





**Tax Laws Amendment (2013 Measures  
No. 2) Act 2013**

**No. 124, 2013**

**An Act to amend the law relating to taxation and  
the *Tax Agent Services Act 2009*, and for other  
purposes**



---

## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	4
<b>Schedule 1—Monthly PAYG instalments</b>		5
Part 1—Main amendments		5
	<i>Taxation Administration Act 1953</i>	5
Part 2—Consequential amendments		19
	<i>Income Tax Assessment Act 1997</i>	19
Part 3—Application and transitional provisions		21
<b>Schedule 2—Incentives for designated infrastructure projects</b>		24
Part 1—Main amendments		24
	<i>Income Tax Assessment Act 1936</i>	24
	<i>Income Tax Assessment Act 1997</i>	24
Part 2—Consequential amendments		46
	<i>Income Tax Assessment Act 1936</i>	46
	<i>Income Tax Assessment Act 1997</i>	48
	<i>Infrastructure Australia Act 2008</i>	52
Part 3—Application of amendments		53
	<i>Income Tax (Transitional Provisions) Act 1997</i>	53
Part 4—Miscellaneous amendments		54
	Division 1—Income Tax Assessment Act 1936	54
	Division 2—Income Tax Assessment Act 1997	55
<b>Schedule 5—Tax secrecy and transparency</b>		56
Part 1—Main amendments		56
	<i>Taxation Administration Act 1953</i>	56
Part 2—Consequential amendments		61
	<i>Income Tax Assessment Act 1997</i>	61
Part 3—Application of amendments		62

---

<b>Schedule 6—Petroleum resource rent tax</b>	63
<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	63
<b>Schedule 7—Removing CGT discount for foreign individuals</b>	68
<i>Income Tax Assessment Act 1997</i>	68
<b>Schedule 8—Tax exemption for payments under Defence Abuse Reparation Scheme</b>	76
<i>Income Tax Assessment Act 1997</i>	76
<b>Schedule 9—GST-free treatment for National Disability Insurance Scheme funded supports</b>	77
<i>A New Tax System (Goods and Services Tax) Act 1999</i>	77
<b>Schedule 10—Deductible gift recipients</b>	79
Part 1—Main amendments	79
<i>Income Tax Assessment Act 1997</i>	79
<i>Tax Laws Amendment (2011 Measures No. 2) Act 2011</i>	80
Part 2—The Charlie Perkins Scholarship Trust	81
<i>Income Tax Assessment Act 1997</i>	81
<i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i>	81
<b>Schedule 11—Miscellaneous amendments</b>	82
Part 1—Amendments commencing after the Australian Charities and Not-for-profits Commission Act 2012	82
<i>Income Tax Assessment Act 1997</i>	82
<i>Income Tax (Transitional Provisions) Act 1997</i>	82
Part 2—Amendment commencing after Schedule 1 to the Tax Laws Amendment (2012 Measures No. 6) Act 2013	83
<i>Income Tax Assessment Act 1997</i>	83
<i>Income Tax (Transitional Provisions) Act 1997</i>	83
Part 3—Fringe Benefits Tax	85
<i>Fringe Benefits Tax Assessment Act 1986</i>	85
<i>Taxation Administration Act 1953</i>	90

---

---

<b>Part 4—Updating indexation provisions</b>	92
<i>Income Tax Assessment Act 1997</i>	92
<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	92
<i>Superannuation Guarantee (Administration) Act 1992</i>	92
<b>Part 5—Other amendments</b>	93
<i>Income Tax Assessment Act 1936</i>	93
<i>Income Tax Assessment Act 1997</i>	93





# **Tax Laws Amendment (2013 Measures No. 2) Act 2013**

**No. 124, 2013**

---

---

**An Act to amend the law relating to taxation and the *Tax Agent Services Act 2009*, and for other purposes**

[Assented to 29 June 2013]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2013 Measures No. 2) Act 2013*.

**Schedule 1** Monthly PAYG instalments  
**Part 1** Main amendments

---

## 2 Commencement

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

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2013
2. Schedule 1	The day this Act receives the Royal Assent.	29 June 2013
3. Schedule 2, Parts 1 to 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 2, Part 4, Division 1	The day this Act receives the Royal Assent.	29 June 2013
5. Schedule 2, Part 4, Division 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 3; and (b) the commencement of item 34 of Schedule 6 to the <i>Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
10. Schedules 5 to 9	The day this Act receives the Royal Assent.	29 June 2013
11. Schedule 10, Part 1	The day this Act receives the Royal Assent.	29 June 2013
12. Schedule 10,	The day this Act receives the Royal Assent.	29 June 2013

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
item 13	However, the provision(s) do not commence at all if item 5 of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> commences on or before that day.	
13. Schedule 10, item 14	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 13 of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
14. Schedule 10, item 15	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> .  However, the provision(s) do not commence at all if that Schedule commences before the day this Act receives the Royal Assent.	
15. Schedule 11, Part 1	Immediately after the commencement of Chapter 2 of the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .	3 December 2012
16. Schedule 11, Part 2	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (2012 Measures No. 6) Act 2013</i> .	28 June 2013
17. Schedule 11, Part 3	The day after this Act receives the Royal Assent.	30 June 2013
18. Schedule 11, item 28	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 238 of Schedule 7 to the <i>Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013</i> .	30 June 2013 (paragraph (a) applies)

**Schedule 1** Monthly PAYG instalments  
**Part 1** Main amendments

---

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
19. Schedule 11, items 29 to 31	The day after this Act receives the Royal Assent.	30 June 2013
20. Schedule 11, subitem 32(1)	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 238 of Schedule 7 to the <i>Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	30 June 2013 (paragraph (a) applies)
21. Schedule 11, subitems 32(2) and (3)	The day after this Act receives the Royal Assent.	30 June 2013
22. Schedule 11, Part 5	The day after this Act receives the Royal Assent.	30 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)**

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

## **Schedule 1—Monthly PAYG instalments**

### **Part 1—Main amendments**

#### *Taxation Administration Act 1953*

##### **1 Section 45-1 in Schedule 1**

Omit:

Generally, instalments are payable for each quarter of your income year.

substitute:

Generally, instalments are payable for each quarter of your income year. Alternatively, instalments could be payable monthly or annually.

##### **2 Section 45-1 in Schedule 1**

Omit:

If you are not required to be registered for GST purposes, you may be able to choose to pay an annual instalment after the end of the income year. (In this case, you are an annual payer).

substitute:

If your business or investment income exceeds a certain limit, you may have to pay an instalment after the end of each month. (In this case, you are a monthly payer).

If you are not required to be registered for GST purposes, you may be able to choose to pay an annual instalment after the end of the income year. (In this case, you are an annual payer).

##### **3 After subsection 45-5(2) in Schedule 1**

Insert:

(2A) Alternatively:

- (a) you may be required to pay instalments after the end of each \*instalment month worked out on the basis of your instalment income for that month; or
- (b) you may be able to choose to pay an annual instalment for the income year.

#### **4 After subsection 45-5(5) in Schedule 1**

Insert:

- (5A) If you are a \*monthly payer, the amount of each of your instalments for an income year is the same proportion (as nearly as possible, subject to the principles in subsections (3) and (4)) of the total of those instalments as your \*instalment income for that \*instalment month is of your total instalment income for the income year.

#### **5 After subsection 45-20(2) in Schedule 1**

Insert:

- (2A) If you are a \*monthly payer for the period, you must give the notification electronically, unless the Commissioner otherwise approves.

Note: A penalty applies if you fail to give the notification electronically as required—see section 288-10.

- (2B) The notification is given electronically if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.

#### **6 After subsection 45-50(2) in Schedule 1**

Insert:

- (2A) Subject to subsection (4), you are liable to pay an instalment for an \*instalment month if, at the end of that month, you are a \*monthly payer.

#### **7 Subsection 45-50(4) in Schedule 1**

After “an \*instalment quarter”, insert “, an \*instalment month”.

## **8 Paragraph 45-50(4)(b) in Schedule 1**

After “quarter”, insert “, month”.

## **9 After section 45-61 in Schedule 1**

Insert:

### **45-65 Meaning of *instalment month***

For an income year (whether it ends on 30 June or not), the following are *instalment months*:

- (a) the month that starts on the first day of the income year;
- (b) each subsequent month.

Note: For the meaning of *month*, see section 2G of the *Acts Interpretation Act 1901*.

### **45-67 When monthly instalments are due—payers of monthly instalments**

*You are not a deferred BAS payer*

- (1) If you are a \*monthly payer, the instalment for an \*instalment month that you are liable to pay is due on or before the 21st day of the next instalment month.
- (2) If:
  - (a) subsection (1) would, but for this subsection, have applied to you in relation to an \*instalment month; but
  - (b) you are a \*deferred BAS payer on the 21st day of the next instalment month;the instalment for the month mentioned in paragraph (a) is instead due on or before:
  - (c) the 28th day of that next instalment month unless that next instalment month is January; or
  - (d) if that next instalment month is January—the next 28 February.

Note: If you are the head company of a consolidated group to which Subdivision 45-Q applies, the instalment is due on or before the 21st day of that next month: see section 45-715 (as it has effect because of section 45-703).

## 10 After section 45-70 in Schedule 1

Insert:

### 45-72 Means of payment of instalment

You must pay an instalment by \*electronic payment, or any other means approved in writing by the Commissioner.

## 11 After section 45-112 in Schedule 1

Insert:

### 45-114 How to work out amount of monthly instalment

- (1) Work out the amount of an instalment you are liable to pay for an \*instalment month as follows if, at the end of that instalment month, you are a \*monthly payer:

$$\text{Applicable instalment rate} \times \frac{\text{Your *instalment income for that instalment month}}{\text{for that instalment month}}$$

- (2) For the purposes of the formula in subsection (1):

***applicable instalment rate*** means:

- (a) unless paragraph (b) or (c) applies—the most recent instalment rate given to you by the Commissioner under section 45-15 before the end of that month; or
- (b) if you have chosen an instalment rate for that month under section 45-205—that rate; or
- (c) if you have chosen an instalment rate under section 45-205 for an earlier \*instalment month in that income year (and paragraph (b) does not apply)—that rate.

Note: If you believe the Commissioner's rate is not appropriate for the current income year, you may choose a different instalment rate under Subdivision 45-F.

- (3) The Commissioner may, by legislative instrument, determine one or more specified additional methods by which a specified class of entity that is a \*monthly payer at the end of an \*instalment month may work out, in specified circumstances, the amount of an instalment that it is liable to pay for the instalment month.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (4) You may choose a method specified in the determination:
- (a) unless paragraph (b) applies—for any \*instalment month; or
  - (b) if the determination provides that that method can be chosen only for the first instalment month in an \*instalment quarter—for the first instalment month in an instalment quarter.
- (5) The determination may provide that an entity that chooses a method in accordance with paragraph (4)(b) for the first \*instalment month in an \*instalment quarter is taken to have chosen that method under subsection (4) for the other instalment months in that quarter. The determination has effect accordingly.
- (6) Subsection (7) applies if:
- (a) the Commissioner has made a determination under subsection (3); and
  - (b) at the end of an \*instalment month, you are a \*monthly payer; and
  - (c) you choose under subsection (4), for that month:
    - (i) if the determination specifies one additional method to work out that amount—that method; or
    - (ii) if the determination specifies more than one additional method to work out that amount—one of those methods.
- (7) Despite subsection (1), work out the amount of an instalment you are liable to pay for that \*instalment month in accordance with the method that you chose for that month under subsection (4).

## **12 Paragraph 45-125(1)(a) in Schedule 1**

Omit “you are not an \*annual payer”, substitute “you are not a \*monthly payer or an \*annual payer”.

## **13 Subsection 45-125(5) in Schedule 1**

Repeal the subsection, substitute:

*How and when you stop being such a payer*

- (5) If you are a \*quarterly payer who pays on the basis of instalment income because of paragraph (1)(a), you stop being such a payer at the start of the first \*instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:

- (i) a quarterly payer who pays on the basis of GDP-adjusted notional tax; or
  - (ii) an \*annual payer; or
- (b) at the end of the first \*instalment month of that quarter, you become a \*monthly payer.

*No quarterly payer status in quarter if monthly payer in following month*

- (5A) Despite subsections (1) and (3), you cannot be a \*quarterly payer who pays on the basis of instalment income at a time in an \*instalment quarter if you are a \*monthly payer at a time in the first \*instalment month that ends after that quarter.

#### **14 Paragraph 45-130(1)(a) in Schedule 1**

Omit “an \*annual payer or a \*quarterly payer”, substitute “an \*annual payer, a \*monthly payer or a \*quarterly payer”.

#### **15 After subparagraph 45-130(1)(c)(ii) in Schedule 1**

Insert:

- (ia) you are not a \*monthly payer;

#### **16 Subsection 45-130(4) in Schedule 1**

Repeal the subsection, substitute:

- (4) In addition, you stop being such a payer at the start of the first \*instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
    - (i) a \*quarterly payer who pays on the basis of instalment income; or
    - (ii) an \*annual payer; or
  - (b) at the end of the first \*instalment month of that quarter, you become a \*monthly payer.

*No quarterly payer status in quarter if monthly payer in following month*

- (5) Despite subsections (1) and (2), you cannot be a \*quarterly payer who pays on the basis of GDP-adjusted notional tax at a time in an \*instalment quarter if you are a \*monthly payer at a time in the first \*instalment month that ends after that quarter.

### **17 Subsection 45-132(4) in Schedule 1**

Repeal the subsection, substitute:

- (4) In addition, you stop being such a payer at the start of the first \*instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
    - (i) a \*quarterly payer who pays on the basis of instalment income; or
    - (ii) an \*annual payer; or
  - (b) at the end of the first \*instalment month of that quarter, you become a \*monthly payer.

