

EXPOSURE DRAFT

1 Inserts for
2 **Tax Laws Amendment (2010 Measures**
3 **No. 1) Bill 2010: Minor amendments**
4

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EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1, Parts 1, 2, 3, 4 and 5	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 6, Divisions 1, 2 and 3	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 6, Division 4	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 23 of Schedule 1 to the <i>Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, Part 7	Immediately after the commencement of Schedule 2 to the <i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i> .	24 June 2008
5. Schedule 1, Part 8	1 July 2006.	1 July 2006
6. Schedule 1, items 109 to 111	The day this Act receives the Royal Assent.	
7. Schedule 1, item 112	Immediately after the time specified in the <i>Tax Laws Amendment (2009 Measures No. 4) Act 2009</i> for the commencement of item 132 of Schedule 5 to that Act.	18 September 2009

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 1, item 113	Immediately after the time specified in the <i>Tax Laws Amendment (2009 Measures No. 4) Act 2009</i> for the commencement of item 133 of Schedule 5 to that Act.	18 September 2009
9. Schedule 1, Parts 10 and 11	The day this Act receives the Royal Assent.	

Schedule 1—Minor amendments

Part 1—CGT main residence exemption for replacement dwelling

Income Tax Assessment Act 1997

1 After subsection 118-145(3)

Insert:

- (3A) This section does not apply if the *dwelling was your main residence because of section 118-147 and ceases to be your main residence because of subsections 118-147(3) and (4).

2 After section 118-145

Insert:

118-147 Absence from dwelling replacing main residence that was compulsorily acquired, destroyed etc.

- (1) This section applies if:
- (a) a *dwelling (the *old dwelling*) is treated as your main residence because of your choice under section 118-145; and
 - (b) because of an event (the *key event*) described in subsection 124-70(1):
 - (i) you cease to have any *ownership interest in the old dwelling; or
 - (ii) the old dwelling is lost or destroyed; and
 - (c) after the key event you have an ownership interest (the *substitute property interest*) in:
 - (i) a dwelling (the *substitute dwelling*); or

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1 (ii) land (the *substitute land*) that did not have a dwelling
2 erected on it at the later of the time just after the key
3 event and the time you *acquired the interest; and

4 (d) you acquired the substitute property interest at a time (the
5 *substitute property acquisition time*) no later than one year,
6 or within such further time as the Commissioner allows in
7 special circumstances, after the end of the income year in
8 which the key event happens.

9 Note 1: Subsection 124-70(1) deals with compulsory acquisitions, disposals in
10 circumstances involving powers of compulsory acquisition, expiry of
11 leases granted by Australian government agencies and loss or
12 destruction of a CGT asset.

13 Note 2: The substitute property acquisition time may be before, at or after the
14 time the key event happened. The old dwelling and the substitute
15 dwelling may be different or the same. The land on which the old
16 dwelling is erected and the substitute land may be different or the
17 same.

18 (2) You may choose to treat the substitute dwelling, or a *dwelling you
19 built on the substitute land within 4 years after the later of the time
20 of the key event and the substitute property acquisition time, as
21 your main residence from the later of the following times (or from
22 either of them if they are the same):

23 (a) the substitute property acquisition time;

24 (b) the time one year before the key event happened.

25 (3) Subsection (4) limits the time you can treat a *dwelling as your
26 main residence under this section if you use all or part of it or the
27 substitute land, after the later of the key event and the substitute
28 property acquisition time, for the *purpose of producing assessable
29 income.

30 (4) The maximum period you can treat the *dwelling that way while
31 you use it or the substitute land as described in subsection (3) is:

32 (a) 6 years; or

33 (b) if, just before the key event, you used all or part of the old
34 dwelling for that purpose—so much of the period of 6 years
35 described in subsection 118-145(2) in relation to the old
36 dwelling as had not passed before the event.

37 (5) If you do not use the *dwelling or substitute land as described in
38 subsection (3) you can treat the dwelling as your main residence
39 under this section indefinitely.

40 (6) If you make the choice:

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- 1 (a) you cannot treat any other *dwelling as your main residence
2 while you apply this section; and
3 (b) section 118-140 does not apply in relation to your
4 *acquisition, while you still have an *ownership interest in
5 the old dwelling, of an ownership interest in the dwelling you
6 choose to treat as your main residence under this section; and
7 (c) section 118-150 does not apply after the key event to the land
8 on which the old dwelling is erected or the substitute land;
9 and
10 (d) section 118-155 does not apply after the key event in relation
11 to the old dwelling, the substitute dwelling or a dwelling built
12 on the substitute land.

13 (7) Paragraph (6)(a) does not prevent the old dwelling from being your
14 main residence at any time before the key event happened.

15 **3 Paragraph 118-150(3)(a)**

16 After “residence”, insert “(except because of section 118-147)”.

17 **4 After subsection 118-190(3)**

18 Insert:

19 (3A) Also, you ignore any use of the *dwelling for the *purpose of
20 producing assessable income during any period that you treat it as
21 your main residence under section 118-147 (about absences) to the
22 extent that any part of the old dwelling mentioned in that section
23 was not used for that purpose just before the old dwelling last
24 ceased to be your main residence.

25 **5 At the end of paragraph 118-200(4)(b)**

26 Add “or (3A)”.

27 **6 Application**

28 The amendments made by this Part apply in relation to CGT events
29 happening on or after the day this Act receives the Royal Assent.
30

EXPOSURE DRAFT

1 Part 2—Small business retirement exemption

2 Division 1—Main amendment

3 *Income Tax Assessment Act 1997*

4 7 Paragraph 152-310(2)(a)

5 Omit “exempt from income tax for”, substitute “not assessable income,
6 and is not *exempt income, of”.

7 8 Application

8 The amendment of paragraph 152-310(2)(a) of the *Income Tax*
9 *Assessment Act 1997* made by this Division applies in relation to
10 payments made after 30 June 2007.

