Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016

No. 52, 2016

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016

No. 52, 2016

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

[*Assented to 5 May 2016*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*.

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2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this Act	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 July 2016

Note: This table relates only to the provisions of this Act as originally enacted.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

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Tax integrity: extending GST to digital products and other services imported by consumers

Part 1—Main amendments

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

1 At the end of subsection 9-25(5) (before the example)

Add:

; or (d) the *recipient of the supply is an *Australian consumer.

2 At the end of subsection 9-25(5) (after the example)

Add:

Note: A supply that is connected with the indirect tax zone under this subsection might be GST-free if it is consumed outside the indirect tax zone: see section 38-190. For more rules about supplies that are GST-free, see Division 38.

3 At the end of section 9-25

Add:

*Meaning of **Australian consumer***

(7) An entity is an ***Australian consumer*** of a supply made to the entity if:

(a) the entity is an *Australian resident (other than an entity that is an Australian resident solely because the definition of ***Australia*** in the *ITAA 1997 includes the external Territories); and

(b) the entity:

(i) is not *registered; or

(ii) if the entity is registered—the entity does not acquire the thing supplied solely or partly for the purpose of an *enterprise that the entity *carries on.

Note: Suppliers must take reasonable steps to ascertain whether recipients are Australian consumers: see section 84-100.

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4 At the end of Division 38

Add:

Subdivision 38-T—Inbound intangible consumer supplies

38-610 Inbound intangible consumer supplies

(1) An *inbound intangible consumer supply is ***GST-free*** if:
  (a) it is made by a *non-resident; and
  (b) it is covered by a determination under subsection (2).

(2) The Minister may, by legislative instrument, determine that a specified class of *inbound intangible consumer supplies are GST-free.

(3) However, the Minister must not make the determination unless:
  (a) the *Foreign Minister has advised the Minister in writing that the treatment of the class of supplies under the *GST law would, apart from the determination, be inconsistent with Australia's international obligations; and
  (b) the Minister is satisfied that similar supplies made by *Australian residents would be GST-free.

5 At the end of Division 40

Add:

Subdivision 40-G—Inbound intangible consumer supplies

40-180 Inbound intangible consumer supplies

(1) An *inbound intangible consumer supply is ***input taxed*** if:
  (a) it is made by a *non-resident; and
  (b) it is covered by a determination under subsection (2).

(2) The Minister may, by legislative instrument, determine that a specified class of *inbound intangible consumer supplies are input taxed.

(3) However, the Minister must not make the determination unless:

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(a) the *Foreign Minister has advised the Minister in writing that the treatment of the class of supplies under the *GST law would, apart from the determination, be inconsistent with Australia's international obligations; and

(b) the Minister is satisfied that similar supplies made by *Australian residents would be input taxed.

6 Before Division 85

Insert:

Subdivision 84-B—Inbound intangible consumer supplies

84-45 What this Subdivision is about

> Tax invoices and adjustment notes are not required for offshore supplies to Australian consumers.
>
> The operator of an electronic distribution platform is treated as having made electronic supplies that are made through the platform:
>
> (a) from offshore to Australian consumers; or
>
> (b) in some cases, under an agreement with the supplier.
>
> The result is that the operator, instead of the suppliers, counts the supplies towards its GST turnover and pays GST on the supplies.

84-50 No tax invoices or adjustment notes for inbound intangible consumer supplies

(1) You are not required to issue a *tax invoice for a *taxable supply that you make if the supply is solely an *inbound intangible consumer supply.

(2) You are not required to issue an *adjustment note for an *adjustment event relating to a *taxable supply that you make if the supply is solely an *inbound intangible consumer supply.

(3) This section has effect despite sections 29-70 and 29-75 (which are about tax invoices and adjustment notes).

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84-55 Operator of electronic distribution platform treated as supplier

(1) If an *inbound intangible consumer supply is made through an *electronic distribution platform, the operator of the platform, instead of the supplier, is treated, for the purposes of the *GST law:
  (a) as being the supplier of, and as making, the supply; and
  (b) as having made the supply for the *consideration for which it was made; and
  (c) as having made the supply in the course or furtherance of an *enterprise that the operator *carries on.

Note: As a consequence, GST on the supply is payable by the operator of the electronic distribution platform.

(2) Despite subsection (1), if an *inbound intangible consumer supply is made through more than one *electronic distribution platform, that subsection only applies to the operator of any of those platforms who is:
  (a) a party to a written agreement, between the operator and at least one of the other operators of the platforms, under which the operator is to be treated as the supplier; or
  (b) if no such agreement has been made—the operator determined in accordance with an instrument made under subsection (3); or
  (c) if no such agreement has been made and no instrument has been made under subsection (3):
    (i) the first of the operators of those platforms to receive, or to authorise the charging of, any *consideration for the supply; or
    (ii) if subparagraph (i) does not apply—the first of the operators of those platforms to authorise the delivery of the supply.

(3) The Commissioner may, by legislative instrument, specify how an operator is to be determined for the purposes of paragraph (2)(b).

