
Chapter

Minor amendments

Outline of chapter

1.1 Schedule 1 to this Bill makes various minor amendments to the taxation laws.

Context of amendments

1.2 The amendments seek to ensure the taxation law operates as intended, by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. The minor amendments are part of the Government's commitment to the care and maintenance of the taxation laws.

1.3 Minor amendment packages include addressing issues raised through the Tax Issues Entry System (TIES). The TIES website (www.ties.gov.au), which the Australian Taxation Office (ATO) and Treasury jointly operate, provides a vehicle for tax professionals and the general public to raise issues relating to the care and maintenance of the tax system. The relevant part of the explanatory memorandum identifies TIES issues.

Summary of new law

1.4 The issues these minor amendments deal with include:

- rectifying incorrect terminology;
- correcting grammatical and spelling errors;
- repealing inoperative material;
- clarifying ambiguities; and
- ensuring that provisions are consistent with the original policy intent.

1.5 Part 1 of this Schedule concerns the capital gains tax (CGT) main resident exemption for a replacement dwelling; Part 2 concerns the CGT small business retirement exemption; Part 3 concerns a waiver connected with proceeds of crime proceedings; Part 4 has amendments relating to higher education; Part 5 concerns pay as you go (PAYG) withholding from delayed payments for termination of employment; Part 6 concerns administrative penalties for false or misleading statements; Part 7 concerns offsets against the superannuation charge; Part 8 concerns the status of certain superannuation funds; Part 9 has technical corrections; Part 10 repeals redundant material; and Part 11 makes other minor amendments.

1.6 The more significant amendments are:

- ensuring that a replacement dwelling that is eligible for the compulsory acquisition roll-over is treated as a continuation of the original dwelling for CGT main resident exemption purposes, with application to CGT events happening on or after the day this Bill receives Royal Assent (this issue was identified through **TIES 0007-2009**) (Part 1, comprising items 1 to 6);
- correcting an unintended effect on the operation of the small business CGT retirement exemption made by the *Superannuation Legislation Amendment (Simplification) Act 2007* which inadvertently made payments, or parts thereof, that a trust makes under the retirement exemption to a CGT concession stakeholder subject to CGT event E4 (contained in section 104-70 of the *Income Tax Assessment Act 1997* (ITAA 1997)) (this issue was identified through **TIES 0045-009**) (Part 2, comprising items 7 to 11);
- enabling the Commissioner to waive tax-related liabilities, in appropriate cases to facilitate proceedings under the *Proceeds of Crime Act 2002* (POC Act) (Part 3, comprising item 12 to 14);
- extending the administrative penalty for making a false or misleading statement to cover statements that do not produce a shortfall in tax (Part 6, comprising items 58 to 105); and
- clarifying that the hypothetical dividend a capital benefit is compared to, in working out whether there is a tax benefit, is an assessable dividend (Part 11, comprising items 124 to 125).

1.7 All of the amendments in Schedule 1 commence from the date of Royal Assent unless otherwise stated.

Detailed explanation of new law

Part 1 — Main residence exemption for replacement dwelling

Table 1.1: Amendments to the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
118-145(3) 118-147 118-150(3)(a) 118-190(3A) 118-200(4)(b)	<p>These amendments give effect to a suggestion made through TIES 0007-2009.</p> <p>A taxpayer's main residence is usually not subject to CGT. Section 118-145 allows a taxpayer to continue to treat a dwelling as their main residence (instead of any other dwelling) after it has actually ceased to be their main residence. If the dwelling was used to produce assessable income, that treatment can last for up to six years; otherwise it can last indefinitely.</p> <p>When a dwelling that was no longer a taxpayer's main residence, but is still being treated as one, is destroyed or compulsorily acquired the taxpayer ceases to have a main residence for CGT purposes. They have to live in a new dwelling to establish a new main residence.</p> <p>The amendments allow a taxpayer to transfer the main residence status in such cases to a replacement dwelling, even if the taxpayer never lives in it. [<i>Schedule 1, item 2, subsections 118-147(1) and (2)</i>]</p> <p>The taxpayer can transfer the main residence status only if the replacement dwelling (or the land on which it is built) is acquired no later than one year after the income year in which the original dwelling was destroyed or compulsorily acquired. The Commissioner can allow more time if there are special circumstances. [<i>Schedule 1, item 2, paragraph 118-147(1)(d)</i>]</p> <p>The taxpayer can transfer the main residence status to a replacement dwelling they build only if it is built within four years after the original dwelling was destroyed or compulsorily acquired (or after the land for the replacement dwelling was acquired if that was later). [<i>Schedule 1, item 2, subsection 118-147(2)</i>]</p> <p>If the taxpayer transfers the main residence status to a replacement dwelling, it is treated as being the main residence from when the replacement dwelling was acquired (or from a year before the original dwelling was destroyed or compulsorily acquired if that is later). [<i>Schedule 1, item 2, subsection 118-147(2)</i>]</p> <p>It can continue to be treated as the taxpayer's main residence indefinitely if it is not used to produce assessable income. [<i>Schedule 1, item 2, subsection 118-147(5)</i>]</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>If it is used to produce assessable income, it can be treated as the taxpayer's main residence for up to six years after the original dwelling was destroyed or compulsorily acquired (or after the replacement dwelling was acquired if that was later). If the original dwelling was also used to produce assessable income, the six years is instead the balance of the six-year period that was running on the original dwelling. <i>[Schedule 1, item 2, subsections 118-147(3) and (4)]</i></p> <p>If the original dwelling is accidentally destroyed but the taxpayer does not transfer the main residence status to a replacement dwelling, existing section 118-160 allows the taxpayer to choose to treat the original land as if it remained the main residence.</p> <p>If the taxpayer's replacement dwelling (or land) is subject to the extended absence rule, they cannot treat another dwelling as their main residence during this period. However, where the taxpayer acquires a replacement dwelling (or land) before the involuntary event, the taxpayer may treat both the old dwelling and the replacement dwelling (or land) as their main residence but only up to a maximum of one year before the involuntary event happened. <i>[Schedule 1, item 2, paragraph 118-147(6)(a) and subsections 118-147(2) and (7)]</i></p> <p>Sections 118-140 (about changing main residences) and 118-150 and 118-155 (about building, repairing or renovating a dwelling) do not apply if the taxpayer chooses to transfer their main residence status. <i>[Schedule 1, item 2, paragraphs 118-147(6)(b) to (d)]</i></p> <p>There are a number of minor consequential amendments. <i>[Schedule 1, items 1 and 3 to 5, paragraphs 118-150(3)(a) and 118-200(4)(b) and subsections 118-145(3) and 118-190(3A)]</i></p> <p>The amendments apply to CGT events happening in relation to the replacement land or dwelling on or after the day this Bill receives Royal Assent. <i>[Schedule 1, item 6]</i></p>

