# Tax Laws Amendment (2012 Measures No. 6) Act 2013

# No. 84, 2013

## An Act to amend the law relating to taxation and superannuation, 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. 6) Act 2013

**No. 84, 2013**

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

[*Assented to 28 June 2013*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Tax Laws Amendment (2012 Measures No. 6) Act 2013*.

## 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. | 28 June 2013 |
| 2. Schedules 1 to 7 | The day this Act receives the Royal Assent. | 28 June 2013 |
| 3. Schedule 8, Part 1 | 1 July 2007. | 1 July 2007 |
| 4. Schedule 8, Part 2 | The day this Act receives the Royal Assent. | 28 June 2013 |

Note: This table relates only to the provisions of this Act as originally enacted.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)

(1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

## 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 purposes of giving effect to Part 1 of Schedule 1 (about the tax treatment of native title benefits) to this Act.

# Schedule 1—Tax treatment of native title benefits

## Part 1—Main amendments

### *Income Tax Assessment Act 1936*

#### 1 Subsection 128U(1) (definition of *mining payment*)

Omit all the words after "but does not", substitute:

include:

(d) a payment made by a distributing body; or

(e) a native title benefit (within the meaning of the *Income Tax Assessment Act 1997*).

### *Income Tax Assessment Act 1997*

#### 2 Section 11-55 (after table item headed "National Rental Affordability Scheme")

Insert:

**native title benefits**

native title benefits ..... 59-50

#### 3 After section 59-45

Insert:

#### 59-50 Native title benefits

(1) To the extent that a *native title benefit would otherwise be included in your assessable income, it is not assessable income and is not *exempt income if you are an *Indigenous person or an *Indigenous holding entity.

(2) To the extent that an amount, or other benefit, arising directly or indirectly from a *native title benefit would otherwise be included in your assessable income, it is not assessable income and is not *exempt income if you are an *Indigenous person or an *Indigenous holding entity.

(3) Neither subsection (1) nor (2) applies to an amount, or benefit, to the extent that it:

(a) is for the purposes of meeting the provider's administrative costs; or

(b) is remuneration or consideration for the provision of goods or services.

(4) Subsection (2) does not apply to an amount, or benefit, to the extent that it arises directly or indirectly:

(a) from so much of:

(i) the *native title benefit; or

(ii) an amount, or benefit, arising directly or indirectly from the native title benefit;

as is not *non-assessable non-exempt income of an entity because of this section; or

(b) from an entity investing any or all of:

(i) the native title benefit; or

(ii) an amount, or benefit, arising directly or indirectly from the native title benefit.

(5) A ***native title benefit*** is an amount, or *non-cash benefit, that:

(a) arises under:

(i) an agreement made under an Act of the Commonwealth, a State or a Territory, or under an instrument made under such an Act; or

(ii) an ancillary agreement to such an agreement;

to the extent that the amount or benefit relates to an act that would extinguish *native title or that would otherwise be wholly or partly inconsistent with the continued existence, enjoyment or exercise of native title; or

(b) is compensation determined in accordance with Division 5 of Part 2 of the *Native Title Act 1993*.

Note 1: Agreements that can be covered by paragraph (a) include:

(a) indigenous land use agreements (within the meaning of the *Native Title Act 1993*); and

(b) an agreement of the kind mentioned in paragraph 31(1)(b) of that Act; and

(c) recognition and settlement agreements (within the meaning of the *Traditional Owner Settlement Act 2010* (Vic.)).

Note 2: Paragraph (a) does not require a determination of native title under the *Native Title Act 1993*.

(6) An ***Indigenous holding entity*** is:

(a) a *distributing body; or

(b) a trust, if the beneficiaries of the trust can only be *Indigenous persons or distributing bodies.

## 4 After section 118-75

Insert:

### 118-77 Native title and rights to native title benefits

(1) A *capital gain or *capital loss you make is disregarded if:

(a) you are an *Indigenous person or an *Indigenous holding entity; and

(b) you make the gain or loss because one of the following things happens in relation to a *CGT asset mentioned in subsection (2):

(i) you transfer the CGT asset to one or more entities that are either Indigenous persons or Indigenous holding entities;

(ii) you create a trust, that is an Indigenous holding entity, over the CGT asset;

(iii) your ownership of the CGT asset ends, resulting in *CGT event C2 happening in relation to the CGT asset.

(2) The *CGT assets are as follows:

(a) *native title;

(b) the right to be provided with a *native title benefit.