(4) Despite subsections (1) and (2), this section does not apply to an operator of an *electronic distribution platform in relation to an *inbound intangible consumer supply made through the platform if:

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(a) a document, relating to the supply, issued to the *recipient of the supply identifies:
  (i) the supply; and
  (ii) the supplier as the supplier of the supply; and
(b) the supplier and the operator of the electronic distribution platform have agreed in writing that the supplier is the entity responsible for paying GST for:
  (i) the supply; or
  (ii) a class of supplies that includes the supply; and
(c) the operator of the electronic distribution platform:
  (i) does not authorise the charge to the recipient for the supply; and
  (ii) does not authorise the delivery of the supply; and
  (iii) does not set the terms and conditions under which the supply is made.

84-60 Extension of section 84-55 to certain other supplies through an electronic distribution platform

(1) Section 84-55 applies to a supply as if it were an *inbound intangible consumer supply if:
  (a) the supply is made through an *electronic distribution platform; and
  (b) the supply is covered by a written agreement entered into between the supplier and the operator of the platform before the supply is made; and
  (c) the operator is *registered; and
  (d) under the agreement, the supply is to be treated as if it were an inbound intangible consumer supply made through the platform.

(2) However, subsection (1) does not apply to the supply if:
  (a) the supply is GST-free or input taxed; or
  (b) the operator would not be treated under section 84-55 as being the supplier of, and as making, the supply if it were an *inbound intangible consumer supply.

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(3) If subsection (1) applies to the supply, the supply is treated as having been made in the course or furtherance of the *enterprise through which the operator operates the platform.

84-65 Meaning of *inbound intangible consumer supply*

(1) A supply of anything other than goods or *real property is an ***inbound intangible consumer supply*** if the *recipient is an *Australian consumer, unless:
  (a) the thing is done wholly in the indirect tax zone; or
  (b) the supplier makes the supply wholly through an *enterprise that the supplier *carries on in the indirect tax zone.

(2) Disregard section 84-55 in determining whether paragraph (1)(b) applies.

84-70 Meaning of *electronic distribution platform*

(1) A service (including a website, internet portal, gateway, store or marketplace) is an ***electronic distribution platform*** if:
  (a) the service allows entities to make supplies available to end-users; and
  (b) the service is delivered by means of *electronic communication; and
  (c) the supplies are to be made by means of electronic communication.

(2) However, a service is not an ***electronic distribution platform*** solely because it is:
  (a) a carriage service (within the meaning of the *Telecommunications Act 1997*); or
  (b) a service consisting of one or more of the following:
    (i) providing access to a payment system;
    (ii) processing payments;
    (iii) providing *vouchers the supply of which are not *taxable supplies because of section 100-5.

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Subdivision 84-C—Australian consumers

84-95 What this Subdivision is about

A supplier is treated in some situations to be making a supply to an entity that is not an Australian consumer.

Note: Whether the recipient of a supply of an intangible is an Australian consumer is one of the tests for whether the supply is connected with Australia: see subsection 9-25(5).

84-100 When entities are treated as not being Australian consumers

(1) The *GST law applies in relation to you as if another entity was not an *Australian consumer of a supply if:
  (a) you take reasonable steps to obtain information about whether or not the other entity is an Australian consumer of the supply; and
  (b) after taking those steps, you reasonably believe that the other entity is not an Australian consumer of the supply.

(2) Without limiting subsection (1), the *GST law applies in relation to you as if another entity was not an *Australian consumer of a supply if:
  (a) your usual business systems and processes provide you with a reasonable basis for forming a reasonable belief about whether the other entity is an Australian consumer of the supply; and
  (b) you reasonably believe that the other entity is not an Australian consumer of the supply.

(3) For the purposes of subsections (1) and (2), to the extent that your belief that the other entity is not an *Australian consumer of the supply is based on the other entity being *registered, your belief is reasonable only if:
  (a) the other entity's *ABN, or the other identifying information prescribed under subsection (4) relating to the other entity, has been disclosed to you; and
  (b) the other entity has provided to you a declaration or information that indicates that the other entity is registered.

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(4) The Commissioner may, by legislative instrument, prescribe identifying information for the purposes of paragraph (3)(a).

Subdivision 84-D—Limited registration entities

84-135 What this Subdivision is about

Non-residents may elect to be limited registration entities. Limited registration entities are not entitled to input tax credits for acquisitions, and must have quarterly tax periods.

Note: The Commissioner may approve simpler approved forms for limited registration entities: see subsection 388-50(3) in Schedule 1 to the *Taxation Administration Act 1953*.

84-140 Limited registration entities

(1) You are a ***limited registration entity*** for a tax period applying to you if an election under subsection (2) is in effect for you during the period.

Electing to be a limited registration entity

(2) You may, by notifying the Commissioner in the *approved form, make an election under this subsection if:
  (a) you have made, or intend to make, one or more *inbound intangible consumer supplies; and
  (b) you are a *non-resident.

When an election is in effect

(3) The election:
  (a) takes effect from the start of the tax period you nominate in the election; and
  (b) if your *registration is cancelled and the date of effect of the cancellation occurs after the start of that tax period—ceases to have effect on the date of effect of the cancellation; and
  (c) if paragraph (b) does not apply and, under subsection (5), you revoke the election—ceases to have effect at the start of your first tax period to start after the revocation.

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(4) However, the election never takes effect if your *registration is cancelled and the date of effect of the cancellation occurs on or before the start of the tax period you nominate in the election.

Revoking an election

(5) You may, by notifying the Commissioner in the *approved form, revoke an election under subsection (2).

(6) However, subsection (5) does not apply if you have been notified that the Commissioner has decided to cancel your *registration (whether or not the cancellation has already taken effect).

