Tax Laws Amendment (2012 Measures No. 2) Act 2012

No. 99, 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. 2) Act 2012

No. 99, 2012

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

[*Assented to 29 June 2012*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2012 Measures No. 2) 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 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2012
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	30 June 2012
3. Schedule 1, Part 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day the *Pay As You Go Withholding Non-compliance 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.	30 June 2012
4. Schedule 1, Part 3, Division 1	The day after this Act receives the Royal Assent.	30 June 2012
5. Schedule 1, Part 3, Division 2	Immediately after the commencement of the provision(s) covered by table item 3.	30 June 2012
6. Schedule 2	Immediately after the commencement of Parts 1, 2 and 3 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009.*	26 March 2009
7. Schedule 3, Part 1	The day this Act receives the Royal Assent.	29 June 2012
8. Schedule 3, Part 2	Immediately after the commencement of the provision(s) covered by table item 7.	29 June 2012
9. Schedule 3, Part 3	Immediately after the commencement of the provision(s) covered by table item 8.	29 June 2012

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
10. Schedule 3, Part 4	The day this Act receives the Royal Assent.	29 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Note: This table relates only to the provisions of this Act as originally enacted.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.

(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 this section; and

(b) the amendment is made within 2 years after that commencement; and

(c) the amendment is made for the purpose of giving effect to Schedule 2 or 3 to this Act.

Schedule 1—Companies' non-compliance with PAYG withholding and superannuation guarantee obligations

Part 1—Recovery of penalties

Division 1—Amendments applying to future and undischarged penalties

Taxation Administration Act 1953

1 At the end of section 8AAZL

Add:

(4) Furthermore, the Commissioner does not have to treat an amount using either of those methods if:
  (a) doing so would require the Commissioner to apply the amount against a tax debt; and
  (b) the tax debt is a penalty that is due and payable under section 269-20 in Schedule 1 (penalties for directors of non-complying companies).

2 Subsections 269-35(1) to (4) in Schedule 1

Repeal the subsections, substitute:

Illness

(1) You are not liable to a penalty under this Division if, because of illness or for some other good reason, it would have been unreasonable to expect you to take part, and you did not take part, in the management of the company at any time when:
  (a) you were a director of the company; and
  (b) the directors were under the relevant obligations under subsection 269-15(1).

All reasonable steps

(2) You are not liable to a penalty under this Division if:

(a) you took all reasonable steps to ensure that one of the following happened:
  (i) the directors caused the company to comply with its obligation;
  (ii) the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
  (iii) the directors caused the company to begin to be wound up (within the meaning of that Act); or
(b) there were no reasonable steps you could have taken to ensure that any of those things happened.

(3) In determining what are reasonable steps for the purposes of subsection (2), have regard to:
  (a) when, and for how long, you were a director and took part in the management of the company; and
  (b) all other relevant circumstances.

When you can rely on this section

(4) For the purposes of:
  (a) proceedings in a court to recover from you a penalty payable under this Division; or
  (b) proceedings in a court against you in relation to a right referred to in paragraph 269-45(2)(b) (directors jointly and severally liable as guarantors);

subsection (1) or (2) of this section does not apply unless you prove the matters mentioned in that subsection.

(4A) For the purpose of the Commissioner recovering from you a penalty payable under this Division (other than as mentioned in subsection (4)), subsection (1) or (2) does not apply unless:
  (a) you provide information to the Commissioner during the period of 60 days starting on the day the Commissioner:
    (i) in the case of the Commissioner recovering the penalty under section 260-5 (Commissioner may collect amounts from third party)—gives you a notice under subsection 260-5(6) in relation to the penalty; or
    (ii) otherwise—notifies you in writing that he or she has recovered any of the penalty; and

(b) the Commissioner is satisfied of the matters mentioned in subsection (1) or (2) of this section on the basis of that information.

3 After section 269-50 in Schedule 1

Insert:

269-52 Copies of notices

(1) If:
  (a) the Commissioner gives you a notice under section 269-25 in accordance with section 269-50; and
  (b) you have given the address of a *registered tax agent to the Commissioner as your address for service for the purposes of any *taxation law;

the Commissioner may also give you a copy of the notice.

(2) The Commissioner may do so by leaving the copy at, or posting the copy to, the address of the *registered tax agent.

(3) To avoid doubt, this section does not affect:
  (a) whether the Commissioner has given you the actual notice; or
  (b) how the Commissioner may give you the actual notice.

4 Application of amendments

The amendments made by this Division apply to penalties that are:
  (a) payable under Subdivision 269-B in Schedule 1 to the *Taxation Administration Act 1953* (including penalties in relation to which subitem 65(4) of Schedule 1 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010* applies); and
  (b) due:
    (i) at or after the commencement of this item; or
    (ii) before the commencement of this item, to the extent the penalties are not paid, remitted or discharged before the commencement of this item.

Note: Subitem 65(4) of Schedule 1 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010* applies in relation to penalties that were payable under Division 9 of former Part VI of the *Income Tax Assessment Act 1936*.

Division 2—Penalties for new directors

Taxation Administration Act 1953

5 Paragraph 269-20(3)(b) in Schedule 1

Omit "14 days", substitute "30 days".

6 Subsection 269-20(4) in Schedule 1

Omit "14th day", substitute "30th day".

7 Application of amendments

The amendments made by this Division apply to you, in relation to an obligation under section 269-15 in Schedule 1 to the *Taxation Administration Act 1953*, if you:

(a) become a director of the relevant company; and

(b) begin to be under the obligation;

on or after the commencement of this item.

Division 3—Remission of penalties

Taxation Administration Act 1953

8 Section 269-30 in Schedule 1

Repeal the section, substitute:

269-30 Effect on penalty of directors' obligation ending before end of notice period

(1) Subject to subsection (2), a penalty of yours under this Division is remitted if the directors of the company stop being under the relevant obligation under section 269-15:

(a) before the Commissioner gives you notice of the penalty under section 269-25; or

(b) within 21 days after the Commissioner gives you notice of the penalty under that section.

(2) The following table has effect:

When appointing administrator or winding up company does not affect penalty			
Item	**Column 1** **If the company's obligation is to pay to the Commissioner, on or before the due day …**	**Column 2** **and, because of paragraph 269-15(2)(b) or (c) (an administrator is appointed or the company begins to be wound up), the directors stop being under the relevant obligation after the last day of the 3 months after …**	**Column 3** **subsection (1) does not apply …**
1	an amount in accordance with Subdivision 16-B (obligation to pay withheld amounts to the Commissioner),	the due day,	to the extent the company does not, on or before the last day mentioned in column 2, notify the Commissioner under section 16-150 of the amount the company is obliged to pay.
2	the amount of an estimate under Division 268 (estimates of PAYG withholding liabilities and superannuation guarantee charge),	the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.

Note: An administrator of the company being appointed, or the company beginning to be wound up, after the last day mentioned in column 2 will, to the extent mentioned in column 3, have no effect on the penalty.

(3) If you become a director of the company during or after the 3 months mentioned in column 2, treat the reference in the column to the 3 months as being a reference to the 3 months after the day you become a director of the company.

9 Application of amendment

The amendment made by this Division applies, in relation to a penalty under Division 269 in Schedule 1 to the *Taxation Administration Act 1953*, if the directors of the relevant company stop being under the relevant obligation under section 269-15 in that Schedule on or after the commencement of this item.

Part 2—Credits

Income Tax Assessment Act 1997

10 Subsection 86-40(2) (note 2)

Omit "and PAYG credits (see Subdivisions 16-C and 18-A", substitute ", PAYG credits and PAYG withholding non-compliance tax (see Subdivisions 16-C, 18-A and 18-D".

11 Subsection 995-1(1)

Insert:

> ***PAYG withholding non-compliance tax*** means the Pay as you go withholding non-compliance tax imposed under the *Pay As You Go Withholding Non-compliance Tax Act 2012*.

Taxation Administration Act 1953

12 Subsection 8AAB(4) (after table item 38)

Insert:

38A	18-150 in Schedule 1	*Taxation Administration Act 1953*	PAYG withholding non-compliance tax

13 At the end of section 18-5 in Schedule 1

Add:

Note: See also Subdivision 18-D (PAYG withholding non-compliance tax, which can reverse the economic benefit of a credit of a director, or an associate of a director, of a company that does not comply with its obligations under subsection 16-70(1)).

14 At the end of Division 18 in Schedule 1

Add:

Subdivision 18-D—Directors etc. of non-complying companies

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Object of Subdivision

18-120 Object of Subdivision

The object of this Subdivision is to reverse the economic benefit of a credit under section 18-15 (Tax credit for recipient of withholding payment) of a director, or an *associate of a director, of a company if:

(a) the company does not comply with its obligations under subsection 16-70(1) (obligation to pay amounts withheld to the Commissioner); and

(b) the credit is attributable to *amounts withheld from *withholding payments made by the company to the director or associate;

until the company complies with its obligations.