Note: Paragraph (a) does not require a determination of native title under the *Native Title Act 1993*.

## 5 Subsection 995-1(1)

Insert:

***Indigenous holding entity*** has the meaning given by subsection 59-50(6).

## 6 Subsection 995-1(1)

Insert:

***Indigenous person*** means an individual who is:

(a) a member of the Aboriginal race of Australia; or
(b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

## 7 Subsection 995-1(1)

Insert:

***native title*** has the same meaning as in the *Native Title Act 1993*.

## 8 Subsection 995-1(1)

Insert:

***native title benefit*** has the meaning given by subsection 59-50(5).

## 9 Application of amendments

(1) The amendments made by items 1, 2 and 3 apply in relation to income years starting on or after 1 July 2008.

(2) The amendment made by item 4 applies in relation to CGT events happening on or after 1 July 2008.

# Part 2—Other amendments

## *Income Tax Assessment Act 1936*

### 10 Subsection 6(1)

Insert:

***Indigenous land*** has the same meaning as in the *Income Tax Assessment Act 1997*.

### 11 Subsection 6(1)

Insert:

***Indigenous person*** has the same meaning as in the *Income Tax Assessment Act 1997*.

### 12 Division 11C of Part III (heading)

Repeal the heading, substitute:

## Division 11C—Payments in respect of mining operations on Indigenous land

### 13 Subsection 128U(1) (definition of *Aboriginal*)

Repeal the definition.

### 14 Subsection 128U(1) (definition of *Aboriginal land*)

Repeal the definition.

### 15 Subsection 128U(1) (subparagraphs (d)(i) and (ii) of the definition of *distributing body*)

Omit "Aboriginals" (wherever occurring), substitute "Indigenous persons".

### 16 Subsection 128U(1) (definition of *mining payment*)

Omit "Aboriginal or Aboriginals", substitute "Indigenous person or persons".

### 17 Subsection 128U(1) (paragraph (c) of the definition of *mining payment*)

Omit "Aboriginals", substitute "Indigenous persons".

### 18 Subsection 128U(1) (subparagraphs (c)(i), (ii) and (iii) of the definition of *mining payment*)

Omit "Aboriginal land" (wherever occurring), substitute "Indigenous land".

## *Income Tax Assessment Act 1997*

### 19 Section 11-55 (table item headed "mining")

Omit "Aboriginals", substitute "Indigenous persons".

### 20 Subsection 30-300(2)

Omit "Aboriginal arts", substitute "arts of *Indigenous persons".

### 21 Paragraphs 59-15(1)(b) and (2)(b)

Omit "*Aboriginals", substitute "*Indigenous persons".

### 22 Subsection 995-1(1) (definition of *Aboriginal*)

Repeal the definition.

### 23 Subsection 995-1(1)

Insert:

> ***Indigenous land*** means any estate or interest in land that, under an *Australian law relating to *Indigenous persons, is held for the use or benefit of Indigenous persons.

# Schedule 2—Deductible gift recipients

## *Income Tax Assessment Act 1997*

### 1 Subsection 30-25(2) (table item 2.2.34)

Omit "1 July 2012", substitute "1 July 2015".

### 2 Subsection 30-25(2) (table item 2.2.38)

Omit "1 July 2012", substitute "1 July 2016".

### 3 Subsection 30-25(2) (at the end of the table)

Add:

| | | |
|---|---|---|
| 2.2.41 | Teach for Australia | the gift must be made after 31 December 2012 |

### 4 Subsection 30-80(2) (after table item 9.2.8)

Insert:

| | | |
|---|---|---|
| 9.2.9 | AE1 Inc | the gift must be made after 25 September 2011 and before 26 September 2014 |

### 5 Subsection 30-80(2) (table item 9.2.10)

Omit "and before 28 June 2012".

### 6 Subsection 30-80(2) (table item 9.2.24 (table item dealing with Rhodes Trust in Australia))

Omit "9.2.24", substitute "9.2.25".

Note: This item corrects duplicated numbering.

### 7 Section 30-315 (after table item 2AAB)

Insert:

| | | |
|---|---|---|
| 2AAC | AE1 Inc | item 9.2.9 |

### 8 Section 30-315 (table item 97AAA)

Omit "9.2.24", substitute "9.2.25".

Note: This item is consequential on item 6.