84-145 Limited registration entities cannot make creditable acquisitions

(1) An acquisition made by a *limited registration entity is not a *creditable acquisition if an election under subsection 84-140(2) is in effect for the entity when the acquisition is made.

(2) However, subsection (1) does not apply, and is taken never to have applied, to the acquisition if you revoke the election under subsection 84-140(5) during:
   (a) the *financial year in which the acquisition is made; or
   (b) the next financial year.

(3) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

84-150 Entries in the Australian Business Register

(1) Subsection 25-10(2) does not apply if:
   (a) you become *registered; and
   (b) on the date your registration takes or took effect, you are a *limited registration entity.

Note: Under subsection 25-10(2), the Australian Business Registrar would otherwise be required to enter that date in the Australian Business Register.

(2) However, if:

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(a) you cease to be a *limited registration entity at a time when you are *registered; and
(b) because of subsection (1) of this subsection, subsection 25-10(2) did not apply to your registration;

subsection 25-10(2) is taken to apply from the time you cease to be a limited registration entity.

(3) Subsection 25-60(2) does not apply if:
(a) your *registration is cancelled; and
(b) because of subsection (1) of this section, the date on which your registration took effect was not entered in the *Australian Business Register; and
(c) immediately before the cancellation took effect, you were a *limited registration entity.

Note: Under subsection 25-60(2), the Australian Business Registrar would otherwise be required to enter that date in the Australian Business Register.

84-155 Limited registration entities have only quarterly tax periods

(1) If you are a *limited registration entity, you cannot make an election under section 27-10, and the Commissioner cannot determine your tax periods under section 27-15 or 27-37.

Note: Sections 27-10 and 27-15 provide for each individual month to be a tax period. Section 27-37 provides for 12 complete tax periods in each year.

(2) An election by you under section 27-10 or a determination under section 27-15 or 27-37 in relation to you is taken not to be in force at any time during which you are a *limited registration entity.

(3) This section has effect despite sections 27-10, 27-15 and 27-37 (which are about one month tax periods).

7 Paragraph 188-15(3)(b)

Repeal the paragraph, substitute:

(b) any supply that is connected with the indirect tax zone because of paragraph 9-25(5)(c), unless:
(i) the supply is made to an *Australian consumer; and
(ii) the supply is not *GST-free; and

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(iii) the thing to be acquired under the right or option referred to in that paragraph is not goods or *real property; and

8 Paragraph 188-20(3)(b)

Repeal the paragraph, substitute:

(b) any supply that is connected with the indirect tax zone because of paragraph 9-25(5)(c), unless:

(i) the supply is made to an *Australian consumer; and

(ii) the supply is not *GST-free; and

(iii) the thing to be acquired under the right or option referred to in that paragraph is not goods or *real property; and

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Part 2—Other amendments

A New Tax System (Australian Business Number) Act 1999

9 At the end of section 8

Add:

Limited registration entities

(3) However, a limited registration entity (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*) is not entitled to an *ABN.

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

10 Section 13-1 (note 2)

Omit "Division 84", substitute "Subdivision 84-A".

11 Section 25-49 (at the end of the table)

Add:

4	Offshore supplies other than goods or real property	Division 84

12 Section 25-99 (after table item 1B)

Insert:

1C	Offshore supplies other than goods or real property	Division 84

13 Section 27-99 (table item 1AB)

Repeal the item, substitute:

1AB	Offshore supplies other than goods or real property	Division 84
1AC	Payment of GST by instalments	Division 162

14 Section 29-99 (after table item 4)

Insert:

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4A	Offshore supplies other than goods or real property	Division 84

15 Subparagraph 48-40(2)(a)(i)

Omit "Division 84", substitute "section 84-5".

16 Subsection 48-45(3)

Omit "Division 84", substitute "section 84-5".

17 Paragraph 58-10(2)(b)

Omit "84", substitute "section 84-5".

18 Paragraph 83-5(2)(a)

Omit "Division 84", substitute "section 84-5".

19 Before section 84-1

Insert:

Subdivision 84-A—Intangible supplies from offshore that are taxable supplies under this Subdivision

20 Section 84-1 (heading)

Omit "**Division**", substitute "**Subdivision**".

21 Section 84-1

Omit "Division" (wherever occurring), substitute "Subdivision".

22 Section 84-5 (heading)

Omit "**Division**", substitute "**Subdivision**".

23 After paragraph 84-5(1)(b)

Insert:

; or (ba) subject to subsections (1A) and (1B), a supply connected with the indirect tax zone because of paragraph 9-25(5)(d);

24 After subsection 84-5(1)

Insert:

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(1A) Paragraph (1)(ba) applies to a supply only if:

(a) under section 84-100, the *GST law applies in relation to the supplier as if the *recipient of the supply was not an *Australian consumer of the supply; and

(b) the *ABN of the recipient of the supply, or the other identifying information prescribed under subsection 84-100(4) relating to the recipient, has been disclosed to the supplier; and

(c) the recipient has provided to the supplier a declaration or information that indicates that the recipient is *registered.

(1B) Without limiting subsection (1A), paragraph (1)(ba) applies to a supply only to the extent that it is connected with the indirect tax zone solely because of paragraph 9-25(5)(d).

(1C) To the extent that paragraph (1)(ba) applies to a supply, disregard paragraphs (1)(c) and (ca).