PAYG withholding non-compliance tax

18-125 Directors of non-complying companies

Liability to pay PAYG withholding non-compliance tax

(1) An individual must pay *PAYG withholding non-compliance tax in relation to a company for an income year of the individual if:

(a) the individual is or has been a director (within the meaning of the *Corporations Act 2001*) of the company; and

(b) the company was required to pay to the Commissioner under subsection 16-70(1) in this Schedule amounts:

(i) the company withheld from *withholding payments the company made to any entities during the income year of the individual; and

(ii) to which subsection (2) applies; and

(c) the company did not pay the total of those amounts to the Commissioner on or before the last day (the ***non-compliance day***) on or before which the company was required to pay any of those amounts to the Commissioner in accordance with subsection 16-70(1); and

(d) a credit to which the individual is entitled under section 18-15 is attributable to an extent to *amounts withheld by the company under Division 12 from withholding payments made to the individual during the income year of the individual.

Note: For the purposes of paragraph (1)(d), it does not matter whether the company pays the amounts withheld from the withholding payments made to the individual to the Commissioner under subsection 16-70(1).

(2) This subsection applies to *amounts withheld that the company was required to pay to the Commissioner on or before a particular day (the ***payment day***) under subsection 16-70(1), if:

(a) both of the following subparagraphs apply:

(i) the individual was a director (within the meaning of the *Corporations Act 2001*) of the company on the payment day;

(ii) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the payment day; or

(b) all of the following subparagraphs apply:
  (i) the individual became a director of the company after the payment day;
  (ii) the individual was still a director of the company 30 days after becoming a director;
  (iii) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the last of those 30 days.

Amount of tax

(3) The amount of the *PAYG withholding non-compliance tax the individual must pay is the lesser of:
  (a) the extent of the credit mentioned in paragraph (1)(d); and
  (b) the total amount the company did not pay to the Commissioner as mentioned in paragraph (1)(c).

18-130 Directors of non-complying companies—tax reduced in certain circumstances

(1) The amount of the *PAYG withholding non-compliance tax the individual must pay as mentioned in section 18-125 is reduced if the Commissioner gives a notice to the individual under this section.

Notice

(2) The Commissioner must give a written notice to the individual on a day (the ***reduction notice day***) (whether before, on or after the day (if any) the Commissioner gives the individual the relevant notice under section 18-140), if the Commissioner is satisfied that:
  (a) because of illness or for some other good reason, it would have been unreasonable to expect the individual to take part, and the individual did not take part, in the management of the company at any time during the period:
    (i) starting on a day on or by which the company was required to pay any of the total mentioned in paragraph 18-125(1)(c) to the Commissioner under subsection 16-70(1); and
    (ii) ending on the reduction notice day; or

(b) the individual took all reasonable steps to ensure that one of the following happened:

(i) the directors (within the meaning of the *Corporations Act 2001*) of the company caused the company to pay the total of the amounts mentioned in paragraph 18-125(1)(c) to the Commissioner;

(ii) the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;

(iii) the directors caused the company to begin to be wound up (within the meaning of that Act);

or there were no reasonable steps the individual could have taken to ensure that any of those things happened.

(3) In determining what are reasonable steps for the purposes of paragraph (2)(b), the Commissioner must have regard to:

(a) when, and for how long, the individual was a director and took part in the management of the company; and

(b) all other relevant circumstances.

Amount of reduction

(4) The amount of the reduction is the amount stated in the notice.

(5) In determining the amount to state in the notice, the Commissioner must have regard to:

(a) in a case to which paragraph (2)(a) applies—when, and for how long, the individual could not have been expected to take part, and did not take part, in the management of the company; and

(b) in a case to which paragraph (2)(b) applies—when, and for how long, the individual was a director and took part in the management of the company; and

(c) in either case—what is fair and reasonable in the circumstances.

Effect of reduction

(6) The amount of the *PAYG withholding non-compliance tax the individual must pay is treated as always having been that amount as reduced under this section.

18-135 Associates of directors of non-complying companies

Liability to pay PAYG withholding non-compliance tax

(1) An individual must pay *PAYG withholding non-compliance tax in relation to a company for an income year of the individual if:

(a) at a time when another individual (the ***director***) was a director (within the meaning of the *Corporations Act 2001*) of the company, the first individual was an *associate of the director; and

(b) the company was required to pay to the Commissioner under subsection 16-70(1) in this Schedule amounts:

(i) the company withheld from *withholding payments the company made to any entities during the income year of the individual; and

(ii) to which subsection (2) of this section applies; and

(c) the company did not pay the total of those amounts to the Commissioner on or before the last day (the ***non-compliance day***) on or before which the company was required to pay any of those amounts to the Commissioner in accordance with subsection 16-70(1); and

(d) subsection (3) or (6) of this section applies; and

(e) a credit to which the individual is entitled under section 18-15 is attributable to an extent to *amounts withheld by the company under Division 12 from withholding payments made to the individual during the income year of the individual.

Note: For the purposes of paragraph (1)(e), it does not matter whether the company pays the amounts withheld from the withholding payments made to the individual to the Commissioner under subsection 16-70(1).

(2) This subsection applies to *amounts withheld that the company was required to pay to the Commissioner on or before a particular day (the ***payment day***) under subsection 16-70(1), if:

(a) all of the following subparagraphs apply:

(i) the director was a director (within the meaning of the *Corporations Act 2001*) of the company on the payment day;

(ii) the individual was an *associate of the director on the payment day;

(iii) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the payment day; or

(b) all of the following subparagraphs apply:

(i) the director became a director of the company after the payment day;

(ii) the director was still a director of the company 30 days after becoming a director;

(iii) the individual was an *associate of the director throughout that 30 day period;

(iv) the company did not pay the total of those amounts to the Commissioner in accordance with subsection 16-70(1) on or before the last of those 30 days.

(3) This subsection applies if the Commissioner is satisfied that:

(a) because of:

(i) the individual's relationship with the director; or

(ii) a relationship of the individual with the company;

the individual knew, or could reasonably have been expected to know, of the company's failure to pay the total of the amounts mentioned in paragraph (1)(c) to the Commissioner; and

(b) none of the following subparagraphs applies:

(i) the individual took all reasonable steps to influence the director to cause the company to notify the Commissioner under Subdivision 18-C of the relevant *amounts withheld;

(ii) the individual took all reasonable steps to influence the director to cause one of the events mentioned in subsection (4) to happen, or there were no reasonable steps the individual could have taken to influence the director to cause any of those events to happen;

(iii) the individual reported the company's non-payment to the Commissioner or to another authority with responsibilities relevant to the operation of the company.

Example: Other authorities with responsibilities relevant to the operation of the company could include the Minister, the police, the Australian Securities and Investments Commission or the Building and Construction Industry Commissioner.

(4) The following are the events:
  (a) the company pays the total of the amounts mentioned in paragraph (1)(c) to the Commissioner;
  (b) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
  (c) the company begins to be wound up (within the meaning of that Act).

(5) In determining what are reasonable steps for the purposes of paragraph (3)(b), have regard to:
  (a) when, and for how long, the individual was an *associate of the director; and
  (b) when, and for how long, the director was a director and took part in the management of the company; and
  (c) all other relevant circumstances.

(6) This subsection applies if:
  (a) the individual was an employee of the company; and
  (b) the Commissioner is satisfied that the company treated the individual more favourably than it treated other employees of the company.

Amount of tax

(7) The amount of the *PAYG withholding non-compliance tax the individual must pay is the lesser of:
  (a) the extent of the credit mentioned in paragraph (1)(e); and
  (b) the total amount the company did not pay to the Commissioner as mentioned in paragraph (1)(c).

18-140 Notices

Notices

(1) The Commissioner must not commence proceedings to recover:
  (a) the *PAYG withholding non-compliance tax an individual must pay for an income year in relation to a company as mentioned in section 18-125 or 18-135; or
  (b) any related *general interest charge payable under section 18-150;

unless, after the non-compliance day mentioned in section 18-125 or 18-135, the Commissioner gives a written notice to the individual under this section.

(2) The Commissioner may only give the notice if the Commissioner is satisfied, on the basis of information available to the Commissioner, that it is fair and reasonable for the individual to pay *PAYG withholding non-compliance tax in relation to the company for the income year.

(3) The Commissioner must not give the notice on a day if, on that day:
  (a) the individual; or
  (b) in a case to which section 18-135 applies—the director mentioned in that section;

is liable to pay to the Commissioner a penalty under Division 269 because the company has not complied with the obligation mentioned in item 1 of the table in subsection 269-10(1) to pay to the Commissioner an *amount withheld to which paragraph 18-125(1)(b) or 18-135(1)(b) applies.

(4) The notice must specify:
  (a) the company; and
  (b) the income year; and
  (c) the amount of the *PAYG withholding non-compliance tax the individual must pay.

Effect of compliance between non-compliance day and notice day

(5) Subsections (6) and (7) apply if:
  (a) the company's liability to pay the total of the amounts mentioned in paragraph 18-125(1)(c) or 18-135(1)(c) to the Commissioner is discharged to any extent during the period:
    (i) starting on the day after the non-compliance day; and
    (ii) ending on the day before the day the Commissioner gives the notice under this section to the individual; and
  (b) had all discharges of the company's liability occurring during that period occurred before the non-compliance day:
    (i) the individual would not have been required to pay the *PAYG withholding non-compliance tax in relation to the company for the income year; or

(ii) the amount of PAYG withholding non-compliance tax the individual would have been required to pay would have been less than the actual amount of PAYG withholding non-compliance tax.