11 Division 2—Related amendments

12 *Income Tax Assessment Act 1997*

13 9 Section 11-15 (table item headed “small business 14 retirement exemption”)

15 Repeal the item.

16 10 Section 11-55 (table item headed “capital gains tax”)

17 Repeal the item, substitute:

capital gains tax

small business retirement exemption, payments made
directly or indirectly to CGT concession stakeholder so
company or trust complies with section 152-325 152-310

18 11 Section 12-5 (table item headed “capital gains tax”)

19 After:

no deduction for an amount that would otherwise be
deductible only because a net capital gain is included
in assessable income..... 51AAA

20 insert:

small business retirement exemption, no deduction for
payments made directly or indirectly to CGT
concession stakeholder so company or trust complies
with section 152-325 152-310

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1 **Part 3—Waiver connected with proceeds of crime** 2 **proceedings**

3 *Taxation Administration Act 1953*

4 **12 Division 340 in Schedule 1 (heading)**

5 Repeal the heading, substitute:

6 **Division 340—Commissioner’s power in cases of hardship**

7 **13 At the end of Part 4-50 in Schedule 1**

8 Add:

9 **Division 342—Commissioner’s power relating to proceeds** 10 **of crime proceedings**

11 **Table of Subdivisions**

12 Guide to Division 342

13 342-A Power to waive right to payment of tax-related liabilities

14 **Guide to Division 342**

15 **342-1 What this Division is about**

16 To facilitate the starting, conduct and ending of proceedings under
17 the *Proceeds of Crime Act 2002*, the Commissioner may waive the
18 right to payment of certain tax-related liabilities.

19 **Subdivision 342-A—Power to waive right to payment of** 20 **tax-related liabilities**

21 **Table of sections**

22 342-5 Object of this Subdivision

23 342-10 Power to waive right to payment of tax-related liability

24 **342-5 Object of this Subdivision**

25 The object of this Subdivision is to facilitate the starting, conduct
26 and ending of proceedings under the *Proceeds of Crime Act 2002*
27 by allowing the Commissioner to waive the right to payment of

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1 certain liabilities to the Commonwealth arising under *taxation
2 laws.

3 Note: The Commissioner may also exercise other powers so as to facilitate
4 the starting, conduct and ending of proceedings under the *Proceeds of*
5 *Crime Act 2002*. Examples of those other powers include:

- 6 (a) the power under section 255-10 to defer the time a tax-related
7 liability is due and payable; and
8 (b) the power under section 8AAG to remit general interest charge.

9 **342-10 Power to waive right to payment of tax-related liability**

10 (1) The Commissioner may waive the Commonwealth's right to
11 payment of all or part of a *tax-related liability if the
12 Commissioner is satisfied that:

13 (a) the waiver will facilitate the starting, conduct or ending (by
14 settlement or otherwise) of proceedings under the *Proceeds*
15 *of Crime Act 2002*; and

16 (b) the liability is connected with circumstances associated with
17 the proceedings.

18 Note: The Commissioner may waive the right to payment only after the
19 liability has arisen, but may do so whether or not the liability is due
20 and payable.

21 Example: A liability is connected with circumstances associated with the
22 proceedings if the liability arose because of activities constituting an
23 offence to which the proceedings relate.

24 (2) In deciding whether to waive the right, the Commissioner must
25 consider:

26 (a) the amount the Commonwealth will forgo as a direct or
27 indirect result of the waiver and the time the Commonwealth
28 could reasonably be expected to receive that amount apart
29 from the waiver; and

30 (b) the amount the Commonwealth could reasonably be expected
31 to receive as a result of the proceedings and the time the
32 Commonwealth could reasonably be expected to receive that
33 amount.

34 (3) Subsection (2) does not limit the matters that the Commissioner
35 may consider in making the decision.

36 *Extended operation of this section*

37 (4) This section (except this subsection) applies in relation to a
38 pecuniary liability to the Commonwealth that arises directly under

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1 a *taxation law, but is not a *tax-related liability, in the same way
2 as this section applies in relation to a tax-related liability.

3 Example: This section applies to a civil penalty under Division 290 (which
4 penalises certain conduct involving promotion of schemes) in the
5 same way as this section applies to a tax-related liability.

6 **14 Application**

7 (1) Division 342 in Schedule 1 to the *Taxation Administration Act 1953*
8 applies in relation to:

9 (a) proceedings started, or proposed to be started, on or after the
10 commencement of that Division; and

11 (b) proceedings started, and not ended, before that
12 commencement.

13 That Division applies whether the liability was incurred before, on or
14 after that commencement.

15 (2) For the purposes of paragraph (1)(b), proceedings are taken not to have
16 ended before that commencement if any appeal relating to the
17 proceedings has not ended, or a period for lodging an appeal relating to
18 the proceedings has not ended, before that commencement.
19

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1 **Part 4—Amendments relating to higher education**

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

3 **15 Section 195-1 (definition of *higher education institution*)**

4 Repeal the definition, substitute:

5 *higher education institution* means an entity that is a higher
6 education provider as defined in section 16-1 of the *Higher*
7 *Education Support Act 2003*.

8 *Fringe Benefits Tax Assessment Act 1986*

9 **16 Section 135M (first paragraph)**

10 Omit “the *Higher Education Funding Act 1988* or”.

11 *Income Tax Assessment Act 1936*

12 **17 Subsection 82A(2) (paragraphs (a), (ab) and (b) of the** 13 **definition of *expenses of self-education*)**

14 Repeal the paragraphs.

15 **18 Application**

16 The amendment of section 82A of the *Income Tax Assessment Act 1936*
17 made by this Part applies in relation to assessments for the income year
18 in which this Act receives the Royal Assent and later income years.

