Employer (whether the entity or another entity) under the Seasonal Labour Mobility Program; and

(b) at a time when:

(i) the employee is a foreign resident; and

(ii) the employee holds a Special Program Visa (subclass 416).

11 Application of Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953*

Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953*, as inserted by this Schedule, applies to salary, wages, commission, bonuses or allowances paid on or after 1 July 2012.

12 Subsection 15-10(2) in Schedule 1

After “12FB”, insert “, 12FC”.

13 Subsection 15-15(1) in Schedule 1

After “Subdivision”, insert “12-FC or”.

14 Subsection 15-15(1) in Schedule 1 (after note 3)

Insert:

Note 3A: Subdivision 12-FC is about the Seasonal Labour Mobility Program.

15 Paragraph 16-153(1)(a) in Schedule 1

After "or Subdivision", insert "12-FC or".

16 After paragraph 16-195(1)(aa) in Schedule 1

Insert:

(ab) Subdivision 12-FC (Seasonal Labour Mobility Program); or

17 Section 18-1 in Schedule 1

After "or 12-285," (wherever occurring), insert "Subdivision 12-FC,".

18 Subsection 18-10(1) in Schedule 1

After "Subdivision 12-FA (about departing Australia superannuation payments),", insert "Subdivision 12-FC (Seasonal Labour Mobility Program),".

19 Group heading before section 18-30 in Schedule 1

Repeal the heading, substitute:

Entitlement to credits: dividend, interest or royalty, amount attributable to fund payment or Seasonal Labour Mobility Program

20 After section 18-32 in Schedule 1

Insert:

18-33 Credit: Seasonal Labour Mobility Program

(1) An individual is entitled to a credit if:

(a) the individual's *ordinary income or *statutory income includes salary, wages, commission, bonuses or allowances; and

(b) an amount is withheld from the salary, wages, commission, bonuses or allowances under Subdivision 12-FC (about the Seasonal Labour Mobility Program).

(2) The amount of the credit is the *amount withheld.

21 Section 18-35 in Schedule 1 (heading)

Repeal the heading, substitute:

18-35 Credit: penalty under section 12-415, 16-30, 16-35 or 16-40 or related general interest charge

22 After subsection 18-35(1) in Schedule 1

Insert:

(1AA) If an entity has paid:

(a) an amount of penalty under section 16-30 or 16-35 to the Commissioner for a *withholding payment covered by Subdivision 12-FC (Seasonal Labour Mobility Program); or

(b) an amount of *general interest charge under section 298-25 for the penalty;

the entity liable to pay the *Seasonal Labour Mobility Program withholding tax for the withholding payment is entitled to a credit equal to the lesser of:

(c) the amount of the penalty, or general interest charge, as appropriate; and

(d) the amount of Seasonal Labour Mobility Program withholding tax (and any general interest charge under section 840-910 of the *Income Tax Assessment Act 1997*) in relation to the withholding payment, reduced by:

(i) any credits from an application of section 18-33 in relation to the withholding payment; and

(ii) any credits from a previous application of this subsection in relation to the withholding payment.

23 Paragraph 18-35(2)(a) in Schedule 1

After “paragraph (1)(a)”, insert “, (1AA)(a)”.

24 Paragraph 18-35(2)(c) in Schedule 1

After “subsection (1)”, insert “, (1AA)”.

25 Paragraph 18-35(3)(a) in Schedule 1

After “paragraph (1)(b)”, insert “, (1AA)(b)”.

26 Paragraph 18-35(3)(c) in Schedule 1

After “subsection (1)”, insert “, (1AA)”.

27 Subsection 250-10(2) in Schedule 1 (after table item 39A)

Insert:

39AA	Seasonal Labour Mobility Program withholding tax	840-910	*Income Tax Assessment Act 1997*

28 Subsection 340-10(2) in Schedule 1 (after paragraph (d) of table item 6, column headed “Provision(s)”)

Insert:

(da) section 840-905 of the *Income Tax Assessment Act 1997*; or

Schedule 2—Excise exemptions for certain blends of gaseous fuels and aviation fuels

Excise Act 1901

1 After subsection 77H(2)

Insert:

Blends of a relevant fuel that is not subject to remission

(2A) Goods that are the product of the blending of amounts of one kind of relevant fuel are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if both of the following apply:

(a) none of the amounts of the relevant fuel are subject to a remission (either in full or in part) of excise duty or a duty of Customs;

(b) excise duty or a duty of Customs that is payable on the amounts of the relevant fuel has been paid.