(6) The amount of the *PAYG withholding non-compliance tax the individual must pay is reduced:

(a) in a case to which subparagraph (5)(b)(i) applies—to nil; or

(b) otherwise—to the amount of PAYG withholding non-compliance tax the individual would have been required to pay as mentioned in subparagraph (5)(b)(ii).

(7) The amount of the *PAYG withholding non-compliance tax the individual must pay is treated as always having been that amount as reduced under subsection (6).

18-145 When PAYG withholding non-compliance tax must be paid

(1) The *PAYG withholding non-compliance tax an individual must pay for an income year is due and payable at the earliest time any of the income tax the individual must pay for the *financial year to which the income year relates is due and payable.

Note: Division 5 of the *Income Tax Assessment Act 1997* explains how to work out when to pay your income tax.

(2) For the purposes of subsection (1), if the individual is not required to pay income tax for the *financial year:

(a) treat the individual as being required to pay income tax for the financial year; and

(b) if the Commissioner has made an assessment that the income tax the individual is required to pay is nil—treat that assessment as being for an amount greater than nil.

Note: See Part 4-15 in this Schedule for collection and recovery provisions.

18-150 General interest charge payable on unpaid PAYG withholding non-compliance tax

If an amount of *PAYG withholding non-compliance tax that an individual must pay to the Commissioner remains unpaid after the time by which it is due to be paid, the individual is liable to pay *general interest charge on the unpaid amount of tax for each day in the period that:

(a) started at the beginning of the day by which the unpaid amount of tax was due to be paid; and

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

(i) the unpaid amount of tax;

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

18-155 Validity of decisions and evidence

(1) Section 175 of the *Income Tax Assessment Act 1936* (validity) applies to a decision of the Commissioner under section 18-140 in this Schedule in the same way as it applies to an assessment.

(2) Section 177 of the *Income Tax Assessment Act 1936* (Evidence) applies to a notice under section 18-140 in this Schedule in the same way as it applies to a notice of assessment.

18-160 Rights of indemnity and contribution

(1) This section applies if an individual must pay *PAYG withholding non-compliance tax as mentioned in section 18-125 or 18-135 because a company did not pay an amount to the Commissioner as mentioned in paragraph 18-125(1)(c) or 18-135(1)(c).

(2) The individual has the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against the company or anyone else as if:

(a) the individual had made a payment equal to the amount of the *PAYG withholding non-compliance tax under a guarantee of the liability of the company to pay the amount to the Commissioner; and

(b) under the guarantee:

(i) the individual; and

(ii) every individual to whom subsection (3) applies;

were jointly and severally liable as guarantors (but only, in the case of an individual to whom subparagraph (ii) of this paragraph applies, to the extent to which subsection (3) applies to the individual); and

(c) any credit to which the individual mentioned in subsection (1) is entitled under section 18-170 or 18-175 in

relation to the amount of PAYG withholding non-compliance tax were a repayment of the payment mentioned in paragraph (a) of this subsection.

(3) This subsection applies to an individual to the extent that:

(a) the individual was a director (within the meaning of the *Corporations Act 2001*) of the company on the day (the ***payment day***) on or by which the company was required to pay the amount mentioned in subsection (1) to the Commissioner; or

(b) both of the following subparagraphs apply:

(i) the individual became a director of the company after the payment day;

(ii) the individual was still a director of the company 30 days after becoming a director.

(4) However, subsection (3) does not apply to an individual to the extent that the amount of the *PAYG withholding non-compliance tax the individual must pay in relation to the company for the income year as mentioned in section 18-125 is reduced under section 18-130.

Credits for later compliance

18-165 Credits for later compliance—scope

Sections 18-170, 18-175 and 18-180 apply if:

(a) an individual must pay *PAYG withholding non-compliance tax in relation to a company for an income year because the company did not pay to the Commissioner the total of the amounts mentioned in paragraph 18-125(1)(c) or 18-135(1)(c); and

(b) the Commissioner gives to the individual a notice under section 18-140 on a particular day (the ***tax notice day***) in relation to the PAYG withholding non-compliance tax the individual must pay; and

(c) on or after the tax notice day, the company's liability to pay the total of the amounts to the Commissioner is discharged to any extent.

18-170 Credits for later compliance—Commissioner must give notice in certain circumstances

Commissioner must give notice to director or associate in certain circumstances

(1) The Commissioner must give a written notice to the individual on a particular day (the ***credit notice day***) if, had the discharge mentioned in paragraph 18-165(c) (and all previous discharges of the company's liability mentioned in that paragraph) occurred before the tax notice day:

(a) the individual would not have been required to pay the *PAYG withholding non-compliance tax in relation to the company for the income year; or

(b) the amount of PAYG withholding non-compliance tax the individual would have been required to pay would have been less than the actual amount of PAYG withholding non-compliance tax.

Note 1: Subsection 18-180(2) provides that the Commissioner must not give a notice to the individual in certain circumstances.

Note 2: The amount of PAYG withholding non-compliance tax may be limited by:

(a) the conditions in subsections 18-125(1) and (2) or 18-135(1) to (6); or

(b) the limits on the amount of the tax in subsection 18-125(3) or 18-135(7).

Note 3: In working out the actual amount of the tax for the purposes of paragraph (1)(b), have regard to other credits to which the individual is entitled under this section or section 18-175. See subsection 18-180(1).

Director or associate entitled to credit if Commissioner gives notice

(2) The individual is entitled to a credit if the Commissioner gives a written notice to the individual under subsection (1).

(3) The individual becomes entitled to the credit on the day the Commissioner gives the notice to the individual.

Amount of credit

(4) The amount of the credit is the amount stated in the notice.

(5) In a case to which paragraph (1)(a) applies, the amount stated must be the amount of the *PAYG withholding non-compliance tax.

(6) In any other case, the amount stated:
  (a) must not exceed the amount of the *PAYG withholding non-compliance tax; and
  (b) must not exceed the amount of the discharge mentioned in paragraph 18-165(c); and
  (c) must not be less than the amount by which:
    (i) the amount of the PAYG withholding non-compliance tax; exceeds
    (ii) the amount that would have been the amount of the PAYG withholding non-compliance tax had the discharge mentioned in paragraph 18-165(c) (and all previous discharges of the company's liability mentioned in that paragraph) occurred before the tax notice day.

(7) In determining the amount to state in the notice in a case to which paragraph (1)(a) does not apply, the Commissioner must have regard to what is fair and reasonable in the circumstances.

18-175 Credits for later compliance—Commissioner may give notice

Commissioner may give notice to director or associate

(1) The Commissioner may give a written notice to the individual on a particular day (the ***credit notice day***).

Note: Subsection 18-180(2) provides that the Commissioner must not give a notice to the individual in certain circumstances.

Director or associate entitled to credit if Commissioner gives notice

(2) The individual is entitled to a credit if the Commissioner gives a written notice to the individual under subsection (1).

(3) The individual becomes entitled to the credit on the day the Commissioner gives the notice to the individual.

Amount of credit

(4) The amount of the credit is the amount stated in the notice.

(5) The amount stated:

(a) must not exceed the amount of the *PAYG withholding non-compliance tax; and

Note: In working out the amount of the tax for the purposes of paragraph (5)(a), have regard to other credits to which the individual is entitled under section 18-170 or this section. See subsection 18-180(1).

(b) must not exceed the amount of the discharge mentioned in paragraph 18-165(c).

Commissioner's discretion

(6) In determining:

(a) whether to give a notice under this section; or

(b) the amount to state in the notice;

the Commissioner must have regard to what is fair and reasonable in the circumstances.

18-180 Effect of earlier credits

(1) A reference in section 18-170 or 18-175, or subsection (2) of this section, to the amount of the *PAYG withholding non-compliance tax is treated as being a reference to:

(a) the amount of the PAYG withholding non-compliance tax; less

Note: The amount of the PAYG withholding non-compliance tax may, in a case to which section 18-125 applies, be affected by reductions under section 18-130.

(b) the total of any credits to which the individual is entitled in relation to the amount of PAYG withholding non-compliance tax because of notices given to the individual under section 18-170 or 18-175 before the credit notice day.

(2) The Commissioner must not give a written notice to the individual under section 18-170 or 18-175 if, on the day before the credit notice day, the amount of the *PAYG withholding non-compliance tax is nil.

Other provisions

18-185 When Commissioner may give notice

The Commissioner may give a notice to the individual on a day (the ***notice day***) under section 18-130, 18-140, 18-170 or 18-175 if:

(a) on the notice day, the Commissioner has not given a notice of assessment to the individual for the income year mentioned in section 18-125 or 18-135; or

(b) if the notice would:

(i) in the case of a notice under section 18-130—result in the individual being liable to pay *PAYG withholding non-compliance tax or an increased amount of PAYG withholding non-compliance tax; or

(ii) in the case of a notice under section 18-140—result in the Commissioner being able to commence proceedings to recover PAYG withholding non-compliance tax, or an increased amount of PAYG withholding non-compliance tax, from the individual; or

(iii) in the case of a notice under section 18-170 or 18-175—reduce the amount of a credit or disentitle the individual to a credit;

the Commissioner gives the notice no later than 2 years after first giving a notice of assessment to the individual for the income year mentioned in section 18-125 or 18-135; or

(c) if the notice would:

(i) in the case of a notice under section 18-130—result in the individual being liable to pay no PAYG withholding non-compliance tax, or a reduced amount of PAYG withholding non-compliance tax; or

(ii) in the case of a notice under section 18-140—result in the Commissioner no longer being able to commence proceedings to recover PAYG withholding non-compliance tax, or result in the Commissioner being able to commence proceedings to recover a reduced amount of PAYG withholding non-compliance tax, from the individual; or

(iii) in the case of a notice under section 18-170 or 18-175—increase the amount of a credit or entitle the individual to a credit;

the Commissioner gives the notice no later than 4 years after first giving a notice of assessment to the individual for the income year mentioned in section 18-125 or 18-135; or

(d) in any case—the Commissioner gives the notice:

(i) to give effect to a decision on a review or appeal; or

(ii) as a result of an objection made by the individual or pending a review or appeal.