19 *Income Tax Assessment Act 1997*

20 **19 Paragraphs 26-20(1)(a), (b) and (c)**

21 Repeal the paragraphs.

22 **20 Application**

23 The amendment of subsection 26-20(1) of the *Income Tax Assessment*
24 *Act 1997* made by this Part applies in relation to assessments for the
25 income year in which this Act receives the Royal Assent and later
26 income years.

27 **21 Subsection 30-25(1) (cell at table item 2.1.3, column** 28 **headed “Fund, authority or institution”)**

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1 Repeal the cell, substitute:
a charitable or public institution that is a
higher education provider within the meaning
of the *Higher Education Support Act 2003*

2 **22 Subsection 30-25(1) (cell at table item 2.1.6, column**
3 **headed “Fund, authority or institution”)**

4 Repeal the cell, substitute:
a residential educational institution that is
affiliated with a charitable or public institution
that is a higher education provider within the
meaning of the *Higher Education Support Act*
2003

5 **23 Application**

6 The amendments of subsection 30-25(1) of the *Income Tax Assessment*
7 *Act 1997* made by this Part apply in relation to gifts made on or after the
8 day this Act receives the Royal Assent.

9 **24 Subparagraph 52-132(a)(x)**

10 Repeal the subparagraph.

11 **25 Subparagraph 52-140(3)(a)(x)**

12 Repeal the subparagraph.

13 **26 Application**

14 The amendments of sections 52-132 and 52-140 of the *Income Tax*
15 *Assessment Act 1997* made by this Part apply in relation to payments
16 received on or after the day this Act receives the Royal Assent.

17 ***Taxation Administration Act 1953***

18 **27 Section 8AAZA (definition of *HEC assessment debt*)**

19 Repeal the definition.

20 **28 Paragraph 8AAZLD(a)**

21 Repeal the paragraph.

22 Note: The heading to section 8AAZLD is altered by omitting “**HEC and**”.

23 **29 Paragraph 8AAZLD(aa)**

24 Omit “secondly,”, substitute “first,”.

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1 **30 Paragraph 11-1(c) in Schedule 1**

2 Repeal the paragraph.

3 **31 Subsection 15-25(1) in Schedule 1**

4 Omit “(c),”.

5 **32 Paragraph 15-30(c) in Schedule 1**

6 Repeal the paragraph.

7 **33 Paragraph 15-50(1)(b) in Schedule 1**

8 Omit “(c),”.

9 **34 Paragraph 45-5(1)(c) in Schedule 1**

10 Repeal the paragraph.

11 **35 Section 45-340 in Schedule 1 (method statement, step 3)**

12 Omit “an accumulated HEC debt under the *Higher Education Funding*
13 *Act 1988*, or an *accumulated HELP debt under the *Higher Education*
14 *Support Act 2003*,”, substitute “an *accumulated HELP debt”.

15 **36 Section 45-375 in Schedule 1 (method statement, step 3)**

16 Omit “an accumulated HEC debt under the *Higher Education Funding*
17 *Act 1988*, or an *accumulated HELP debt under the *Higher Education*
18 *Support Act 2003*,”, substitute “an *accumulated HELP debt”.

19 ***Taxation (Interest on Overpayments and Early Payments)***
20 ***Act 1983***

21 **37 Subsection 3(1) (definition of *HEC assessment debt*)**

22 Repeal the definition.

23 **38 Section 3C (table item 40)**

24 Repeal the item.

25 **39 Subparagraph 8A(1)(a)(ii)**

26 Repeal the subparagraph.

27 **40 Paragraph 8A(2)(b)**

28 Repeal the paragraph.

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1 **41 Subparagraphs 8E(1)(d)(iii) and (2)(d)(iii)**

2 Omit “an HEC assessment debt or”, substitute “a”.

3 **42 Sub-subparagraph 12A(1)(a)(iv)(B)**

4 Repeal the sub-subparagraph.

5 **43 Paragraph 12A(2)(b)**

6 Repeal the paragraph.

7

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

3 **Division 1—Main amendments**

4 *Taxation Administration Act 1953*

5 **44 Subsection 10-5(1) in Schedule 1 (table item 8)**

6 Omit “an *employment termination payment”, substitute “a payment for
7 termination of employment”.

8 **45 Subsection 12-5(2) in Schedule 1 (table item 2)**

9 Omit “an *employment termination payment”, substitute “a payment for
10 termination of employment”.

11 **46 Subdivision 12-C in Schedule 1 (heading)**

12 Repeal the heading, substitute:

13 **Subdivision 12-C—Payments for retirement or termination of**
14 **employment**

15 **47 Section 12-85 in Schedule 1 (heading)**

16 Repeal the heading, substitute:

17 **12-85 Superannuation lump sums and termination payments**

18 **48 Paragraph 12-85(b) in Schedule 1**

19 Repeal the paragraph, substitute:

20 (b) a payment that is an *employment termination payment or
21 would be one except that it is received more than 12 months
22 after termination of employment.

23 **49 Section 16-165 in Schedule 1 (heading)**

24 Repeal the heading, substitute:

25 **16-165 Payment summaries for superannuation lump sums and**
26 **termination payments**

27 **50 Paragraph 16-165(2)(b) in Schedule 1**

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1 Omit “an *employment termination payment,” substitute “a payment
2 that is an *employment termination payment or would be one except
3 that it is received more than 12 months after termination of
4 employment.”.

5 **51 Subparagraph 18-65(3)(d)(ii) in Schedule 1**

6 Omit “(*superannuation benefits, annuities, *employment termination
7 payments and unused leave payments)”, substitute “(Payments for
8 retirement or termination of employment)”.