## 9 Section 30-315 (after table item 114)

Insert:

| | | |
|---|---|---|
| 114A | Teach for Australia | item 2.2.41 |

# Schedule 3—Geothermal energy

## *Income Tax Assessment Act 1997*

### 1 Section 10-5 (after table item headed "general insurance companies and companies that self insure")

Insert:

| | |
|---|---|
| **geothermal energy** | |
| providing geothermal exploration information | 15-40 |

### 2 Section 12-5 (table item headed "capital allowances")

Omit:

| | |
|---|---|
| exploration or prospecting | 40-80(1), 40-730 |

substitute:

| | |
|---|---|
| exploration or prospecting | 40-80(1) and (1A), 40-730 |
| geothermal exploration information | Subdivision 40-B |
| geothermal exploration rights | Subdivision 40-B |

### 3 Section 15-40 (heading)

Repeal the heading, substitute:

**15-40 Providing mining, quarrying or prospecting information or geothermal exploration information**

### 4 Section 15-40

After "prospecting information", insert "or *geothermal exploration information".

### 5 After paragraph 40-30(2)(b)

Insert:

(ba) *geothermal exploration rights;

(bb) *geothermal exploration information;

### 6 Section 40-40 (after table item 9)

Insert:

| | | |
|---|---|---|
| 9A | *Geothermal exploration information that an entity | The entity |

has and that is relevant to:

(a) *geothermal energy extraction carried on, or proposed to be carried on, by the entity; or

(b) a *business carried on by the entity that includes *exploration or prospecting for *geothermal energy resources from which energy can be extracted by geothermal energy extraction;

whether or not the information is generally available

## 7 After subsection 40-80(1)

Insert:

(1A) The decline in value of a *depreciating asset you *hold is the asset's *cost if:

(a) you first use the asset for *exploration or prospecting for *geothermal energy resources from which energy can be extracted by *geothermal energy extraction; and

(b) when you first use the asset, you do not use it for:

(i) development drilling for geothermal energy resources; or

(ii) operations in the course of working a property containing geothermal energy resources; and

(c) you satisfy one or more of these subparagraphs at the asset's *start time:

(i) you carry on geothermal energy extraction;

(ii) it would be reasonable to conclude you proposed to carry on geothermal energy extraction;

(iii) you carry on a *business of, or a business that included, exploration or prospecting for geothermal energy resources from which energy can be extracted by geothermal energy extraction, and expenditure on the asset was necessarily incurred in carrying on that business.

## 8 Subsection 40-290(5)

Repeal the subsection, substitute:

*Exception: mining, quarrying or prospecting information and geothermal exploration information*

(5) This section does not apply to *mining, quarrying or prospecting information or *geothermal exploration information.

## 9 Subsection 40-300(2) (at the end of the table)

Add:

| | | |
|---|---|---|
| 12 | You stop *holding a *geothermal exploration right relating to an area because you *acquire a *geothermal energy extraction right relating to the same area or an area that is not significantly different | Zero |

## 10 Paragraph 40-630(1)(b)

After "operations", insert "or *geothermal energy extraction".

## 11 Subsection 40-630(1) (note)

After "operations", insert "or geothermal energy extraction".

## 12 Paragraphs 40-630(1A)(b), (1B)(b) and (3)(b)

After "operations", insert "or *geothermal energy extraction".

## 13 Paragraph 40-650(3)(a)

After "operations", insert "or *geothermal energy extraction".

## 14 At the end of paragraph 40-650(3)(b)

Add "or that extraction".

## 15 Before subsection 40-730(1)

Insert:

*Exploration or prospecting for minerals or quarry materials*

## 16 After subsection 40-730(2)

Insert:

*Exploration or prospecting for geothermal energy resources*

(2A) You can deduct expenditure you incur in an income year on *exploration or prospecting for *geothermal energy resources from which energy can be extracted by *geothermal energy extraction if:

(a) you carried on geothermal energy extraction; or

(b) it would be reasonable to conclude you proposed to carry on geothermal energy extraction; or

(c) you carried on a *business of, or a business that included, exploration or prospecting for geothermal energy resources from which energy can be extracted by geothermal energy extraction, and the expenditure was necessarily incurred in carrying on that business.

(2B) However, you cannot deduct expenditure under subsection (2A) if it is expenditure on:

(a) development drilling for *geothermal energy resources; or

(b) operations in the course of working a property containing geothermal energy resources.

*No deduction under this section for cost of depreciating asset*

## 17 Subsection 40-730(3)

Omit "Also, you cannot deduct expenditure under subsection (1)", substitute "You cannot deduct expenditure under subsection (1) or (2A)".