### **18 Subsection 45-134(4) in Schedule 1**

Repeal the subsection, substitute:

- (4) In addition, you stop being such a payer at the start of the first \*instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
    - (i) a \*quarterly payer who pays on the basis of instalment income; or
    - (ii) an \*annual payer; or
  - (b) at the end of the first \*instalment month of that quarter, you become a \*monthly payer.

### **19 After Subdivision 45-D in Schedule 1**

Insert:

#### **Subdivision 45-DA—Monthly payers**

##### **Table of sections**

45-136	Monthly payer
45-138	Monthly payer requirement

#### **45-136 Monthly payer**

- (1) You are a *monthly payer* at a time if:
- (a) you were a monthly payer immediately before that time; or

**Schedule 1** Monthly PAYG instalments  
**Part 1** Main amendments

---

- (b) if paragraph (a) does not apply—you satisfy the requirement in subsection 45-138(1) for the income year in which that time occurs.

Note: If paragraph (b) applies, see subsection (3) for the time at which you become a monthly payer.

- (2) The *starting instalment month* in an income year (the *current year*) is:
  - (a) if the Commissioner gives you an instalment rate for the first time during an \*instalment month in the current year—the next instalment month in the current year; or
  - (b) if the Commissioner has given you an instalment rate during a previous income year and your instalment rate has not been withdrawn—the first instalment month in the current year.

*How and when you become such a payer*

- (3) Despite subsection (1), if paragraph (1)(b) applies, you become a \*monthly payer just before the end of the \*starting instalment month in the income year.

*How and when you stop being such a payer*

- (4) Despite subsection (1), you stop being a \*monthly payer at the start of the first \*instalment month in a later income year if:
  - (a) you do not satisfy the requirement in subsection 45-138(1) for that later income year; and
  - (b) you give the Commissioner a notice (the *MP stop notice*) in the \*approved form for that later income year before the start of that later income year.

### **45-138 Monthly payer requirement**

- (1) You satisfy the requirement in this subsection for an income year if at the start of your \*MPR test day for that income year, your base assessment instalment income (within the meaning of section 45-320) for the \*base year equals or exceeds:
  - (a) \$20 million; or
  - (b) if regulations made for the purposes of this paragraph specify a different amount—that amount.

- (2) However, you do *not* satisfy the requirement in subsection (1) for an income year if, at the start of your \*MPR test day for that income year:
- (a) you have (or, if you are a \*member of a \*GST group, the \*representative member of the GST group has) an obligation to give the Commissioner a \*GST return for a quarterly \*tax period; and
  - (b) you are *not* the \*head company of a \*consolidated group nor the \*provisional head company of a \*MEC group; and
  - (c) your base assessment instalment income (within the meaning of section 45-320) for the \*base year is less than \$100 million.
- (3) For the purposes of subsections (1) and (2), at the start of an entity's \*MPR test day:
- (a) determine the amount of the entity's base assessment instalment income (within the meaning of section 45-320) for the \*base year only on the basis of the information provided by the Commissioner to the entity before that start of that day; and
  - (b) in determining on that day whether an entity has an obligation mentioned in paragraph (2)(a), disregard any creation or removal of such an obligation after that day (even if that change is made retrospective to that day).
- (4) An entity's **MPR test day** for an income year is:
- (a) if the Commissioner gives the entity an instalment rate for the first time during an \*instalment month in the income year—the last day of that month; or
  - (b) otherwise—the first day of the third last month of the previous income year.
- (5) Subsection (6) applies if, disregarding that subsection, an entity does *not* satisfy the requirement in subsection (1) for an income year.
- (6) For the purposes of this section, in determining the entity's base assessment instalment income (within the meaning of section 45-320) for the \*base year:
- (a) disregard subsection 45-120(2C); and

- (b) disregard paragraph (3)(a) of this section, to the extent that that paragraph relates to the operation of subsection 45-120(2C).
- (7) If, because of subsection (6), the entity satisfies the requirement in subsection (1) for an income year, the entity must give the Commissioner a notice in the \*approved form in respect of that income year before:
- (a) if the \*starting instalment month in the income year is determined under paragraph 45-136(2)(a)—the end of that starting instalment month; or
  - (b) if the starting instalment month in the income year is determined under paragraph 45-136(2)(b)—the start of that starting instalment month.

## **20 Subdivision 45-F in Schedule 1 (heading)**

Repeal the heading, substitute:

### **Subdivision 45-F—Varying the instalment rate for quarterly or monthly payers who pay on the basis of instalment income**

## **21 Section 45-200 in Schedule 1**

Before “This”, insert “(1)”.

## **22 At the end of section 45-200 in Schedule 1**

Add:

- (2) If you are a \*monthly payer, this Subdivision has effect in relation to you in respect of an \*instalment month in the same way in which it has effect in relation to a \*quarterly payer in respect of an \*instalment quarter.

## **23 At the end of section 45-205 in Schedule 1**

Add:

- (5) Subsection (6) applies if you are a monthly payer.
- (6) Treat the references in subsections (1) and (4) to section 45-110 as instead being references to section 45-114.

## **24 Before section 45-230 in Schedule 1**

Insert:

### **45-225 Effect of Subdivision in relation to monthly payers**

If you are a \*monthly payer, this Subdivision has effect in relation to you in respect of an \*instalment month in the same way in which it has effect in relation to a \*quarterly payer in respect of an \*instalment quarter.

## **25 After section 45-595 in Schedule 1**

Insert:

### **45-597 Effect of Subdivision in relation to instalment months**

This Subdivision has effect in relation to an \*instalment month in the same way in which it has effect in relation to an \*instalment quarter.

## **26 Before section 45-705 in Schedule 1**

Insert:

### **45-703 Effect of this Subdivision and Subdivision 45-R in relation to monthly payers**

(1) If:

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

(b) the company is a \*monthly payer;

this Subdivision and Subdivision 45-R have effect in relation to the company as the head company of the group in respect of an \*instalment month in the same way in which they have effect in relation to a company that is a \*quarterly payer as the head company of a consolidated group in respect of an \*instalment quarter.

(2) If:

(a) an entity is a \*subsidiary member of a \*consolidated group;  
and

(b) the entity is a \*monthly payer;

this Subdivision and Subdivision 45-R have effect in relation to the entity in respect of an \*instalment month in the same way in which they have effect in relation to an entity that is a \*quarterly payer in respect of an \*instalment quarter.

- (3) However, those effects are subject to any modifications set out in those Subdivisions.

Note: Subdivision 45-S can also have effect in relation to a monthly payer because of the operation of this section and section 45-910.

## **27 After subsection 45-705(4) in Schedule 1**

Insert:

*When the period begins—modified timing for head company that is monthly payer*

- (4A) Subsection (4B) applies if:
- (a) apart from subsection (4B), this Subdivision starts to apply to a company as the \*head company of a \*consolidated group at a particular time because of the operation of subsection (2), (3) or (4); and
  - (b) the company is a \*monthly payer; and
  - (c) the Commissioner gave the \*initial head company instalment rate as mentioned in subsection (2), subparagraph (3)(c)(ii), subparagraph (4)(d)(ii) or subparagraph (4)(d)(iv) in an \*instalment month.
- (4B) Treat subsection (2), (3) or (4) (as the case requires) as providing that this Subdivision starts to apply to the company as the \*head company of the group at the start of the *next* \*instalment month.

Note: For the application of this Subdivision to a monthly payer, see section 45-703.

## **28 Section 45-715 in Schedule 1**

Before “If”, insert “(1)”.

## **29 At the end of section 45-715 in Schedule 1**

Add:

- (2) Subsection (3) applies if section 45-703 applies to the \*head company of the \*consolidated group (because it is a \*monthly payer).
- (3) Treat the reference in subsection (1) to subsection 45-61(2) as instead being a reference to subsection 45-67(2).

### **30 Paragraph 45-860(1)(b) in Schedule 1**

Omit “ends before the end”, substitute “starts before the start”.

### **31 At the end of section 45-870 in Schedule 1**

Add:

- (5) Subsections (6) and (7) apply if:
    - (a) the \*head company of the \*consolidated group is a \*monthly payer at a time in an \*instalment month (the *current month*); and
    - (b) any of the other \*members of the group (the *subsidiary quarterly payers*) are \*quarterly payers at a time in the \*instalment quarter (the *current quarter*) in which the current month starts.
  - (6) Apply the following rules:
    - (a) treat the reference in subsection (1) to an \*instalment quarter as being a reference to the current month;
    - (b) treat the references in this section to that quarter (or that instalment quarter) as being references to the current month.
  - (7) Also apply the following rules, for the purposes of subsections (1) to (5):
    - (a) treat the subsidiary quarterly payers as \*monthly payers for each \*instalment month (a *notional instalment month*) that starts (disregarding paragraph (6)(a)) in the current quarter;
    - (b) apply this section separately in relation to each of those notional instalment months;
    - (c) treat the amount of instalment or credit for a subsidiary quarterly payer in respect of a notional instalment month as being the extent to which the amount of instalment or credit for the subsidiary quarterly payer for the current quarter is attributable to that notional instalment month.
-

**32 After subsection 45-915(4) in Schedule 1**

Insert:

*When the period begins—modified timing for provisional head company that is monthly payer*

- (4A) Subsection (4B) applies if:
- (a) apart from subsection (4B), Subdivision 45-Q starts to apply to a company as the \*provisional head company of a \*MEC group at a particular time because of the operation of subsection (2), (3) or (4); and
  - (b) the company is a \*monthly payer; and
  - (c) the Commissioner gave the \*initial head company instalment rate as mentioned in subsection (2), subparagraph (3)(c)(ii), subparagraph (4)(b)(ii) or subparagraph (4)(b)(iv) in an \*instalment month.
- (4B) Treat subsection (2), (3) or (4) (as the case requires) as providing that Subdivision 45-Q starts to apply to the company as the \*provisional head company of the \*MEC group at the start of the *next* \*instalment month.

Note: For the application of this Subdivision to a monthly payer, see sections 45-703 and 45-910.

**33 Subsection 250-10(2) in Schedule 1 (after table item 115)**

Insert:

115A	monthly PAYG instalment	45-67 in Schedule 1	<i>Taxation Administration Act 1953</i>
------	-------------------------	---------------------	---

**34 After paragraph 288-10(a) in Schedule 1**

Insert:

- (aa) under subsection 45-20(2A) in this Schedule, is required to give a notification electronically; or

**35 Subsection 288-10(a) in Schedule 1**

Omit “lodges or notifies”, substitute “lodges, gives or notifies”.

**36 Paragraph 288-20(b) in Schedule 1**

After “or subsection 16-85(1)”, insert “or section 45-72”.

## **Part 2—Consequential amendments**

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

#### **37 Subsection 721-10(2) (after table item 30)**

Insert:

- 32 section 45-67 in Schedule 1 to the *Taxation Administration Act 1953* (monthly \*PAYG instalment) the \*instalment month to which the \*instalment relates

#### **38 After subsection 721-10(3)**

Insert:

- (3A) Item 32 of the table in subsection (2) is taken not to include a \*PAYG instalment of the \*head company if the Commissioner gave the head company its \*initial head company instalment rate on or after the start of the \*instalment month of the head company to which the PAYG instalment relates.

#### **39 Subsection 721-10(2) (table item 45)**

Repeal the item, substitute:

- 45 subsection 45-230(4) in Schedule 1 to the *Taxation Administration Act 1953* (general interest charge on shortfall in instalment worked out on basis of varied rate) the \*instalment quarter or \*instalment month to which the general interest charge relates

#### **40 Subsection 721-10(2) (table item 60)**

Repeal the item, substitute:

- 60 subsection 45-875(2) in Schedule 1 to the *Taxation Administration Act 1953* (head company's liability to GIC on shortfall in instalment) the \*instalment quarter or \*instalment month to which the general interest charge relates

#### **41 Subsection 995-1(1)**

Insert:

*instalment month* has the meaning given by section 45-65 in Schedule 1 to the *Taxation Administration Act 1953*.

**42 Subsection 995-1(1)**

Insert:

*monthly payer* has the meaning given by section 45-136 in Schedule 1 to the *Taxation Administration Act 1953*.

**43 Subsection 995-1(1)**

Insert:

*MPR test day* has the meaning given by subsection 45-138(4) in Schedule 1 to the *Taxation Administration Act 1953*.

**44 Subsection 995-1(1) (definition of *quarterly payer*)**

Omit “\*annual payer”, substitute “\*annual payer or \*monthly payer”.

## **Part 3—Application and transitional provisions**

### **45 General application of amendments**

The amendments made by this Schedule apply to starting instalment months that start on or after 1 January 2014.

### **46 Delayed application to non-corporate tax entities**

Despite subsection 45-138(1) in Schedule 1 to the *Taxation Administration Act 1953*, an entity cannot be a monthly payer at a time if:

- (a) the entity is *not* a corporate tax entity at the time; and
- (b) the time is before 1 January 2016.

### **47 Transitional MPR thresholds**

- (1) Subitem (2) applies if an entity is a corporate tax entity.
- (2) If the entity's MPR test day for an income year mentioned in subsection 45-138(1) in Schedule 1 to the *Taxation Administration Act 1953* is before 1 October 2015, treat the reference in paragraph (a) of that subsection to \$20 million as a reference to:
  - (a) if that MPR test day is before 1 October 2014—\$1 billion; or
  - (b) otherwise—\$100 million.
- (3) Subitem (4) applies if an entity is *not* a corporate tax entity.
- (4) If the entity's MPR test day for an income year mentioned in subsection 45-138(1) in Schedule 1 to the *Taxation Administration Act 1953* is before 1 October 2016, treat the reference in paragraph (a) of that subsection to \$20 million as a reference to \$1 billion.
- (5) Disregard subitems (2) and (4) for the purposes of subsection 45-136(4) in Schedule 1 to the *Taxation Administration Act 1953* (MP stop notice).