9 **52 Section 390-1 in Schedule 1 (note)**

10 Omit “and employment termination payments”.

11 **53 Application of amendments**

12 The amendments made by this Division apply in relation to payments
13 made on or after the later of the following days (or either of them if they
14 are the same):

- 15 (a) the day this Division commences;
16 (b) 1 July 2010.

17 **Division 2—Related amendments**

18 ***Child Support (Registration and Collection) Act 1988***

19 **54 Subsection 4(1) (note at the end of the definition of *work*
20 *and income support related withholding payments*)**

21 Omit “employment termination payments,” substitute “payments for
22 termination of employment.”.

23 ***Income Tax Assessment Act 1936***

24 **55 Subsection 6(1) (note at the end of the definition of *work*
25 *and income support related withholding payments and*
26 *benefits*)**

27 Omit “employment termination payments,” substitute “payments for
28 termination of employment.”.

29 ***Income Tax Assessment Act 1997***

30 **56 Subsection 28-185(3) (cell at table item 5, column headed
31 “Subject matter”)**

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1 Repeal the cell, substitute:
Payments for retirement or termination of
employment

2 **57 Subsection 900-12(3) (cell at table item 5, column headed**
3 **“Subject matter”)**

4 Repeal the cell, substitute:
Payments for retirement or termination of
employment

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1 **Part 6—Administrative penalties for false or**
2 **misleading statements**

3 **Division 1—Main amendments**

4 *Taxation Administration Act 1953*

5 **58 Section 284-25 in Schedule 1**

6 Omit “in an *approved form”.

7 **59 Paragraph 284-75(1)(a) in Schedule 1**

8 Omit “or your agent makes”, substitute “make”.

9 **60 Paragraph 284-75(1)(b) in Schedule 1**

10 Omit “it; and”, substitute “it.”.

11 **61 Paragraph 284-75(1)(c) in Schedule 1**

12 Repeal the paragraph.

13 **62 Subsection 284-75(1) in Schedule 1 (note)**

14 Omit “Note:”, substitute “Note 1:”.

15 **63 At the end of subsection 284-75(1) in Schedule 1**

16 Add:

17 Note 2: This section applies to a statement made by your agent as if it had
18 been made by you: see section 284-25.

19 **64 Paragraph 284-75(2)(a) in Schedule 1**

20 Omit “or your agent makes”, substitute “make”.

21 **65 Paragraph 284-75(2)(b) in Schedule 1**

22 Omit “or your agent”.

23 **66 Paragraph 284-75(2)(c) in Schedule 1**

24 Repeal the paragraph.

25 **67 At the end of section 284-75 in Schedule 1**

26 Add:

27 (4) You are liable to an administrative penalty if:

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- 1 (a) you make a statement to an entity other than:
2 (i) the Commissioner; and
3 (ii) an entity exercising powers or performing functions
4 under a *taxation law; and
5 (b) the statement is, or purports to be, one required or permitted
6 by a taxation law; and
7 (c) the statement is false or misleading in a material particular,
8 whether because of things in it or omitted from it.
- 9 (5) You are not liable to an administrative penalty under subsection (1)
10 or (4) for a statement that is false or misleading in a material
11 particular if you, and your *agent (if relevant), took reasonable care
12 in connection with the making of the statement.

68 Subsection 284-80(1) in Schedule 1 (note)

13 Repeal the note.
14

69 Subsection 284-90(1) in Schedule 1

15 After “this table”, insert “and section 284-224 if relevant”.
16

70 Subsection 284-90(1) in Schedule 1 (table items 1, 2 and 3)

17 Omit “Your *shortfall amount or part of it”, substitute “You have a
18 *shortfall amount as a result of a statement described in subsection
19 284-75(1) or (4) and the amount, or part of the amount,”.
20

71 Subsection 284-90(1) in Schedule 1 (after table item 3)

21 Insert:
22

23 3A	A statement described in subsection 284-75(1) or (4) was false or misleading because of intentional disregard of a *taxation law by you or your *agent but did not result in you having a *shortfall amount	60 penalty units
3B	A statement described in subsection 284-75(1) or (4) was false or misleading because of recklessness by you or your *agent as to the operation of a *taxation law but did not result in you having a *shortfall amount	40 penalty units
3C	A statement described in subsection 284-75(1) or (4) was false or misleading because of a failure by you or your *agent to take reasonable care to comply with a *taxation law but did not result in you having a *shortfall amount	20 penalty units

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72 Subsection 284-90(1) in Schedule 1 (table item 4)

Omit “Your *shortfall amount or part of it”, substitute “You have a *shortfall amount, all or part of which”.

73 Subsection 284-90(1) in Schedule 1 (note)

Repeal the note.

74 Subsection 284-90(2) in Schedule 1

Omit “to you for your *shortfall amount or a part of it”.

75 At the end of Subdivision 284-B in Schedule 1

Add:

284-95 Joint and several liability of directors of corporate trustee that makes a false or misleading statement

(1) This section applies if a trustee of a *self managed superannuation fund, or of a fund that is treated as a self managed superannuation fund under subsection 10(4) of the *Superannuation Industry (Supervision) Act 1993*:

- (a) is liable to an administrative penalty under subsection 284-75(1) or (4); and
- (b) is a body corporate.

(2) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the *tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

76 Subsection 284-150(2) in Schedule 1 (note)

Repeal the note.

77 Section 284-160 in Schedule 1

After “*scheme is”, insert “, subject to section 284-224”.

78 Section 284-160 in Schedule 1 (note)

Repeal the note.

79 Section 284-215 in Schedule 1

Repeal the section.

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80 Subsection 284-220(1) in Schedule 1

Omit “for an accounting period”.

81 Paragraph 284-220(1)(a) in Schedule 1

After “*shortfall amount”, insert “, or the false or misleading nature of a statement,”.