Part 2 — Small business retirement exemption

Table 1.2: Amendments to the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
152-310(2)(a)	<p>These amendments give effect to a suggestion made through TIES 0045-2009.</p> <p>The amendment corrects an unintended effect on the operation of the small business CGT retirement exemption made by the <i>Superannuation Legislation Amendment (Simplification) Act 2007</i>. Those amendments inadvertently made any payment, or part of any payment, that a trust makes under the retirement exemption to a CGT concession stakeholder subject to CGT event E4 (contained in section 104-70 of the ITAA 1997).</p> <p>CGT event E4 has the effect of reducing the cost base and reduced cost base of the unit or interest in the trust by the amount of the non-assessable payment. If the cost base is zero (or is reduced to zero), a capital gain arises to the beneficiary to the extent of the payment (or remainder of the payment).</p> <p>Prior to the superannuation amendments in 2007, any payment made under the retirement exemption to a CGT concession stakeholder was an eligible termination payment. Under the eligible termination payment rules, CGT exempt amounts were ignored in determining whether the CGT concession stakeholder, made a capital gain.</p> <p>This amendment treats a payment representing an amount that was subject to the small business retirement exemption made by a company or trust to a CGT concession stakeholder not assessable and not exempt income of the stakeholder. This means that the payments are disregarded for the purposes of CGT event E4 through the operation of paragraph 104-71(1)(a) of the ITAA 1997. [<i>Schedule 1, item 7, paragraph 152-310(2)(a)</i>]</p> <p>The amendment applies to payments made after 30 June 2007 to give it the same date of effect as the superannuation amendments mentioned above. The retrospective application of this amendment should benefit affected taxpayers or at the very least not have a negative effect on such taxpayers. [<i>Schedule 1, item 8</i>]</p> <p>A number of consequential amendments deal with the small business retirement exemption. [<i>Schedule 1, items 9 to 11, section 11-15 (table item headed ‘small business retirement exemption’), sections 11-55 and 12-5 (table items headed ‘capital gains tax’)</i>]</p>

Part 3 — Waiver connected with proceeds of crime proceedings

Table 1.3: Amendments to the *Taxation Administration Act 1953*

<i>Provision being amended</i>	<i>What the amendment does</i>
<p>340 in Schedule 1 (heading) 342-1 in Schedule 1 342-5 in Schedule 1 342-10 in Schedule 1</p>	<p>These amendments address the interaction between actions brought by the Commonwealth Director of Public Prosecutions under the POC Act and Commissioner’s obligations to collect tax under the tax laws.</p> <p>The POC Act provides a comprehensive scheme to trace, restrain and confiscate the proceeds of crimes against Commonwealth law.</p> <p>Under current tax law, the Commissioner is required to follow an administrative process of assessing and collecting taxes without taking into consideration that action may also be taken under the POC Act. The Commissioner cannot waive, or refuse to collect, a tax liability, even where this obligation hinders the operation of the POC Act.</p> <p>The amendments enable the Commissioner to waive tax-related liabilities in appropriate cases to facilitate proceedings under the POC Act. <i>[Schedule 1, item 13, Division 342]</i></p> <p>The Commissioner must be satisfied that the tax-related liability is connected with the circumstances associated with the proceedings under the POC Act and that waiving the liability facilitates proceedings under the POC Act. <i>[Schedule 1, item 13, subsection 342-10(1) in Schedule 1]</i></p> <p>In deciding whether to waive the tax liability, the Commissioner must take into account the amount that the Commissioner believes the Commonwealth would forgo as a result of the waiver (taking into account things that might be saved, such as recovery costs that would not have been spent), the amount the Commonwealth is likely to collect from the proceedings and the times at which those amounts would be, or would have been, likely to be collected. The Commissioner may also consider other matters. <i>[Schedule 1, item 13, subsections 342-10(2) and (3)]</i></p> <p>The Commissioner also has some existing powers that might be exercised for the purpose of facilitating proceedings under the POC Act. Those powers allow him to defer the time for payment of tax-related liabilities (under section 255-10 in Schedule 1) and to remit general interest charge (under section 8AAG).</p> <p>As a consequential amendment, Division 340 (which provides a power to release taxpayers from their liabilities in hardship cases) is renamed to reflect the fact that it is no longer the only power to wave tax-related liabilities. <i>[Schedule 1, item 12, Division 340 (heading) in Schedule 1]</i></p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>This amendment only applies to proceeds of crime proceedings that start on or after the commencement of Division 342 and to proceedings that had started but not ended before commencement. The amendments do not affect proceeds of crime actions that were settled before commencement. The amendment facilitates the resolution of outstanding proceedings under the POC Act, and will not have an adverse impact on taxpayers. <i>[Schedule 1, item 14]</i></p> <p>Proceedings under the POC Act start when an application for a restraining order or an application for a confiscation order has been filed. They end when the time for applying for exclusion from forfeiture, recovery from forfeiture or compensation orders expires or when any applications for exclusion, recovery, compensation or for enforcement of confiscation orders have been finally determined and all confiscation orders made in the proceedings have been satisfied.</p>