### **48 Additional MPR test days**

- (1) This item applies if:
  - (a) (apart from this item) there is a time in an income year when you are *not* a monthly payer; and
  - (b) either:

**Schedule 1** Monthly PAYG instalments  
**Part 3** Application and transitional provisions

---

- (i) if you are a corporate tax entity at the time—the income year includes 1 January 2014, 1 January 2015 or 1 January 2016; or
- (ii) if you are *not* a corporate tax entity at the time—the income year includes 1 January 2016 or 1 January 2017.

Note: This item may have a separate application for each of a number of income years.

- (2) In determining whether you satisfy the requirement in subsection 45-138(1) in Schedule 1 to the *Taxation Administration Act 1953* for the income year, treat your MPR test day for that income year as being:
  - (a) in a case where subparagraph (1)(b)(i) applies:
    - (i) if the income year includes 1 January 2014—1 October 2013; or
    - (ii) if the income year includes 1 January 2015—1 October 2014; or
    - (iii) if the income year includes 1 January 2016—1 October 2015; or
  - (b) in a case where subparagraph (1)(b)(ii) applies:
    - (i) if the income year includes 1 January 2016—1 October 2015; or
    - (ii) if the income year includes 1 January 2017—1 October 2016.
- (3) If you are a monthly payer at a time in an income year because of subitem (2), treat the starting instalment month in the income year as being:
  - (a) unless paragraph (b) applies—the first instalment month that starts on or after the following day (the *application day*):
    - (i) if subparagraph (2)(a)(i) applies—1 January 2014;
    - (ii) if subparagraph (2)(a)(ii) applies—1 January 2015;
    - (iii) if subparagraph (2)(a)(iii) applies—1 January 2016;
    - (iv) if subparagraph (2)(b)(i) applies—1 January 2016;
    - (v) if subparagraph (2)(b)(ii) applies—1 January 2017; or
  - (b) if:
    - (i) apart from subitem (2), you are a quarterly payer; and
    - (ii) the application day is not the first day of an instalment quarter;

the first instalment month that starts on or after the start of the *next* instalment quarter.

- (4) If you would (apart from subitem (2)) be an annual payer and you would (apart from this subitem) become a monthly payer at a time in the income year under paragraph (3)(a):
- (a) you are taken *not* to satisfy the requirement in subsection 45-138(1) in Schedule 1 to the *Taxation Administration Act 1953* for the income year because of the operation of subitem (2); and
  - (b) instead, you are taken to satisfy that requirement for the *next* income year.

Note: In this case, you become a monthly payer in that next income year at the time specified in subsection 45-136(3) in Schedule 1 to the *Taxation Administration Act 1953*.

#### **49 Deadline for TOFA BAI calculation notice**

- (1) Subitem (2) applies if an entity must give the Commissioner a notice under subsection 45-138(7) in Schedule 1 to the *Taxation Administration Act 1953* in respect of an income year because its MPR test day for that income year is treated under item 48 as being a particular day (the ***additional MPR test day***).
- (2) Despite subsection 45-138(7) in Schedule 1 to the *Taxation Administration Act 1953*, the entity must give the notice before the 1 January that follows the additional MPR test day.

## Schedule 2—Incentives for designated infrastructure projects

### Part 1—Main amendments

#### *Income Tax Assessment Act 1936*

##### **1 At the end of section 272-100 in Schedule 2F**

Add:

; or (f) it is a designated infrastructure project entity at the particular time.

#### *Income Tax Assessment Act 1997*

##### **2 Paragraph 165-35(b)**

Omit “*period*.”, substitute “*period*); or”.

##### **3 After paragraph 165-35(b)**

Insert:

(c) the company was a \*designated infrastructure project entity during the whole of the income year.

Note: See subsection 415-35(7) if there is only part of the income year during which the company was a designated infrastructure project entity.

##### **4 At the end of Part 3-45**

Add:

### Division 415—Designated infrastructure projects

#### Table of Subdivisions

	Guide to Division 415
415-A	Object of this Division
415-B	Tax losses and bad debts
415-C	Designating infrastructure projects

## Guide to Division 415

### 415-1 What this Division is about

This Division provides for special treatment for tax losses and bad debts for certain entities (called “designated infrastructure project entities”) that carry on infrastructure projects that the Infrastructure Coordinator designates under Subdivision 415-C.

### Subdivision 415-A—Object of this Division

#### Table of sections

415-5 Object of this Division

### 415-5 Object of this Division

The object of this Division is to reduce the disincentives for private expenditure on nationally significant infrastructure that result from the long lead times between incurring deductions for, and earning assessable income from, such expenditure.

### Subdivision 415-B—Tax losses and bad debts

## Guide to Subdivision 415-B

### 415-10 What this Subdivision is about

The unutilised amounts of a designated infrastructure project entity’s tax losses are increased each year by the long term bond rate. A *designated infrastructure project entity* is a fixed trust or company that:

- (a) carries on an infrastructure project designated under Subdivision 415-C; and
- (b) only engages, and has only ever engaged, in activities for the purposes of carrying on that designated infrastructure project.

**Schedule 2** Incentives for designated infrastructure projects  
**Part 1** Main amendments

---

The tests that apply in relation to tax losses and bad debts if there is a change of ownership of an entity are modified so that periods during which the entity is a designated infrastructure project entity are not tested.

The loss utilisation rules in Subdivision 707-C do not apply if the head company of a consolidated group is a designated infrastructure project entity after another designated infrastructure project entity joins the group.

Note: The transfer rules in subsection 707-120(1A) do not apply if a designated infrastructure project entity joins a consolidated group: see subsection 707-120(5).

### Table of sections

#### Uplift of tax losses

- 415-15 Uplift of tax losses of designated infrastructure project entities  
415-20 *Designated infrastructure project entity*

#### Change of ownership of trusts and companies

- 415-25 Tax losses of trusts  
415-30 Bad debts written off etc. by trusts  
415-35 Tax losses of companies  
415-40 Bad debts written off by companies

#### Consolidated groups

- 415-45 Losses transferred to head companies of consolidated groups

### Uplift of tax losses

#### 415-15 Uplift of tax losses of designated infrastructure project entities

- (1) The amount of a \*tax loss of a \*loss year of an entity is increased, at the end of each later income year (and before any \*utilisation of the tax loss by the entity in the later income year), by the amount worked out using the following formula:

$$\begin{array}{r} \text{Amount of the *tax loss,} \\ \text{to the extent it has} \\ \text{not been *utilised} \end{array} \times \begin{array}{r} \text{*Long term bond} \\ \text{rate for the later} \\ \text{income year} \end{array} \times \begin{array}{r} \text{Eligible portion} \\ \text{of the later} \\ \text{income year} \end{array}$$

where:

*eligible portion of the later income year* means the amount worked out using the following formula:

$$\frac{\text{Number of days in the later income year on which subsection (2) applies to the entity}}{\text{Number of days in the later income year}}$$

- (2) This subsection applies to the entity on a day in the later income year if:
- (a) the entity is a \*designated infrastructure project entity on that day; and
  - (b) on the day mentioned in subsection (3), the entity has notified the Commissioner (whether before, during or after the later income year) in the \*approved form that the entity was, at any time, a designated infrastructure project entity.
- (3) For the purposes of paragraph (2)(b), the day is the day after the latest of the following days:
- (a) the day before which the entity:
    - (i) is required to lodge its \*income tax return for the later income year with the Commissioner; or
    - (ii) if the entity is not required to lodge an income tax return for the later income year—would be required to lodge its income tax return for the later income year were the entity required to lodge such a return;
  - (b) the 28th day after the first day the entity \*carries on the infrastructure project mentioned in paragraph 415-20(1)(b);
  - (c) the 28th day after the day the Infrastructure Coordinator designates the infrastructure project under section 415-70;
  - (d) a later day allowed by the Commissioner.

Note: The increase under this section can occur at the end of an income year even if, at the end of the year, the entity does not know the entity is a designated infrastructure project entity (e.g. because the Infrastructure Coordinator has not yet designated the infrastructure project that the entity carries on, but the Infrastructure Coordinator does so later).

*Consolidated groups*

- (4) Disregard paragraph 701-30(3)(a) for the purposes of the denominator in the formula in the definition of ***eligible portion of the later income year*** in subsection (1) of this section.

Note: Paragraph 701-30(3)(a) applies if the entity becomes a subsidiary member of a consolidated group during the later income year.

- (5) For the purposes of applying this section to a \*tax loss the \*head company of a \*consolidated group makes as mentioned in subsection 707-140(1):
- (a) the head company is treated as having made the loss in the income year before the income year in which the transfer mentioned in that subsection occurs; and
  - (b) subsection (2) of this section is treated as not applying to the head company on or before the day the transfer occurs;
- unless the transferred loss was a non-membership period loss (within the meaning of subsection 701-30(3)) in relation to the group.

Note: Subsection 707-140(1) treats the head company of a consolidated group as having made a loss in an income year in which a loss is transferred to the head company from an entity that joins the group.

*Total net forgiven amounts*

- (6) A reference in subsection (1) to any \*utilisation of a \*tax loss is treated as including a reference to any reduction of the loss by the application of a \*total net forgiven amount.

**415-20** ***Designated infrastructure project entity***

*Designated infrastructure project entity*

- (1) An entity is a ***designated infrastructure project entity*** at a time (the ***relevant time***) if:
- (a) at the relevant time, the entity is a \*fixed trust or a company; and
  - (b) at or after the relevant time, the entity \*carries on a single \*designated infrastructure project; and
  - (c) the entity does not, at or before the relevant time, carry on any other designated infrastructure project; and

- (d) the only activities in which the entity engages at the relevant time, or engaged before the relevant time, are or were for the purposes of the entity carrying on the single designated infrastructure project.
- (2) For the purposes of this section:
- (a) an \*enterprise that becomes a \*designated infrastructure project at a time is treated as having been a designated infrastructure project at all earlier times; and
  - (b) if the entity \*carries on (whether or not at the same time) one or more parts, but not the whole, of a single designated infrastructure project—the parts are treated as being a single designated infrastructure project; and
  - (c) in any case—the following are treated as being a single designated infrastructure project:
    - (i) a single designated infrastructure project (the ***listed infrastructure project***) that is included on an Infrastructure Priority List;
    - (ii) any designated infrastructure projects that the entity carries on (whether or not at the same time) and that are part of the listed infrastructure project; and
- Note: For Infrastructure Priority Lists, see paragraph 5(2)(b) of the *Infrastructure Australia Act 2008*.
- (d) in any case—any designated infrastructure projects that the entity carries on (whether or not at the same time) and that are part of a single infrastructure project that:
- (i) is included on an Infrastructure Priority List; and
  - (ii) is not a designated infrastructure project;
- are treated as being a single designated infrastructure project.

*Partnerships*

- (3) Subsection (4) applies to an entity if:
- (a) the entity is a \*fixed trust or a company; and
  - (b) the person that is the trustee of the trust, or the person that is the company, is a partner in a partnership.
- (4) For the purposes of subsections (1) and (2), the entity:
- (a) is treated as \*carrying on any \*designated infrastructure project carried on by the partnership; and

- (b) is treated as engaging in any activity engaged in by the partnership; and
- (c) if the partnership engages in an activity for the purpose of the partnership carrying on a designated infrastructure project— is treated as engaging in that activity for the purpose of the entity carrying on that designated infrastructure project.

*Consolidated groups*

- (5) For the purposes of working out whether the \*head company of a \*consolidated group was a \*designated infrastructure project entity at a time (whether before or after the group consolidates), section 701-5 (Entry history rule) is treated as not applying to the head company in relation to an entity that was not a \*member of the consolidated group at that time.
- (6) For the purposes of working out whether an entity is a \*designated infrastructure project entity at a time after the entity ceases to be a \*subsidiary member of a \*consolidated group, section 701-40 (Exit history rule) is treated as not applying to the entity in relation to the group.

## **Change of ownership of trusts and companies**

### **415-25 Tax losses of trusts**

*Scope*

- (1) This section applies to a \*tax loss of a \*trust if the trust is a \*designated infrastructure project entity at a time (the *status time*) in the \*loss year.

*Modifications of Schedule 2F to the Income Tax Assessment Act 1936*

- (2) Despite paragraph 266-25(1)(b), 266-30(a), 266-75(1)(b) or (2)(b), 266-80(1)(a) or (2)(a), 266-110(1)(b), 266-115(a), 266-150(2)(a), 266-155(2)(a), 267-20(1)(b) or 267-60(a) in Schedule 2F to the *Income Tax Assessment Act 1936*, for the purposes of sections 266-40 and 266-45, section 266-90, subsections 266-125(1) and (2), subsections 266-165(1) and (2), sections 267-40 and 267-45 or sections 267-70 and 267-75 in that

Schedule (whichever are applicable), the test period starts at the first time:

- (a) that occurs after the status time; and
- (b) at which the trust is not a \*designated infrastructure project entity;

if, apart from this subsection, the test period would start earlier.

- (3) For the purposes of section 267-30 in that Schedule, disregard any part of an income year during which the trust is a \*designated infrastructure project entity.
- (4) For the purposes of working out, under subsection 268-10(3), 268-15(3) or 268-20(3) in that Schedule, the end of the first period, disregard any part of the income year mentioned in that subsection during which the trust is a \*designated infrastructure project entity.

Note: A trust does not calculate its net income and tax loss under Division 268 in that Schedule if the trust was a designated infrastructure project entity during the whole of the income year: see paragraphs 266-30(c), 266-80(1)(d) and (2)(c), 266-115(b), 266-155(2)(b), 267-60(b) and 272-100(f) in that Schedule.

- (5) For the purposes paragraph 268-20(4)(b) in that Schedule, disregard any part of the first of the successive periods during which the trust is a \*designated infrastructure project entity.

#### **415-30 Bad debts written off etc. by trusts**

##### *Scope*

- (1) This section applies to a debt to which paragraph 266-35(1)(a), 266-85(1)(a) or (2)(a), 266-120(1)(a), 266-160(1)(a) or (b), 267-25(1)(a) or 267-65(1)(a) in Schedule 2F to the *Income Tax Assessment Act 1936* applies, if the trust is a \*designated infrastructure project entity at a time (the *status time*) in the income year in which the debt was incurred.