## 18 Before subsection 40-730(4)

Insert:

*Definitions*

## 19 Paragraph 40-730(4)(b)

After "petroleum mining", insert "and for *geothermal energy resources".

## 20 Paragraph 40-730(4)(c)

After "materials", insert ", or of extracting energy from geothermal energy resources,".

## 21 At the end of subsection 40-730(4)

Add:

; and (e) obtaining *geothermal exploration information associated with the search for, and evaluation of, areas containing geothermal energy resources.

## 22 After subsection 40-730(7)

Insert:

(7A) ***Geothermal energy resources*** means matter occurring naturally within the Earth and containing energy as heat.

(7B) ***Geothermal energy extraction*** means operations that are for:

(a) the extraction of energy from *geothermal energy resources; and

(b) the *purpose of producing assessable income.

## 23 At the end of section 40-730

Add:

(9) ***Geothermal exploration information*** is geological, geophysical or technical information that:

(a) relates to the presence, absence or extent of *geothermal energy resources in an area; or

(b) is likely to help in determining the presence, absence or extent of such resources in an area.

## 24 Subparagraph 43-70(2)(fa)(iv)

After "40-80(1)", insert "or (1A)".

## 25 At the end of Subdivision 112-A

Add:

### 112-38 Geothermal extraction rights

The first element of the *cost base and *reduced cost base of a *geothermal energy extraction right is nil if:

(a) you *acquire the right because you *held a *geothermal exploration right; and

(b) you stopped holding the geothermal exploration right because you acquired the geothermal energy extraction right; and

(c) the area the geothermal energy extraction right relates to is the same as, or not significantly different from, the area the geothermal exploration right related to.

## 26 After paragraph 165-55(2)(b)

Insert:

(ba) deductions for exploration or prospecting for *geothermal energy resources (see section 40-80 and Subdivision 40-H);

## 27 Paragraphs 716-300(1)(b) and (c)

After "40-80(1)", insert "or (1A)".

## 28 Subsection 716-300(1) (note)

Omit "Subsection 40-80(1), which is in that Subdivision, provides", substitute "Subsections 40-80(1) and (1A), which are in that Subdivision, provide".

## 29 Subsection 995-1(1)

Insert:

***geothermal energy extraction*** has the meaning given by subsection 40-730(7B).

## 30 Subsection 995-1(1)

Insert:

***geothermal energy extraction right*** means:

(a) an authority, licence, permit or right under an *Australian law to carry on *geothermal energy extraction; or

(b) a lease of land that allows the lessee to carry on geothermal energy extraction on the land; or

(c) an interest in such an authority, licence, permit, right or lease.

## 31 Subsection 995-1(1)

Insert:

***geothermal energy resources*** has the meaning given by subsection 40-730(7A).

## 32 Subsection 995-1(1)

Insert:

***geothermal exploration information*** has the meaning given by subsection 40-730(9).

## 33 Subsection 995-1(1)

Insert:

***geothermal exploration right*** means:

(a) an authority, licence, permit or right under an *Australian law to explore for *geothermal energy resources; or

(b) a lease of land that allows the lessee to explore for geothermal energy resources on the land; or

(c) an interest in such an authority, licence, permit, right or lease.

## 34 Application of amendments

(1) The amendments of section 15-40 of the *Income Tax Assessment Act 1997* made by this Schedule apply to amounts received on or after 1 July 2012.

(2) The amendments of sections 40-30, 40-40, 40-80, 40-290 and 716-300 of the *Income Tax Assessment Act 1997* made by this Schedule apply to depreciating assets whose start time is on or after 1 July 2012.

(3) The amendment of section 40-300 of the *Income Tax Assessment Act 1997* made by this Schedule applies to depreciating assets that started to be held on or after 1 July 2012.

(4) The amendments of sections 40-630 and 40-650 and subsection 40-730(3) of the *Income Tax Assessment Act 1997* made by this Schedule apply to expenditure incurred on or after 1 July 2012.

(5) Subsections 40-730(2A) and (2B) of the *Income Tax Assessment Act 1997* apply to expenditure incurred on or after 1 July 2012.

(6) Section 112-38 of the *Income Tax Assessment Act 1997* applies to geothermal energy extraction rights acquired on or after 1 July 2012.