18-190 Review of decisions

An individual to whom the Commissioner gives a notice under section 18-140 in relation to an amount of *PAYG withholding non-compliance tax may object, under Part IVC of this Act, against a decision of the Commissioner under section 18-130, 18-140, 18-170 or 18-175 in relation to the PAYG withholding non-compliance tax if the individual is dissatisfied with the decision.

15 Subsection 250-10(2) in Schedule 1 (after table item 105)

Insert:

110	PAYG withholding non-compliance tax	18-145 in Schedule 1	*Taxation Administration Act 1953*

Taxation (Interest on Overpayments and Early Payments) Act 1983

16 Subsection 3(1) (after paragraph (caa) of the definition of *decision to which this Act applies*)

Insert:

(cab) in a case where the expression is used in relation to relevant tax of a kind referred to in item 91 of the table in section 3C (Pay as you go withholding non-compliance tax)—a decision of the Commissioner under section 18-130 in Schedule 1 to the *Taxation Administration Act 1953*; or

Note: Section 18-130 in Schedule 1 to the *Taxation Administration Act 1953* requires the Commissioner to give a notice to a director of a company if the Commissioner is satisfied of certain matters.

17 Subsection 3(1) (note at the end of the definition of *income tax crediting amount*)

Omit "Note", substitute "Note 1".

18 Subsection 3(1) (at the end of the definition of *income tax crediting amount*)

Add:

Note 2: For credits that arise under section 18-170 or 18-175 in Schedule 1 to the *Taxation Administration Act 1953*, see subsection (3) of this section.

19 At the end of section 3

Add:

Credits under section 18-170 or 18-175 in Schedule 1 to the Taxation Administration Act 1953

(3) To avoid doubt, for the purposes of this Act, a credit of an individual that arises under section 18-170 or 18-175 in Schedule 1 to the *Taxation Administration Act 1953* relates to the income tax payable by the individual for the year of income in which the individual becomes entitled to the credit.

Note: Subdivision 18-D in Schedule 1 to the *Taxation Administration Act 1953* provides that a director, or an associate of a director, of a company that does not comply with its obligations under Part 2-5 (Pay as you go (PAYG) withholding) must pay Pay as you go withholding non-compliance tax in certain circumstances. Sections 18-170 and 18-175 entitle the director or associate to a credit if the company subsequently complies with its obligations.

20 Section 3C (after table item 90 of the definition of *relevant tax*)

Insert:

91 Pay as you go withholding non-compliance tax

21 Section 10

Before "Interest payable", insert "(1)".

22 At the end of section 10

Add:

(2) For the purposes of subparagraph (1)(a)(i), if the decision to which this Act relates is a decision of the Commissioner under section 18-130 in Schedule 1 to the *Taxation Administration Act*

1953 in relation to an amount of Pay as you go withholding non-compliance tax, the notice of the decision in relation to which that decision was made is the notice the Commissioner gives to the person under section 18-140 in that Schedule in relation to that amount of tax.

23 Application of amendments

The amendments made by this Part apply to an individual in relation to amounts withheld by a company, if:

(a) the amounts are withheld during an income year of the individual starting on or after 1 July 2011; and

(b) the company is required to pay the amounts withheld to the Commissioner on or after the commencement of this item.

Part 3—Superannuation guarantee charge

Division 1—Estimates

Corporations Act 2001

24 Paragraph 553AB(1)(a)

After "superannuation guarantee charge", insert ", or by way of a liability to pay the amount of an estimate under Division 268 in Schedule 1 to the *Taxation Administration Act 1953*".

25 Paragraph 553AB(1)(b)

After "superannuation guarantee charge", insert "or estimate liability".

26 Paragraph 553AB(3)(a)

After "superannuation guarantee charge", insert ", or by way of a liability to pay the amount of an estimate under Division 268 in Schedule 1 to the *Taxation Administration Act 1953*".

27 Paragraph 553AB(3)(b)

After "superannuation guarantee charge", insert "or estimate liability".

28 Paragraph 556(1)(e)

Repeal the paragraph, substitute:

(e) subject to subsection (1A)—next:

(i) wages, superannuation contributions and superannuation guarantee charge payable by the company in respect of services rendered to the company by employees before the relevant date; or

(ii) liabilities to pay the amounts of estimates under Division 268 in Schedule 1 to the *Taxation Administration Act 1953* of superannuation guarantee charge mentioned in subparagraph (i);

29 Before subsection 556(1A)

Insert:

Superannuation guarantee charge

30 After subsection 556(1AF)

Insert:

(1AG) Subsections (1AC) to (1AF) apply to a liability to pay the amount of an estimate of superannuation guarantee charge for a quarter in the same way as they apply to superannuation guarantee charge payable for the quarter.

31 Before subsection 556(1B)

Insert:

Leave amounts

32 Before subsection 556(1C)

Insert:

Retrenchment payments

33 Before subsection 556(2)

Insert:

Definitions

34 Subsection 588FGA(1)

Repeal the subsection, substitute:

(1) This section applies if the Court makes an order under section 588FF against the Commissioner of Taxation because of the payment of an amount in respect of a liability:

(a) under any of the following provisions:

(i) former section 220AAE, 220AAM or 220AAR of the *Income Tax Assessment Act 1936*;

(ii) former section 221F (except subsection 221F(12)), former section 221G (except subsection 221G(4A)) or former section 221P of the *Income Tax Assessment Act 1936*;

(iii) former subsection 221YHDC(2) of the *Income Tax Assessment Act 1936*;

(iv) former subsection 221YHZD(1) or (1A) of the *Income Tax Assessment Act 1936*;

(v) former subsection 221YN(1) of the *Income Tax Assessment Act 1936*;

(vi) section 222AHA of the *Income Tax Assessment Act 1936*;

(vii) Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953*; or

(b) to pay the amount of an estimate of unpaid superannuation guarantee charge under Division 268 in Schedule 1 to the *Taxation Administration Act 1953*.

Superannuation Guarantee (Administration) Act 1992

35 At the end of section 63A

Add:

Estimates under the Taxation Administration Act 1953

(3) For the purposes of this Part, an amount paid to the Commonwealth is treated as being a payment of superannuation guarantee charge:

(a) in respect of an employee or employees; and

(b) made by or on behalf of an employer;

to the extent that, as a result of the amount being paid to the Commonwealth, a liability of the employer to pay superannuation guarantee charge in respect of that employee or those employees is discharged under subsection 268-20(3) in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Under Division 268 in that Schedule, the Commissioner may make an estimate of the unpaid and overdue amount of an employer's superannuation guarantee charge for a quarter.

(4) However, subsection (3) does not apply to the amount until the Commissioner knows which employee or employees the liability to pay the superannuation guarantee charge was in respect of.

Taxation Administration Act 1953

36 Division 268 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 268—Estimates and recovery of PAYG withholding liabilities and superannuation guarantee charge

37 Section 268-1 in Schedule 1

Omit:

> This Division enables the Commissioner to make an estimate of amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding), and to recover the amount of the estimate.

substitute:

> This Division enables the Commissioner to make an estimate of:
>
> (a) amounts not paid as required by Part 2-5 of this Act (Pay as you go (PAYG) withholding); or
>
> (b) unpaid superannuation guarantee charge;
>
> and to recover the amount of the estimate.

38 Section 268-1 in Schedule 1

After "amounts required by Part 2-5", insert "or the *Superannuation Guarantee (Administration) Act 1992*".

39 Section 268-1 in Schedule 1

After "that Part", insert "or Act".

40 Section 268-5 in Schedule 1

Repeal the section, substitute:

268-5 Object of Division

The object of this Division is to enable the Commissioner to take prompt and effective action to recover:

(a) amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding); or

(b) unpaid superannuation guarantee charge that has not been assessed.

41 Subsection 268-10(1) in Schedule 1

Repeal the subsection, substitute:

Estimate

(1) The Commissioner may estimate the unpaid and overdue amount of a liability (the ***underlying liability***) of yours:

(a) under section 16-70 in this Schedule (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules); or

(b) to pay superannuation guarantee charge for a *quarter under section 16 of the *Superannuation Guarantee (Administration) Act 1992*, to the extent the superannuation guarantee charge has not been assessed before the Commissioner makes the estimate.

(1A) For the purposes of this Division, your superannuation guarantee charge for a *quarter is treated as being payable on the day by which you must lodge a superannuation guarantee statement for the quarter under section 33 of the *Superannuation Guarantee (Administration) Act 1992*, even if, on that day, the charge has not been assessed under that Act.