25 Section 84-14

Omit "This Division", substitute "This Subdivision".

26 After section 126-25

Insert:

126-27 When gambling supplies are connected with the indirect tax zone

(1) A *gambling supply is ***connected with the indirect tax zone*** if the *recipient of the supply is an Australian resident (unless he or she is an Australian resident solely because the definition of ***Australia*** in the *ITAA 1997 includes the external Territories).

(2) This section has effect in addition to section 9-25 (which is about when supplies are connected with the indirect tax zone).

27 After subsection 153-55(4)

Insert:

(4A) Without limiting subsection (4), this section does not apply in relation to a supply to which section 84-55 applies.

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Note: Under section 84-55, an inbound intangible consumer supply made through an electronic distribution platform (or a supply that is taken to be such a supply because of section 84-60) is treated as having been made by the operator of the platform.

28 After subsection 153-60(3)

Insert:

(3A) This section does not apply in relation to an acquisition if section 84-55 applies to the supply to which the acquisition relates.

Note: Under section 84-55, an inbound intangible consumer supply made through an electronic distribution platform (or a supply that is taken to be such a supply because of section 84-60) is treated as having been made by the operator of the platform.

29 Paragraph 162-5(1)(e)

Omit "position.", substitute "position; and".

30 At the end of subsection 162-5(1)

Add:

(f) you are not a *limited registration entity.

31 After paragraph 162-30(1)(ca)

Insert:

(d) during a financial year, you become a *limited registration entity; or

32 At the end of section 162-30

Add:

Becoming a limited registration entity

(6) If paragraph (1)(d) applies, your election is taken to have ceased to have effect from the start of the *financial year referred to in that paragraph.

33 Section 195-1

Insert:

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Australian consumer has the meaning given by subsection 9-25(7) and affected by section 84-100.

34 Section 195-1 (definition of *connected with the indirect tax zone*)

Omit "sections 9-25 and 85-5", substitute "sections 9-25, 85-5 and 126-27".

35 Section 195-1 (note at the end of the definition of *creditable acquisition*)

After "78-30", insert ", 84-145".

36 Section 195-1

Insert:

electronic communication has the same meaning as in the *Electronic Transactions Act 1999*.

electronic distribution platform has the meaning given by section 84-70.

Foreign Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

inbound intangible consumer supply has the meaning given by section 84-65.

limited registration entity has the meaning given by section 84-140.

Taxation Administration Act 1953

37 Paragraph 284-75(4)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) the statement is, or purports to be one that:
  (i) is required or permitted by a taxation law (other than the Excise Acts); or
  (ii) might reasonably be expected to be used, by an entity in determining, for the purposes of the *GST law, whether

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you are an Australian consumer (within the meaning of the *GST Act); and

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Part 3—Application

38 Application

The amendments made by this Schedule apply in relation to working out net amounts for tax periods starting on or after 1 July 2017.

39 Progressive or periodic supplies

(1) If:

(a) a supply is made under an agreement, or an enactment, that provides (expressly or impliedly) that the thing supplied is to be supplied:

(i) for a period; or

(ii) progressively over a period; and

(b) that period begins before 1 July 2017 and ends on or after 1 July 2017;

then, for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* as amended by this Act and for the purposes of item 38 of this Schedule:

(c) the supply is taken to be made continuously and uniformly throughout that period; and

(d) to the extent that the supply is taken to be made on or after 1 July 2017:

(i) any consideration for the supply received before the first tax period to start on or after that day is taken to be received in that tax period; and

(ii) an invoice relating to the supply issued before the first tax period to start on or after that day is taken to have been issued in that tax period.

(2) However, this item does not apply to:

(a) a supply of a warranty (whether express, implied or required by law) that relates to goods or a service, if the value of the warranty was included in the price of the goods or service; or

(b) a supply to the extent that it would be a taxable supply if the amendments made by this Schedule had not been made.

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(3) If this item has an effect in relation to a supply, it has a corresponding effect in relation to the acquisition to which the supply relates.

(4) In this item:

warranty has the same meaning as in section 12 of the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

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Schedule 2—GST treatment of cross-border transactions between businesses

Part 1—Cross-border supplies that are not connected with the indirect tax zone

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

1 Subsection 9-25(3)

Omit all the words after "the supplier", substitute "imports the goods into the indirect tax zone."

2 Subsection 9-25(6)

Repeal the subsection, substitute:

Supplies of goods involving installation or assembly services

(6) If a supply of goods (other than a *luxury car) (the ***actual supply***) involves the goods being brought to the indirect tax zone and the installation or assembly of the goods in the indirect tax zone, then the actual supply is to be treated as if it were 2 separate supplies in the following way:

(a) the part of the actual supply that involves the installation or assembly of the goods in the indirect tax zone is to be treated as if it were a separate supply of a thing done in the indirect tax zone;

(b) the remainder of the actual supply is to be treated as if it were a separate supply of goods involving the goods being brought to the indirect tax zone but not involving the installation or assembly of the goods.

Note 1: The paragraph (a) supply is connected with the indirect tax zone (see paragraph (5)(a)), unless item 1 or 2 of the table in section 9-26 applies.

Note 2: The paragraph (b) supply may be a taxable supply (see subsection (3)), or there may be a taxable importation of the goods: see Division 13.

Note 3: For the ***price*** of the separate supplies, see subsection 9-75(4).