Part 4 — Amendments relating to higher education

Table 1.4: Amendments related to the *Higher Education Support Act 2003*

<i>Provision being amended</i>	<i>What the amendment does</i>
Provisions in various acts	<p>The <i>Higher Education Support Act 2003</i> (HESA) has superseded the <i>Higher Education Funding Act 1988</i> (HEFA).</p> <p>Various tax laws refer to concepts in the HEFA, such as: ‘higher education institution’, ‘self education’ and ‘higher education provider’.</p> <p>The amendments remove references to HEFA equivalent concepts and where appropriate replace them with references to equivalent concepts in the HESA. <i>[Schedule 1, items 15 to 43, section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999, section 135M of the Fringe Benefits Tax Assessment Act 1986, subsection 82A(2) (paragraphs (a), (ab), and (b) of the definition of expenses of self-education) of the Income Tax Assessment Act 1936 (ITAA 1936), paragraphs 26-20(1)(a) to (c), subsection 30-25(1) (cell at table item 2.1.3, column headed ‘Fund, authority or institution’), subsection 30-25(1) (cell at table item 2.1.6, column headed ‘Fund, authority or institution’), subparagraphs 52-132(a)(x) and 52-140(3)(a)(x) of the ITAA 1997, section 8AAZA, paragraph 8AAZLD(aa), paragraph 11-1(c) in Schedule 1, paragraph 15-50(1)(b) in Schedule 1, paragraph 45-5(1)(c) in Schedule 1, section 45-340 in Schedule 1 (method statement, step 3) and section 45-375 in Schedule 1 (method statement, step 3) of the Taxation Administration Act 1953 (TAA 1953), subsection 3(1) (definition of HEC assessment debt), item 40 in</i></p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p><i>the table in section 3C, subparagraph 8A(1)(a)(ii), paragraph 8A(2)(b), subparagraphs 8E(1)(d)(iii) and (2)(d)(iii) and 12A(1)(a)(iv)(B) and paragraph 12A(2)(b) of the Taxation (Interest on Overpayments and Early Payments) Act 1983]</i></p> <p>The amendments apply in relation to gifts made, or payments received, on or after the day this Bill receives Royal Assent. <i>[Schedule 1, items 23 and 26]</i></p>

Part 5 — PAYG withholding from delayed payments for termination of employment

Table 1.5: Amendments relating to PAYG withholding from delayed payments for termination of employment