42 Subsection 268-10(3) in Schedule 1 (example)

Repeal the example, substitute:

Example 1: In the case of an underlying liability under section 16-70 (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the Commissioner may have regard to information about amounts you withheld under the Pay as you go rules before the period in relation to which the underlying liability arose.

Example 2: In the case of an underlying liability to pay superannuation guarantee charge for a quarter, the Commissioner may have regard to information about your contributions to RSAs and complying superannuation funds for earlier quarters.

43 Subsection 268-75(1) in Schedule 1

Repeal the subsection, substitute:

(1) This section applies if:
  (a) your liability to pay the amount of the estimate remains undischarged at the end of 7 days after the Commissioner gives you notice of the estimate; and
  (b) the underlying liability is not a liability to pay superannuation guarantee charge.

44 Subsection 268-90(2) in Schedule 1

Omit "The statutory", substitute "In a case covered by paragraph 268-10(1)(a) (estimate of liability under requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the statutory".

45 After subsection 268-90(2) in Schedule 1

Insert:

(2A) In a case covered by paragraph 268-10(1)(b) (estimate of liability to pay superannuation guarantee charge), the statutory declaration or affidavit must verify the following facts:
  (a) your name and address;
  (b) for each employee for whom you have an *individual superannuation guarantee shortfall for the relevant *quarter:
    (i) the employee's name and postal address and, if the employee has *quoted the employee's *tax file number to you, the employee's tax file number; and
    (ii) the amount of the shortfall;
  (c) what has been done to comply with your obligation to pay the relevant superannuation guarantee charge to the Commissioner.

Note: The amount of the individual superannuation guarantee shortfall mentioned in paragraph (b) is a factor in determining the amount of the superannuation guarantee charge mentioned in paragraph 268-10(1)(b). The lesser amount mentioned in subsection 268-40(2) may therefore differ from the amount of that shortfall.

46 Saving provision—estimates

An estimate:
  (a) made under section 268-10 in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) in force just before the commencement of this item;

has effect, from that commencement, as if it had been made under that section as amended by this Schedule.

47 Application of amendments

The amendments made by this Division apply to superannuation guarantee charge for a quarter if the day by which you must lodge a superannuation guarantee statement for the quarter occurs on or after the day this item commences.

Division 2—Penalties

Superannuation Guarantee (Administration) Act 1992

48 Subsection 63A(3)

After "subsection 268-20(3)", insert ", or section 269-40,".

Taxation Administration Act 1953

49 Section 269-1 in Schedule 1

After "Division 268", insert "in this Schedule and Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge)".

50 Paragraph 269-5(a) in Schedule 1

Repeal the paragraph, substitute:

(a) meets its obligations under:

(i) Subdivision 16-B (obligation to pay withheld amounts to the Commissioner); and

(ii) Division 268 (estimates of PAYG withholding liabilities and superannuation guarantee charge); and

(iii) Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); or

51 Subsection 269-10(1) in Schedule 1 (table)

Repeal the table, substitute:

Obligations that directors must cause company to comply with		
Item	**Column 1** **This Division applies if, on a particular day (the *initial day*), a company is a company registered under the *Corporations Act 2001*, and on the initial day …**	**Column 2** **and the company is obliged to pay to the Commissioner on or before a particular day (the *due day*) …**
1	the company withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.
2	the company receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	the company provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
4	the company is given notice of an estimate under Division 268	the amount of the estimate.
5	a *quarter ends	superannuation guarantee charge for the quarter in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

52 At the end of section 269-10 in Schedule 1

Add:

Superannuation guarantee charge

(3) For the purposes of this Division, the company's superannuation guarantee charge for a *quarter under the *Superannuation Guarantee (Administration) Act 1992* is treated as being payable on the day by which the company must lodge a superannuation guarantee statement for the quarter under section 33 of that Act, even if the charge is not assessed under that Act on or before that day.

53 Subsection 269-30(2) in Schedule 1 (table)

At the end of the table, add:

3	superannuation guarantee charge for	the due day,	(a) if the company, on or before the last day

a *quarter,	mentioned in column 2, lodges under section 33 of the *Superannuation Guarantee (Administration) Act 1992* a superannuation guarantee statement for the quarter—the extent (if any) to which the sum mentioned in paragraph 35(1)(e) of that Act is less than the amount of the superannuation guarantee charge the company is obliged to pay for the quarter; or (b) otherwise—to any extent.

54 Subsection 269-30(2) in Schedule 1 (note)

Omit "Note", substitute "Note 1".

55 At the end of subsection 269-30(2) in Schedule 1

Add:

Note 2: The sum mentioned in paragraph 35(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* is the sum of:

(a) the total of the company's individual superannuation guarantee shortfalls; and

(b) the company's nominal interest component; and

(c) the company's administration component;

specified in the superannuation guarantee statement.

56 After subsection 269-35(3) in Schedule 1

Insert:

Superannuation guarantee charge—reasonably arguable position

(3A) You are not liable to a penalty under this Division to the extent that the penalty resulted from the company treating the *Superannuation Guarantee (Administration) Act 1992* as applying to a matter or identical matters in a particular way that was *reasonably arguable, if the company took reasonable care in connection with applying that Act to the matter or matters.

57 Application of amendments

The amendments made by this Division apply to a company's liability to pay superannuation guarantee charge for a quarter if the day by which the company must lodge a superannuation guarantee statement for the quarter occurs on or after the day this item commences.

Schedule 2—Consolidation and TOFA

Income Tax Assessment Act 1997

1 Paragraph 715-375(1)(b)

After "of the joining entity at the joining time", insert "(disregarding subsection 701-1(1) (the single entity rule))".

2 Paragraph 715-375(1)(c)

Repeal the paragraph, substitute:

(c) the accounting liability is or is part of a *Division 230 financial arrangement of the head company at the joining time (because of subsection 701-1(1) (the single entity rule)).

3 Subsections 715-375(2), (3) and (4)

Repeal the subsections, substitute:

(2) For the purposes of Division 230 and Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*, treat the *head company of the group as starting to have the accounting liability at the joining time for receiving a payment equal to:

(a) if the liability is or is part of a *Division 230 financial arrangement of the head company at the joining time (because of subsection 701-1(1) (the single entity rule)):

(i) to which Subdivision 230-B (accruals method or realisation method) applies; or

(ii) to which Subdivision 230-E (hedging financial arrangements method) applies;

the amount of the liability, as determined in accordance with:

(iii) the joining entity's *accounting principles for tax cost setting; or

(iv) if the amount of the liability cannot be determined in accordance with the joining entity's accounting principles for tax cost setting—comparable standards for accounting made under a *foreign law; or

(b) otherwise—the liability's *Division 230 starting value at the joining time.

4 After section 715-375

Insert:

715-378 Cost setting—head company's right to receive or obligation to provide payment

(1) This section applies in relation to an asset or a liability if:

(a) an entity (the ***joining entity***) becomes a subsidiary member of a consolidated group at a time (the ***joining time***); and

(b) the asset or liability becomes that of the head company of the group because subsection 701-1(1) (the single entity rule) applies at the joining time; and

(c) in the case of an asset—subsection 701-55(5A) applies in relation to the asset at the joining time; and

(d) in the case of a liability—subsection 715-375(2) applies in relation to the liability at the joining time.

(2) In the case of an asset, for the purposes of section 230-60, assume that the *head company of the group acquired the asset at the joining time (as mentioned in subsection 701-55(5A)) in return for the head company starting to have an obligation to provide the payment mentioned in that subsection.

(3) In the case of a liability, for the purposes of section 230-60, assume that the *head company of the group started to have the liability at the joining time (as mentioned in subsection 715-375(2)) in return for the head company starting to have a right to receive the payment mentioned in that subsection.

Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009

5 After item 104 of Schedule 1

Insert:

104B Asset or liability of entity joining pre-TOFA consolidated group etc.

(1) This item applies in relation to an asset or liability if:

(a) an entity (the ***joining entity***) becomes a subsidiary member of a consolidated group or MEC group at a time (the ***joining time***); and

(b) the asset or liability becomes that of the head company of the group because subsection 701-1(1) of the *Income Tax Assessment Act 1997* (the single entity rule) applies when the joining entity becomes a subsidiary member of the group; and

(c) the asset or liability is, or is part of, a financial arrangement at the start of the head company's first applicable income year; and

(d) the head company's first applicable income year starts after the joining time; and

(e) the head company has the asset or liability (whether or not because of subsection 701-1(1) of the *Income Tax Assessment Act 1997* (the single entity rule)) throughout the period:

(i) starting at the joining time; and

(ii) ending at the start of the head company's first applicable income year; and

(f) the head company elects to have subitem 104(2) apply to itself; and

(g) the joining entity is *not* a chosen transitional entity (within the meaning of Division 701 of the *Income Tax (Transitional Provisions) Act 1997*).

Note: Item 104C prevents the application of this item in relation to certain assets and liabilities.

(2) For the purposes of subitem 104(13) and Division 230 of the *Income Tax Assessment Act 1997*:

(a) in the case of an asset—assume that subsection 701-55(5A) of that Act applies in relation to the asset at the joining time; and

(b) in the case of a liability—assume that section 715-375 of that Act applies as if the liability is, or is part of, a Division 230 financial arrangement at the joining time.