82 Paragraph 284-220(1)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) you:

(i) became aware of such a shortfall amount after a statement had been made to the Commissioner about the relevant *tax-related liability; or

(ii) became aware of the false or misleading nature of a statement made to the Commissioner or another entity after the statement had been made;

and you did not tell the Commissioner or other entity about it within a reasonable time; or

83 Paragraph 284-220(1)(c) in Schedule 1

Omit “for a previous accounting period”, substitute “previously”.

84 After paragraph 284-220(1)(c) in Schedule 1

Insert:

(ca) the base penalty amount was worked out using item 3A, 3B or 3C of the table in subsection 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or

85 Paragraph 284-220(1)(d) in Schedule 1

Omit “for a previous accounting period”, substitute “previously”.

86 Paragraph 284-220(1)(e) in Schedule 1

After “you were”, insert “previously”.

87 Paragraph 284-220(1)(e) in Schedule 1

Omit “for a previous accounting period”.

88 After section 284-220 in Schedule 1

Insert:

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284-224 Reduction of base penalty amount if law was applied in an accepted way

(1) If, apart from this section, you would have a *base penalty amount because you or your *agent treated a *taxation law as applying in a particular way, and that way agreed with:

- (a) advice given to you or your agent by or on behalf of the Commissioner; or
- (b) general administrative practice under that law; or
- (c) a statement in a publication approved in writing by the Commissioner;

your base penalty amount is reduced to the extent that it was caused by that treatment.

(2) For the purposes of subsection (1) it does not matter whether the *base penalty amount also relates to:

- (a) a statement; or
- (b) a failure to give the Commissioner a return, notice or other document when required; or
- (c) a *scheme.

89 Section 284-225 in Schedule 1 (heading)

Repeal the heading, substitute:

284-225 Reduction of base penalty amount if you voluntarily tell the Commissioner

90 Subsections 284-225(1) and (2) in Schedule 1

Repeal the subsections, substitute:

(1) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced by 20% if:

- (a) the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; and
 - (b) *after* that time, you voluntarily tell the Commissioner, in the *approved form, about the shortfall, the part of it or the false or misleading nature of the statement; and
 - (c) telling the Commissioner can reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the examination.
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1 (2) The *base penalty amount for your *shortfall amount or *scheme
2 shortfall amount, for part of it or for your false or misleading
3 statement is reduced under subsection (3), (4) or (4A) if you
4 voluntarily tell the Commissioner, in the *approved form, about the
5 shortfall amount, the part of it or the false or misleading nature of
6 the statement *before*:

7 (a) the day the Commissioner tells you that an examination is to
8 be made of your affairs relating to a *taxation law for a
9 relevant period; or

10 (b) if the Commissioner makes a public statement requesting
11 entities to make a voluntary disclosure by a particular earlier
12 day about a *scheme or transaction that applies to your
13 affairs—that earlier day.

14 **91 After subsection 284-225(4) in Schedule 1**

15 Insert:

16 (4A) The *base penalty amount for your false or misleading statement
17 that does not result in you having a *shortfall amount is reduced to
18 nil.

19 **92 Subsection 284-225(5) in Schedule 1**

20 Omit “or part of it, *after* the Commissioner tells you that a *tax audit is
21 to be conducted of your financial affairs”, substitute “part of it or the
22 false or misleading nature of the statement *after* the Commissioner tells
23 you that an examination is to be conducted of your affairs relating to a
24 *taxation law for a relevant period”.

25 **93 Subsection 284-225(5) in Schedule 1**

26 Omit “the audit”, substitute “the examination”.

27 **94 Section 288-85 in Schedule 1**

28 Repeal the section.

29 **95 Subsection 361-5(1) in Schedule 1 (note 1)**

30 Omit “1”.

31 **96 Subsection 361-5(1) in Schedule 1 (note 2)**

32 Repeal the note.

33 **97 Subsection 361-5(3) in Schedule 1**

34 Repeal the subsection.

EXPOSURE DRAFT

1 **Division 2—Consequential amendments**

2 *Product Grants and Benefits Administration Act 2000*

3 **98 Paragraph 35(1)(b)**

4 After “subsection 284-75(1)”, insert “or (4)”.

5 *Superannuation Industry (Supervision) Act 1993*

6 **99 Section 38A (subparagraph (ab)(i) of the definition of** 7 ***regulatory provision*)**

8 Repeal the subparagraph, substitute:

9 (i) subsections 284-75(1) and (4) and section 284-95;

10 **100 Subsection 39(1B)**

11 Omit “section 288-85 in Schedule 1 to the *Taxation Administration Act*
12 *1953* as a contravention of that section”, substitute “subsection
13 284-75(1) or (4) in Schedule 1 to the *Taxation Administration Act 1953*
14 as a contravention of that subsection”.

15 **Division 3—Application of amendments made by** 16 **Divisions 1 and 2**

17 **101 Application**

18 The amendments made by Divisions 1 and 2 apply in relation to things
19 done on or after the commencement of those Divisions.

20 **Division 4—Amendments with contingent** 21 **commencement**

22 *Taxation Administration Act 1953*

23 **102 Subsections 284-75(1A) and (1B) in Schedule 1**

24 Repeal the subsections.

25 **103 Before subsection 284-75(5) in Schedule 1**

26 Insert:

EXPOSURE DRAFT

Exceptions to subsections (1) and (4)

1
2 **104 At the end of section 284-75 in Schedule 1**

3 Add:

4 (6) You are not liable to an administrative penalty under subsection (1)
5 or (4) if:

6 (a) you engage a *registered tax agent or BAS agent; and

7 (b) you give the registered tax agent or BAS agent all relevant
8 taxation information; and

9 (c) the registered tax agent or BAS agent makes the statement;
10 and

11 (d) the false or misleading nature of the statement did not result
12 from:

13 (i) intentional disregard by the registered tax agent or BAS
14 agent of a *taxation law; or

15 (ii) recklessness by the agent as to the operation of a
16 taxation law.