<i>Provision being amended</i>	<i>What the amendment does</i>
<p>TAA 1953</p> <p>10-5(1) in Schedule 1 (table item 8)</p> <p>12-5(2) in Schedule 1 (table item 2)</p> <p>12-C in Schedule 1 (heading)</p> <p>12-85 in Schedule 1 (heading)</p> <p>12-85(b) in Schedule 1</p> <p>16-165 in Schedule 1 (heading)</p> <p>16-165(2)(b) in Schedule 1</p> <p>18-65(3)(d)(ii) in Schedule 1</p> <p>90-1 in Schedule 1 (note)</p> <p><i>Child Support (Registration and Collection) Act 1988</i></p> <p>4(1) (note at the end of the definition of work and income support related withholding payments)</p> <p>ITAA 1936</p> <p>6(1) (note at the end of the definition of work and income support related withholding payments and benefits)</p>	<p>These amendments give effect to a suggestion made through TIES 0009-2008.</p> <p>Under section 12-85 of Schedule 1 to the TAA 1953 an entity must withhold an amount from an employment termination payment it makes to an individual. Broadly, employment termination payments are payments received in consequence of the termination of a person's employment. Before 1 July 2007, these payments were eligible termination payments and were subject to PAYG withholding under section 12-85.</p> <p>Termination payments received more than 12 months after termination will only be employment termination payments where the Commissioner of Taxation (Commissioner) has made a determination that they are employment termination payments. This 12 month restriction exists to prevent abuse of the tax concession provided to employment termination payments by structuring a series of payments over a number of income years. This restriction did not apply to eligible termination payments and its introduction has created an unintended gap in the coverage of the PAYG withholding provisions. These amendments extend the application of the PAYG withholding provisions to termination payments that would be employment termination payments except that they are received more than 12 months after termination of employment. <i>[Schedule 1, items 44 to 52, item 8 in the table in subsection 10-5(1) in Schedule 1, item 2 in the table in subsection 12-5(2) in Schedule 1, section 12-C (heading) in Schedule 1, section 12-85 (heading) in Schedule 1, subsection 12-85(b) in Schedule 1, section 16-165 (heading) in Schedule 1, paragraph 16-165(2)(b) in Schedule 1, subparagraph 18-65(3)(d)(ii) in Schedule 1, section 90-1 (note) in Schedule 1 to the TAA 1953]</i></p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>These amendments will apply in relation to payments made on or after the later of, the day that the Bill receives Royal Assent or 1 July 2010 (or either of them if they are the same). <i>[Schedule 1, item 53]</i></p> <p>Consequential amendments are made to ensure that the notes refer correctly to the types of payments covered by relevant definitions. <i>[Schedule 1, items 54 and 55, subsection 4(1) (note at the end of the definition of ‘work and income support related withholding payments’) in the Child Support (Registration and Collection) Act 1988, and subsection 6(1) (note at the end of the definition of ‘work and income support related withholding payments and benefits’) of the ITAA 1936]</i></p> <p>Consequential amendments are made to ensure the provisions refer correctly to payments included in Subdivision 12 C of Schedule 1 to the TAA 1953. <i>[Schedule 1, items 56 and 57, subsection 28-185(3) (cell at table item 5, column headed ‘Subject matter’) and subsection 900-12(3) (cell at table item 5, column headed ‘Subject matter’) of the ITAA 1997]</i></p>

Part 6 — Administrative penalties for false or misleading statements

1.8 Subdivision 284-B in Schedule 1 to the TAA 1953 provides an administrative penalty for making a false or misleading statement to the Commissioner (or to another entity exercising a power or performing a function under a taxation law). That administrative penalty regime provides a simpler and more cost effective approach to penalties than prosecuting all offences.

1.9 The penalty is set to take account of the extent of the taxpayer’s culpability and any behaviour that helps or frustrates the Commissioner’s investigation after the statement is made.

1.10 The penalty is also based on the tax shortfall caused by the statement being false or misleading. That ensures that the penalty increases as the consequences become more serious. However, it also means that a statement that does not produce any tax shortfall is not penalised, even though it is false or misleading. For such a statement, prosecuting an offence is the only remedy currently available.

1.11 The amendments extend the existing administrative regime to cover false or misleading statements that do not directly produce a tax shortfall.

1.12 They also extend the regime to cover some false or misleading statements made to entities other than the Commissioner.

1.13 All references in this part are to provisions of the TAA 1953 unless otherwise indicated.

Liability for the penalty (Division 284 in Schedule 1)

1.14 Section 284-75 creates a liability for a penalty for making a false or misleading statement. It is amended to remove the need for the statement to lead to a shortfall in tax. It is also amended to extend it to cover some statements that are made neither to the Commissioner nor to another entity exercising a power or performing a function under a taxation law. Those statements must be statements that the tax law either requires be made or permits to be made. So, for instance, they would include the statements the tax law requires the trustee of a super fund to provide to the fund's members and they would also include declarations that employees may opt to give to their employers to reduce the amount of tax withheld from their wages. *[Schedule 1, items 60, 61, 66, 67, 70 and 72, paragraphs 274-75(1)(b), (1)(c) and (2)(c), subsection 284-75(4) and items 1 to 4 in the table in subsection 284-90(1) in Schedule 1]*

1.15 The penalty applies if a taxpayer makes a false or misleading statement or if the taxpayer's agent makes the statement for the taxpayer. The amendments make it clear that outcome applies even if a statement an agent makes is not made in an approved form. *[Schedule 1, items 58, 59 and 62 to 65, paragraphs 284-75(2)(a) and (b), subsection 284-75(1) and section 284-25 in Schedule 1]*

The amount of the penalty

1.16 Currently, the penalty starts with the 'base penalty amount', which is the tax shortfall, adjusted for the extent of the taxpayer's culpability — it is 25 per cent of the shortfall if the taxpayer merely fails to take reasonable care, 50 per cent if the shortfall is caused by recklessness, and 75 per cent if the shortfall is caused by an intentional disregard of the law. The amendments provide a base penalty amount for false or misleading statements that do not cause any tax shortfall. The amount is 20, 40 or 60 penalty units depending on whether the taxpayer did not take reasonable care, was reckless, or intentionally disregarded the law. Under section 4AA of the *Crimes Act 1914*, a penalty unit is currently \$110. *[Schedule 1, item 71, items 3A, 3B and 3C in the table in subsection 284-90(1) in Schedule 1]*

1.17 The amendments also ensure that there can be only one base penalty amount for each false or misleading statement. *[Schedule 1, item 74, subsection 284-90(2) in Schedule 1]*

1.18 Those base penalty amounts are set to provide sufficient incentive for taxpayers to take care in the taxation statements they make. Where the statement merely involves a failure to take reasonable care, the

amount reflects the existing penalty imposed by section 288-85 in Schedule 1 on trustees of self-managed super funds. The increase in the amount for more serious cases follows the proportions that apply under the existing base penalty amount rules.