# Schedule 4—Extension of interim streaming provisions for managed investment trusts

## *Tax Laws Amendment (2011 Measures No. 5) Act 2011*

### 1 Subitem 51(5) of Schedule 2 (heading)

Repeal the heading, substitute:

*MITs and the 2010-11, 2011-12, 2012-13 and 2013-14 income years*

### 2 Subitem 51(6) of Schedule 2

Repeal the subitem, substitute:

(6) The amendments made by this Schedule do not apply to an assessment for an income year mentioned in paragraph (7)(c) unless the trustee of the entity makes a choice in accordance with subitem (7) in relation to the income year or an earlier income year.

### 3 At the end of subitem 51(7) of Schedule 2

Add:

; and (c) can only be made in relation to the following income years:

(i) the 2010-11 income year;

(ii) the 2011-12 income year;

(iii) the 2012-13 income year;

(iv) the 2013-14 income year.

# Schedule 5—Rebate for medical expenses

## *Income Tax Assessment Act 1936*

### 1 Subsection 6(1)

Insert:

***adjusted taxable income for rebates*** means adjusted taxable income (within the meaning of the *A New Tax System (Family Assistance) Act 1999*, disregarding clauses 3 and 3A of Schedule 3 to that Act).

### 2 Subsection 6(1)

Insert:

***family tier 1 threshold*** has the meaning given by the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

### 3 Subsection 6(1)

Insert:

***medical expense rebate higher phase-in limit*** has the meaning given by subsection 159Q(5).

### 4 Subsection 6(1)

Insert:

***medical expense rebate lower phase-in limit*** has the meaning given by subsection 159Q(6).

### 5 Subsection 6(1)

Insert:

***rebatable medical expense amount*** has the meaning given by subsections 159P(1) and (3).

### 6 Subsection 6(1)

Insert:

***singles tier 1 threshold*** has the meaning given by the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

## 7 Section 159HA (heading)

Omit "**sections 159J, 159L and 159P**", substitute "**this Subdivision**".

## 8 Subsection 159HA(1)

Omit "159P", substitute "159Q".

## 9 Subsection 159HA(7) (definition of *indexable amount*)

Repeal the definition, substitute:

***indexable amount*** means:

(a) an amount mentioned in column 1 of an item of the following table; or

(b) if that amount has been altered under this section in relation to the year of income mentioned in column 2 of the item, or a later year of income—the altered amount:

**Indexable amounts**

| Item | Column 1<br>Indexable amount | Column 2<br>First indexable year |
|---|---|---|
| 1 | the amount specified in:<br>(a) paragraph 23AB(7A)(a); or<br>(b) paragraph (d) of the definition of ***relevant rebate amount*** in subsection 79A(4); or<br>(c) paragraph (d) of the definition of ***concessional rebate amount*** in subsection 79B(6) | the 2008-09 year of income |
| 2 | an amount specified in subsection 159J(1B) or (2) (other than the amounts specified in column 3 of the table in subsection 159J(2) in respect of a dependant included in class 3 or 4) | the 2008-09 year of income |
| 3 | the amounts specified in subsection 159L(2) | the 2008-09 year of income |
| 4 | the amount specified in subsection 159Q(5) (medical expense rebate higher | the 2013-14 year of income |

| Indexable amounts | | |
|---|---|---|
| **Item** | **Column 1**<br>**Indexable amount** | **Column 2**<br>**First indexable year** |
| | phase-in limit) | |
| 5 | the amount specified in subsection 159Q(6) (medical expense rebate lower phase-in limit) | the 2011-12 year of income |

## 10 Paragraphs 159J(1AB)(a) and (1AC)(a) and (b)

Omit "adjusted taxable income", substitute "adjusted taxable income for rebates".

## 11 Paragraph 159J(1AC)(c) (formula)

Repeal the formula, substitute:

$$\text{Spouse's adjusted taxable income for rebates for the year} \times \frac{\text{Numbers of days a spouse}}{\text{Number of days in the year}}$$

## 12 Subsection 159J(1AC) (note)

Omit "adjusted taxable income", substitute "adjusted taxable income for rebates".

## 13 Subsections 159J(4) and (5)

Omit "adjusted taxable income", substitute "adjusted taxable income for rebates".

## 14 Subsection 159J(6) (definition of *adjusted taxable income*)

Repeal the definition.

## 15 Before subsection 159P(1)

Insert:

*Definition of* ***rebatable medical expense amount***

## 16 Subsections 159P(1) and (3)

Omit "shall, for the purposes of this section, be treated as a rebatable amount", substitute "is a ***rebatable medical expense amount***".