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3 After section 9-25

Insert:

9-26 Supplies by non-residents that are not connected with the indirect tax zone

(1) A supply is *not* ***connected with the indirect tax zone*** if:

(a) the supplier is a *non-resident; and

(b) the supplier does not make the supply through an *enterprise that the supplier *carries on in the indirect tax zone; and

(c) the supply is covered by an item in this table:

Offshore supplies that are not connected with the indirect tax zone		
Item	**Topic**	**These supplies are *not* connected with the indirect tax zone …**
1	Inbound intangible supply	a supply of anything other than goods or *real property if: (a) the thing is done in the indirect tax zone; and (b) the *recipient is an *Australian-based business recipient of the supply.
2	Intangible supply between non-residents	a supply of anything other than goods or *real property if: (a) the thing is done in the indirect tax zone; and (b) the *recipient is a *non-resident that acquires the thing supplied solely for the purpose of an *enterprise that the recipient *carries on outside the indirect tax zone.
3	Supply between non-residents of leased goods	a supply by way of transfer of ownership of leased goods if: (a) the *recipient is a *non-resident that does not acquire the thing supplied solely or partly for the purpose of an *enterprise that the recipient *carries on in the indirect tax zone; and (b) the lessee: (i) made a *taxable importation of the goods before the supply was made; and (ii) continues to lease the goods on substantially similar terms and conditions after the supply is made.
4	Supply by way	a supply made by way of lease if:

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Offshore supplies that are not connected with the indirect tax zone		
Item	**Topic**	**These supplies are *not* connected with the indirect tax zone …**
	of continued lease of goods from item 3	(a) the *recipient is the lessee referred to in paragraph (b) of item 3 of this table; and (b) the lease is the lease referred to in subparagraph (ii) of that paragraph.

Note: This subsection does not apply to supplies made by a non-resident through a resident agent if they have agreed it is not to apply: see section 57-7.

(2) An entity is an ***Australian-based business recipient*** of a supply made to the entity if:
  (a) the entity is *registered; and
  (b) an *enterprise of the entity is *carried on in the indirect tax zone; and
  (c) the entity's acquisition of the thing supplied is not solely of a private or domestic nature.

Note: If a supply is not connected with the indirect tax zone, the Australian-based business recipient may be subject to a reverse charge: see Subdivision 84-A.

(3) This section applies despite sections 9-25 (which is about when supplies are connected with the indirect tax zone) and 85-5 (which is about telecommunication supplies).

9-27 When enterprises are *carried on in the indirect tax zone*

(1) An *enterprise of an entity is ***carried on in the indirect tax zone*** if:
  (a) the enterprise is *carried on by one or more individuals covered by subsection (3) who are in the indirect tax zone; and
  (b) any of the following applies:
    (i) the enterprise is carried on through a fixed place in the indirect tax zone;
    (ii) the enterprise has been carried on through one or more places in the indirect tax zone for more than 183 days in a 12 month period;

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(iii) the entity intends to carry on the enterprise through one or more places in the indirect tax zone for more than 183 days in a 12 month period.

(2) It does not matter whether:
(a) the entity has exclusive use of a place; or
(b) the entity owns, leases or has any other claim or interest in relation to a place.

(3) This subsection covers the following individuals:
(a) if the entity is an individual—that individual;
(b) an employee or *officer of the entity;
(c) an individual who is, or is employed by, an agent of the entity that:
(i) has, and habitually exercises, authority to conclude contracts on behalf of the entity; and
(ii) is not a broker, general commission agent or other agent of independent status that is acting in the ordinary course of the agent's business as such an agent.

3A Section 9-39 (after table item 8)

Insert:

8AA	Resident agents acting for non-residents	Division 57

4 At the end of section 9-75

Add:

(4) Despite subsection (1), if a supply of goods (the ***actual supply***) is to be treated as separate supplies because of subsection 9-25(6), then the ***price*** of each such separate supply is so much of the price of the actual supply, worked out under subsection (1), as reasonably represents the price of the separate supply.

5 At the end of section 57-5

Add:

(3) However, this section does not apply to a *taxable supply if:
(a) apart from this section, the *non-resident would not be liable to pay GST on the supply; or

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(b) the non-resident makes the supply through an *enterprise that the non-resident *carries on in the indirect tax zone.

5A After section 57-5

Insert:

57-7 Agreement to apply this Division to all supplies through a resident agent

(1) Subsection 9-26(1) does not apply to a supply made by a *non-resident through a *resident agent if:

(a) section 57-5 would apply to the supply if that subsection did not apply to the supply; and

(b) the non-resident and the agent have agreed in writing that that subsection will not apply to any supplies made by the non-resident through the agent; and

(c) the supply is made no earlier than:

(i) if the agreement specifies a time (not earlier than the start of the day the agreement is made) as the time the agreement takes effect—that time; or

(ii) otherwise—the start of the day the agreement is made.

Note: An agreement under paragraph (1)(b) prevents subsection 9-26(1) having the effect that the supply would not be connected with the indirect tax zone (that subsection could otherwise result in the GST on the supply being reverse charged to the recipient under Division 84).

(2) If the *recipient of the supply is an *Australian-based business recipient, the recipient must be given a notice in the *approved form by:

(a) if the agreement referred to in paragraph (1)(b) specifies that the *non-resident is to give the notice—the non-resident; or

(b) otherwise—the *resident agent.