Blends of LPG or liquefied natural gas that is subject to remission or not subject to duty

(2B) Goods that are the product of the blending of amounts of one kind of relevant fuel that is either LPG or liquefied natural gas are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if, for each amount in the blend, either of the following applies to the amount:

(a) the amount is subject to a remission (whether in full or in part) of excise duty or a duty of Customs on the grounds that the amount is not used, or intended for use, in an internal combustion engine in either a motor vehicle or a vessel;

(b) the amount is not subject to excise duty or a duty of Customs because the amount was manufactured, produced or imported before 1 December 2011.

2 Subsection 77H(5) (heading)

Repeal the heading, substitute:

Definitions

3 Subsection 77H(5)

Insert:

relevant fuel means:

(a) gasoline for use in aircraft; or

(b) kerosene for use in aircraft; or

(c) LPG; or

(d) liquefied natural gas; or

(e) compressed natural gas that is classified to subitem 10.19C of the Schedule to the *Excise Tariff Act 1921*.

Excise Tariff Act 1921

4 Schedule (paragraph (g) of the cell at table item 10, column headed "Description of goods")

After "**subsection 77H(1)**", insert "**, (2A), (2B)**".

5 Application

The amendments to the *Excise Act 1901* and the *Excise Tariff Act 1921* made by this Schedule apply in relation to goods that are the product of the blending of amounts of relevant fuel if the blending occurs on or after 1 July 2012 (whether the amounts of relevant fuel being blended were manufactured, produced or imported before, on or after that day).

Schedule 3—Low-income taxpayer rebate

Income Tax Assessment Act 1936

1 At the end of section 159N

Add:

Rebate for a trustee assessed under section 98

(6) A trustee who is liable to be assessed under section 98 in respect of a share of the net income of a trust estate in respect of a beneficiary is not entitled under this section to a rebate of tax in their assessment for the year of income to the extent Division 6AA applies to that share.

2 Application

The amendment made by this Schedule applies to assessments for the 2011-12 year of income and later years of income.

Schedule 4—Clean energy payments

Income Tax Assessment Act 1997

1 Section 11-15 (table item headed "social security or like payments")

After:

clean energy payment under the *Veterans' Entitlements Act 1986*	52-65

insert:

clean energy payment under the scheme prepared under Part VII of the *Veterans' Entitlements Act 1986*	52-65

2 Section 11-15 (table item headed "social security or like payments")

After:

clean energy payment under the *Military Rehabilitation and Compensation Act 2004*	52-114

insert:

clean energy payment under the scheme determined under section 258 of the *Military Rehabilitation and Compensation Act 2004*	52-114

3 Section 11-15 (table item headed "social security or like payments")

After:

training and learning bonus under the *Social Security Act 1991*	52-10

insert:

transitional farm family payment	53-10

4 After paragraph 52-65(1)(b)

Insert:

(ba) clean energy payments under the scheme prepared under Part VII (about educating veterans' children) of the *Veterans' Entitlements Act 1986*; or

5 Subsection 52-65(1G)

Repeal the subsection, substitute:

(1G) The following are exempt from income tax:

(a) clean energy payments under the *Veterans' Entitlements Act 1986*;

(b) clean energy payments under the scheme prepared under Part VII (about educating veterans' children) of that Act.

Note: The supplementary amount of each other payment under the scheme mentioned in paragraph (b) is also exempt from income tax (see section 52-140).

6 Section 52-75 (after table item 3A)

Insert:

3B	Clean energy payment under Veterans' Children Education Scheme	Part VII	Not applicable

7 Section 52-114 (table item 16)

Repeal the item, substitute:

16	Education and training, or a payment, under the education scheme for certain eligible young persons (section 258)	Exempt if: (a) provided for or made to a person under 16; or (b) a clean energy payment	Exempt

8 At the end of section 52-114

Add:

Note: The supplementary amount of a payment covered by item 16 of the table made to a person aged 16 or over is also exempt from income tax (see section 52-140).

9 Subsection 52-131(2)

After "crisis payment", insert ", or clean energy payment,".

10 After paragraph 52-131(8)(a)

Insert:

(aa) a clean energy payment; or

11 At the end of section 52-132

Add:

; and (c) so much of the payment as is included by way of clean energy supplement.

12 At the end of subsection 52-140(3)

Add:

; and (c) so much of the payment as is included by way of clean energy supplement.