(3) Subitems 104(14) and (15) do not apply in relation to the asset or liability.

(4) In the case of an asset, subitems (5), (6) and (7) apply if, on the assumption that subsection 701-55(5A) of the *Income Tax Assessment Act 1997* applies in relation to the asset at the joining time, paragraph 701-55(5A)(b) of that Act would apply in relation to the asset.

(5) Work out if the Division 230 starting value for the asset at the joining time exceeds or falls short of its tax cost setting amount.

(6) If there is an excess, an amount equal to 25% of that excess is included in the head company's assessable income for:

(a) the head company's first applicable income year; and

(b) each of the 3 subsequent income years.

(7) If there is a shortfall, the head company is entitled to a deduction equal to 25% of that shortfall for:

(a) the head company's first applicable income year; and

(b) each of the 3 subsequent income years.

(8) In the case of a liability, subitem (9) applies if Subdivision 705-B of the *Income Tax Assessment Act 1997* (group formation) has effect in relation to the joining entity becoming a subsidiary member of the group.

(9) Treat the amount of the payment mentioned in subsection 715-375(2) of that Act as being the amount of consideration that the joining entity would need to provide, if it were to cease holding the liability just before the joining time, without an amount being assessable income of, or deductible to, the joining entity.

104C Exception to item 104B

(1) Subitem (2) applies if:

(a) assuming that item 51 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No. 2) Act 2012* commenced at the same time as this item, that item would apply in relation to a ruling or advice; and

(b) to the extent that the ruling or advice has effect in relation to the application of subsection 701-55(5C) or (6) of the original 2010 law (within the meaning of that Schedule) in respect of the joining entity mentioned in item 50 of that Schedule, that ruling or advice is in relation to an asset of an entity for an income year; and

(c) the asset is, or is part of, a financial arrangement at the start of the income year; and

(d) the requirements in subitem 104B(1) are satisfied in relation to the asset; and

(e) the entity is the head company mentioned in subitem 104B(1); and

(f) the income year is the head company's first applicable income year mentioned in subitem 104B(1).

(2) Item 104B does not apply in relation to the asset.

(3) Subitem (4) applies if:

(a) subitem (2) applies; and

(b) a liability is, or is part of, a financial arrangement at the start of the income year mentioned in subitem (1); and

(c) the financial arrangement is of the same kind as the financial arrangement mentioned in paragraph (1)(c); and

(d) the requirements in subitem 104B(1) are satisfied in relation to the liability; and

(e) the head company mentioned in subitem 104B(1) is the same entity as the head company mentioned in paragraph (1)(e) of this item.

(4) Item 104B does not apply in relation to the liability.

6 Application

Items 1, 2 and 3 of this Schedule apply in the same way as Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* applies.

Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that Schedule.

Schedule 3—Consolidation

Part 1—Pre rules

Income Tax Assessment Act 1997

1 Subsection 701-55(5C)

Repeal the subsection, substitute:

Rights to future amounts

(5C) If:

(a) the asset's tax cost is set because an entity becomes a *subsidiary member of a *consolidated group at the particular time; and

(b) section 716-410 (rights to amounts that are expected to be included in assessable income) covers the asset at the particular time; and

(c) the asset is *not* a *non-deductible right to future income;

the expression means that section 716-405 may apply in relation to the asset after the particular time.

Consumable stores

(5D) If:

(a) the asset's tax cost is set because an entity becomes a *subsidiary member of a *consolidated group at the particular time; and

(b) the asset is consumable stores;

the expression means that, for the purposes of section 8-1, the *head company of the group is taken to have incurred an outgoing at the particular time in acquiring the asset equal to the asset's *tax cost setting amount.

2 Subsection 701-55(6)

Repeal the subsection, substitute:

Other provisions

(6) If any provision of this Act that is not mentioned above is to apply in relation to the asset, the expression means that the provision applies as if the asset's cost at that time were equal to its *tax cost setting amount.

Note: For specific clarifications of the operation of this subsection in relation to bad debts, see Subdivision 716-S.

3 Section 701-56 (heading)

Repeal the heading, substitute:

701-56 Non-application of subsection 701-55(6) to certain assets

4 Subsections 701-56(1) and (2)

Repeal the subsections.

5 Subsection 701-58(2)

Omit ", (5C)", substitute ", (5C), (5D)".

6 After section 701-61

Insert:

701-63 Asset forming part of goodwill, right to future income, etc.

(1) Subsection (2) applies if an entity (the ***joining entity***) became a subsidiary member of a *consolidated group at a time (the ***joining time***).

(2) For the purposes of this Part (other than this section):
  (a) treat goodwill of a business of the joining entity as a single asset; and
  (b) treat an asset of that business of the joining entity that is an *asset forming part of goodwill as being part of that single asset; and
  (c) as a result of paragraph (b), do not treat an asset of that business of the joining entity that is an asset forming part of goodwill as a separate asset.

(3) An ***asset forming part of goodwill*** means any of the following:

(a) an intangible asset, the value of which is attributable to expected future profits from *life insurance policies or *general insurance policies;

(b) a customer relationship asset, know-how asset or other accounting intangible asset, that is *not* any of the following:

(i) a *CGT asset;

(ii) a *revenue asset;

(iii) a *depreciating asset;

(iv) *trading stock;

(v) a thing that is or is part of a *Division 230 financial arrangement;

(vi) goodwill;

(vii) an excluded asset for the purposes of section 705-35;

(c) a *non-deductible right to future income.

(4) A ***non-deductible right to future income*** is a *right to future income that is not an *unbilled income asset.

(5) A ***right to future income*** is a valuable right (including a contingent right) to receive an amount for the performance of work or services or the provision of goods if:

(a) the valuable right forms part of a contract or agreement; and

(b) the *market value of the valuable right (taking into account all the obligations and conditions relating to the right) is greater than nil; and

(c) the valuable right is neither a *Division 230 financial arrangement nor part of a Division 230 financial arrangement.

(6) An asset that is a *right to future income is an ***unbilled income asset*** if:

(a) the asset:

(i) is in respect of work (but not goods) that has been performed, or partially performed, by an entity for another entity; or

(ii) is in respect of goods (other than *trading stock) or services that have been provided, by an entity to another entity; and

(b) a recoverable debt has not yet arisen in respect of the work, goods or services.

7 Section 701-90

Repeal the section.

8 Paragraph 705-25(5)(d)

Omit "a right that is an asset covered by section 716-410 (rights to future amounts that are expected to be included in assessable income)", substitute "a right that is an *unbilled income asset".

9 Section 716-405

Repeal the section, substitute:

716-405 Tax cost setting and rights to future income—deduction

(1) This section applies if:

(a) an entity (the ***joining entity***) became a subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) subsection 701-55(5C) applies in relation to the asset at the joining time.

Note: Subsection 701-55(5C) deals with assets covered by section 716-410 (Rights to amounts that are expected to be included in assessable income after joining time).

(2) An entity qualified for a deduction under subsection (5) for the asset for an income year ending after the joining time:

(a) if the entity is the *head company of the group and the entity expects that a recoverable debt will arise in respect of the work, goods or services mentioned in subsection 701-63(6) in relation to the asset within 12 months after the joining time—can deduct, for that income year, the *unexpended tax cost setting amount for the asset; or

(b) if paragraph (a) does not apply and one or more recoverable debts arise, in that income year, in respect of the work, goods or services mentioned in subsection 701-63(6) in relation to the asset—can deduct, for that income year, the lesser of:

(i) the unexpended tax cost setting amount for the asset for that income year; and

(ii) the total of those recoverable debts; or

(c) if paragraphs (a) and (b) do not apply—*cannot* deduct an amount under this section in respect of the asset for that income year.

(4) The ***unexpended tax cost setting amount*** for the asset for an income year is the *tax cost setting amount for the asset, reduced by:

(a) the amounts (if any) of all deductions under this section in respect of the asset for previous income years ending after the joining time; and

(b) in determining the amount of a deduction under this section in respect of the asset for that income year for an entity that ceased to be a *subsidiary member of the group in that income year—the amount (if any) that the *head company of the group can deduct under this section in respect of the asset for that income year.

(5) An entity is qualified for a deduction under this subsection for an income year for the asset if:

(a) the entity:

(i) is the *head company of the group; and

(ii) held the asset at a time in that income year (whether or not because of the operation of subsection 701-1(1) (the single entity rule)); or

(b) the entity:

(i) held the asset at a time in that income year; and

(ii) ceased to be a *subsidiary member of the group in that income year or an earlier income year.

(6) An amount deducted under this section:

(a) is not to be deducted under any other provision of this Act; and

(b) is not to be taken into account in determining an amount that is included in the assessable income of any entity qualified for a deduction under subsection (5) for any income year for the asset; and

(c) is not to be taken into account in determining an amount of a deduction of any entity qualified for a deduction under subsection (5) for any income year for the asset; and

(d) despite paragraphs (b) and (c), is taken never to have been included in any of the elements of the *cost base of the asset.

10 Section 716-410

Repeal the section, substitute:

716-410 Rights to amounts that are expected to be included in assessable income after joining time

This section covers an asset at a time if:

(a) the asset is a *right to future income; and

(b) the asset is held by an entity just before the time (the ***joining time***) it became a *subsidiary member of a *consolidated group; and

(c) it is reasonable to expect that an amount attributable to the asset will be included in the assessable income of the entity or any other entity after the joining time; and

(d) Division 230 does not apply in relation to the asset (disregarding section 230-455).