(3) The notice must be given no later than 7 days after the earlier of:

(a) the first day any of the *consideration for the supply is provided; or

(b) the day on which an *invoice for the supply is issued.

Note: Subsection 286-75(7) in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of subsection (2) or this subsection.

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(4) If the *non-resident and the agent agree in writing to terminate the agreement referred to in paragraph (1)(b), this section ceases to apply:

(a) if the agreement to terminate specifies a time (not earlier than the start of the day the agreement to terminate is made) as the time the termination takes effect—at that time; or

(b) otherwise—at the start of the day the agreement to terminate is made.

6 Subsection 72-5(2)

Repeal the subsection, substitute:

(2) This section has effect despite paragraphs 9-5(a) and 84-5(1)(d) (which would otherwise require a taxable supply to be for consideration).

7 At the end of section 72-10

Add:

(3) This section does not apply to a supply that is a *taxable supply because of section 84-5 (which is about offshore supplies other than goods or real property).

8 At the end of section 72-70

Add:

(4) This section does not apply to a supply that is a *taxable supply because of section 84-5 (which is about offshore supplies other than goods or real property).

9 Paragraph 84-5(1)(c)

Repeal the paragraph, substitute:

(c) the *recipient of the supply acquires the thing supplied solely or partly for the purpose of an *enterprise that the recipient *carries on in the indirect tax zone; and

(ca) the recipient of the supply does not acquire the thing supplied solely for a *creditable purpose; and

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10 Subsection 84-13(1) (definition of *extent of consideration*)

Repeal the definition, substitute:

extent of consideration is:

(a) if the *recipient is the supplier's *associate and the supply is without *consideration—100%; or

(b) in any other case—the extent to which you provide, or are liable to provide, the consideration for the acquisition, expressed as a percentage of the total consideration for the acquisition.

11 Subsection 84-13(2)

Repeal the subsection, substitute:

(2) This section has effect despite:

(a) sections 11-25 and 11-30 (which are about the amount of input tax credits for creditable acquisitions); and

(b) section 72-45 (which is about the amount of input tax credits on an acquisition from an associate without consideration).

12 After section 84-15

Insert:

84-20 The price of taxable supplies of offshore intangibles without, or for inadequate, consideration

(1) The ***price*** of a supply that is a *taxable supply because of section 84-5 is the *GST inclusive market value of the supply, if:

(a) the supply is from the *recipient's *associate; and

(b) the supply is:

(i) without *consideration; or

(ii) for consideration that is *less* than the GST inclusive market value.

Note: A supply to an associate without consideration may be a taxable supply, see section 72-5.

(2) This section has effect despite section 9-75 (which is about the price of taxable supplies).

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84-25 Tax periods for supplies from associates that are not connected with the indirect tax zone

(1) This section applies if a supply that is a *taxable supply because of section 84-5 is:

(a) a supply from the *recipient's *associate without *consideration; and

(b) not *connected with the indirect tax zone.

Note: If the supply is connected with the indirect tax zone, see sections 72-15 and 72-50 for the tax periods.

(2) The tax period to which the GST on the supply, and the input tax credit on the acquisition, is attributable is the tax period in which the thing supplied starts to be done.

(3) This section has effect despite:

(a) sections 29-5 and 72-15 (about attributing GST to tax periods); and

(b) sections 29-10 and 72-50 (about attributing input tax credits to tax periods).

84-30 Adjustments for acquisitions made solely for a creditable purpose

(1) This section applies to an acquisition that relates to a supply if the supply would be a *taxable supply under section 84-5 if paragraph 84-5(1)(ca) were disregarded.

(2) For the purpose of working out whether there is an *adjustment for the acquisition, and the amount of that adjustment, disregard paragraph 84-5(1)(ca).

Note: As a result, the adjustment (including the full input tax credit referred to in sections 129-70 and 129-75) is worked out assuming the supply is taxable and the acquisition fully creditable.

13 At the end of subsection 85-5(3)

Add ", but is subject to section 9-26 (which is about when supplies are not connected with the indirect tax zone)".

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14 Section 195-1

Insert:

> ***Australian-based business recipient*** has the meaning given by subsection 9-26(2).

15 Section 195-1 (definition of *carried on in the indirect tax zone*)

Omit "subsection 9-25(6)", substitute "section 9-27".

16 Section 195-1 (note at the end of the definition of *connected with the indirect tax zone*)

Repeal the note, substitute:

Note: This meaning is also affected by sections 9-26 and 96-5.

17 Section 195-1 (definition of *price*)

Omit "section 9-75", substitute "sections 9-75 and 84-20".

Taxation Administration Act 1953

17A At the end of section 286-75 in Schedule 1

Add:

(7) You are also liable to an administrative penalty if:
  (a) you are required under subsections 57-7(2) and (3) of the *A New Tax System (Goods and Services Tax) Act 1999* to notify another entity by a particular day; and
  (b) you do not give the notice in the *approved form to the entity by that day.

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Part 2—Cross-border supplies that are GST-free

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

18 Subdivision 38-E (heading)

Repeal the heading, substitute:

Subdivision 38-E—Exports and other cross-border supplies

19 At the end of subsection 38-190(3)

Add:

; and (c) for a supply other than an *input taxed supply—none of the following applies:

(i) the other entity would be an *Australian-based business recipient of the supply, if the supply had been made to it;

(ii) the other entity is an individual who is provided with the supply as an employee or *officer of an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it; or

(iii) the other entity is an individual who is provided with the supply as an employee or officer of the *recipient, and the recipient's acquisition of the thing is solely for a *creditable purpose and is not a *non-deductible expense.

