





# **Tax Laws Amendment (2012 Measures No. 1) Act 2012**

**No. 71, 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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## **An Act to amend the law relating to taxation, and for related purposes**

[Assented to 27 June 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2012 Measures No. 1) Act 2012*.

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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 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 June 2012
2. Schedules 1 and 2	The day this Act receives the Royal Assent.	27 June 2012
3. Schedule 3, Part 1	The day this Act receives the Royal Assent.	27 June 2012
4. Schedule 3, Part 2	1 July 2015.	1 July 2015
5. Schedule 4	The day this Act receives the Royal Assent.	27 June 2012
6. Schedule 5, items 1 to 16	Immediately after the commencement of the <i>Minerals Resource Rent Tax Act 2012</i> .	1 July 2012
7. Schedule 5, item 17	Immediately after the commencement of Part 1 of Schedule 2 to the <i>Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012</i> .	1 July 2012
8. Schedule 5, item 18	Immediately after the commencement of Part 2 of Schedule 2 to the <i>Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012</i> .	Does not commence
9. Schedule 5, item 19	The day this Act receives the Royal Assent.	27 June 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Note:	This table relates only to the provisions of this Act as originally enacted.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.	

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- (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—Disallow deductions against rebatable benefits

### *Income Tax Assessment Act 1997*

#### **1 Section 12-5 (after table item headed “rates and land taxes”)**

Insert:

**rebatable benefits**

no deduction for ..... 26-19

#### **2 Before section 26-20**

Insert:

#### **26-19 Rebatable benefits**

- (1) You cannot deduct under this Act a loss or outgoing to the extent that the loss or outgoing is incurred in gaining or producing a rebatable benefit (within the meaning of section 160AAA of the *Income Tax Assessment Act 1936*).
- (2) To the extent that you use property in gaining or producing a rebatable benefit, your use of the property is taken *not* to be for the \*purpose of producing assessable income if subsection (1) would stop you deducting a loss or outgoing if you incurred it in the income year in gaining or producing the rebatable benefit.

Note: Under some provisions of this Act, in order to deduct an amount for your property, you must have used the property for the purpose of producing assessable income.

#### **3 Subsection 995-1(1) (note at the end of the definition of *purpose of producing assessable income*)**

Omit “Section 32-15 (about using property in providing entertainment) treats”, substitute “Sections 26-19 (about using property in gaining or producing rebatable benefits) and 32-15 (about using property in providing entertainment) treat”.

#### **4 Application of amendments**

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

## Schedule 2—Limiting the trading stock exception for superannuation funds

### *Income Tax Assessment Act 1997*

#### **1 Section 70-10**

Before “*Trading*”, insert “(1)”.

#### **2 Paragraph 70-10(b)**

Omit “\*live stock;”, substitute “\*live stock.”.

#### **3 Section 70-10**

Omit “but does not include a \*Division 230 financial arrangement.”.

#### **4 At the end of section 70-10 (before the notes)**

Add:

(2) *Trading stock* does not include:

(a) a \*Division 230 financial arrangement; or

(b) a \*CGT asset covered by section 275-105 that:

(i) is owned by a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust; or

(ii) is a \*complying superannuation/FHSA asset of a \*life insurance company.

#### **5 At the end of subsection 295-85(4)**

Add:

Note: For item 5, certain assets (particularly shares, units in a unit trust, and land) are not trading stock when owned by the entity (see paragraph 70-10(2)(b)).

#### **6 Application of amendments**

(1) The amendments made by this Schedule apply in relation to CGT assets owned after 7.30 pm, by legal time in the Australian Capital Territory, on 10 May 2011 (the *budget time*).

- (2) However, the amendments made by this Schedule do not apply in relation to a CGT asset owned by an entity after the budget time if, just before the budget time, the entity owned and held the CGT asset as trading stock.

## Schedule 3—Tax exemption for payments to individuals for recent floods

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

##### **1 Section 11-15 (table item headed “welfare”)**

After:

Assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year ..... 51-30

insert:

Assistance for New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in January, February and March 2012 ..... 51-30

##### **2 Section 51-30 (after table item 5.1B)**

Insert:

5.1C	an individual in receipt of an ex-gratia payment from the Commonwealth known as assistance for New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in January, February and March 2012	the payment	the payment must be claimed: (a) after 5 February 2012; and (b) before 7 August 2012
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## **Part 2—Sunsetting on 1 July 2015**

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

#### **3 Section 11-15 (table item headed “welfare”)**

Omit:

Assistance for New Zealand non-protected special  
category visa holders for the floods that occurred in  
New South Wales and Queensland in January,  
February and March 2012 ..... 51-30

#### **4 Section 51-30 (table item 5.1C)**

Repeal the item.