## 17 Subsection 159P(3A)

Repeal the subsection, substitute:

*Rebate*

(3A) A taxpayer is entitled to a rebate of tax in the taxpayer's assessment in respect of income of a year of income if one or more rebatable medical expense amounts are applicable to the taxpayer in respect of the year.

(3AA) The amount of the rebate is:

(a) if the medical expense rebate higher phase-in limit applies—10% of the amount by which the total of the rebatable medical expense amounts exceeds the medical expense rebate higher phase-in limit; or

(b) otherwise—20% of the amount by which the total of the rebatable medical expense amounts exceeds the medical expense rebate lower phase-in limit.

Note: For the phase-in limits, see section 159Q.

## 18 Subsection 159P(3B)

Omit "treated, for the purposes of this section, as a rebatable amount", substitute "a rebatable medical expense amount".

## 19 Before subsection 159P(4)

Insert:

*Other definitions*

## 20 At the end of Subdivision A of Division 17 of Part III

Add:

### 159Q Rebate for medical expenses—phase-in limits

*When medical expense rebate higher phase-in limit applies*

(1) The medical expense rebate higher phase-in limit applies if:

(a) an item of the following table applies to the following individual (the ***principal individual***) for the year of income:

(i) other than in a case to which subparagraph (ii) applies—the taxpayer;

(ii) in the case of an assessment mentioned in paragraph 159P(3)(a)—the beneficiary; and

(b) the amount mentioned in column 2 of the item exceeds the threshold mentioned in column 3 of the item.

**When medical expense rebate higher phase-in limit applies**

| Item | Column 1<br>This item applies to the principal individual for a year of income if: | Column 2<br>Income amount | Column 3<br>Threshold |
|---|---|---|---|
| 1 | on the last day of the year, the principal individual is married (within the meaning of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*). | the total of:<br>(a) the principal individual's adjusted taxable income for rebates for the year; and<br>(b) the adjusted taxable income for rebates for the year of the individual to whom the principal individual is married | the principal individual's family tier 1 threshold for the year |
| 2 | (a) item 1 does not apply; and<br>(b) on any day in the year, the principal individual has one or more dependants (within the meaning of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*). | the principal individual's adjusted taxable income for rebates for the year | the principal individual's family tier 1 threshold for the year |
| 3 | items 1 and 2 do not apply. | the principal individual's adjusted taxable income for rebates for the year | the principal individual's singles tier 1 threshold for the year |

(2) The reference in item 1 of the table in subsection (1) to the last day of the year is treated as being a reference to the day the principal individual dies, if the principal individual dies during the year.

(3) Despite section 5 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*, for the purposes of item 2 of the table in subsection (1) of this section, an individual is treated as not being a dependant of the principal individual on a day if the individual is married (within the meaning of that Act) to the principal individual on that day.

(4) In the case of an assessment mentioned in paragraph 159P(3)(a), treat a reference in the table in subsection (1) to the principal individual's adjusted taxable income for rebates for the year as being a reference to the amount in respect of which the trustee is liable to be assessed, as mentioned in that paragraph.

*Phase-in limits*

(5) The ***medical expense rebate higher phase-in limit*** is $5,000.

Note: This amount is indexed annually: see section 159HA.

(6) The ***medical expense rebate lower phase-in limit*** is $2,000.

Note: This amount is indexed annually: see section 159HA.

## 21 Application of amendments

The amendments made by this Schedule apply to assessments for the 2012-13 year of income and later years of income.

# Schedule 6—Limited recourse debt

## *Income Tax Assessment Act 1997*

### 1 Subsection 243-20(2)

Repeal the subsection, substitute:

(2) An obligation imposed by law on an entity (the ***debtor***) to pay an amount to another entity (the ***creditor***) is also a ***limited recourse debt*** if it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest:

(a) are capable of being limited in the way mentioned in subsection (1); or

(b) are in substance or effect limited wholly or predominantly to rights (including the right to money payable) in relation to any or all of the following:

(i) the *debt property or the use of the debt property;

(ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;

(iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property.

Note: Paragraph (b) could apply to a special purpose entity. For example, an entity's only significant asset is one that it financed by way of a bank loan. The bank's rights to recover the debt (if the entity defaults) are not contractually limited, however they are in effect limited to rights in relation to the asset.

### 2 Subsection 243-20(3)

Omit the second sentence.