1.19 Section 284-220 in Schedule 1 provides for a base penalty amount to be increased by 20 per cent if the taxpayer takes steps to prevent the Commissioner learning that a statement was false or misleading or if the taxpayer has been subject to a previous penalty for making a false or misleading statement.

1.20 Section 284-225 in Schedule 1 provides for the penalty to be reduced by 20 per cent if the taxpayer informs the Commissioner about a false or misleading statement after the Commissioner announces an audit. If the taxpayer informs the Commissioner before that, the reduction is 80 percent (or 100 percent if the tax shortfall is \$1,000 or less).

1.21 The amendments ensure those provisions also apply to statements that do not produce a tax shortfall. Because there is no tax shortfall, the \$1,000 rule cannot apply, so the amendments reduce the penalty in those cases to nil if the taxpayer informs the Commissioner before an audit is announced. *[Schedule 1, item 91, subsection 284-225(4A) in Schedule 1]*

1.22 The Commissioner can also exercise his existing power under section 298-20 in Schedule 1 to remit some or all of the penalty.

1.23 Directors of a corporate trustee of a self-managed super fund that becomes liable for the penalty are themselves jointly and severally liable to pay that penalty. That preserves the existing outcome provided for by section 288-85 in Schedule 1, which is repealed by the amendments. *[Schedule 1, item 75, section 284-95 in Schedule 1]*

Exclusion from liability

1.24 Section 224-215 in Schedule 1 does two things. First, it reduces the penalty to the extent that the tax shortfall is caused by the taxpayer treating the law as applying in a way that was consistent with the Commissioner's advice or general practice. Second, it reduces the penalty to nil if the taxpayer takes reasonable care in making a false or misleading statement.

1.25 The amendments split section 284-215 into two parts so that each can be located in its proper place in Division 284. They also ensure that the reduction in penalty for relying on the Commissioner's advice or general practice also applies in cases where there is no tax shortfall. For example, if a taxpayer makes a statement that is false or misleading but is

consistent with the Commissioner's published view, the penalty is reduced accordingly. *[Schedule 1, items 67, 79 and 88, subsection 284-225(5) and sections 284-215 and 284-224 in Schedule 1]*

1.26 The provision that reproduces the effect of the existing subsection 284-215(2) is slightly changed to ensure that it extends to all false or misleading statements rather than just to those that produce a tax shortfall. It excludes taxpayers from liability for any penalty if they take reasonable care in making the statement. If their agent makes the statement, both the taxpayer and the agent need to take reasonable care before the exclusion from liability applies. *[Schedule 1, item 67, subsection 284-75(5) in Schedule 1]*

Consequential amendments

1.27 A number of consequential amendments deal with section 284-215's change in location. *[Schedule 1, items 68, 69, 73, 76 to 78 and 95 to 97, subsections 284-80(1) (note), 284-90(1), 284-150(2) (note) and 361-5(1) (notes) and (3) and section 284-160 in Schedule 1]*

1.28 A number of other minor amendments are also made as a consequence of the main amendments. *[Schedule 1, items 80 to 87, 89 to 93 and 98, subsections 284-220(1) and 284-225(1), (2), (4A) and (5) and section 284-225 (heading) in Schedule 1 and paragraph 35(1)(b) of the Product Grants and Benefits Administration Act 2000]*

1.29 The amendments repeal section 288-85 in Schedule 1, which penalises trustees for statements that do not directly produce a tax shortfall. This is because the general extension of the penalty regime covers that case. *[Schedule 1, item 94, section 288-85 in Schedule 1, Division 288 in Schedule 1]*

1.30 Consequential amendments reflect the fact that section 288-85 is replaced by the general penalty regime. *[Schedule 1, items 99 and 100, subsection 39(1)B and section 38A (subparagraph (ab)(i) of the definition of 'regulatory provision') of the Superannuation Industry (Supervision) Act 1993]*

1.31 The Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009 introduces a safe harbour for taxpayers who use the services of a tax agent. As long as the taxpayer provides the agent with all relevant information and the agent takes reasonable care, the taxpayer will not incur a penalty for making a false or misleading statement that produces a tax shortfall.

1.32 After that Bill commences, the amendments in this Bill extend the safe harbour to also cover cases where the statement does not produce a tax shortfall. *[Schedule 1, items 102 to 105, subsections 284-75(1A), (1B), (5) (heading), (6) and (7) in Schedule 1 and item 3 in the table in clause 2]*

Application

1.33 The amendments apply in relation to things done (such as statements being made) after the amendments commence (which is the start of the day following Royal Assent). [Schedule 1, item 101 and item 2 in the table in clause 2]