17 (7) If you wish to rely on subsection (6), you bear an evidential burden
18 in relation to paragraph (6)(b).

19 **105 Application of amendments**

20 The amendments made by this Division apply in relation to statements
21 made on or after the commencement of this Division.
22

EXPOSURE DRAFT

1 **Part 7—Offsets against superannuation guarantee**
2 **charge**

3 ***Tax Laws Amendment (2008 Measures No. 2) Act 2008***

4 **106 After item 7 of Schedule 2**

5 Insert:

6 **7A Application of section 23A of the *Superannuation***
7 ***Guarantee (Administration) Act 1992 as amended***

8 (1) Section 23A of the *Superannuation Guarantee (Administration) Act*
9 *1992*, as amended by this Schedule, applies to:

- 10 (a) contributions made before, on or after 1 January 2006; and
11 (b) elections made on or after 24 June 2008.

12 Note: The amendments of that section made by this Schedule commenced on 24 June 2008.

13 (2) This item has effect subject to items 8 and 9.

14 (3) To avoid doubt, this item:

- 15 (a) has effect despite subitem 10(1) of Schedule 6 to the *Tax*
16 *Laws Amendment (Loss Recoupment Rules and Other*
17 *Measures) Act 2005*; and
18 (b) does not affect the application of amendments of section 23A
19 of the *Superannuation Guarantee (Administration) Act 1992*
20 commencing after the commencement of the amendments of
21 that section made by this Schedule.

22 Note: Subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and*
23 *Other Measures) Act 2005* applied the amendment inserting section 23A in the
24 *Superannuation Guarantee (Administration) Act 1992* to contributions made on or after
25 1 January 2006.

26 **107 Paragraphs 8(1)(a) and 9(a) of Schedule 2**

27 After “this Schedule”, insert “(apart from item 7A)”.

28

EXPOSURE DRAFT

1 **Part 8—Status of certain superannuation funds**

2 *Income Tax Assessment Act 1936*

3 **108 Subsection 267(1) (at the end of the definition of**
4 ***constitutionally protected fund*)**

5 Add “and is not established under Schedule 3 to the *Superannuation Act*
6 *1988* of South Australia”.

7

EXPOSURE DRAFT

1 **Part 9—Technical corrections**

2 *A New Tax System (Luxury Car Tax) Act 1999*

3 **109 Section 9-20**

4 Omit “from”, substitute “form”.

5 Note: This item corrects a misspelling.

6 *Taxation Administration Act 1953*

7 **110 Section 363-35 in Schedule 1**

8 Renumber as section 263-35.

9 Note: This item corrects a numbering error.

10 **111 Subparagraphs 426-165(1)(b)(a) and (b) in Schedule 1**

11 Renumber as subparagraphs (i) and (ii).

12 Note: This item corrects a numbering error.

13 *Tax Laws Amendment (2009 Measures No. 4) Act 2009*

14 **112 Item 132 of Schedule 5**

15 Omit “the Arts”, substitute “Arts”.

16 Note: This item corrects a misdescribed amendment.

17 **113 Item 133 of Schedule 5**

18 Omit “and Arts”, substitute “and the Arts”.

19 Note: This item corrects a misdescribed amendment.

20

EXPOSURE DRAFT

1 **Part 10—Repeal of redundant material**

2 *Income Tax Assessment Act 1936*

3 **114 Subsection 6(1) (definition of *accrued leave transfer***
4 ***payment*)**

5 Repeal the definition.

6 Note: This repeals a definition that is not used any more and defines *accrued leave transfer*
7 *payment* by reference to a repealed provision.

8 *Income Tax Assessment Act 1997*

9 **115 Subsection 116-30(1) (note)**

10 Repeal the note.

11 Note: This repeals a note that merely refers to 2 sections that have been repealed.

12 *Taxation Administration Act 1953*

13 **116 Subsection 16-150(1) in Schedule 1**

14 Omit “(1) An”, substitute “An”.

15 Note: This omits a subsection number from a section that is no longer divided into
16 subsections.
17

EXPOSURE DRAFT

1 Part 11—Other minor changes

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

3 **117 Section 195-1**

4 Insert:

5 *luxury car* has the same meaning as in section 25-1 of the *A New*
6 *Tax System (Luxury Car Tax) Act 1999*.

7 *Income Tax Assessment Act 1936*

8 **118 Subsection 6(1) (definition of agent)**

9 Repeal the definition, substitute:

10 *agent*: this Act applies to some entities (within the meaning of the
11 *Income Tax Assessment Act 1997*) that are not agents in the same
12 way as it applies to agents: see section 960-105 of the *Income Tax*
13 *Assessment Act 1997*.

14 **119 Transitional provision relating to agents**

15 A declaration in force for the purposes of paragraph (b) of the definition
16 of *agent* in subsection 6(1) of the *Income Tax Assessment Act 1936*
17 immediately before the repeal of that definition by this Part continues to
18 have effect on and after that repeal as if it were a determination under
19 subsection 960-105(2) of the *Income Tax Assessment Act 1997*.

20 **120 Subsection 6(1) (definition of allowable deduction)**

21 Repeal the definition, substitute:

22 *allowable deduction* has the same meaning as *deduction* has in the
23 *Income Tax Assessment Act 1997*.

24 **121 Subsection 6(1) (definition of friendly society dispensary)**

25 Repeal the definition, substitute:

26 *friendly society dispensary* has the meaning given by subsection
27 995-1(1) of the *Income Tax Assessment Act 1997*.