## **Schedule 4—Phasing out the dependent spouse tax offset**

### ***Income Tax Assessment Act 1936***

#### **1 Sub-subparagraph 23AB(7)(a)(ii)(B)**

Omit “in respect of a dependant included in class 5 or 6 in the table in subsection 159J(2)”, substitute “in respect of a dependant who is an invalid relative for the purposes of class 5 in the table in subsection 159J(2) or a dependant included in class 6 in the table in subsection 159J(2)”.

#### **2 Subparagraph 23AB(7)(a)(iii)**

Omit “subsection 159J(2)”, substitute “subsection 159J(2) or an invalid spouse or carer spouse for the purposes of class 5 in the table in subsection 159J(2)”.

#### **3 Subparagraphs 79A(2)(a)(ii), (d)(ii) and (e)(ii)**

Omit “subsection 159J(2)”, substitute “subsection 159J(2) or an invalid spouse or carer spouse for the purposes of class 5 in the table in subsection 159J(2)”.

#### **4 Subsection 79A(4) (paragraph (b) of the definition of *relevant rebate amount*)**

Omit “in respect of a dependant included in class 5 or 6 in the table in subsection 159J(2)”, substitute “in respect of a dependant who is an invalid relative for the purposes of class 5 in the table in subsection 159J(2) or a dependant included in class 6 in the table in subsection 159J(2)”.

#### **5 Subparagraph 79B(2)(a)(iii)**

Omit “class 1”, substitute “class 1 or an invalid spouse or carer spouse for the purposes of class 5”.

#### **6 Paragraph 79B(4)(c)**

Omit “subsection 159J(2)”, substitute “subsection 159J(2) or an invalid spouse or carer spouse for the purposes of class 5 in the table in subsection 159J(2)”.

**7 Subparagraph 79B(4A)(b)(iii)**

Omit “subsection 159J(2)”, substitute “subsection 159J(2) or an invalid spouse or carer spouse for the purposes of class 5 in the table in subsection 159J(2)”.

**8 Subsection 79B(6) (paragraph (b) of the definition of concessional rebate amount)**

Omit “in respect of a dependant included in class 5 or 6 in the table in subsection 159J(2)”, substitute “in respect of a dependant who is an invalid relative for the purposes of class 5 in the table in subsection 159J(2) or a dependant included in class 6 in the table in subsection 159J(2)”.

**9 Paragraph 159J(1AB)(a)**

Omit “class 1”, substitute “class 1 or who is an invalid spouse or carer spouse for the purposes of class 5 in the table in subsection 159J(2)”.

**10 Paragraph 159J(1AB)(b)**

Omit “2, 5 or 6”, substitute “2 or 6, or an invalid relative for the purposes of class 5”.

**11 Subsection 159J(1C)**

Omit “1 July 1971”, substitute “1 July 1952”.

**12 Application of amendments**

- (1) The amendments made by items 1 to 10 apply to assessments for the 2011-12 income year and later income years.
- (2) The amendment made by item 11 applies to assessments for the 2012-13 income year and later income years.

## Schedule 5—Miscellaneous amendments to the taxation laws

### *Income Tax Assessment Act 1997*

#### **1 Section 960-260**

Omit “in this Act”.

#### **2 Section 960-265 (at the end of the table)**

Add:

- |    |   |  |
|----|---|--|
| 14 | Minerals resource rent tax—starting base losses | subsection 80-45(1)<br>of the <i>Minerals<br/>Resource Rent Tax<br/>Act 2012</i> |
|----|---|--|

#### **3 Subsection 995-1(1) (paragraph (b) of the definition of *index number*)**

Omit “for an amount mentioned in a provision listed at another item in section 960-265”, substitute “for any other amount”.

### *Minerals Resource Rent Tax Act 2012*

#### **4 Subsection 15-5(1) (note 2)**

After “not”, insert “necessarily”.

#### **5 Subsection 15-5(4) (note 2)**

After “not”, insert “necessarily”.