Part 7 — Offset against superannuation guarantee charge

Table 1.6: Amendments to the *Tax Laws Amendment (2008 Measures No. 2) Act 2008*

<i>Provision being amended</i>	<i>What the amendment does</i>
Schedule 2 to <i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i>	<p>The amendments correct an anomaly in the application of the superannuation guarantee late payment offset which arose from amendments made to the offset by the <i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i>. The superannuation guarantee late payment offset is intended to allow employers to elect to offset late contributions against superannuation guarantee charge liabilities, however, this only applies to contributions made on or after 1 January 2006. The amendment ensures that late contributions made before 1 January 2006 are eligible for the offset. [Schedule 1, items 106, 107 and 7A and paragraphs 8(1)(a) and 9(a) of Schedule 2]</p> <p>The amendments commence immediately after the commencement of the <i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i>, on 24 June 2008. [Schedule 1, item 4 in the table in clause 2]</p> <p>Retrospective commencement delivers the policy intent of the original amendments and will validate any late payment offset elections already processed by the ATO on the assumption that the offset applied to all late contributions.</p> <p>Except for no longer being confined to late contributions made on or after 1 January 2006, the late payment offset continues to operate without change.</p>

Part 8 — Status of certain superannuation funds

Table 1.7: Amendments to the *Income Tax Assessment Act 1936*

<i>Provision being amended</i>	<i>What the amendment does</i>
267(1)	<p>The amendment ensures that two South Australian public sector superannuation schemes are taxed superannuation entities at all times, as was always intended. [Schedule 1, item 108, subsection 267(1)]</p> <p>For periods in the 2006-07 income year, these schemes unintentionally became constitutionally protected funds as the unintended consequence of changes to South Australian legislation and therefore exempt from income tax for those periods. The amendment commences on 1 July 2006. [Schedule 1, item 5 in the table in clause 2]</p>

Part 9 — Technical corrections

Table 1.8: Amendments to the *A New Tax System (Luxury Car Tax) Act 1999*

<i>Provision being amended</i>	<i>What the amendment does</i>
9-20	Corrects a spelling error that was made in the original enactment, referring to 'the *approved from' instead of 'the *approved form'. [Schedule 1, item 109, section 9-20]

Table 1.9: Amendments to the *Tax Administration Act 1953*

<i>Provision being amended</i>	<i>What the amendment does</i>
363-35 in Schedule 1 426-165(1)(b)(a) and (b) in Schedule 1	Corrects numbering errors. [Schedule 1, items 110 and 111, section 363-35 in Schedule 1 and subparagraphs 426-165(1)(b)(a) and (b) in Schedule 1]

Table 1.10: Amendments to the *Tax Laws Amendment (2009 Measures No. 4) Act 2009*

<i>Provision being amended</i>	<i>What the amendment does</i>
132 of Schedule 5 133 of Schedule 5	Corrects a misdescribed amendment. [Schedule 1, items 112 and 113, items 132 and 133 of Schedule 5]

Part 10 — Repeal of redundant material

Table 1.11: Amendments to the *Income Tax Assessment Act 1936*

<i>Provision being amended</i>	<i>What the amendment does</i>
6(1) (definition of ‘accrued leave transfer payment’)	Repeals the definition of ‘accrued leave transfer payment’ as it is no longer used in the Act. [Schedule 1, item 114, subsection 6(1)]

Table 1.12: Amendments to the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
116-30(1)(note)	Repeals a note that merely refers to provisions that have been repealed. [Schedule 1, item 115, subsection 116-30(1)]

Table 1.13: Amendments to the *Tax Administration Act 1953*

<i>Provision being amended</i>	<i>What the amendment does</i>
16-150(1) in Schedule 1	Omits a subsection number from a section that is no longer divided into subsections. [Schedule 1, item 116, subsection 16-150(1) in Schedule 1]

Part 11 — Other minor changes

Table 1.14: Amendments to *A New Tax System (Goods and Services Tax) Act 1999*

<i>Provision being amended</i>	<i>What the amendment does</i>
195-1 (definition of ‘luxury car’)	The amendment giving effect to the suggestion made through TIES 0001-2008 . The amendment inserts a definition of the term ‘luxury car’ that adapts the meaning provided by the <i>A New Tax System (Goods and Services Tax) Act 1999</i> . This confirms the meaning the term was always intended to have. [Schedule 1, item 117, section 195-1]

Table 1.15: Amendments to the *Income Tax Assessment Act 1936*

<i>Provision being amended</i>	<i>What the amendment does</i>
6(1) 45B(10)	<p>The amendments adopt the meanings of the terms ‘agent’, ‘allowable deduction’, ‘friendly society dispensary’, ‘paid-up share capital’, ‘person’ and ‘scheme’, that are in the ITAA 1997 for reasons of simplicity. The meanings in the two Acts are the same in all material respects. [Schedule 1, items 118 and 120, subsection 6(1), and item 126, subsection 45B(10)]</p> <p>A transitional provision preserves the effect of any determinations about who is an agent that the Commissioner may have made for the purposes of the ITAA 1936. [Schedule 1, item 119]</p>
45B(9)	<p>The amendment changes the reference at the end of subsection 45B(9) from ‘dividend’ to ‘assessable dividend’, as in some cases the amount of tax payable on a dividend is nil. This clarifies that the hypothetical dividend a capital benefit is compared to, in working out whether there is a tax benefit, is an <i>assessable</i> dividend. [Schedule 1, item 124, subsection 45B(9)]</p> <p>This amendment applies to the provision of capital benefits on or after 30 November 2009 (the date of release of the exposure draft legislation). This approach is consistent with the application provision for section 45B when it was originally introduced. It does not affect the interpretation of the provisions before that time. [Schedule 1, item 125, subsection 45B(9)]</p>