28 **122 Subsection 6(1) (definition of paid-up share capital)**

29 Repeal the definition, substitute:

EXPOSURE DRAFT

1 *paid-up share capital* has the meaning given by subsection
2 995-1(1) of the *Income Tax Assessment Act 1997*.

3 **123 Subsection 6(1) (definition of *person*)**

4 Repeal the definition, substitute:

5 *person* has the same meaning as in the *Income Tax Assessment Act*
6 *1997*.

7 **124 Subsection 45B(9)**

8 Omit “a dividend.”, substitute “an assessable dividend.”.

9 **125 Application of amendment of subsection 45B(9)**

10 (1) The amendment of subsection 45B(9) of the *Income Tax Assessment Act*
11 *1936* made by this Part applies to capital benefits provided on or after
12 30 November 2009.

13 (2) The amendment is to be disregarded for the purposes of interpreting that
14 subsection as in force before the commencement of the amendment.

15 **126 Subsection 45B(10)**

16 Repeal the subsection, substitute:

17 (10) In this section:

18 *scheme* has the meaning given by subsection 995-1(1) of the
19 *Income Tax Assessment Act 1997*.

20 ***Income Tax Assessment Act 1997***

21 **127 Section 12-5 (table item headed “family tax benefit”)**

22 Repeal the item.

23 **128 Section 25-7**

24 Repeal the section.

25 **128A Section 67-23 (after table item 10)**

26 Insert:

12 education expenses the *tax offset available under
Subdivision 61-M

27 **128B Application**

EXPOSURE DRAFT

1 Item 12 of the table in section 67-23 of the *Income Tax Assessment Act*
2 *1997* applies to tax offsets for the 2009-2010 income year and later
3 income years.

4 **128C Section 67-23 (after table item 20)**

5 Insert:

23 National Rental the *tax offsets available under Division 380
Affordability Scheme

6 **128D Application**

7 Item 23 of the table in section 67-23 of the *Income Tax Assessment Act*
8 *1997* applies to tax offsets for the 2008-09 income year and later
9 income years.

10 **128E Subsection 67-25(7)**

11 Repeal the subsection.

12 **128F Application**

13 The repeal of subsection 67-25(7) of the *Income Tax Assessment Act*
14 *1997* by this Part applies to tax offsets for the 2009-2010 income year
15 and later income years.

16 **129 Section 109-55 (table item 8C)**

17 After “replacement-asset roll-over”, insert “(other than a roll-over
18 covered by section 115-34)”.

19 **130 At the end of section 109-55**

20 Add:

21 Note: Section 115-34 sets out other acquisition rules for certain cases
22 involving replacement-asset roll-overs covered by that section.

23 **131 Section 112-97 (cell at table item 21, column headed** 24 **“See:”)**

25 Repeal the cell, substitute:

subsection
320-200(2)

26 **132 Section 112-97 (cell at table item 22, column headed** 27 **“See:”)**

28 Repeal the cell, substitute:

subsection

EXPOSURE DRAFT

320-255(2)

1 **133 Subsection 115-25(1) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **134 At the end of subsection 115-25(1)**

4 Add:

5 Note 2: Section 115-30 or 115-34 may affect the time when the entity is
6 treated as having acquired the CGT asset.

7 **135 Subsection 115-30(1) (table item 2)**

8 Repeal the item, substitute:

- 2 A *CGT asset that the acquirer *acquired as a replacement asset for a *replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c))
- (a) when the acquirer acquired the original asset involved in the roll-over; or
 - (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs (other than roll-overs covered by paragraph 115-34(1)(c))—when the acquirer acquired the original asset involved in the first roll-over in the series

9 **136 After section 115-30**

10 Insert:

11 **115-32 Special rule about time of acquisition for certain**
12 **replacement-asset roll-overs**

- 13 (1) This section applies if:
- 14 (a) a *CGT event happens to:
 - 15 (i) your *share in a company; or
 - 16 (ii) your *trust voting interest, unit or other fixed interest in
17 a trust; and
 - 18 (b) you *acquired the share or interest as a replacement asset for
19 a *replacement-asset roll-over (other than a roll-over covered
20 by paragraph 115-34(1)(c)); and
 - 21 (c) at the time of the CGT event, the company or trust:

EXPOSURE DRAFT

-
- 1 (i) owns a *membership interest in an entity (the *original*
2 *entity*); and
3 (ii) has owned that membership interest for less than 12
4 months; and
5 (d) that membership interest is the original asset for the roll-over.

6 Note: This section does not affect the time when you are treated as having
7 acquired the replacement asset. That time is worked out under item 2
8 of the table in subsection 115-30(1).

9 *Application of tests about the assets of the company or trust*

- 10 (2) Subsection 115-45(4) applies as if the company or trust had
11 *acquired the original asset at least 12 months before the *CGT
12 event, if the condition in that subsection would not be met were it
13 to be applied to the original entity and the CGT event.
- 14 (3) Subsection 115-45(6) applies as if the company or trust had
15 *acquired the original asset at least 12 months before the *CGT
16 event, if the condition in subsection 115-45(5) would not be met
17 were it to be applied to the original entity and the CGT event.

18 **115-34 Further special rule about time of acquisition for certain**
19 **replacement-asset roll-overs**

- 20 (1) This section applies if:
- 21 (a) a *CGT event happens to your *share in a company; and
22 (b) at the time of the CGT event, you had owned the share for
23 less than 12 months; and
24 (c) you *acquired the share as a replacement asset for:
- 25 (i) a *replacement-asset roll-over under Subdivision 122-A
26 (disposal of assets by individuals or trustees to a
27 wholly-owned company) for which you *disposed of a
28 *CGT asset, or all the assets of a *business, to the
29 company; or
30 (ii) a replacement-asset roll-over under Subdivision 122-B
31 (disposal of assets by partners to a wholly-owned
32 company) for which you disposed of your interests in a
33 CGT asset, or your interests in all the assets of a
34 business, to the company; or
35 (iii) a replacement-asset roll-over under Subdivision 124-N
36 (disposal of assets by trusts to a company) for which a
37 trust of which you were a beneficiary disposed of all of
38 its CGT assets to the company.

