



# **Tax Laws Amendment (2005 Measures No. 3) Act 2005**

**No. 63, 2005**

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

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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**No. 63, 2005**

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

[Assented to 26 June 2005]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2005  
Measures No. 3) Act 2005*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 to 3	The day on which this Act receives the Royal Assent.	
3. Schedule 4	Immediately after the commencement of Schedule 10 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	1 July 2005
4. Schedule 5	The day on which this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Philanthropy

### *Income Tax Assessment Act 1936*

**1 Section 102M (subparagraph (b)(ii) of the definition of exempt entity)**

After “50-5”, insert “or item 4.1 of the table in section 50-20”.

**2 Subsection 121F(1) (paragraph (aa) of the definition of relevant exempting provision)**

After “50-15,”, insert “50-20,”.

**3 Paragraph 269B(1)(b)**

After “50-15,”, insert “50-20,”.

**4 Paragraph 272-90(7)(b) in Schedule 2F**

Omit “or 50-10”, substitute “, 50-10 or 50-20”.

### *Income Tax Assessment Act 1997*

**5 Section 11-5 (after table item headed “film”)**

Insert:

**funds established by will or trust**  
contributions to other funds..... 50-20

**6 Subparagraph 43-55(1)(a)(i)**

After “50-15,”, insert “50-20,”.

**7 After section 50-15**

Insert:

**50-20 Funds contributing to other funds**

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**Funds contributing to other funds**

<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
4.1	fund established by will or instrument of trust solely for a purpose referred to in paragraph (a) or (b) of the column headed "Recipient" in item 2 of the table in section 30-15 (and not covered by item 1.5, 1.5A or 1.5B of the table in section 50-5)	see sections 50-52 and 50-72

**8 Section 50-52 (heading)**

Repeal the heading, substitute:

**50-52 Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1**

**9 Subsection 50-52(1)**

Omit "or 1.5B", substitute ", 1.5B or 4.1".

**10 Subsection 50-52(1) (note)**

Omit "or section 50-60 (for an entity covered by item 1.5A or 1.5B)", substitute ", 50-60 (for an entity covered by item 1.5A or 1.5B) or section 50-72 (for an entity covered by item 4.1)".

**11 Subsection 50-52(3) (note)**

Omit "or 1.5B", substitute ", 1.5B or 4.1".

**12 Subsection 50-52(3) (note)**

Omit "and 50-60", substitute ", 50-60 and 50-72".

**13 Paragraphs 50-60(c) and (d)**

Repeal the paragraphs, substitute:

(c) distributes solely, and has at all times since 1 July 1997 distributed solely, to either or both of the following:

- (i) a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia;



- (ii) a charitable fund, foundation or institution that, to the best of the trustee's knowledge, meets the description and requirements in item 1 or 2 of the table in section 30-15.

#### **14 After section 50-70**

Insert:

#### **50-72 Special condition for item 4.1**

- (1) A fund covered by item 4.1 is not exempt from income tax unless the fund:
  - (a) is applied for the purposes for which it is established; and
  - (b) distributes solely, and has at all times since the time mentioned in subsection (2) distributed solely, to a fund, authority or institution that:
    - (i) meets the description and requirements in item 1 of the table in section 30-15; and
    - (ii) is an \*exempt entity.
- (2) The time is the start of the income year after the income year in which the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* receives the Royal Assent.

#### **15 Paragraph 50-75(3)(b)**

Repeal the paragraph, substitute:

- (b) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution described in subparagraph 50-60(c)(i) or (ii);

#### **16 At the end of subsection 50-110(2)**

Add "or item 4.1 of the table in section 50-20".

#### **17 Subsection 50-110(5)**

Omit ", either".

#### **18 Paragraph 50-110(5)(a)**

After "section 50-5", insert "and item 4.1 of the table in section 50-20".

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

Add:

; or (c) if the entity is covered by item 4.1 of the table in section 50-20 and has not made any distributions—there must be reasonable grounds for believing that the entity will satisfy section 50-72.

**20 After subsection 118-60(1)**

Insert:

(1A) If the only reason the gain or loss is not disregarded under subsection (1) is because the property has not been valued by the Commissioner at more than \$5,000, then, for the purposes of that subsection, it is taken to have been so valued.

**21 Subsection 207-115(2) (heading)**

Repeal the heading, substitute:

*Income tax exempt charitable or other institutions*

**22 Paragraph 207-115(2)(a)**

After “section 50-5”, insert “or item 4.1 of the table in section 50-20”.

**23 Application**

The amendments made by this Schedule apply to the income year after the income year in which this Act receives the Royal Assent and each later income year.

## **Schedule 2—International shipping and airline profits**

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

#### **1 Paragraph 23AH(1)(a)**

After “deriving foreign branch income,”, insert “(except income and capital gains from the operation of ships or aircraft in international traffic)”.

#### **2 After subsection 23AH(14)**

Insert:

- (14A) This section does not apply to foreign income, or to a capital gain or capital loss, of a company to the extent that the income, gain or loss is from:
- (a) the operation of ships or aircraft in international traffic at or through a PE of the company in a listed country or unlisted country; or
  - (b) things that are ancillary to that operation.
- (14B) A company operates a ship or aircraft in international traffic if the company operates it for transporting passengers or goods between a place in one country and a place in another country.

#### **3 Application**

The amendments made by this Schedule apply to income years starting on or after 1 July 2004.

## Schedule 3—Secrecy provisions

### *Taxation Administration Act 1953*

#### **1 Subsection 2(1) (before paragraph (da) of the definition of *head*)**

Insert:

(dag) in the case of the Corruption and Crime Commission of Western Australia—the Commissioner for that Commission;

#### **2 Subsection 2(1) (after paragraph (daf) of the definition of *law enforcement agency*)**

Insert:

(dag) the Corruption and Crime Commission of Western Australia;  
or

#### **3 Application**

The amendments made by this Schedule apply to communications or disclosures of information after the day on which this item commences (regardless of whether the information was acquired before or after that commencement).

## **Schedule 4—Rebatable employer status**

### ***Fringe Benefits Tax Assessment Act 1986***

#### **1 Paragraph 65J(1)(baa)**

After “charitable institution”, insert “(other than an institution of the Commonwealth, a State or a Territory)”.

#### **2 Paragraph 123E(1)(a)**

Omit “subsections (2) and (3)”, substitute “subsection (2)”.

#### **3 Application**

The amendments made by this Schedule apply to benefits provided on or after 1 July 2005.

## Schedule 5—Dependent child age criterion

### *Income Tax Assessment Act 1936*

**1 Subsection 159J(2) (cell at table item dealing with Class 3, column headed “Dependant”)**

Omit “16”, substitute “21”.

**2 Paragraphs 159L(1)(a) and (b)**

Omit “16”, substitute “21”.

**3 Subparagraphs 251R(3)(b)(ii) and (iii)**

Omit “16”, substitute “21”.

**4 Application**

The amendments made by this Schedule apply to assessments for the 2005-2006 income year and later income years.

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*[Minister’s second reading speech made in—  
House of Representatives on 12 May 2005  
Senate on 14 June 2005]*

(60/05)

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