##### *Modifications of Schedule 2F to the Income Tax Assessment Act 1936*

- (2) Despite paragraph 266-35(1)(b), 266-85(1)(b) or (2)(b), 266-120(1)(b), 266-160(2)(a), 267-25(1)(b) or 267-65(1)(a) in that Schedule, for the purposes of sections 266-40 and 266-45, section 266-90, subsections 266-125(1) and (2),

**Schedule 2** Incentives for designated infrastructure projects  
**Part 1** Main amendments

---

subsections 266-165(1) and (2), sections 267-40 and 267-45 or sections 267-70 and 267-75 in that Schedule (whichever are applicable), the test period starts at the first time:

- (a) that occurs after the status time; and
  - (b) at which the trust is not a \*designated infrastructure project entity.
- (3) For the purposes of section 267-30 in that Schedule, disregard any part of an income year during which the trust is a \*designated infrastructure project entity.

### **415-35 Tax losses of companies**

#### *Scope*

- (1) This section applies to a \*tax loss of a company if the company is a \*designated infrastructure project entity at a time (the *status time*) in the \*loss year.

#### *Modifications of Divisions 165 and 166*

- (2) Despite subsection 165-12(1), 166-5(2) or 166-20(1), the \*ownership test period or \*test period under that subsection starts at the earlier of:
- (a) the first time:
    - (i) that occurs after the status time; and
    - (ii) at which the company is not a \*designated infrastructure project entity; and
  - (b) the end of the income year referred to in that subsection as the income year.
- (3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-12.
- (4) Despite subsection 165-13(2), 166-5(5), 165-15(2) or 166-20(4), the \*same business test period under that subsection starts at the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the same business test period would start earlier.
- (5) Despite subsection 165-13(2), 165-15(3), 166-5(6) or 166-20(4), the \*test time under that subsection occurs just after the start of the

\*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.

- (6) A reference in subsection 165-15(1) to the \*loss year is treated as being a reference to the period:
- (a) starting at the start of the \*ownership test period; and
  - (b) ending at the end of the income year in which the ownership test period starts.
- (7) For the purposes of working out, under paragraph 165-45(3)(a) or (b) or subsection 165-45(4), the end of the first period, disregard any part of the income year mentioned in section 165-45 during which the company is a \*designated infrastructure project entity.

Note: A company does not calculate its taxable income and tax loss under Subdivision 165-B if the company was a designated infrastructure project entity during the whole of the income year: see paragraph 165-35(c).

*Exceptions*

- (8) Disregard this section for the purposes of Subdivisions 165-CA and 165-CB (about net capital losses) and 175-A and 175-CA (about tax benefits).

**415-40 Bad debts written off by companies**

*Scope*

- (1) This section applies to a debt that a company writes off as bad, if the company is a \*designated infrastructure project entity at a time (the *status time*) in the income year in which the debt was incurred.

*Modifications of Divisions 165 and 166*

- (2) Despite subsection 165-123(1) or 166-40(2), the \*ownership test period or \*test period under that subsection starts at the earlier of:
- (a) the first time that occurs after the status time and on or after:
    - (i) in the case of subsection 165-123(1)—the start of the \*first continuity period; or
    - (ii) in the case of subsection 166-40(2)—the time the company chooses under that subsection;
- and at which the company is not a \*designated infrastructure project entity; and

- (b) the end of the \*second continuity period.
- (3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-123.
- (4) Despite subsection 165-126(2), 165-129(2), 165-132(1) or 166-40(5), the \*same business test period under that subsection starts at the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the same business test period would start earlier.
- (5) Despite subsection 165-126(2), 165-129(3) or 166-40(6), the \*test time under that subsection occurs just after the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.
- (6) A reference in subsection 165-129(1) to the \*first continuity period is treated as being a reference to the period:
  - (a) starting at the start of the \*ownership test period; and
  - (b) ending at the end of the income year in which the ownership test period starts.

*Exception*

- (7) Disregard this section for the purposes of Subdivision 175-C (about tax benefits).

## **Consolidated groups**

### **415-45 Losses transferred to head companies of consolidated groups**

Subdivision 707-C (Amount of transferred losses that can be utilised) does not apply to a loss transferred under Subdivision 707-A (Transfer of previously unutilised losses to head company), if:

- (a) just before the transfer, the transferor of the loss was a \*designated infrastructure project entity; and
- (b) just after the transfer, the transferee of the loss is a designated infrastructure project entity.

## **Subdivision 415-C—Designating infrastructure projects**

### **Guide to Subdivision 415-C**

#### **415-50 What this Subdivision is about**

To receive the special treatment for tax losses and bad debts under Subdivision 415-B, an entity must only engage in activities for the purposes of carrying on an infrastructure project designated by the Infrastructure Coordinator under this Subdivision.

Designation is dependent on:

- (a) criteria prescribed by the Minister; and
- (b) a cap on the total estimated private capital expenditure that would be incurred for all provisionally designated and designated infrastructure projects.

#### **Table of sections**

##### **Designating infrastructure projects**

- 415-55 Applications for designation
- 415-60 Dealing with applications
- 415-65 Provisional designation
- 415-70 Designation

##### **Infrastructure project capital expenditure cap**

- 415-75 Infrastructure project capital expenditure cap
- 415-80 Acceptance of estimates of infrastructure project capital expenditure

##### **Miscellaneous**

- 415-85 Review of decisions
- 415-90 Information to be made public
- 415-95 Delegation
- 415-100 Infrastructure project designation rules

## Designating infrastructure projects

### 415-55 Applications for designation

- (1) An entity may apply to the Infrastructure Coordinator to have the Infrastructure Coordinator designate an \*enterprise (the *infrastructure project*) that is a proposed investment in, or enhancement to, infrastructure as being an infrastructure project in relation to which Subdivision 415-B applies.

Note: The Infrastructure Coordinator holds office under the *Infrastructure Australia Act 2008*.

- (2) The application must include an estimate of the \*infrastructure project capital expenditure that would be incurred for the purpose of the infrastructure project.
- (3) Subsection (2) does not apply to \*infrastructure project capital expenditure to the extent that the infrastructure project capital expenditure would be:
  - (a) incurred by an \*Australian government agency; or
  - (b) funded by a grant from an Australian government agency.
- (4) The application must:
  - (a) be in a form (if any) approved by the Infrastructure Coordinator; and
  - (b) be accompanied by the fee (if any) prescribed by the \*infrastructure project designation rules.

### 415-60 Dealing with applications

#### *Dealing with applications*

- (1) The Infrastructure Coordinator must deal with applications made under this Division:
  - (a) in accordance with the requirements prescribed by the \*infrastructure project designation rules; or
  - (b) if the infrastructure project designation rules do not prescribe any requirements—in the order in which the applications are made.

- (2) Without limiting paragraph (1)(a), the requirements the \*infrastructure project designation rules may prescribe for the purposes of that paragraph include:
- (a) requirements relating to the time at which or by which the Infrastructure Coordinator must deal with an application; and
  - (b) requirements relating to applications that, in the opinion of the Infrastructure Coordinator, are incomplete or do not contain sufficient information for the Infrastructure Coordinator to deal with the applications.
- (3) For the purposes of subsection (1), the Infrastructure Coordinator deals with an application by:
- (a) designating the infrastructure project provisionally under section 415-65, or deciding not to designate the infrastructure project provisionally under that section; or
  - (b) designating the infrastructure project under section 415-70 or deciding not to designate the infrastructure project under that section (whether or not the Infrastructure Coordinator has previously dealt with the application by designating the infrastructure project provisionally under section 415-65).
- (4) Paragraph (1)(b) does not apply to the Infrastructure Coordinator deciding whether to designate a \*provisionally designated infrastructure project under section 415-70.

*No designation after 30 June 2017 or later prescribed day*

- (5) Despite anything else in this Subdivision, the Infrastructure Coordinator must not provisionally designate the infrastructure project under section 415-65, or designate the infrastructure project under section 415-70, after:
- (a) 30 June 2017; or
  - (b) a later day (if any) prescribed by the \*infrastructure project designation rules.

#### **415-65 Provisional designation**

*Provisional designation*

- (1) The Infrastructure Coordinator must, by instrument in writing, designate the infrastructure project provisionally for the purposes of this Division if:

**Schedule 2** Incentives for designated infrastructure projects  
**Part 1** Main amendments

---

- (a) the entity applies to have the Infrastructure Coordinator designate the infrastructure project in accordance with section 415-55; and
  - (b) the Infrastructure Coordinator accepts the estimate of the \*infrastructure project capital expenditure under section 415-80; and
  - (c) the provisional designation would not breach the infrastructure project capital expenditure cap under section 415-75; and
  - (d) the following conditions are satisfied:
    - (i) the conditions prescribed by the \*infrastructure project designation rules;
    - (ii) if the infrastructure project designation rules do not prescribe any conditions—in the opinion of the Infrastructure Coordinator, the infrastructure is nationally significant infrastructure (within the meaning of the *Infrastructure Australia Act 2008*); and
  - (e) the infrastructure project is not a \*designated infrastructure project.
- (2) The instrument of provisional designation must contain any details prescribed by the \*infrastructure project designation rules.

*Amendment of instruments of provisional designation*

- (3) The Infrastructure Coordinator must, by instrument in writing, amend the instrument of provisional designation in accordance with any requirements prescribed by the \*infrastructure project designation rules. The Infrastructure Coordinator must not amend the instrument in any other circumstances.
- (4) Without limiting subsection (3), the requirements the \*infrastructure project designation rules may prescribe for the purposes of that subsection include requirements relating to when an amendment must take effect, which may be a time before the amendment is made.

*Revocation of instruments of provisional designation*

- (5) The Infrastructure Coordinator must, by instrument in writing, revoke the instrument of provisional designation:

- (a) if the Infrastructure Coordinator has designated the project under section 415-70, or decides not to designate the project; or
- (b) if the Infrastructure Coordinator has revoked the instrument of acceptance of the estimate under section 415-80; or
- (c) in the circumstances (if any) prescribed by the \*infrastructure project designation rules.

The Infrastructure Coordinator must not revoke the instrument in any other circumstances.

- (6) Without limiting paragraph (5)(c), the circumstances the \*infrastructure project designation rules may prescribe for the purposes of that paragraph include:
  - (a) circumstances involving a failure by a prescribed entity to give prescribed information to the Infrastructure Coordinator; and
  - (b) circumstances involving a breach of conditions set by the Infrastructure Coordinator for the \*provisionally designated infrastructure project to remain provisionally designated.
- (7) The \*infrastructure project designation rules must prescribe matters to which the Infrastructure Coordinator must have regard in setting conditions for a \*provisionally designated infrastructure project to remain provisionally designated, if the infrastructure project designation rules provide for the Infrastructure Coordinator to set such conditions, as mentioned in paragraph (6)(b).

## **415-70 Designation**

### *Designation*

- (1) The Infrastructure Coordinator must, by instrument in writing, designate the infrastructure project for the purposes of this Division if:
  - (a) the entity applies to have the Infrastructure Coordinator designate the infrastructure project in accordance with section 415-55; and
  - (b) the Infrastructure Coordinator accepts the estimate of the \*infrastructure project capital expenditure under section 415-80; and

**Schedule 2** Incentives for designated infrastructure projects  
**Part 1** Main amendments

---

- (c) the designation would not breach the infrastructure project capital expenditure cap under section 415-75; and
  - (d) the following conditions are satisfied:
    - (i) the conditions prescribed by the \*infrastructure project designation rules;
    - (ii) if the infrastructure project designation rules do not prescribe any conditions—the conditions mentioned in subsection (2);
- (whether or not the infrastructure project is a \*provisionally designated infrastructure project).
- (2) For the purposes of subparagraph (1)(d)(ii), the following are the conditions:
    - (a) in the opinion of the Infrastructure Coordinator, the infrastructure is nationally significant infrastructure (within the meaning of the *Infrastructure Australia Act 2008*);
    - (b) in the opinion of the Infrastructure Coordinator, financial close on the infrastructure project has occurred or is imminent.
  - (3) The instrument of designation must contain any details prescribed by the \*infrastructure project designation rules.

*Amendment of instruments of designation*

- (4) The Infrastructure Coordinator must, by instrument in writing, amend the instrument of designation in accordance with any requirements prescribed by the \*infrastructure project designation rules. The Infrastructure Coordinator must not amend the instrument in any other circumstances.
- (5) Without limiting subsection (4), the requirements the \*infrastructure project designation rules may prescribe for the purposes of that subsection include requirements relating to when an amendment must take effect, which may be a time before the amendment is made.

*Revocation of instruments of designation*

- (6) The Infrastructure Coordinator must, by instrument in writing, revoke the instrument of designation in the circumstances prescribed by the \*infrastructure project designation rules. The

Infrastructure Coordinator must not revoke the instrument in any other circumstances.

- (7) Without limiting subsection (6), the circumstances the \*infrastructure project designation rules may prescribe for the purposes of that subsection include:
- (a) circumstances involving a failure by a prescribed entity to give prescribed information to the Infrastructure Coordinator; and
  - (b) circumstances involving a breach of conditions set by the Infrastructure Coordinator for the \*designated infrastructure project to remain designated.
- (8) The \*infrastructure project designation rules must prescribe matters to which the Infrastructure Coordinator must have regard in setting conditions for a \*designated infrastructure project to remain designated, if the infrastructure project designation rules provide for the Infrastructure Coordinator to set such conditions, as mentioned in paragraph (7)(b).

*Infrastructure Coordinator must notify Commissioner*

- (9) The Infrastructure Coordinator must notify the Commissioner of a decision made by the Infrastructure Coordinator:
- (a) to designate the infrastructure project; or
  - (b) to amend or to revoke the instrument of designation;
- within 28 days after making the decision.