13 Section 53-10 (after table item 4C)

Insert:

4D	**Transitional Farm Family Payment**	The program known as the Transitional Farm Family Payment program	Only so much of the payment as is included: (a) in lieu of clean energy advance; or (b) by way of clean energy supplement; is exempt

14 At the end of section 53-15

Add:

and (c) for an exceptional circumstances relief payment—so much of the payment as is included by way of clean energy supplement, worked out as if the payment were the applicable payment of youth allowance, or newstart allowance, referred to in paragraph 24A(1)(a) of the *Farm Household Support Act 1992*.

15 Application of amendments

(1) The amendments made by this Schedule (other than items 3 and 13) apply in relation to payments made in the 2011-12 income year or a later income year.

(2) The amendments made by items 3 and 13 apply in relation to payments made in the 2012-13 income year or a later income year.

Schedule 5—Better targeting of the employment termination payment tax offset

Income Tax Assessment Act 1997

1 Subsection 82-10(4)

Repeal the subsection, substitute:

(4) The amount is so much of the *taxable component of the payment as does not exceed the smallest of the following:

(a) the *ETP cap amount reduced (but not below zero) by:

(i) if the payment is a payment of a kind referred to in subsection (6) (an ***excluded payment***)—the amount worked out under this subsection for each *life benefit termination payment you have received earlier in the income year to the extent that it is an excluded payment; or

(ii) if the payment is not an excluded payment—the amount worked out under this subsection for each life benefit termination payment you have received earlier in the income year;

(b) the ETP cap amount reduced (but not below zero) by:

(i) if the payment is an excluded payment—the amount worked out under this subsection for each life benefit termination payment you have received earlier in consequence of the same employment termination (whether in the income year or an earlier income year) to the extent that it is an excluded payment; or

(ii) if the payment is not an excluded payment—the amount worked out under this subsection for each life benefit termination payment you have received earlier in consequence of the same employment termination (whether in the income year or an earlier income year);

(c) if the payment is not an excluded payment—$180,000, reduced (but not below zero) by your taxable income for the income year in which the payment is made.

Note 1: For the ***ETP cap amount***, see section 82-160.

Note 2: If you have also received a death benefit termination payment in the same income year, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to a tax concession for the death benefit termination payment (under section 82-65 or 82-70).

Note 3: Certain other life benefit termination payments made before 1 July 2012 may be treated as earlier payments under paragraph (4)(b): see section 82-10H of the *Income Tax (Transitional Provisions) Act 1997*.

(5) In working out, for the purposes of paragraph (4)(c), your taxable income for the income year, disregard:

(a) the taxable component of the payment; and

(b) the taxable component of each *life benefit termination payment you receive later in the income year.

(6) Paragraph (4)(c) does not apply in relation to *life benefit termination payments:

(a) that are *genuine redundancy payments, or that would be genuine redundancy payments but for paragraph 83-175(2)(a); or

(b) that are *early retirement scheme payments; or

(c) that include *invalidity segments, or what would be invalidity segments included in such payments but for paragraph 82-150(1)(c); or

(d) that:

(i) are paid in connection with a genuine dispute; and

(ii) are principally compensation for personal injury, unfair dismissal, harassment, discrimination or a matter prescribed by the regulations; and

(iii) exceed the amount that could, at the time of the termination of your employment, reasonably be expected to be received by you in consequence of the voluntary termination of your employment.

(7) If the payment is partly an excluded payment:

(a) subsection (4) applies as if the payment were 2 payments as follows:

(i) first, a payment consisting only of the part of the payment that is an excluded payment;

(ii) second, another payment, made immediately after the first payment, consisting only of the part of the payment that is not an excluded payment; and

(b) subsection (4) applies to the second payment as if a reference in subsection (5) to the taxable component of a payment were a reference to so much of the taxable component as relates to the part of the payment that is not an excluded payment.

(8) Despite subsections (4) and (7), the amount mentioned in subsection (4) in relation to the payment must not exceed either of the following:

(a) the *ETP cap amount reduced (but not below zero) by the amount worked out under subsection (4) for each *life benefit termination payment you have received earlier in the income year;

(b) the ETP cap amount reduced (but not below zero) by the amount worked out under subsection (4) for each life benefit termination payment you have received earlier in consequence of the same employment termination (whether in the income year or an earlier income year).

2 Application of amendment

The amendment made by this Schedule applies in relation to life benefit termination payments received on or after 1 July 2012.

[*Minister's second reading speech made in—*
House of Representatives on 24 May 2012
Senate on 18 June 2012]

(104/12)