20 At the end of Subdivision 38-E

Add:

38-191 Supplies relating to the repair etc. of goods under warranty

(1) A supply of anything other than goods or *real property is ***GST-free*** if:

(a) the *recipient is a *non-resident who:

(i) is not in the indirect tax zone when the thing supplied is done; and

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(ii) acquires the thing in *carrying on the recipient's *enterprise, but is not *registered or *required to be registered; and

(b) the supply is constituted by the repair, renovation, modification or treatment of goods; and

(c) the repair, renovation, modification or treatment is done in order to meet the recipient's obligations under a warranty relating to the goods; and

(d) either:

(i) *consideration for the warranty was included in the consideration for the supply of the goods; or

(ii) the supply of the warranty was a separate *taxable supply to the supply of the goods.

(2) A supply of goods is ***GST-free*** if:

(a) it is made in the course of a supply that is GST-free under subsection (1), and to the same *recipient; and

(b) either:

(i) the goods are attached to, or become part of, the goods to which the warranty relates; or

(ii) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the goods to which the warranty relates.

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Part 3—Cross-border supplies that are not included in GST turnover

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

21 Subsections 188-15(3) and 188-20(3)

At the end of the subsections, add:

; and (d) any *GST-free supply made by a *non-resident that does not make the supply through an *enterprise that the non-resident *carries on in the indirect tax zone.

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Part 4—Value of taxable importations

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

22 At the end of section 13-20

Add:

(4) For a *taxable importation that you make, you may choose to treat the amount under paragraph (2)(b), (or, if paragraph (2)(ba) applies, the sum of the amounts under paragraphs (2)(b) and (ba)), as an amount equal to:

(a) the percentage prescribed by the regulations of the *customs value of the goods imported; or

(b) if no percentage is prescribed—10% of their customs value.

(5) However, subsection (4) does not apply if:

(a) you are not *registered; or

(b) the *local entry of the goods is a *taxable dealing in relation to *wine; or

(c) the importation of the goods is a *taxable importation of a luxury car.

23 Subparagraphs 38-185(3)(f)(ii) and 38-185(4)(f)(ii)

Omit "wine (within the meaning of the *Wine Tax Act)", substitute "*wine".

24 Section 195-1

Insert:

taxable dealing, in relation to *wine, has the meaning given by section 33-1 of the *Wine Tax Act.

taxable importation of a luxury car has the meaning given by section 27-1 of the *A New Tax System (Luxury Car Tax) Act 1999*.

wine has the meaning given by Subdivision 31-A of the *Wine Tax Act.

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Part 5—Application and saving provisions

25 Application

(1) The amendments made by this Schedule (apart from Part 4) apply in relation to working out net amounts for tax periods starting on or after the start day.

(2) The amendments made by Part 4 of this Schedule apply in relation to taxable importations made on or after the start day.

(3) In this item:

start day means the first day of the second quarterly tax period starting on or after the day this Schedule commences.

26 Saving—previous interpretation preserved

The amendments of Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* made by Part 1 of this Schedule do not affect by implication the interpretation of that Act before the amendments.

27 Existing agreements: no opportunity to review

(1) The amendments made by this Schedule do not apply in relation to a supply if:

(a) a written agreement specifically identifies the supply and identifies the consideration in money, or a way of working out the consideration in money, for the supply; and

(b) the agreement was made before the commencement of this Schedule; and

(c) the supplier is registered or required to be registered.

(2) Subitem (1) does not apply to a supply to the extent (if any) that it is made on or after the earlier of the following:

(a) if a review opportunity (within the meaning of section 13 of the *A New Tax System (Goods and Services Tax Transition) Act 1999*) arises on or after the commencement of this Schedule—when that opportunity arises;

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(b) if the supplier and the recipient of the supply agree in writing that the amendments made by this Schedule should apply from a time—that time.

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Schedule 3—Farm management deposits

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Section 393-1

Omit "in exceptional circumstances or in the event of", substitute "in the event of a severe drought or".

2 After paragraph 393-15(2)(c)

Insert:

(ca) subsection 393-40(3) (about repayment of a farm management deposit in the event of severe drought); and

3 At the end of Subdivision 393-A

Add:

393-17 Tax consequences of liabilities reducing because of farm management deposits

(1) To avoid doubt, if amounts of interest payable by the *owner of a *farm management deposit, or by a partnership of which the owner is a partner, to the *FMD provider in respect of loans or other debts of the owner or partnership fall short of what they otherwise would be because the owner holds the farm management deposit, then:

(a) any income of the owner or partnership comprising the shortfall is neither assessable income nor *exempt income of the owner or partnership; and

(b) any amount that any person:

(i) is not liable to pay because of the shortfall; and

(ii) could have, apart from this section, deducted under this Act;

is not deductible.

(2) However, this section applies only to the extent that the loans or other debts relate to a *primary production business that the *owner or partnership carries on.

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4 Subsection 393-25(3)

After "This Division", insert "(other than subsection 393-17(2) and paragraph 393-37(b))".

5 Subsection 393-30(2)

Omit "items 7 to 9", substitute "items 7 and 9".