## **Infrastructure project capital expenditure cap**

### **415-75 Infrastructure project capital expenditure cap**

- (1) Provisional designation, or designation, of the infrastructure project would breach the \*infrastructure project capital expenditure cap under this section if, were the provisional designation or designation to occur, the total of the estimates accepted under section 415-80 for each infrastructure project that, just after the provisional designation or designation, would be:
- (a) a \*provisionally designated infrastructure project; or
  - (b) a \*designated infrastructure project;
- would exceed the amount mentioned in subsection (2).

- (2) The amount is:
- (a) \$25 billion; or
  - (b) if the \*infrastructure project designation rules prescribe a greater amount—that prescribed amount.
- (3) For the purposes of subsection (1), disregard so much of the amount of an estimate for an infrastructure project (the *listed infrastructure project*) as relates to a part of the listed infrastructure project, if:
- (a) that part of the listed project is (or would be, were the provisional designation or designation mentioned in that subsection to occur):
    - (i) a \*provisionally designated infrastructure project; or
    - (ii) a \*designated infrastructure project; and
  - (b) the listed infrastructure project is included on an Infrastructure Priority List.

Note: For Infrastructure Priority Lists, see paragraph 5(2)(b) of the *Infrastructure Australia Act 2008*.

- (4) In this Act:

***infrastructure project capital expenditure:***

- (a) has the meaning given by the \*infrastructure project designation rules; or
- (b) if the infrastructure project designation rules do not give *infrastructure project capital expenditure* a meaning—means capital expenditure.

**415-80 Acceptance of estimates of infrastructure project capital expenditure**

*Acceptance of estimates*

- (1) The Infrastructure Coordinator must, by instrument in writing, accept the estimate of \*infrastructure project capital expenditure if the following conditions are satisfied:
- (a) the conditions prescribed by the \*infrastructure project designation rules;
  - (b) if the infrastructure project designation rules do not prescribe any conditions—in the opinion of the Infrastructure Coordinator, the estimate is acceptable.

*Revocation of instruments of acceptance*

- (2) The Infrastructure Coordinator must not revoke the instrument of acceptance if the infrastructure project is a \*designated infrastructure project.
- (3) Subject to subsection (2), the Infrastructure Coordinator must, by instrument in writing, revoke the instrument of acceptance in the circumstances prescribed by the \*infrastructure project designation rules. The Infrastructure Coordinator must not revoke the instrument in any other circumstances.
- (4) Without limiting subsection (3), the circumstances the \*infrastructure project designation rules may prescribe for the purposes of that subsection include:
  - (a) circumstances involving a failure by a prescribed entity to give prescribed information to the Infrastructure Coordinator; and
  - (b) circumstances involving a failure by the applicant to amend the estimate in accordance with a request made by the Infrastructure Coordinator.
- (5) The \*infrastructure project designation rules must prescribe matters to which the Infrastructure Coordinator must have regard in requesting the applicant to amend the estimate, if the infrastructure project designation rules provide for the Infrastructure Coordinator to make such requests as mentioned in paragraph (4)(b).
- (6) If:
  - (a) the \*infrastructure project designation rules provide for the Infrastructure Coordinator to request the applicant to amend the estimate; and
  - (b) the applicant amends the estimate in accordance with such a request;the acceptance is treated, from the time the amendment is made, as being an acceptance of the amended estimate.

## Miscellaneous

### 415-85 Review of decisions

Applications may be made to the \*AAT for review of the following decisions of the Infrastructure Coordinator:

- (a) a decision not to designate the infrastructure project provisionally under section 415-65;
- (b) a decision to amend or revoke the instrument of provisional designation under section 415-65;
- (c) a decision not to designate the infrastructure project under section 415-70;
- (d) a decision to amend or revoke the instrument of designation under section 415-70.

### 415-90 Information to be made public

The Infrastructure Coordinator must comply with any requirements prescribed by the \*infrastructure project designation rules in relation to the publication of information about:

- (a) \*provisionally designated infrastructure projects and \*designated infrastructure projects; and
- (b) the \*infrastructure project capital expenditure cap under section 415-75.

### 415-95 Delegation

The Infrastructure Coordinator may, by instrument in writing, delegate any of the Infrastructure Coordinator's powers or functions under this Subdivision to an SES employee, or acting SES employee, who is a member of the staff assisting the Infrastructure Coordinator as mentioned in section 39 of the *Infrastructure Australia Act 2008*.

### 415-100 Infrastructure project designation rules

- (1) The Minister may, by legislative instrument, make rules (the *infrastructure project designation rules*) prescribing matters:
  - (a) required or permitted by this Subdivision to be prescribed by the rules; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Subdivision.
- (2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the \*infrastructure project designation rules may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument, or other writing, made by Infrastructure Australia as in force or existing from time to time.

## **5 At the end of section 707-120**

Add:

### *Designated infrastructure project entities*

- (5) Despite subsection (1A), the loss is transferred under subsection (1) to the full extent if:
  - (a) the loss is a \*tax loss; and
  - (b) the joining entity is a \*designated infrastructure project entity:
    - (i) at a time in the \*loss year; and
    - (ii) just before the joining time.

## **6 After subsection 719-265(3)**

Insert:

### *Transfer of tax loss from designated infrastructure project entity*

- (3A) If:
  - (a) the focal company made the loss because the loss was transferred under Subdivision 707-A to the focal company as the \*head company of a \*MEC group; and
  - (b) subsection 707-120(5) (about designated infrastructure project entities joining consolidated groups) applies to the transfer;the test company for the focal company is the company that was the \*top company for the MEC group at the time of a transfer.

## Part 2—Consequential amendments

### *Income Tax Assessment Act 1936*

#### **7 At the end of section 266-15 in Schedule 2F**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
-------	---

#### **8 At the end of section 266-30 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

#### **9 At the end of section 266-65 in Schedule 2F**

Add:

Note:	The exception mentioned in this section applies differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
-------	--

#### **10 At the end of section 266-80 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

#### **11 At the end of section 266-100 in Schedule 2F**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
-------	---

**12 At the end of section 266-115 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

**13 At the end of section 266-140 in Schedule 2F**

Add:

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
---

**14 At the end of section 266-155 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

**15 At the end of section 267-15 in Schedule 2F**

Add:

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
---

**16 At the end of section 267-55 in Schedule 2F**

Add:

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see sections 415-25 and 415-30 of the <i>Income Tax Assessment Act 1997</i> .
---

**17 At the end of section 267-60 in Schedule 2F**

Add:

Note: See section 415-25 of the *Income Tax Assessment Act 1997* if the trust was a designated infrastructure project entity during part, but not the whole, of the test period.

**18 Subsection 268-20(4) in Schedule 2F**

Repeal the subsection, substitute:

- (4) However, what would, apart from this subsection, be 2 or more successive periods are treated as a single period if:
  - (a) the trust is a listed widely held trust; and
  - (b) during all of the periods the trust passed the same business test in relation to the time immediately before the end of the first of the successive periods.

**19 Subsection 272-140(1) in Schedule 2F**

Insert:

*designated infrastructure project entity* has the meaning given by the *Income Tax Assessment Act 1997*.

**20 Subsection 272-140(1) in Schedule 2F (at the end of paragraph (c) of the definition of tax loss)**

Add “(including such a tax loss as increased under section 415-15 of that Act)”.

***Income Tax Assessment Act 1997***

**21 Section 12-5 (table item headed “financial arrangements”)**

Omit “*borrowings*”.

**22 Section 12-5 (table item headed “infrastructure borrowings”)**

Repeal the item, substitute:

**infrastructure**

infrastructure borrowings ..... 159GZZZZD to  
159GZZZZH

see also *tax losses*

**23 Section 12-5 (table item headed “interest”)**

Omit “*borrowings*”.

**24 Section 12-5 (table item headed “tax losses”)**

After:

---

change of ownership or control of a company  
generally ..... Division 165  
for earlier income years ..... Subdivision 165-A  
for income year of the change ..... Subdivision 165-B

insert:

designated infrastructure project entities ..... Division 415

**25 Section 36-25 (at the end of the table dealing with tax losses of companies)**

Add:

6. A company is a designated infrastructure project entity. Subdivision 415-B

**26 Section 36-25 (at the end of the table dealing with tax losses of trusts)**

Add:

3. A trust is a designated infrastructure project entity. Subdivision 415-B

**27 At the end of section 165-5**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-35.
-------	---

**28 At the end of section 165-117**

Add:

Note:	The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-40.
-------	---

**29 Subsection 707-120(1)**

Repeal the subsection, substitute:

*Transfer of loss from joining entity to head company*

- (1) Subject to subsection (1A), the loss is transferred at the joining time from the joining entity to the \*head company of the joined group (even if they are the same entity).
- (1A) The loss is transferred under subsection (1) only to the extent (if any) that the loss could have been \*utilised by the joining entity for an income year consisting of the \*trial year if:
  - (a) at the joining time, the joining entity had not become a \*member of the joined group (but had been a \*wholly-owned subsidiary of the \*head company if the joining entity is not the head company); and
  - (b) the amount of the loss that could be utilised for the trial year were not limited by the joining entity's income or gains for the trial year.

**30 Paragraph 707-125(1)(b)**

Omit "subsection 707-120(1)", substitute "section 707-120".

**31 Subsection 707-130(1)**

Omit "subsection 707-120(1)", substitute "section 707-120".

**32 At the end of section 707-300**

Add:

Note: This Subdivision does not apply if the joining entity is a designated infrastructure project entity just before the transfer and the head company is a designated infrastructure project entity just after the transfer: see section 415-45.
--

**33 Paragraph 719-265(1)(a)**

After "(3),", insert "(3A),".

**34 Subsection 719-265(7)**

After "(3),", insert "(3A),".

**35 Subsection 995-1(1)**

Insert:

*designated infrastructure project* means an infrastructure project designated under section 415-70.

*designated infrastructure project entity* has the meaning given by section 415-20.

*infrastructure project capital expenditure* has the meaning given by subsection 415-75(4).

*infrastructure project designation rules* has the meaning given by section 415-100.

**36 Subsection 995-1(1) (at the end of the definition of ownership test period)**

Add “, and affected by sections 415-35 and 415-40”.

**37 Subsection 995-1(1)**

Insert:

*provisionally designated infrastructure project* means an infrastructure project designated provisionally under section 415-65.

**38 Subsection 995-1(1) (definition of same business test period)**

Omit “section 707-400”, substitute “sections 415-35, 415-40 and 707-400”.

**39 Subsection 995-1(1) (paragraph (a) of the definition of tax loss)**

After “this Act”, insert “(including such a tax loss as increased under section 415-15)”.

**40 Subsection 995-1(1) (at the end of paragraph (d) of the definition of tax loss)**

Add “(including such a tax loss as increased under section 415-15 of this Act)”.

**41 Subsection 995-1(1) (at the end of the definition of test period)**

Add “, and affected by sections 415-35 and 415-40”.

**42 Subsection 995-1(1) (at the end of the definition of *test time*)**

Add “, and affected by sections 415-35 and 415-40”.

***Infrastructure Australia Act 2008***

**43 Subsection 28(2)**

Repeal the subsection, substitute:

- (2) The Infrastructure Coordinator has the following additional functions:
  - (a) any functions that the Minister, by writing, directs the Infrastructure Coordinator to perform;
  - (b) any other functions conferred on the Infrastructure Coordinator by this Act or any other law.

**44 Subsections 28(3) and (4)**

Omit “subsection (2)”, substitute “paragraph (2)(a)”.

**45 Subsection 40(1)**

Omit “subsection 28(2)”, substitute “paragraph 28(2)(a)”.

**46 Saving provision—directions**

A direction:

- (a) made under subsection 28(2) of the *Infrastructure Australia Act 2008*; and
  - (b) in force just before the commencement of this item;
- has effect, from that commencement, as if it had been made under paragraph 28(2)(a) of that Act, as amended by this Schedule.

## **Part 3—Application of amendments**

### ***Income Tax (Transitional Provisions) Act 1997***

#### **47 At the end of Part 3-45**

Add:

### **Division 415—Designated infrastructure projects**

#### **Table of Subdivisions**

415-B Application of Subdivision 415-B of the Income Tax Assessment Act 1997

### **Subdivision 415-B—Application of Subdivision 415-B of the Income Tax Assessment Act 1997**

#### **Table of sections**

415-10 Application of Subdivision 415-B of the *Income Tax Assessment Act 1997*

### **415-10 Application of Subdivision 415-B of the *Income Tax Assessment Act 1997***

Subdivision 415-B of the *Income Tax Assessment Act 1997* applies to:

- (a) a tax loss for the 2012-13 income year or a later income year;  
or
- (b) a debt incurred in the 2012-13 income year or a later income year.

### **48 Application of amendments**

- (1) The amendments made by items 1, 2 and 3 of this Schedule apply in relation to the 2012-13 income year and later income years.
- (2) The amendments made by items 5 and 6 of this Schedule apply to a loss for the 2012-13 income year or a later income year.

## **Part 4—Miscellaneous amendments**

### **Division 1—Income Tax Assessment Act 1936**

#### **49 Subsections 266-185(1) and 267-90(1) in Schedule 2F**

Omit “start”, substitute “beginning”.

#### **50 Subsection 268-10(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **51 Subsection 268-10(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **52 Subsection 268-15(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **53 Subsection 268-15(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **54 Subsection 268-20(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **55 Subsection 268-20(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **56 Subsection 268-25(2) in Schedule 2F**

Omit “starts at the start”, substitute “begins at the beginning”.

#### **57 Subsection 268-25(2) in Schedule 2F**

Omit “starts” (second occurring), substitute “begins”.

#### **58 Subsections 268-75(1) and 268-80(1) in Schedule 2F**

Omit “starts” (wherever occurring), substitute “begins”.

#### **59 Subsection 268-85(5) in Schedule 2F**

Omit “start”, substitute “begin”.

**60 Subsection 269-65(1) in Schedule 2F**

Omit “start” (first occurring), substitute “begin”.