### 3 After subsection 243-20(3)

Insert:

(3A) In reaching a conclusion for the purposes of subsection (2) or (3), have regard to the following:

(a) the debtor's assets (other than assets that are indemnities or guarantees provided in relation to the debt);

(b) any *arrangement to which the debtor is a party;

(c) except for the purposes of paragraph (2)(b)—whether all of the debtor's assets would be available for the purpose of discharging the debt (other than assets that are security for other debts of the debtor or any other entity);

(d) whether the debtor and creditor are dealing at *arm's length in relation to the debt.

## 4 Application of amendments

The amendments made by this Schedule apply in relation to debt arrangements terminated at or after 7.30 pm, by legal time in the Australian Capital Territory, on 8 May 2012.

# Schedule 7—In-house fringe benefits under salary packaging arrangements

## *Fringe Benefits Tax Assessment Act 1986*

### 1 Subsection 41(2)

Repeal the subsection, substitute:

(2) This section does not apply to food or drink provided to, and consumed by, an employee if the food or drink is provided under a salary packaging arrangement.

### 2 Before paragraph 42(1)(a)

Insert:

(aa) if the recipient's property was provided to the recipient under a salary packaging arrangement—an amount equal to the notional value of the recipient's property at the provision time; or

### 3 Paragraph 42(1)(a)

Omit "if the recipient's property", substitute "if paragraph (aa) does not apply and the recipient's property".

### 4 Paragraph 42(1)(b)

Omit "if paragraph (a) does not apply", substitute "if neither paragraph (aa) nor (a) applies".

### 5 At the end of paragraphs 47(1)(a), (b), (c) and (e)

Add "and".

### 6 After paragraph 47(1)(e)

Insert:

(f) the benefit is not provided under a salary packaging arrangement;

### 7 Before paragraph 48(a)

Insert:

(aa) if the benefit was provided to the recipient under a salary packaging arrangement—an amount equal to the notional value of the benefit at the comparison time; or

## 8 Paragraph 48(a)

Omit "where", substitute "if paragraph (aa) does not apply and".

## 9 Before paragraph 49(a)

Insert:

(aa) if the benefit was provided to the recipient under a salary packaging arrangement—an amount equal to the notional value of the benefit at the comparison time; or

## 10 Paragraph 49(a)

Omit "where", substitute "if paragraph (aa) does not apply and".

## 11 Paragraph 62(2)(a)

After "in-house fringe benefit", insert "not provided under a salary packaging arrangement".

## 12 Subsection 136(1)

Insert:

***salary packaging arrangement*** means an arrangement under which a benefit is provided to an employee if:

(a) the benefit is provided in return for the employee agreeing to a reduction in the employee's salary or wages that would not have happened apart from the arrangement; or

(b) the arrangement is part of the employee's remuneration package, and the benefit is provided in circumstances where it is reasonable to conclude that the employee's salary or wages would be greater if the benefit were not provided.

## 13 Application of amendments

(1) The amendments made by this Schedule apply in relation to benefits provided on or after 22 October 2012.

(2) However, the amendments made by items 1 to 11 do not apply in relation to benefits provided to an employee under an existing salary

packaging arrangement to the extent that the benefits are provided before the earlier of:

(a) 1 April 2014; and

(b) the first time on or after 22 October 2012 that the existing salary packaging arrangement is varied in a material way.

(3) For the purposes of subitem (2), an ***existing salary packaging arrangement*** is a salary packaging arrangement entered into by the employer and employee before 22 October 2012.

# Schedule 8—Miscellaneous amendments

## Part 1—Amendments of superannuation regulations

### *Retirement Savings Accounts Regulations 1997*

#### 1 Paragraph 4A.04(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

#### 2 Paragraph 4A.05(6A)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

#### 3 Paragraph 4A.08(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

#### 4 Subparagraph 4A.15(1)(b)(ii)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

#### 5 Paragraph 4A.18(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

#### 6 Paragraph 4A.27(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

#### 7 Paragraph 4A.28(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account based pension".

### *Superannuation Industry (Supervision) Regulations 1994*

#### 8 Paragraph 7A.03A(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 9 Paragraph 7A.03B(6A)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 10 Subparagraph 7A.03E(b)(i)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 11 Subparagraph 7A.04(1)(b)(ii)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 12 Paragraph 7A.07(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 13 Paragraph 7A.16(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 14 Subregulation 7A.16(4)

Omit "allocated pension or a market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 15 Paragraph 7A.17(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

## 16 Paragraph 7A.18(1)(b)

Omit "allocated pension or market linked pension", substitute "allocated pension, market linked pension or account-based pension".