#### **6 Section 30-5 (note)**

Repeal the note, substitute:

- Note: Most of the amounts are covered by this Division. However, the following amounts may also be included in a miner’s mining revenue:
- (a) amounts that are in effect recoupment of the value of starting base assets (see section 90-65);
  - (b) certain pre-mining profits (see section 140-20);
  - (c) amounts arising as a result of adjustments to take account of changes in circumstances (see Division 160);

- (d) amounts arising as a result of balancing adjustment events for starting base assets (see Division 165).

**7 Paragraph 30-15(1)(c)**

Repeal the paragraph, substitute:

- (c) makes an initial supply of or uses, or exports from Australia, something produced using the taxable resource, but not after:
  - (i) paragraph (a) or (b) has already applied in relation to the taxable resource; or
  - (ii) this paragraph has already applied in relation to the thing produced using the taxable resource.

**8 Subsection 30-15(1) (note)**

Repeal the note, substitute:

Note: There is at least one mining revenue event in relation to each quantity of taxable resource. However, there could only be more than one mining revenue event in relation to a quantity of taxable resource if more than one thing is produced from it.

Example: There are 2 mining revenue events in relation to a quantity of coal if it is extracted then consumed producing both electricity and fly-ash.

**9 Paragraph 30-25(5)(a)**

Omit “what it is assumed by subsection (4) to do”, substitute “the things it is assumed by subsection (4) to do, and the circumstances in which it is assumed by that subsection to do them”.

**10 Subparagraph 30-25(5)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) any depreciation of assets;

**11 Subsection 30-25(5)**

Omit “\*taxable resource in relation to which the \*mining revenue event happens”, substitute “\*mining revenue event”.

**12 Paragraph 30-55(b)**

Repeal the paragraph, substitute:

- (b) the amount is received, or becomes receivable, for a \*supply, or a proposed supply, of:

- (i) \*taxable resources extracted, or proposed to be extracted, from the \*project area for the mining project interest; or
- (ii) things produced, or proposed to be produced, using such taxable resources; and

**13 Paragraph 35-40(2)(b)**

Omit “relating to the mining project interest”, substitute “to which a mining project interest relates”.

**14 Paragraph 115-10(1)(e)**

After “\*starting base asset”, insert “that has a \*base value greater than zero”.

**15 Section 135-15**

Repeal the section, substitute:

**135-15 The effect of renewing or changing mining ventures**

- (1) A change in, or a renewal of, a \*mining venture to which a mining project interest relates does not cause the \*termination day for the mining project interest to happen.
- (2) However, if the change in, or the renewal of, the \*mining venture would otherwise result in the mining project interest covering an additional area:
  - (a) the \*project area for the mining project interest does not include that additional area; and
  - (b) to avoid doubt, the additional area is the project area for another mining project interest.

Note: The other mining project interest may be combined with the original mining project interest under Division 115.

**16 Subsection 200-10(1)**

Omit “\$50 million”, substitute “\$75 million”.

***Taxation Administration Act 1953***

**17 Subsection 350-10(1) in Schedule 1 (table item 2)**

Repeal the item, substitute:

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- |   |   |   |
|---|---|---|
| 2 | (a) a notice of assessment of an<br>*assessable amount; or<br>(b) a declaration under:<br>(i) subsection 165-40(1) or<br>165-45(3) of the *GST<br>Act; or<br>(ii) subsection 75-40(1) or<br>75-45(3) of the <i>Fuel Tax<br/>                         Act 2006</i> ; | (a) the assessment or declaration<br>was properly made; and<br>(b) except in proceedings under<br>Part IVC of this Act on a review<br>or appeal relating to the<br>assessment or declaration—the<br>amounts and particulars of the<br>assessment or declaration are<br>correct. |
|---|---|---|

**18 Subsection 350-10(1) in Schedule 1 (table item 2)**

Repeal the item, substitute:

- |   |   |   |
|---|---|---|
| 2 | a notice of assessment of an<br>*assessable amount; | (a) the assessment was properly<br>made; and<br>(b) except in proceedings under<br>Part IVC of this Act on a review<br>or appeal relating to the<br>assessment—the amounts and<br>particulars of the assessment are<br>correct. |
|---|---|---|

**19 Subsection 355-65(8) in Schedule 1 (paragraph (a) of the cell at table item 4, column headed “and the record or disclosure ...”)**

Omit “section 140V”, substitute “section 140ZH”.

Note: This item fixes an incorrect cross-reference.

*[Minister’s second reading speech made in—  
 House of Representatives on 21 March 2012  
 Senate on 10 May 2012]*