**61 Subsection 269-65(1) in Schedule 2F**

Omit “start” (second occurring), substitute “beginning”.

**62 Paragraph 269-65(1)(a) in Schedule 2F**

Omit “start”, substitute “beginning”.

**63 Paragraphs 269-100(4)(a) and 271-80(a) in Schedule 2F**

Omit “started”, substitute “began”.

**64 Subparagraph 272-80(6A)(a)(i) in Schedule 2F**

Omit “starting”, substitute “beginning”.

**65 Paragraphs 272-80(6B)(a) and (b) and 272-85(5C)(a) and (b) in Schedule 2F**

Omit “starting”, substitute “beginning”.

**Division 2—Income Tax Assessment Act 1997**

**66 Subsection 415-15(6)**

Repeal the subsection.

## Schedule 5—Tax secrecy and transparency

### Part 1—Main amendments

#### *Taxation Administration Act 1953*

##### **1 At the end of Part 1A**

Add:

##### **3C Reporting of information about corporate tax entity with reported total income of \$100 million or more**

- (1) This section applies to an entity if:
  - (a) the entity is a corporate tax entity (within the meaning of the *Income Tax Assessment Act 1997*); and
  - (b) the entity has total income equal to or exceeding \$100 million for an income year, according to information reported to the Commissioner in the entity's income tax return (within the meaning of that Act) for the income year.
- (2) The Commissioner must, as soon as practicable after the end of the income year, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
  - (a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;
  - (b) the entity's total income for the income year, according to information reported to the Commissioner in the entity's income tax return (within the meaning of that Act) for the income year;
  - (c) the entity's taxable income or net income (if any) for the income year, according to information reported to the Commissioner in that income tax return;
  - (d) the entity's income tax payable (if any) for the financial year corresponding to the income year, according to information reported to the Commissioner in that income tax return.
- (4) Subsection (5) applies if:

- (a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and
  - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

### **3D Reporting of information about entity with MRRT payable**

- (1) This section applies to an entity if the entity has an amount of MRRT payable for an MRRT year, according to information reported to the Commissioner in the entity's MRRT return for the MRRT year.
- (2) The Commissioner must, as soon as practicable after the end of the MRRT year, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
  - (a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;
  - (b) the entity's MRRT payable for the MRRT year, according to information reported to the Commissioner in the entity's MRRT return for the MRRT year.
- (4) Subsection (5) applies if:
  - (a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and
  - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of

the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

(7) In this section:

**MRRT return** has the meaning given by the *Income Tax Assessment Act 1997*.

**MRRT year** has the meaning given by section 300-1 of the *Minerals Resource Rent Tax Act 2012*.

### **3E Reporting of information about entity with PRRT payable**

- (1) This section applies to an entity if the entity has an amount of PRRT payable for a year of tax, according to information reported to the Commissioner in the entity's PRRT return for the year of tax.
- (2) The Commissioner must, as soon as practicable after the end of the year of tax, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
  - (a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;
  - (b) the PRRT payable by the entity in respect of the year of tax, according to information reported to the Commissioner in the entity's PRRT return for the year of tax.
- (4) Subsection (5) applies if:
  - (a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and
  - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

(7) In this section:

**PRRT return** means a return under section 59 or 60 of the *Petroleum Resource Rent Tax Assessment Act 1987*.

**year of tax** has the meaning given by the *Petroleum Resource Rent Tax Assessment Act 1987*.

## **2 After section 355-45 in Schedule 1**

Insert:

### **355-47 Exception—disclosure of periodic aggregate tax information**

(1) Section 355-25 does not apply if the information is \*periodic aggregate tax information.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

(2) **Periodic aggregate tax information** is information that:

- (a) specifies the total amount collected or assessed by the Commissioner during a period, or predicted by the Commissioner to be collected or assessed by the Commissioner during a period, in respect of:
  - (i) tax imposed under a particular Act or particular Acts; or
  - (ii) if an Act imposes duties of excise—a type of duty of excise imposed under that Act; or
  - (iii) if an Act imposes duties of customs—a type of duty of customs imposed under that Act; and
- (b) does not identify, nor is reasonably capable of being used to identify, an individual.

## **3 Subsection 355-50(1) in Schedule 1 (note)**

Omit “Note:”, substitute “Note 1”.

## **4 At the end of subsection 355-50(1) in Schedule 1**

Add:

Note 2: An example of a duty mentioned in paragraph (b) is the duty to make available information under sections 3C, 3D and 3E.

## **5 Subsection 355-65(4) in Schedule 1 (table item 7)**

Repeal the item, substitute:

---

- 7 the Secretary of the Department of the Treasury is for the purpose of:
- (a) briefing the Treasurer in relation to a decision that the Treasurer may make under the *Foreign Acquisitions and Takeovers Act 1975*; or
  - (b) briefing the Treasurer in relation to a decision that the Treasurer may make in accordance with the document issued by the Treasurer known as Australia's Foreign Investment Policy; or
  - (c) briefing an officer of the Department of the Treasury who is authorised by the Treasurer to make a decision mentioned in paragraph (a) or (b) in relation to the decision.

## **6 After section 355-170 in Schedule 1**

Insert:

### **355-172 Exception—disclosure of periodic aggregate tax information**

Section 355-155 does not apply if the information is \*periodic aggregate tax information.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

## **Part 2—Consequential amendments**

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

#### **7 Subsection 995-1(1)**

Insert:

*periodic aggregate tax information* has the meaning given by subsection 355-47(2) in Schedule 1 to the *Taxation Administration Act 1953*.

## Part 3—Application of amendments

### 8 Application of amendments

- (1) Subject to this item, the amendments made by this Schedule apply to:
  - (a) the 2013-14 income year and later income years; and
  - (b) the 2013-2014 MRRT year and later MRRT years; and
  - (c) the year of tax (within the meaning of the *Petroleum Resource Rent Tax Assessment Act 1987*) starting on 1 July 2013 and later years of tax.
- (2) The amendment made by item 5 of this Schedule applies to records and disclosures made on or after the commencement of that item (whenever the information was obtained).

## **Schedule 6—Petroleum resource rent tax**

### ***Petroleum Resource Rent Tax Assessment Act 1987***

#### **1 Subsection 37(1)**

Omit “liable to be made”, substitute “to the extent that they are made”.

#### **2 Subsection 37(1)**

Omit “liable to be paid by the person in relation to”, substitute “paid by the person, to the extent that the payment relates to”.

#### **3 At the end of section 37**

Add:

- (3) For the purposes of this section, a person is taken to make a payment when the person becomes liable to make the payment.

#### **4 Subsection 38(1)**

Omit “liable to be made”, substitute “to the extent that they are made”.

#### **5 Subsection 38(1)**

Omit “liable to be paid by the person in relation to”, substitute “paid by the person, to the extent that the payment relates to”.

#### **6 At the end of section 38**

Add:

- (3) For the purposes of this section, a person is taken to make a payment when the person becomes liable to make the payment.

#### **7 Subsection 39(1)**

Omit “liable to be made”, substitute “to the extent that they are made”.

#### **8 At the end of section 39**

Add:

- (5) For the purposes of this section, a person is taken to make a payment when the person becomes liable to make the payment.

## 9 Subsection 41(1)

Repeal the subsection, substitute:

- (1) If a person (the *eligible person*) makes or made a payment wholly or partly to procure the carrying on or providing of operations, facilities or other things of a kind referred to in section 37, 38 or 39 by another person, then:
  - (a) for the purposes of this Act:
    - (i) the operations, facilities or other things are taken to have been carried on or provided by the eligible person and not by the other person; and
    - (ii) to the extent that the payment is to procure the carrying on or providing of the operations, facilities or other things—it is taken to have been made by the eligible person in carrying on or providing the operations, facilities or other things; and
  - (b) if subsection (1A) does not apply to the other person in relation to the payment—to the extent that the payment is to procure the carrying on or providing of the operations, facilities or other things, the payment is taken, for the purposes of sections 37, 38, 39 and 44, to have the same character and nature as the operations, facilities or other things procured; and
  - (c) if subsection (1A) applies to the other person in relation to the payment—to the extent that:
    - (i) the payment is to procure the carrying on or providing of the operations, facilities or other things; and
    - (ii) the payment relates to use of property on which the other person has incurred capital expenditure;the payment is taken, for the purposes of those sections, to have the same character and nature as the operations, facilities or other things procured; and
  - (d) if subsection (1A) applies to the other person in relation to the payment—to the extent that:
    - (i) the payment is to procure the carrying on or providing of the operations, facilities or other things; and
    - (ii) the payment does not relate to use of property on which the other person has incurred capital expenditure;the payment is taken, for the purposes of those sections, to be of the same amount, and to have the same character and

nature, as the expenditure the other person incurred in carrying on or providing the operations, facilities or other things procured.

Note: If the payment is excluded expenditure, it will not be exploration expenditure under section 37, general project expenditure under section 38 or closing-down expenditure under section 39. However, if paragraph (1)(d) applies to the payment, the amount taken to be excluded expenditure may be reduced under subsection (1D) of this section.

(1A) This subsection applies to the other person in relation to a payment if, at the time the payment is made, the other person:

- (a) holds an interest in the petroleum project to which the operations, facilities or other things relate; or
- (b) is connected (within the meaning of section 328-125 of the *Income Tax Assessment Act 1997*) with the eligible person.

(1B) The amount of the other person's expenditure referred to in paragraph (1)(d) is taken not to exceed so much of the amount of the eligible person's payment as:

- (a) is a payment to procure the carrying on or providing of the operations, facilities or other things; and
- (b) does not relate to use of property on which the other person has incurred capital expenditure.

(1C) If:

- (a) subsection (1A) applies to the other person in relation to the payment; and
- (b) the other person, to any extent, procures for:
  - (i) the eligible person; or
  - (ii) the eligible person and one or more persons who hold an interest in the project;

the operations, facilities or other things from a third person who is connected (within the meaning of section 328-125 of the *Income Tax Assessment Act 1997*) with the other person; the references in paragraph (1)(d) and subsection (1B) to the other person's expenditure are taken (to the extent that carrying on or providing the operations, facilities or other things was procured from the third person) to be references to the third person's expenditure.

- (1D) If the other person's expenditure is reduced because of subsection (1B), sections 37, 38, 39 and 44 apply in relation to that expenditure as if it were reduced to the same extent.

## **10 At the end of section 41**

Add:

- (3) For the purposes of this section, a person is taken to make a payment when the person becomes liable to make the payment.

## **11 Application of amendments**

- (1) The amendments made by this Schedule apply, in relation to a petroleum project, to any payment made by a person on or after:
- (a) the applicable commencement date in relation to the project, unless paragraph (b) or (c) applies; or
  - (b) the starting base day for the person's interest in the project under subsection 45(5) of the *Petroleum Resource Rent Tax Assessment Act 1987*, if:
    - (i) the project is an onshore petroleum project or the North West Shelf project, or an onshore petroleum project is a pre-combination project in relation to the project; and
    - (ii) item 2 or 3 of the table in that subsection sets out that starting base day; or
  - (c) the day provided under subclause 15(3) or (4) of Schedule 2 to that Act, in relation to the asset to which the payment relates, if:
    - (i) the project is an onshore petroleum project or the North West Shelf project, or an onshore petroleum project is a pre-combination project in relation to the project; and
    - (ii) the person chose, under Part 2 of that Schedule, the book value approach or the market value approach for the person's interest in the project; and
    - (iii) the payment is interim expenditure, within the meaning of clause 15 of that Schedule, in relation to that asset.
- (2) Despite subitem (1), the amendments made by items 9 and 10 do not apply in relation to a payment by a person that was made:
- (a) before 1 July 2012; and
  - (b) in relation to a petroleum project for which the person has been required under section 59 of the *Petroleum Resource*

*Rent Tax Assessment Act 1987* to furnish a return before  
14 December 2012.

- (3) Despite subitem (1), the amendments made by items 9 and 10 apply in relation to a payment by a person that was made:
- (a) before 1 July 2013; and
  - (b) in relation to a petroleum project for which the person has not been required under section 59 of the *Petroleum Resource Rent Tax Assessment Act 1987* to furnish a return before 14 December 2012;
- as if subsection 41(1A) of that Act as amended by this Schedule did not apply, in relation to the payment, to the other person referred to in subsection 41(1) of that Act as so amended.
- (4) For the purposes of this item, a person is taken to make a payment when the person becomes liable to make the payment.

## Schedule 7—Removing CGT discount for foreign individuals

### *Income Tax Assessment Act 1997*

#### **1 Subsection 115-30(1)**

Omit “and 115-45”, substitute “, 115-45, 115-105, 115-110 and 115-115”.

#### **2 After subsection 115-30(1)**

Insert:

(1A) For the purposes of sections 115-105, 115-110 and 115-115, item 2 of the table in subsection (1) applies in relation to all \*replacement-asset roll-overs, including those covered by paragraph 115-34(1)(c).

#### **3 Subparagraph 115-100(a)(i)**

After “individual”, insert “and neither section 115-105 nor 115-110 (about foreign or temporary residents) applies to the gain”.

#### **4 Subparagraph 115-100(a)(ii)**

After “\*FHSA trust”, insert “and section 115-120 (about foreign or temporary residents) does not apply to the gain”.

#### **5 At the end of section 115-100**

Add:

- ; or (c) the percentage resulting from section 115-115 if section 115-105 or 115-110 applies to the gain; or
- (d) the percentage resulting from section 115-120 if that section applies to the gain.

#### **6 At the end of Subdivision 115-B**

Add:

### **115-105 Foreign or temporary residents—individuals with direct gains**

#### *Object*

- (1) The object of this section (with section 115-115) is to adjust the discount percentage so as to deny you a discount to the extent that you accrued a \*capital gain while a foreign resident or \*temporary resident.