11 Subsection 995-1(1)

Insert:

asset forming part of goodwill has the meaning given by subsection 701-63(3).

12 Subsection 995-1(1)

Insert:

non-deductible right to future income has the meaning given by subsection 701-63(4).

13 Subsection 995-1(1)

Insert:

right to future income has the meaning given by subsection 701-63(5).

14 Subsection 995-1(1)

Insert:

unbilled income asset has the meaning given by subsection 701-63(6).

Part 2—Interim rules

Income Tax Assessment Act 1997

15 Subsection 701-55(5C)

Repeal the subsection, substitute:

Rights to future amounts

(5C) If:

(a) the asset's tax cost is set because an entity becomes a *subsidiary member of a *consolidated group at the particular time; and

(b) section 716-410 (rights to amounts that are expected to be included in assessable income) covers the asset at the particular time; and

(c) the asset is *not* a *non-deductible right to future income in relation to the entity;

the expression means that section 716-405 may apply in relation to the asset after the particular time.

16 Subsection 701-55(6)

Repeal the subsection, substitute:

Other provisions

(6) If any provision of this Act that is not mentioned above is to apply in relation to the asset by including an amount in assessable income, or by allowing an amount as a deduction, in a way that brings into account (directly or indirectly) any of the following amounts:

(a) the cost of the asset;

(b) outgoings incurred, or amounts paid, in respect of the asset;

(c) expenditure in respect of the asset;

(d) an amount of a similar kind in respect of the asset;

the expression means that the provision applies, for the purpose of determining the amount included in assessable income or the amount of the deduction, as if the cost, outgoing, expenditure or

other amount had been incurred or paid to acquire the asset at the particular time for an amount equal to its *tax cost setting amount.

Note 1: This subsection modifies the application of the provision only for the purpose of determining the amount included in assessable income or the amount of the deduction. Therefore:

(a) the acquisition mentioned in this subsection is recognised only for that purpose; and

(b) apart from the things mentioned in subsection 701-56(1), that acquisition does not affect the operation of section 701-5 (the entry history rule) in relation to the asset for other purposes.

Note 2: For specific clarifications of the operation of this subsection in relation to bad debts, see Subdivision 716-S.

17 Section 701-56 (heading)

Repeal the heading, substitute:

701-56 Setting the tax cost of an asset—subsection 701-55(6)

18 Before subsection 701-56(3)

Insert:

Entry history rule

(1) To avoid doubt, if subsection 701-55(6) applies in relation to an asset at the time (the ***joining time***) an entity (the ***joining entity***) became a *subsidiary member of a *consolidated group, the things that are taken to have happened in relation to the *head company of the group under section 701-5 (the entry history rule) do not include:

(a) the cost, outgoing, expenditure or other amount incurred or paid to acquire the asset by the joining entity; and

(b) whether the cost, outgoing, expenditure or other amount incurred or paid by the joining entity to acquire the asset has been deducted by the joining entity before the joining time.

Trading stock

(2) Subsection 701-55(6) does not apply in relation to an asset if it is *trading stock.

19 Section 701-63

Repeal the section, substitute:

701-63 Asset forming part of goodwill, right to future income, etc.

(1) Subsection (2) applies if an entity (the ***joining entity***) became a subsidiary member of a *consolidated group at a time (the ***joining time***).

(2) For the purposes of this Part (other than this section):
  (a) treat goodwill of a business of the joining entity as a single asset; and
  (b) treat an asset of that business of the joining entity that is an *asset forming part of goodwill as being part of that single asset; and
  (c) as a result of paragraph (b), do not treat an asset of that business of the joining entity that is an asset forming part of goodwill as a separate asset.

(3) An ***asset forming part of goodwill*** means any of the following:
  (b) a customer relationship asset, know-how asset or other accounting intangible asset, that is *not* any of the following:
    (i) a *CGT asset;
    (ii) a *revenue asset;
    (iii) a *depreciating asset;
    (iv) *trading stock;
    (v) a thing that is or is part of a *Division 230 financial arrangement;
    (vi) goodwill;
    (vii) an excluded asset for the purposes of section 705-35;
  (c) a *non-deductible right to future income.

(4) A *right to future income that is a right of an entity under a contract or agreement with another entity (the customer) is a ***non-deductible right to future income*** in relation to the entity to the extent that the value of the right to future income:
  (a) is contingent on the renewal of the contract or agreement; or
  (b) is attributable to a period (if any) during which the customer can unilaterally cancel the contract or agreement without paying compensation or a penalty; or
  (c) if there is a period during which the customer can unilaterally cancel the contract or agreement, but must pay compensation

or a penalty—is attributable to that period, but not to that compensation or penalty.

(5) A ***right to future income*** is a valuable right (including a contingent right) to receive an amount for the performance of work or services or the provision of goods (other than *trading stock) if:

(a) the valuable right forms part of a contract or agreement; and

(b) the *market value of the valuable right (taking into account all the obligations and conditions relating to the right) is greater than nil; and

(c) the valuable right is neither a *Division 230 financial arrangement nor a part of a Division 230 financial arrangement.

20 At the end of Division 701

Add:

701-90 Right to future income treated as separate asset

(2) Subject to subsection 701-63(2), for the purposes of this Part, treat a *right to future income as a separate asset.

(3) For the purposes of this Part, if:

(a) a *right to future income is treated as a separate asset under subsection (2); and

(b) the contract or agreement mentioned in subsection 701-63(5) in respect of the right to future income also includes one or more other rights;

for the purposes of this Part, treat the contract or agreement (excluding the right to future income) as a separate asset.

(4) For the purposes of this Part:

(a) take into account all the obligations and conditions relating to a *right to future income treated as a separate asset under subsection (2) in working out the *market value of that separate asset; and

(b) if a contract or agreement (excluding the right to future income) is treated as a separate asset under subsection (3)—take into account all the obligations and conditions relating to each right (other than the right to future income) that forms

part of the contract or agreement in working out the market value of that separate asset.

21 Paragraph 705-25(5)(d)

Omit “a right that is an *unbilled income asset”, substitute “a right that is an asset covered by section 716-410 (rights to amounts that are expected to be included in assessable income)”.

22 After section 705-56

Insert:

705-56A Modification for tax cost setting in relation to certain rights to future income

(1) This section applies if, just before the joining time:
  (a) the joining entity *holds an asset; and
  (b) under the terms of a contract or agreement, the joining entity holds a *right to future income arising from the asset; and
  (c) the right to future income is not a *non-deductible right to future income in relation to the joining entity.

(2) Subsection (3) applies if the sum of:
  (a) the *market value of the asset at the joining time (having regard to the *right to future income); and
  (b) the market value of the right to future income at the joining time;

  exceeds the market value of the asset at the joining time (disregarding the right to future income).

(3) For the purposes of paragraph 705-35(1)(c), treat the *market value of the *right to future income as the excess mentioned in subsection (2).

(4) If subsection (3) does not apply:
  (a) the *right to future income is not taken into account under paragraph 705-35(1)(b) or (c); and
  (b) the right to future income’s *tax cost setting amount is taken to be nil.

23 Section 716-405

Repeal the section, substitute:

716-405 Tax cost setting and rights to future income—deduction

(1) This section applies if:

(a) an entity (the ***joining entity***) became a subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) subsection 701-55(5C) applies in relation to the asset at the joining time.

Note: Subsection 701-55(5C) deals with assets covered by section 716-410 (Rights to amounts that are expected to be included in assessable income after joining time).

(2) An entity qualified for a deduction under subsection (5) for the asset for an income year ending after the joining time can deduct, for that income year:

(a) unless paragraph (b) applies—the amount determined under subsection (3A); or

(b) if it is reasonable to expect that no amount will be included in the assessable income of an entity qualified for a deduction under subsection (5) for the asset for any later income year—the *unexpended tax cost setting amount for the asset for that income year.

(3) Paragraph (2)(b) does not apply in relation to an entity qualified for a deduction under subsection (5) for the asset for that income year if:

(a) the entity is the *head company of the group; and

(b) another entity ceased to be a *subsidiary member of the group in that income year; and

(c) the other entity can deduct an amount under subsection (2) for that income year because it is also qualified for a deduction under subsection (5) for the asset for that income year.

(3A) For the purposes of paragraph (2)(a), the amount is the lesser of the following:

(a) the *unexpended tax cost setting amount for the asset for that income year;

(b) the unexpended tax cost setting amount for the asset for the first income year ending after the joining time, divided by the lesser of:

(i) 10; or

(ii) if the contract or agreement giving rise to the *right to future income mentioned in paragraph 716-410(a) is for a specified period—the number of days in that period that end after the joining time, divided by 365 and rounded upwards to the nearest whole number.

(4) The ***unexpended tax cost setting amount*** for the asset for an income year is the *tax cost setting amount for the asset, reduced by:

(a) the amounts (if any) of all deductions under this section in respect of the asset for previous income years ending after the joining time; and

(b) in determining the amount of a deduction under this section in respect of the asset for that income year for an entity that ceased to be a *subsidiary member of the group in that income year—the amount (if any) that the *head company of the group can deduct under this section in respect of the asset for that income year.