Table 1.16: Amendments to the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
12-5 25-7	<p>The amendments reflect the fact that Family Tax Benefit can no longer be claimed through the tax system after 1 July 2009. [Schedule 1, items 127 and 128, sections 12-5 (table item headed ‘family tax benefit’), and 25-7]</p>
67-23 67-25(7)	<p>The amendments reinstate the result that the tax offset available under the National Rental Affordability Scheme is a <i>refundable</i> tax offset. The provision enacted in 2008 to make it a refundable tax offset was inadvertently omitted early in 2009. [Schedule 1, item 128C, item 23 in the table in section 67-23]</p> <p>This amendment applies to assessments for the 2008-09 and later income years to ensure that taxpayers are entitled to the refundable tax offset from when Parliament intended. [Schedule 1, item 128D]</p> <p>The amendments also relocate subsection 67-25(7)</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>(which makes the tax offset for education expenses a refundable tax offset) to a more appropriate place. There is no change in operation. <i>[Schedule 1, items 128A and 128E, subsection 67-25(7) and item 12 in the table in section 67-23]</i></p> <p>These amendments apply to the 2009-10 and later income years. <i>[Schedule 1, items 128B and 128F]</i></p>
112-97	<p>The amendment replaces references to general provisions with references to specific provisions. Item 21 in the table in section 112-97 should refer to subsection 320-200(2), rather than Division 320. Item 22 in the same table should refer to subsection 320-255(2), rather than Division 320. <i>[Schedule 1, items 131 and 132, section 112-97]</i></p>
109-55(table item 8C) 109-55 115-32 115-34 115-45(4) 115-45(6)	<p>These amendments give effect to a suggestion made through TIES 0042-2009.</p> <p>Section 115-30 provides for a different acquisition date for a CGT asset that its owner acquired because of a same asset or replacement asset roll-over.</p> <p>Sections 115-30 and 115-45 may operate in certain circumstances to deny taxpayers access to the CGT discount if they sell their replacement interests within 12 months of receiving a roll-over because the acquirer entity will not have owned the interests in the original entity for at least 12 months.</p> <p>The amendment in new section 115-32 allows a taxpayer who sells their interest in the acquirer entity to 'look through' to the assets of the original entity to establish whether the interests in the original entity, which are now owned by the acquirer entity, can be considered to have been owned for at least 12 months.</p> <p>This means that the requirements in subsections 115-45(4) and (5) need to be applied to the shares or trust interests now owned by the acquirer entity to determine whether they have been owned for at least 12 months. These requirements will be satisfied if the cost bases and the net capital gain of assets of the original entity that have been owned for less than 12 months are not more than 50 per cent of the cost bases and net capital of all the original entity's assets.</p> <p>This result will then be used to test whether the taxpayer is entitled to the discount under section 115-45 by now applying subsections 115-45(4) and (5) to the acquirer entity's assets.</p> <p>The new section 115-32 does not apply to replacement assets acquired under the replacement asset roll-overs provided by Subdivisions 122-A, 122-B and 124-N.</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p><i>[Schedule 1, items 129, 130, 133 to 139, section 115-32, subsections 115-45(4) and 115-45(6)]</i></p> <p>Sections 115-30 and 115-45 may also deny taxpayers access to the CGT discount if they sell a company share received as a replacement asset under a Subdivision 122-A or 122-B replacement asset roll-over (disposal of assets to a wholly owned company) or a Subdivision 124-N (disposal of assets by a trust to a company) replacement-asset roll-over prior to owning the share for 12 months. Selling the share prior to owning it for 12 months will deny the taxpayer the CGT discount. Also, as the company acquires its assets at the time of the roll-over, selling a share in the company before owning it for at least 12 months will mean the conditions in subsections 115-45(4) and 115-45(5) may be met as the company has held its assets for less than 12 months. This results in denying the taxpayer the CGT discount.</p> <p>The amendment (in new section 115-34) for these specific replacement-asset roll-overs treats the taxpayer's replacement asset (share) for the purpose of the CGT discount as being owned for a period of at least 12 months where the share is sold within 12 months of its actual acquisition. The taxpayer therefore does not need to establish an acquisition date for the replacement asset under item 2 in the table in subsection 115-30(1), which is turned off for the purpose of new section 115-34.</p> <p>Also, the amendment allows for the assets owned by the acquiring company to be taken to be owned from the time when the taxpayer originally acquired them for the purposes of subsections 115-45(4) and 115-45(6).</p> <p>The amendments result in the taxpayer being able to sell their share within 12 months of acquisition and still receive the discount where not more than 50 per cent (by cost base and net capital gain) of the company's assets have been owned for less than 12 months including the period they were owned by the taxpayer. <i>[Schedule 1 items 136 to 139, section 115-34, subsections 115-45(4) and (6)]</i></p> <p>The amendments apply to assessments for the income year including 21 September 1999 and for later income years, in relation to CGT events happening after 11.45 am (by legal time in the Australian Capital Territory) on that day. This makes the application of the amendments consistent with the general approach taken to the application of the CGT discount. However, standard amendment periods still apply. The retrospective application of these amendments will not have a negative affect on taxpayers. <i>[Schedule 1, item 140]</i></p>