#### *When this section applies*

- (2) This section applies to a \*discount capital gain if:
  - (a) you are an individual; and
  - (b) you \*acquire a \*CGT asset; and
  - (c) you make the discount capital gain from a \*CGT event happening in relation to the CGT asset; and
  - (d) the period (the *discount testing period*):
    - (i) starting on the day you acquired the CGT asset; and
    - (ii) ending on the day the CGT event happens; ends after 8 May 2012; and
  - (e) you were a foreign resident or \*temporary resident during some or all of so much of that period as is after 8 May 2012.

Note: Section 115-30 has special rules about when assets are acquired.

#### *Changed residency status*

- (3) For the purposes of this section and section 115-115, if:
  - (a) another individual owned the \*CGT asset on a particular day before the discount testing period ends; and
  - (b) on that day, that individual was one of the following (that individual's *residency status*):
    - (i) an Australian resident (but not a \*temporary resident);
    - (ii) a temporary resident;
    - (iii) a foreign resident; and
  - (c) section 115-30 treats you as having \*acquired the CGT asset when that individual, or an earlier owner of the CGT asset, acquired it;you are treated as having the same residency status on that day as that individual had on that day.

## 115-110 Foreign or temporary residents—individuals with trust gains

### *Object*

- (1) The object of this section (with section 115-115) is to adjust the discount percentage so as to deny you a discount for a \*capital gain you make because of section 115-215 to the extent that the gain was accrued while you were a foreign resident or \*temporary resident.

### *When this section applies*

- (2) This section applies to a \*discount capital gain if:
- you are an individual and a beneficiary of a trust (*your trust*); and
  - because of section 115-215, Division 102 applies to you as if you had made the discount capital gain on a particular day (*your gain day*) for a \*capital gain (the *relevant trust gain*) of the trust estate; and
  - the period (the *discount testing period*) worked out from the following table ends after 8 May 2012; and
  - you were a foreign resident or \*temporary resident during some or all of so much of that period as is after 8 May 2012.

### **Working out the *discount testing period***

<b>Item</b>	<b>Column 1 If this is the case:</b>	<b>Column 2 the <i>discount testing period</i> is:</b>
1	your trust is a *fixed trust	the period: (a) starting on the most recent day (before your gain day) that you became a beneficiary of your trust; and (b) ending on your gain day.
2	your trust is not a *fixed trust and the relevant trust gain: (a) is made because a *CGT event happened in relation to a *CGT asset *acquired by the trustee of your trust;	the period: (a) starting on the day of that acquisition; and (b) ending on your gain day.

**Working out the discount testing period**

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If this is the case:</b>	<b>the discount testing period is:</b>
	or	
	(b) is referable (either directly or indirectly through one or more interposed trusts that are not fixed trusts) to a *capital gain made by the trustee of another trust that is not a fixed trust because a CGT event happened in relation to a CGT asset acquired by that trustee	
3	your trust is not a *fixed trust and the relevant trust gain is referable (either directly or indirectly through one or more interposed trusts that are not fixed trusts) to a *capital gain made by a fixed trust	the period: (a) starting on the most recent day (before your gain day) that the trust whose capital gain is directly referable to the capital gain made by the fixed trust became a beneficiary of the fixed trust; and (b) ending on your gain day.

Note: Section 115-30 has special rules about when assets (including membership interests in trusts) are acquired.

*Changed residency status*

- (3) For the purposes of this section and section 115-115, if:
- (a) your trust is a \*fixed trust and another individual owned your \*membership interest in your trust on a particular day before the discount testing period ends; and
  - (b) on that day, that individual was one of the following (that individual's **residency status**):
    - (i) an Australian resident (but not a \*temporary resident);
    - (ii) a temporary resident;
    - (iii) a foreign resident; and
  - (c) section 115-30 treats you as having \*acquired your membership interest in your trust when that individual, or an earlier owner of that membership interest, acquired it;
- you are treated as having the same residency status on that day as that individual had on that day.

### 115-115 Foreign or temporary residents—percentage for individuals

- (1) This section applies if section 115-105 or 115-110 applies to a \*discount capital gain.

#### *Periods starting after 8 May 2012*

- (2) If the discount testing period starts after 8 May 2012, the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Number of days during discount testing period that you were an Australian resident (but not a *temporary resident)}}{2 \times \text{Number of days in discount testing period}}$$

Note 1: The percentage will be 0% if you were a foreign resident or temporary resident during all of the discount testing period.

Note 2: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

#### *Periods starting earlier—Australian residents*

- (3) If:
- (a) the discount testing period starts on or before 8 May 2012; and
  - (b) you were an Australian resident (but not a \*temporary resident) on 8 May 2012;

the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Number of days in discount testing period} - \text{Number of apportionable days that you were a foreign resident or *temporary resident}}{2 \times \text{Number of days in discount testing period}}$$

where:

***apportionable day*** means a day, after 8 May 2012, during the discount testing period.

Note: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

*Periods starting earlier—other residents may choose market value*

- (4) The percentage resulting from this section is worked out from the following table if:
- (a) the discount testing period starts on or before 8 May 2012; and
  - (b) you were a foreign resident or \*temporary resident on 8 May 2012; and
  - (c) the most recent \*acquisition (before the \*CGT event) of the \*CGT asset happened on or before 8 May 2012; and
  - (d) the CGT asset's \*market value on 8 May 2012 exceeds the amount that was its \*cost base at the end of that day; and
  - (e) you choose for this subsection to apply.

Note 1: The CGT event and CGT asset are those expressly or impliedly referred to in section 115-105 or 115-110.

Note 2: Section 115-30 has special rules about when assets are acquired.

**Percentage using market value**

Item	Column 1	Column 2
	<b>If the excess from paragraph (d):</b>	<b>then, the percentage is:</b>
1	is equal to or greater than the amount of the *discount capital gain	50%.
2	falls short of the amount of the *discount capital gain	worked out under subsection (5).

- (5) For the purposes of table item 2 in subsection (4), the following (expressed as a percentage) is the percentage resulting from this section:

$$\text{Excess} + \left( \frac{\text{Shortfall} \times \text{Number of apportionable days that you were an eligible resident}}{\text{Number of apportionable days}} \right)$$

$2 \times \text{Amount of the *discount capital gain}$

where:

**apportionable day** means a day, after 8 May 2012, during the discount testing period.

***eligible resident*** means an Australian resident who is not a \*temporary resident.

***excess*** means the excess from paragraph (4)(d).

***shortfall*** means the amount that the excess falls short of the amount of the \*discount capital gain.

Note: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

*Periods starting earlier—other residents not choosing market value*

(6) If:

- (a) the discount testing period starts on or before 8 May 2012; and
- (b) you were a foreign resident or \*temporary resident on 8 May 2012; and
- (c) subsection (4) does not apply;

the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Number of apportionable days that you were an Australian resident (but not a *temporary resident)}}{2 \times \text{Number of days in discount testing period}}$$

where:

***apportionable day*** means a day, after 8 May 2012, during the discount testing period.

Note 1: The percentage will be 0% if you were a foreign resident or temporary resident on each of the apportionable days.

Note 2: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

### **115-120 Foreign or temporary residents—trusts with certain gains**

- (1) The object of this section is to adjust the discount percentage so as to deny a trustee a discount for a \*capital gain for which the trustee is liable:
  - (a) to be assessed; and
  - (b) to pay tax;

under section 98 of the *Income Tax Assessment Act 1936* in relation to the trust estate in respect of a beneficiary to the extent that the beneficiary was a foreign resident or \*temporary resident.

- (2) This section applies to a \*discount capital gain of a trust estate if:
- (a) you are the trustee of that trust; and
  - (b) section 115-220 applies to you in relation to the discount capital gain and a beneficiary of the trust who is an individual.
- (3) The percentage resulting from this section is the same as the \*discount percentage for the corresponding \*discount capital gain the beneficiary would have made for the purposes of Division 102 had section 115-215 applied to the beneficiary.

## Schedule 8—Tax exemption for payments under Defence Abuse Reparation Scheme

### *Income Tax Assessment Act 1997*

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

Before:

Defence Force member, allowances..... 51-5

insert:

Defence Abuse Reparation Scheme, payments under..... 51-5

#### **2 Section 51-5 (at the end of the table)**

Add:

1.7	a recipient of a	the payment	none
	payment from the		
	Commonwealth		
	under the Defence		
	Abuse Reparation		
	Scheme		

#### **3 Application of amendments**

The amendments made by this Schedule apply in relation to the 2012-13 income year and later income years.

---

## **Schedule 9—GST-free treatment for National Disability Insurance Scheme funded supports**

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

#### **1 After section 38-35**

Insert:

#### **38-38 Disability support provided to NDIS participants**

A supply is *GST-free* if the supply:

- (a) is a supply to a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) for whom a participant's plan is in effect under section 37 of that Act; and
- (b) is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and
- (c) is made under a written agreement, between the supplier and the participant or another person, that:
  - (i) identifies the participant; and
  - (ii) states that the supply is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and
- (d) is of a kind that the \*Disability Services Minister has determined in writing.

#### **2 At the end of section 177-10**

Add:

- (5) The \*Disability Services Minister may, by legislative instrument, make a determination for the purposes of paragraph 38-38(d).
- (6) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, determinations made under subsection (5) of this section may be expressed to take effect from a date before the determinations are registered under that Act.

**Schedule 9** GST-free treatment for National Disability Insurance Scheme funded supports

**Part 3** Application of amendments

---

### **3 Section 195-1**

Insert:

*Disability Services Minister* means the Minister administering the *National Disability Insurance Scheme Act 2013*.

### **4 Application of amendments**

The amendments made by this Schedule apply in relation to supplies made on or after the commencement of section 37 of the *National Disability Insurance Scheme Act 2013*.

## **Schedule 10—Deductible gift recipients**

### **Part 1—Main amendments**

#### *Income Tax Assessment Act 1997*

##### **1 Subsection 30-25(2) (after table item 2.2.4)**

Insert:

2.2.5 Aurora Education Foundation Limited the gift must be made  
after 30 June 2013

##### **2 Subsection 30-25(2) (table item 2.2.40, column headed “Special conditions”)**

Omit “and before 2 August 2013”.

##### **3 Subsection 30-45(2) (after table item 4.2.4)**

Insert:

4.2.5 United Way Australia the gift must be made  
after 25 April 2013

##### **4 Subsection 30-45(2) (after table item 4.2.7)**

Insert:

4.2.8 Australian Neighbourhood Houses & the gift must be made  
Centres Association (ANHCA) Inc. after 30 June 2013

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

Insert:

9.2.11 The Australia Foundation in support of the gift must be made  
Human Rights Watch Limited after 30 June 2013

##### **6 Section 30-105 (after table item 13.2.3A)**

Insert:

13.2.4 Layne Beachley - Aim for the Stars the gift must be made  
Foundation Limited after 30 June 2013

13.2.5 Social Traders Ltd the gift must be made  
after 30 June 2013

**Schedule 10** Deductible gift recipients  
**Part 1** Main amendments

---

**7 Section 30-315 (after table item 9AA)**

Insert:

9AAA Aurora Education Foundation Limited item 2.2.5

**8 Section 30-315 (after table item 9A)**

Insert:

9B Australia Foundation in support of Human Rights Watch Limited item 9.2.11

**9 Section 30-315 (after table item 23)**

Insert:

24 Australian Neighbourhood Houses & Centres Association (ANHCA) Inc. item 4.2.8

**10 Section 30-315 (after table item 65)**

Insert:

65AA Layne Beachley - Aim for the Stars Foundation Limited item 13.2.4

**10A Section 30-315 (after table item 111A)**

Insert:

111AAA Social Traders Ltd item 13.2.5

**11 Section 30-315 (after table item 118B)**

Insert:

118C United Way Australia item 4.2.5

***Tax Laws Amendment (2011 Measures No. 2) Act 2011***

**12 Part 3 of Schedule 1**

Repeal the Part.

## **Part 2—The Charlie Perkins Scholarship Trust**

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

**13 Subsection 30-25(2) (table item 2.2.39, column headed “Special conditions”)**

Omit “and before 2 August 2013”.

**14 Subsection 30-80(2) (table item 9.2.28, column headed “Special conditions”)**

Omit “and before 2 August 2013”.

### ***Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013***

**15 Part 1 of Schedule 1 (amendment of the *Tax Laws Amendment (2011 Measures No. 2) Act 2011*)**

Repeal the amendment and the heading.

## Schedule 11—Miscellaneous amendments

### Part 1—Amendments commencing after the Australian Charities and Not-for-profits Commission Act 2012

#### *Income Tax Assessment Act 1997*

##### **1 At the end of section 50-1**

Add:

Note 3: In all cases the exemption is subject to the special condition in section 50-47 (about an entity that is an ACNC type of entity).

##### **2 After section 50-45**

Insert:

##### **50-47 Special condition for all items**

An entity that:

- (a) is covered by any item; and
- (b) is an \*ACNC type of entity;

is not exempt from income tax unless the entity is registered under the *Australian Charities and Not-for-profits Commission Act 2012*.

##### **3 At the end of subsection 50-110(5)**

Add:

The entity must also satisfy section 50-47, if the entity is an \*ACNC type of entity.

#### *Income Tax (Transitional Provisions) Act 1997*

##### **4 Section 50-50**

Omit “, as amended by Schedules 1 and 2 to the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012*”.

**Part 2—Amendment commencing after Schedule 1 to  
the Tax Laws Amendment (2012 Measures  
No. 6) Act 2013**

*Income Tax Assessment Act 1997*

**5 Paragraph 59-50(6)(b)**

Omit “distributing bodies”, substitute “Indigenous holding entities”.

**6 At the end of subsection 59-50(6)**

Add:

; or (c) a \*registered charity.