# Part 2—Other amendments of taxation laws

## *A New Tax System (Goods and Services Tax) Act 1999*

### 17 Section 75-15

Repeal the section, substitute:

### 75-15 Subdivided real property

(1) This section applies if you make a *taxable supply of *real property that relates only to part of the land or premises in which you acquired an interest, unit or lease.

(2) In applying any of sections 75-10 to 75-14 in working out the *margin for the *taxable supply, use only the corresponding proportion of the following (as applicable):

(a) the *consideration for the acquisition or supply referred to in that section of that interest, unit or lease;

(b) an *approved valuation of that interest, unit or lease as at the day referred to in that section;

(c) the *GST inclusive market value of that interest, unit or lease as at the day or time referred to in that section.

Example 1: If subsection 75-11(2) applies, use only the corresponding proportion of an approved valuation of your interest, unit or lease in the unsubdivided property as at 1 July 2000.

Example 2: If subparagraph 75-11(5)(e)(ii) applies, use only the corresponding proportion of the consideration for the acquisition of the interest, unit or lease in the unsubdivided property by the entity that supplied it to you.

### 18 Section 195-1 (at the end of the definition of *margin*)

Add:

Note: This meaning is affected by sections 75-12 to 75-15.

### 19 Application of amendments

(1) The amendments made by items 17 and 18 apply in relation to taxable supplies made on or after the start of the first quarterly tax period starting on or after the commencement of those items.

(2) For the purposes of subitem (1), it does not matter whether quarterly tax periods are the tax periods that apply to you.

## *Fringe Benefits Tax Assessment Act 1986*

### 20 At the end of subsection 132(1) (before the note)

Add:

Penalty: 30 penalty units.

### 21 At the end of subsection 132(2)

Add:

Penalty: 30 penalty units.

### 22 At the end of subsection 132(3)

Add:

Penalty: 30 penalty units.

### 23 Subsection 132(5) (penalty)

Repeal the penalty.

### 24 Subsection 132(5) (notes)

Repeal the notes.

### 25 At the end of section 132

Add:

(6) An offence under this section is an offence of strict liability.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

### 26 Application of amendment

The amendment made by item 25 applies in relation to offences committed on or after the commencement of that item.

## *Income Tax Assessment Act 1997*

### 27 Section 13-1 (table item headed "water")

Repeal the item.

### 28 Section 67-23 (table item 25)

Repeal the item.

### 29 Subsection 328-130(2) (example)

Omit "and trustees of the same trust".

### 30 Subsections 393-40(1) and (2)

Omit "within 12 months after the end of", substitute "before the last day of the 12 months after".

### 31 Application of amendments

(1) The amendments made by item 30 apply to assessments for the 2010-11 income year and later income years.

(2) Former subsection 393-37(1) in Schedule 2G to the *Income Tax Assessment Act 1936*, as inserted by Part 1 of Schedule 1 to *the Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Act 2002*, is taken to always have applied as if the references in that former subsection to:

(a) within 12 months; and

(b) within the 12 months;

were references to before the last day of the 12 months.

(3) Former subsections 393-37(1) and (2) in Schedule 2G to the *Income Tax Assessment Act 1936*, as inserted by Part 2 of Schedule 1 to *the Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Act 2002*, are taken to always have applied as if the references in those former subsections to within the 12 months were references to before the last day of the 12 months.

### 32 Division 402

Repeal the Division.

## *Taxation Administration Act 1953*

### 33 Section 45-630 in Schedule 1 (note 1)

Omit "income law", substitute "income tax law".

### 34 Subdivision 290-A in Schedule 1 (heading)

Repeal the heading, substitute:

### Subdivision 290-A—Preliminary

### 35 At the end of Subdivision 290-A in Schedule 1

Add:

#### 290-10 Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

### 36 Application of amendment

The amendment made by item 35 applies in relation to acts, omissions, matters and things happening on or after the commencement of that item.

### 37 Subsection 355-70(1) in Schedule 1 (table item 3)

Omit "1 July 2013", substitute "1 July 2015".

## *Tax Laws Amendment (2009 Measures No. 2) Act 2009*

### 38 Part 2 of Schedule 4

Repeal the Part.

[*Minister's second reading speech made in—*
*House of Representatives on 29 November 2012*
*Senate on 19 March 2013*]

(206/12)