6 At the end of section 393-30

Add:

Note: There is an administrative penalty if a requirement contained in the relevant agreement as set out in item 8 of the table in section 393-35 is contravened: see section 288-115 in Schedule 1 to the *Taxation Administration Act 1953*.

7 Section 393-35 (table item 8)

Repeal the item, substitute:

8	The fact that the *owner is the owner of the deposit must not be the reason why, or one of the reasons why, amounts of interest that are or will be payable to the *FMD provider in respect of loans or other debts of the owner, or of a partnership of which the owner is a partner, are or will be less than they would otherwise be.

8 Section 393-35 (table item 10)

Omit "$400,000" (wherever occurring), substitute "$800,000".

9 After section 393-35

Insert:

393-37 Agreements for a farm management deposit may allow for some offsets of a depositor's liabilities

An agreement mentioned in paragraph 393-20(1)(b) does not contravene the requirements of item 8 of the table in section 393-35 to the extent that:

(a) it provides for amounts of interest to be payable to the *FMD provider in respect of a loan or other debt of the *owner of the *farm management deposit, or of a partnership of which the owner is a partner, to be reduced; and

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(b) that loan or other debt relates to a *primary production business that the owner or partnership carries on.

10 Subsection 393-40(1) (note 1)

Omit "subsection (3A)", substitute "subsection (3), (3A)".

11 Subsection 393-40(2) (note 1)

Omit "subsection (3A)", substitute "subsection (3), (3A)".

12 After subsection 393-40(2)

Insert:

Repayment in the event of severe drought

(3) Subsections (1) and (2) do not apply to a repayment of the whole or a part of a *farm management deposit if:

(a) the *owner of the deposit carries on a *primary production business that satisfies one or more of paragraphs (a), (b), (c) and (f) of the definition of ***primary production business*** in subsection 995-1(1); and

(b) any of the land on which the owner of the deposit carries on any primary production business that satisfies one or more of those paragraphs has, for the period specified in subsection (3AA), had rainfall that:

(i) is deficient to an extent prescribed by the regulations; or

(ii) if there are no such regulations—is within the lowest 5% of rainfall for that land according to records held by the Commonwealth Bureau of Meteorology; and

(c) for the period specified in subsection (3AA):

(i) the owner of the deposit has carried on, on that land, a primary production business that satisfies one or more of those paragraphs; and

(ii) the amount of the repayment has been held in that farm management deposit.

(3AA) For the purposes of paragraphs (3)(b) and (c), the period is:

(a) a period prescribed by the regulations; or

(b) if there are no such regulations—the most recent period of 6 consecutive months:

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(i) that precede the repayment; and
(ii) for which rainfall records held by the Commonwealth Bureau of Meteorology are publicly available at the time of the repayment.

13 Subsection 393-40(4)

Omit "subsection (3A)", substitute "subsection (3) or (3A)".

Taxation Administration Act 1953

14 At the end of Division 288 in Schedule 1

Add:

288-115 Prohibited offsets of liabilities using interest etc. accrued on farm management deposits

(1) The person who made or is making a *farm management deposit is liable to an administrative penalty if:
(a) the fact that the person made or is making the deposit is the reason why, or one of the reasons why, an amount of interest payable to the *FMD provider in respect of loans or other debts falls short of what it would otherwise be; and
(b) the shortfall:
(i) contravenes a requirement, contained in the agreement mentioned in paragraph 393-20(1)(b) of the *Income Tax Assessment Act 1997* in relation to the deposit, as set out in item 8 of the table in section 393-35 of that Act; or
(ii) would contravene such a requirement if it were contained in that agreement.

(2) The amount of the penalty is 200% of so much of the shortfall as contravenes that requirement, or would contravene such a requirement.

15 Application of amendments

The amendments made by this Part apply to assessments for the 2016-17 income year and later income years.

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Part 2—Technical amendments

Income Tax Assessment Act 1997

16 Paragraph 328-350(b)

Omit "net income", substitute "net small business income".

17 At the end of section 328-350

Add:

; or (c)	whose assessable income includes an amount because you are a partner in a partnership, or a beneficiary in a trust, that is a small business entity.

18 Paragraph 328-355(b)

Omit "a share of the *net income", substitute "an amount that is a share of the *net small business income".

19 After paragraph 328-355(b)

Insert:

; or (c) whose assessable income for the income year includes an amount that:

(i) would not have been so included if you had not been a partner in a partnership, or a beneficiary in a trust, that is a small business entity for the income year; and

(ii) is not included in the partnership's or trust's assessable income for an income year; and

(iii) would have formed part of the partnership's or trust's net small business income for an income year if the amount were included in the partnership's or trust's assessable income for an income year.

20 Subsection 328-360(1) (paragraph (b) of the definition of *your total net small business income for the income year*)

Repeal the paragraph, substitute:

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(b) an amount referred to in paragraph 328-355(b) or (c) that is included in your assessable income for the income year, reduced (but not below zero) by your deductions to the extent that they are attributable to that amount and covered by section 328-370.

21 Subsection 328-360(1) (definition of *your total net small business income for the income year*)

Omit "For the purposes of paragraph (b), disregard small business entities that are *corporate tax entities.".

22 Application of amendments

The amendments made by this Part apply to assessments for the 2015-16 income year and later income years.

[*Minister's second reading speech made in—*
House of Representatives on 10 February 2016
Senate on 4 May 2016]

(14/16)

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