*Income Tax (Transitional Provisions) Act 1997*

**7 Part 2-15 (heading)**

Repeal the heading, substitute:

**Part 2-15—Non-assessable income**

**8 At the end of Part 2-15**

Add:

**Division 59—Particular amounts of non-assessable  
non-exempt income**

**Table of Subdivisions**

59-N Native title benefits

**Subdivision 59-N—Native title benefits**

**Table of sections**

59-50 Indigenous holding entities

**Schedule 11** Miscellaneous amendments

**Part 2** Amendment commencing after Schedule 1 to the Tax Laws Amendment (2012 Measures No. 6) Act 2013

---

**59-50 Indigenous holding entities**

Without limiting subsection 59-50(6) of the *Income Tax Assessment Act 1997*, an entity was an **Indigenous holding entity** at a time if:

- (a) the time occurred:
  - (i) during an income year starting on or after 1 July 2008; and
  - (ii) before the commencement of Chapter 2 of the *Australian Charities and Not-for-profits Commission Act 2012*; and
- (b) at that time, the entity was endorsed under Subdivision 50-B of the *Income Tax Assessment Act 1997* as exempt from income tax because the entity was covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 of that Act, as in force at that time.

**9 Application of amendments**

The amendments made by this Part apply in relation to income years starting on or after 1 July 2008.

## **Part 3—Fringe Benefits Tax**

### *Fringe Benefits Tax Assessment Act 1986*

#### **10 Subsection 5B(1E) (method statement, paragraph (d) of step 2)**

Omit “by non-profit societies and associations”, substitute “by societies and associations that are rebatable employers”.

#### **11 Subparagraph 57A(2)(b)(iii)**

Repeal the subparagraph, substitute:

- (ii) a hospital carried on by a society or association that is a rebatable employer;

#### **12 Subsection 57A(4)**

Repeal the subsection, substitute:

- (4) A benefit provided in respect of the employment of an employee is an exempt benefit if the employer of the employee is a hospital carried on by a society or association that is a rebatable employer.

#### **13 Section 65J (heading)**

Repeal the heading, substitute:

#### **65J Rebate for certain not-for-profit employers etc.**

#### **14 Subsections 65J(1) and (1A)**

Repeal the subsections, substitute:

*Rebatable employer*

- (1) An employer is a ***rebatable employer*** for a year of tax if the employer:
  - (a) is exempt from income tax at any time during the year of tax under any of the provisions set out in the following table; and
  - (b) satisfies the special conditions (if any) set out in the following table.

**Schedule 11** Miscellaneous amendments  
**Part 3** Fringe Benefits Tax

---

**Rebatable employer**

<b>Item</b>	<b>Column 1 Type of employer</b>	<b>Column 2 Special conditions</b>
1	a registered charity covered by item 1.1 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	The registered charity is not a rebatable employer for the year of tax if it: <ul style="list-style-type: none"> <li>(a) is a registered public benevolent institution; or</li> <li>(b) is a registered health promotion charity; or</li> <li>(c) is an institution of the Commonwealth, a State or a Territory; or</li> <li>(d) has not been endorsed under subsection 123E(1); or</li> <li>(e) is not an institution.</li> </ul>
2	a scientific institution covered by item 1.3 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	The institution is not an institution of the Commonwealth, a State or a Territory unless it: <ul style="list-style-type: none"> <li>(a) is an institution established by a law of the Commonwealth, a State or a Territory; and</li> <li>(b) is not conducted by or on behalf of the Commonwealth, a State or a Territory; and</li> <li>(c) is engaged solely in research into the causes, prevention or cure of diseases in humans.</li> </ul>
3	a public educational institution covered by item 1.4 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	The institution is not an institution established by a law of the Commonwealth, a State or a Territory unless it: <ul style="list-style-type: none"> <li>(a) is not conducted by or on behalf of the Commonwealth, a State or a Territory; and</li> <li>(b) is a preschool or school (other than a tertiary institution).</li> </ul>
4	a society, association or club: <ul style="list-style-type: none"> <li>(a) established for the encouragement of science; and</li> </ul>	See subsection (5) of this section.

<b>Rebatable employer</b>		
<b>Item</b>	<b>Column 1 Type of employer</b>	<b>Column 2 Special conditions</b>
	(b) covered by item 1.7 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	
5	a society, association or club: (a) established for community service purposes (except political or lobbying purposes); and (b) covered by item 2.1 of the table in section 50-10 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
6	an employer association or an employee association covered by item 3.1 of the table in section 50-15 of the <i>Income Tax Assessment Act 1997</i>	None.
7	a trade union covered by item 3.2 of the table in section 50-15 of the <i>Income Tax Assessment Act 1997</i>	None.
8	a society or association: (a) established for the purpose of promoting the development of: (i) aviation; or (ii) tourism; and (b) covered by item 8.1 of the table in section 50-40 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
9	a society or association: (a) established for the purpose of promoting the development of any of the following Australian resources: (i) agricultural resources; (ii) horticultural resources; (iii) industrial resources; (iv) manufacturing resources; (v) pastoral resources;	See subsection (5) of this section.

**Schedule 11** Miscellaneous amendments  
**Part 3** Fringe Benefits Tax

---

---

**Rebatable employer**

---

<b>Item</b>	<b>Column 1 Type of employer</b>	<b>Column 2 Special conditions</b>
	(vi) viticultural resources; (vii) aquacultural resources; (viii) fishing resources; and (b) covered by item 8.2 of the table in section 50-40 of the <i>Income Tax Assessment Act 1997</i>	
10	a society or association: (a) established for the purpose of promoting the development of Australian information and communications technology resources; and (b) covered by item 8.3 of the table in section 50-40 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
11	a society, association or club: (a) established for the encouragement of any of the following: (i) animal racing; (ii) art; (iii) a game or sport; (iv) literature; (v) music; and (b) covered by item 9.1 of the table in section 50-45 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
12	a society, association or club: (a) established for musical purposes; and (b) covered by item 9.2 of the table in section 50-45 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.

Note: Subsection (3) affects the kind of employers that may be considered to be an institution of government.

**15 Subsection 65J(2)**

Repeal the subsection.

---

**16 Subsection 65J(2A) (definition of *rebtable days in year*)**

Omit “paragraphs (1)(a) to (l) (inclusive)”, substitute “the table items in subsection (1)”.

**17 Subsection 65J(5)**

Repeal the subsection, substitute:

- (5) A society, association or club is not covered by table item 4, 5, 8, 9, 10, 11 or 12 in subsection (1) for a year of tax if it is:
- (a) an incorporated company where all the stock or shares in the capital of the company is or are beneficially owned by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority or institution of the Commonwealth, a State or a Territory; or
  - (b) an incorporated company where the company is limited by guarantee and the interests and rights of the members in or in relation to the company are beneficially owned by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority or institution of the Commonwealth, a State or a Territory.

**18 Part XA (heading)**

Omit “charitable institutions”, substitute “registered charities”.

**19 Section 123E (heading)**

Omit “charitable institution”, substitute “registered charity”.

**20 Subsections 123E(1) and (2)**

Omit “a charitable institution covered by paragraph 65J(1)(baa)” (wherever occurring), substitute “a registered charity covered by table item 1 in subsection 65J(1)”.

**21 Paragraph 123E(2)(a)**

Repeal the paragraph, substitute:

- (a) is a registered charity covered by column 1 of that table item; and
- (aa) satisfies the special conditions set out in that table item (other than the condition relating to endorsement under subsection (1) of this section); and

**22 Subsection 135Q(1) (note)**

Omit “charitable institutions”, substitute “registered charities”.

**23 Subsection 136(1)**

Insert:

*rebtable employer* has the meaning given by section 65J.

**24 Paragraph 140(1B)(c)**

Repeal the paragraph, substitute:

(c) a hospital carried on by a society or association that is a rebtable employer;

**25 Subparagraph 140(1C)(b)(iii)**

Repeal the subparagraph, substitute:

(ii) a hospital carried on by a society or association that is a rebtable employer.

***Taxation Administration Act 1953***

**26 Paragraphs 426-5(f) and 426-65(1)(f) in Schedule 1**

Omit “a charitable institution covered by paragraph 65J(1)(baa)”, substitute “a registered charity covered by table item 1 in subsection 65J(1)”.

**27 Application and transitional provisions**

- (1) The amendments made by this Part apply for the 2013-14 year of tax and later years of tax.
- (2) However, those amendments apply to an entity for the 2014-15 year of tax and later years of tax if the entity is endorsed under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* immediately before the commencement of this Part.
- (3) If:
  - (a) subitem (2) applies to an entity; and
  - (b) the entity’s endorsement mentioned in that subitem is in force at the end of the 2013-14 year of tax;

that endorsement has effect after the end of that year of tax as if it were an endorsement under subsection 123E(1) of that Act as amended by this Part.

## Part 4—Updating indexation provisions

### *Income Tax Assessment Act 1997*

#### **28 Subsection 960-275(1A) (formula)**

Repeal the formula, substitute:

$$\frac{\text{*Index number for the *quarter ending on 31 December just before the start of the relevant income year}}{\text{*Index number for the *quarter ending on the previous 31 December}}$$

### *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*

#### **29 Subsection 10A(5) (definition of *current year*)**

Omit “31 March”, substitute “31 December”.

### *Superannuation Guarantee (Administration) Act 1992*

#### **30 Paragraph 9(1)(b)**

Omit “March quarter” (wherever occurring), substitute “December quarter”.

#### **31 Subsection 9(1) (note)**

Repeal the note, substitute:

Note: The December quarter is a quarter beginning on 1 October.

#### **32 Application of amendments**

- (1) The amendment made by item 28 applies in relation to working out the indexation factor for the 2013-14 income year and later income years.
- (2) The amendment made by item 29 applies in relation to working out the indexation factor for the 2013-14 income year and later income years.
- (3) The amendments made by items 30 and 31 apply in relation to working out the indexation factor for the 2013-14 year and later years.

## **Part 5—Other amendments**

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

#### **33 Paragraph 23AG(1AA)(c)**

Omit “50-50(c)”, substitute “50-50(1)(c)”.

#### **34 Section 24AT (paragraphs (c) and (d) of the definition of *excluded STB*)**

Omit “50-55(a)”, substitute “50-55(1)(a)”.

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

#### **35 Section 30-60**

Repeal the section, substitute:

#### **30-60 Gifts to a National Parks body or conservation body must satisfy certain requirements**

You can deduct a gift that you make to an environmental institution covered by any of table items 6.2.1 to 6.2.12 or 6.2.22 in subsection 30-55(2) only if, at the time of making the gift:

- (a) if the institution is not a \*registered charity—the institution has agreed to give the \*Environment Secretary, within a reasonable period after the end of the income year in which you made the gift, statistical information about gifts made to the institution during that income year; and
- (b) the institution has a policy of not acting as a mere conduit for the donation of money or property to other entities.

#### **36 Section 50-15 (at the end of the cell at table item 3.1, column headed “Special conditions”)**

Add:

- ; and (c) complies with all the substantive requirements in its governing rules; and
- (d) applies its income and assets solely for the

purpose for which the  
association is established

**37 Section 50-15 (cell at table item 3.2, column headed  
“Special conditions”)**

Repeal the cell, substitute:

the trade union:

- (a) is located in Australia, and  
incurs its expenditure and  
pursues its objectives  
principally in Australia;  
and
- (b) complies with all the  
substantive requirements  
in its governing rules; and
- (c) applies its income and  
assets solely for the  
purpose for which the  
trade union is established

**38 Section 50-50**

Omit “An entity covered by item 1.1 or 1.2”, substitute “(1) An entity  
covered by item 1.1”.

**39 Paragraph 50-50(d)**

Omit “Australia.”, substitute “Australia;”.

**40 After paragraph 50-50(d) (before the notes)**

Insert:

and the entity satisfies the conditions in subsection (2).

**41 At the end of section 50-50**

Add:

- (2) The entity must:
  - (a) comply with all the substantive requirements in its governing  
rules; and
  - (b) apply its income and assets solely for the purpose for which  
the entity is established.

**42 Section 50-55**

Before “An”, insert “(1)”.

**43 Paragraph 50-55(c)**

Omit “resident.”, substitute “resident;”.

**44 After paragraph 50-55(c) (before the note)**

Insert:

and the entity satisfies the conditions in subsection (2).

**45 At the end of section 50-55**

Add:

(2) The entity must:

- (a) comply with all the substantive requirements in its governing rules; and
- (b) apply its income and assets solely for the purpose for which the entity is established.

**46 Section 50-65**

Before “A fund”, insert “(1)”.

**47 Paragraph 50-65(b)**

Omit “section 30-15.”, substitute “section 30-15;”.

**48 After paragraph 50-65(b) (before the note)**

Insert:

and the fund satisfies the conditions in subsection (2).

**49 At the end of section 50-65**

Add:

(2) The fund must:

- (a) comply with all the substantive requirements in its governing rules; and
- (b) apply its income and assets solely for the purpose for which the fund is established.

**50 Section 50-70**

Before “An”, insert “(1)”.

**51 Paragraph 50-70(c)**

Omit “resident.”, substitute “resident;”.

**52 After paragraph 50-70(c) (before the note)**

Insert:

and the entity satisfies the conditions in subsection (2).

**53 At the end of section 50-70**

Add:

(2) The entity must:

- (a) comply with all the substantive requirements in its governing rules; and
- (b) apply its income and assets solely for the purpose for which the entity is established.

**54 At the end of subsection 50-72(1)**

Add:

- ; and (c) complies with all the substantive requirements in its governing rules; and
- (d) applies its income and assets solely for the purpose for which the fund is established.

**55 Subsection 355-100(1) (table item 2)**

Before “an \*exempt entity”, insert “at any time during the income year”.

**56 Application of amendments**

- (1) The amendments made by this Part (other than item 55) apply in relation to income years starting on or after the commencement of this Part.
- (2) The amendment made by item 55 applies in relation to an R&D entity’s assessments for income years commencing on or after 1 July 2013.

- (3) The amendment made by item 55 does not affect by implication the interpretation of the *Income Tax Assessment Act 1997* in relation to assessments for earlier income years.
- 

*[Minister's second reading speech made in—  
House of Representatives on 29 May 2013  
Senate on 17 June 2013]*