EXPOSURE DRAFT

Application of tests about when you acquired the share

- (2) Sections 115-25 and 115-40 apply as if you had *acquired the *share at least 12 months before the *CGT event.

Application of tests about the company's assets

- (3) For each asset mentioned in subparagraph (1)(c)(i), subsections 115-45(4) and (6) apply as if the company had *acquired that asset when you acquired it.

- (4) For each asset mentioned in subparagraph (1)(c)(ii), subsections 115-45(4) and (6) apply as if the company had *acquired that asset when you acquired your interests in it.

- (5) For each asset mentioned in subparagraph (1)(c)(iii), subsections 115-45(4) and (6) apply as if the company had *acquired that asset when the trust acquired it.

Relationship with Subdivision 109-A

- (6) This section has effect despite Subdivision 109-A (which contains rules about the time of acquisition of CGT assets).

137 Section 115-40 (note)

After “Section 115-30”, insert “or 115-34”.

138 Subsection 115-45(4) (note)

Omit “Section 115-30”, substitute “Sections 115-30 and 115-32, or section 115-34,”.

139 Subsection 115-45(6) (note)

Omit “Section 115-30”, substitute “Sections 115-30 and 115-32, or section 115-34,”.

140 Application

The amendments made by items 129, 130 and 133 to 139 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.

141 At the end of subsection 152-320(1)

Add:

EXPOSURE DRAFT

1 Note: The \$500,000 is also reduced by any reduction under old provisions
2 about reduction of the CGT retirement exemption limit: see item 62 of
3 Schedule 1 to the *New Business Tax System (Capital Gains Tax) Act*
4 *1999*.

142 Before subsection 711-30(2)

6 Insert:

7 *General rule*

143 Before subsection 711-30(3)

9 Insert:

10 *Exception for rights to receive lease payments*

144 Subsection 711-30(3)

12 Omit “However”, substitute “Despite subsection (2)”.

145 At the end of section 711-30

14 Add:

15 *Exception for service receivables*

16 (4) Despite subsection (2), if the asset is a right to receive payment for
17 the provision of services, that amount is equal to the amount of
18 consideration that the *head company would need to receive, if it
19 were to *dispose of the asset just before the leaving time, without
20 an amount being:

21 (a) assessable income of the head company; or

22 (b) deductible to the head company under this Act.

23 146 Application

24 The amendments made by items 142 to 145 apply in relation to leaving
25 times happening on or after 1 July 2002.

26 147 Paragraph 974-110(1)(b)

27 After “subsequently changed”, insert “, including where one or more
28 (but not all) of the schemes cease to exist”.

29 148 Application

30 The amendment of paragraph 974-110(1)(b) of the *Income Tax*
31 *Assessment Act 1997* made by this Part applies in relation to changes
32 occurring on or after the day this Act receives the Royal Assent.

EXPOSURE DRAFT

149 Subsection 995-1(1)

Insert:

common stake has the meaning given by section 124-783.

150 Subsection 995-1(1)

Insert:

common stakeholder has the meaning given by section 124-783.

151 Subsection 995-1(1) (definition of *quote*)

Repeal the definition, substitute:

quote:

(a) *quote* an entity's *ABN means *quote* in a form and manner approved by the Commissioner;

(b) *quote* a *tax file number in connection with a *Part VA investment: you *quote* your tax file number in connection with the investment if you are taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have quoted the number in connection with the investment.

152 Subsection 995-1(1) (definition of *quoted*)

Repeal the definition.

153 Subsection 995-1(1)

Insert:

significant stake has the meaning given by section 124-783.

154 Subsection 995-1(1)

Insert:

significant stakeholder has the meaning given by section 124-783.

Income Tax (Transitional Provisions) Act 1997

155 Section 1-10

Repeal the section, substitute:

EXPOSURE DRAFT

1-10 Definitions and rules for interpreting this Act

(1) In this Act, an expression has the same meaning as in the *Income Tax Assessment Act 1997*.

(2) Division 950 of the *Income Tax Assessment Act 1997* (which contains rules for interpreting that Act) applies to this Act as if the provisions of this Act were provisions of that Act.

156 Subsection 770-230(5)

Omit “limit”.

157 Application of amendment of subsection 770-230(5)

The amendment of subsection 770-230(5) of the *Income Tax (Transitional Provisions) Act 1997* made by this Part applies in relation to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008.

Taxation Administration Act 1953

158 At the end of Chapter 2 in Schedule 1

Add:

Part 2-30—Collecting Medicare levy with income tax

Division 90—Medicare levy and Medicare levy surcharge

Table of Subdivisions

90-A Treatment like income tax

Subdivision 90-A—Treatment like income tax

Table of sections

90-1 Laws apply in relation to Medicare levy and Medicare levy surcharge as they apply in relation to income tax

EXPOSURE DRAFT

1 **90-1 Laws apply in relation to Medicare levy and Medicare levy**
2 **surchage as they apply in relation to income tax**

3 Except so far as the contrary intention appears, this Schedule and
4 the *Income Tax Assessment Act 1997* apply, and are taken always
5 to have applied, in relation to the following in the same way as
6 they apply in relation to income tax and *tax:

- 7 (a) Medicare levy (as defined in section 251R of the *Income Tax*
8 *Assessment Act 1936*);
9 (b) *Medicare levy surcharge.

10 **159 Paragraph 45-288(a) in Schedule 1**

11 After “resident”, insert “unit”.

12