<i>Provision being amended</i>	<i>What the amendment does</i>
152-320(1)	Adds a non-operative note to alert readers to the effect of a transitional provision in another Act. <i>[Schedule 1, item 141, subsection 152-320(1)(note)]</i>
711-30 711-30(2) 711-30(3)	<p>These amendments give effect to a suggestion made through TIES 0003-2009.</p> <p>These amendments to the consolidation regime deal with the treatment of an asset that is a debt for the provision of services (that is, a service receivable) under the tax cost setting rules that apply when an entity leaves a consolidated group or multiple entry consolidated group.</p> <p>The consolidation regime effectively treats wholly-owned corporate groups as single entities for income tax purposes. The head company of the group becomes the relevant taxpayer and subsidiary members of the group are not recognised for tax purposes.</p> <p>An entity joins a consolidated group when the head company of the group acquires all of the membership interests in the entity. Those membership interests cease to be recognised for tax purposes after the joining time. The cost of those interests is added to the joining entity's liabilities. This combined amount is pushed down on to the underlying assets of the joining entity to give them a new tax cost. When the entity subsequently leaves the consolidated group, the tax costs of its membership interests are reconstructed by subtracting the value of the leaving entity's liabilities from the tax costs of its assets.</p> <p>A problem of double taxation arises when a leaving entity holds an asset that is a service receivable. Where the service receivable was created after the joining time, it has no tax cost. Consequently, the value of the service receivable is not taken into account in calculating the tax cost of the membership interests in the leaving entity. This results in an understatement of the tax costs of the membership interests in the leaving entity and an increased capital gain (or reduced capital loss) for the group. Since the debt has already been taxed as ordinary income derived from the provision of the services, this can result in double taxation. In addition, if the service receivable was created before the joining time, the tax cost for the receivable taken into account in calculating the tax cost of the membership interests may be incorrect where, for example, a bad debt had been claimed by the head company in respect of the receivable before the leaving time.</p> <p>The amendment specifies the value of a service receivable asset that is to be taken into account in calculating the tax cost of the membership interests in the</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
	<p>leaving entity. The value is the amount of the consideration the head company would need to receive if it were to dispose of the asset just before the leaving time without an amount being assessable income of, or deductible to, the head company under any provision of the Act. [Schedule 1, items 142 to 145, section 711-30, subsections 711-30(2) to (4)]</p> <p>This amendment applies from 1 July 2002, with the standard amendment periods applying. The amendment is beneficial to business groups and confirms existing practice. [Schedule 1, items 146]</p>
974-110(1)(b)	<p>The amendment provides a mechanism to reclassify the interest where a component of a debt or equity interest needs to be reclassified because part of the interest has ceased to exist, changing the remaining part in a material way.</p> <p>An example is the case where a redeemable preference share and an ordinary share are stapled together and constitute a debt interest for the purposes of the debt/equity rules. On redemption of the redeemable preference share, there is no mechanism available under those rules to re-characterise the remaining ordinary share as an equity interest. It will continue to be a debt interest. The amendment enables the remaining interest to be properly characterised as an equity interest. [Schedule 1, item 147, paragraph 974-110(1)(b)]</p> <p>This amendment applies to changes occurring on or after Royal Assent. [Schedule 1, item 148]</p>
995-1(1)	<p>The definitions of ‘common stake’, ‘common stakeholder’, ‘significant stake’ and ‘significant stakeholder’, which appear in section 124-783, are added to the Act’s dictionary. [Schedule 1, items 149, 150, 153 and 154, subsection 995-1(1) (definitions of ‘common stake’, ‘common stakeholder’, ‘significant stake’ and ‘significant stakeholder’)]</p> <p>Multiple relational definitions of the terms ‘quote’ and ‘quoted’ are merged into a single definition. [Schedule 1, items 151 and 152]</p>

Table 1.17: Amendments to the *Income Tax (Transitional Provisions) Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
1-10	Ensures that Division 950 of the ITAA 1997 applies to the <i>Income Tax (Transitional Provisions) Act 1997</i> to clarify the status of notes, examples and headings. <i>[Schedule 1, item 155]</i>
770-230(5)	Subsection 770-230(5) was meant to extinguish pre-commencement excess foreign income tax once it has been used. However, the word ‘limit’ was mistakenly included and as a result the subsection makes no sense, either literally or otherwise. This amendment removes the word ‘limit’ from the end of subsection 770-230(5), so that the subsection makes sense and gives effect to the original intent of the policy. <i>[Schedule 1, item 156, subsection 770-230(5)]</i> This amendment applies to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008 — the start date for the new foreign income tax offset rules to ensure those rules apply, as intended from their first application. <i>[Schedule 1, item 157]</i>

Table 1.18: Amendments to the *Tax Administration Act 1953*

<i>Provision being amended</i>	<i>What the amendment does</i>
2-30 90	This amendment inserts a new part into the TAA 1953 to enable the application of the Medicare levy (as defined in section 251R of the ITAA 1936) and Medicare levy surcharge to ‘income tax’ and ‘tax’ in the ITAA 1997. This new part is taken to have always applied in the same way in relation to income tax and tax. <i>[Schedule 1, item 158]</i>
45-288(a) in Schedule 1	Section 102Q of the ITAA 1936 defines a ‘resident unit trust.’, and therefore paragraph 45-288(a) needs to apply to ‘a resident unit trust’ and not to ‘resident trust’. <i>[Schedule 1, item 15, paragraph 45-288(a) in Schedule 1]</i>