(5) An entity is qualified for a deduction under this subsection for an income year for the asset if:

(a) the entity:

(i) is the *head company of the group; and

(ii) held the asset at a time in that income year (whether or not because of the operation of subsection 701-1(1) (the single entity rule)); or

(b) the entity:

(i) held the asset at a time in that income year; and

(ii) ceased to be a *subsidiary member of the group in that income year or an earlier income year.

(6) An amount deducted under this section:

(a) is not to be deducted under any other provision of this Act; and

(b) is not to be taken into account in determining an amount that is included in the assessable income of any entity qualified

for a deduction under subsection (5) for any income year for the asset; and

(c) is not to be taken into account in determining an amount of a deduction of any entity qualified for a deduction under subsection (5) for any income year for the asset; and

(d) despite paragraphs (b) and (c), is taken never to have been included in any of the elements of the *cost base of the asset.

24 At the end of paragraph 716-410(a)

Add:

Note: Such a right might be treated as a separate asset for the purposes of this Part (see subsection 701-90(2)).

25 Subsection 995-1(1) (definition of *unbilled income asset*)

Repeal the definition.

Part 3—Prospective rules

Income Tax Assessment Act 1997

26 Section 12-5 (table item headed "consolidated groups and MEC groups")

Omit:

rights to future income 716-405

27 Subsection 701-10(7)

Repeal the subsection.

28 Subsection 701-55(5C)

Repeal the subsection, substitute:

WIP amount assets

(5C) If:

(a) the asset's tax cost is set because an entity becomes a *subsidiary member of a *consolidated group at the particular time; and

(b) the asset is a *WIP amount asset;

the expression means that section 25-95 applies as if the *head company had paid a *work in progress amount for the income year in which the particular time occurs equal to the *tax cost setting amount of the asset.

29 Subsection 701-55(6) (note 1)

Repeal the note.

30 Section 701-56 (heading)

Repeal the heading, substitute:

701-56 Application of subsection 701-55(6)

31 Subsections 701-56(1) and (2)

Repeal the subsections, substitute:

(1) Subsection (2) applies in relation to each asset that would be an asset of an entity at the time (the ***joining time***) it becomes a *subsidiary member of a *consolidated group, assuming that subsection 701-1(1) (the single entity rule) did not apply.

(1A) Subsection (2) applies only to the extent necessary for the purposes of subsection 701-55(6) to determine whether a provision of this Act is to apply in relation to each of those assets on and after the joining time.

(1B) Subsection (2) applies despite section 701-5 (the entry history rule).

(2) Treat the *head company as having acquired each of those assets at the joining time as part of acquiring the business of the joining entity as a going concern.

32 Paragraph 701-56(3)(d)

Omit “, other than section 40-880 (Business related costs)”.

33 Section 701-63

Repeal the section, substitute:

701-63 *Right to future income* and *WIP amount asset*

(5) A ***right to future income*** is a valuable right (including a contingent right) to receive an amount if:

(a) the valuable right forms part of a contract or agreement; and

(b) the *market value of the valuable right (taking into account all the obligations and conditions relating to the right) is greater than nil; and

(c) the valuable right is neither a *Division 230 financial arrangement nor a part of a Division 230 financial arrangement; and

(d) it is reasonable to expect that an amount attributable to the right will be included in the assessable income of any entity at a later time.

(6) ***WIP amount asset*** means an asset that is in respect of work (but not goods) that has been partially performed by a recipient mentioned in paragraph 25-95(3)(b) for a third entity but not yet

completed to the stage where a recoverable debt has arisen in respect of the completion or partial completion of the work.

34 After section 701-65

Insert:

701-67 Assets in this Part are CGT assets, etc.

This Part applies to an asset only if the asset is one or more of the following:

(a) a *CGT asset;

(b) a *revenue asset;

(c) a *depreciating asset;

(d) *trading stock;

(e) a thing that is or is part of a *Division 230 financial arrangement.

35 Section 701-90

Repeal the section.

36 Paragraph 705-25(5)(d)

Repeal the paragraph, substitute:

(d) a *right to future income (other than a *WIP amount asset).

37 Subsection 705-35(1)

Omit “or an asset (an ***excluded asset***) covered by subsection (2)”.

38 Paragraph 705-35(1)(c)

Omit “(other than excluded assets)”.

39 Subsection 705-35(2)

Repeal the subsection.

40 Subsection 705-40(2)

Omit “other than excluded assets”.

41 Paragraph 705-40(3)(c)

Omit “(other than excluded assets)”.

42 Section 705-56A

Repeal the section.

43 Section 716-405

Repeal the section.

44 Section 716-410

Repeal the section.

45 Subsection 995-1(1) (definition of *asset forming part of goodwill*)

Repeal the definition.

46 Subsection 995-1(1) (definition of *non-deductible right to future income*)

Repeal the definition.

47 Subsection 995-1(1) (definition of *unexpended tax cost setting amount*)

Repeal the definition.

48 Subsection 995-1(1)

Insert:

> ***WIP amount asset*** has the meaning given by subsection 701-63(6).

Part 4—Application

49 Interpretation

In this Part:

2010 Act means the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*.

interim rules means the amendments made by Parts 1 and 2 of this Schedule.

original 2002 law means the *Income Tax Assessment Act 1997* (disregarding amendments to that Act made by Division 1 of Part 1 and Division 2 of Part 11 of Schedule 5 to the 2010 Act and by this Schedule).

original 2010 law means the *Income Tax Assessment Act 1997* (as amended by the 2010 Act, but disregarding amendments made by this Schedule).

pre rules means the amendments made by Part 1 of this Schedule.

prospective rules means the amendments made by Parts 1, 2 and 3 of this Schedule.

50 Main application rules

(1) The pre rules, interim rules or prospective rules apply to an assessment of the head company of a consolidated group or MEC group for an income year in respect of an entity (the ***joining entity***) that becomes a member of the group at a time (the ***joining time***), in accordance with subitems (2), (3), (4) and (5).

(2) The pre rules apply, for the income year in respect of the joining entity, if:

(a) the joining time is before 12 May 2010; or

(b) the arrangement under which the joining entity joined the group commenced (see item 52) before 10 February 2010.

(3) Despite subitem (2), the interim rules apply, for the income year in respect of the joining entity, if:

(a) both of these conditions are satisfied:

(i) apart from this subitem, the pre rules would apply, for the income year in respect of the joining entity, in accordance with subitem (2);

(ii) the head company's latest notice of assessment, for the income year, that relates to the application of the original 2010 law in respect of the joining entity, was served on the head company by the Commissioner on or after 12 May 2010 and on or before 30 March 2011; or

(b) both of these conditions are satisfied:

(i) the joining time is on or after 12 May 2010;

(ii) the arrangement under which the joining entity joined the group commenced (see item 52) on or after 10 February 2010 and on or before 30 March 2011.

(4) The prospective rules apply, for the income year in respect of the joining entity, if:

(a) the joining time is on or after 31 March 2011; and

(b) neither subitem (2) nor (3) applies.

(5) Despite subitems (2) and (3), the original 2002 law applies, for the income year in respect of the joining entity, if the head company's latest notice of assessment, for the income year, that relates to the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity, was served on the head company by the Commissioner before 12 May 2010.

(6) Subitem (5) does not apply if:

(a) the head company requests an amendment of the assessment and the amendment relates to the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity; or

(b) the amendment of the assessment, if made:

(i) would relate to an asset of a kind mentioned in paragraph 701-63(3)(b) of the original 2010 law as amended by the pre rules; and

(ii) would not be consistent with the outcome that arises under the pre rules for assets of that kind.

51 Special rule for private rulings etc.

(1) This item applies to:

(a) a private ruling issued before 31 March 2011; or

(b) a written advice given by the Commissioner before 31 March 2011 under an Annual Compliance Arrangement;

to the extent that the ruling or advice has effect in relation to the application of subsection 701-55(5C) or (6) of the original 2010 law in respect of the joining entity mentioned in item 50.

(2) Item 50 does not affect that effect of the ruling or advice.

(3) However, if the head company requests an amendment of the assessment mentioned in item 50 after the issue of the ruling or the giving of the advice, this item does not apply to the extent that the request is inconsistent with or contrary to the ruling or advice.

52 Commencement of arrangement

(1) Subitems (2), (3) and (4) specify, for the purpose of this Part, the time of commencement of the arrangement under which the joining entity mentioned in item 50 joined the group.

(2) If the arrangement is or relates to a takeover bid (within the meaning of the *Corporations Act 2001*) the time is when:

(a) for an off-market bid (within the meaning of that Act)—step 4 of the table in subsection 633(1) of that Act is completed; or

(b) for a market bid (within the meaning of that Act)—step 2 of the table in subsection 635(1) of that Act is completed.

(3) If a court orders, under subsection 411(1) of the *Corporations Act 2001*:

(a) a meeting or meetings of a company's members about the arrangement; or

(b) a meeting or meetings of one or more classes of a company's members about the arrangement;

the time is when the application for the order was made.

(4) If subitem (2) or (3) does not apply, the time is when the decision to enter into the arrangement was made.

[*Minister's second reading speech made in—*
House of Representatives on 24 May 2012
Senate on 21 June 2012]

(105/12)