





**Tax Laws Amendment (2008 Measures  
No. 6) Act 2009**

**No. 14, 2009**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Tax Laws Amendment (2008 Measures No. 6) Act 2009**

**No. 14, 2009**

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

*[Assented to 26 March 2009]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2008  
Measures No. 6) Act 2009*.

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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.   | 26 March 2009       |
| 2. Schedules 1 to 4   | The day on which this Act receives the Royal Assent.   | 26 March 2009       |
| 3. Schedule 5, Part 1, Division 1   | 29 January 2009.   | 29 January 2009     |
| 4. Schedule 5, item 4   | 1 July 2011.<br>However, if item 99 of Schedule 3 to the <i>Tax Laws Amendment (2009 Measures No. 1) Act 2009</i> commences before 1 July 2011, the provision(s) do not commence at all. |                     |
| 5. Schedule 5, items 5 and 6  | 1 July 2011.   | 1 July 2011         |
| 6. Schedule 5, Part 2   | The day on which this Act receives the Royal Assent.   | 26 March 2009       |
| 7. Schedule 5, Part 3   | 29 January 2009.   | 29 January 2009     |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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.

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### **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—CGT roll-overs for corporate restructures

### *Income Tax Assessment Act 1997*

#### 1 Section 112-53 (after table item 2)

Insert:

|    |   |  |          |
|----|---|--|----------|
| 2A | Interest is acquired by an entity where there is a roll-over under Subdivision 124-M and the arrangement is taken to be a restructure | First element of cost base and reduced cost base | 124-784B |
|----|---|--|----------|

#### 2 After section 124-784

Insert:

##### 124-784A When arrangement is a restructure

- (1) This section applies in relation to a single \*arrangement if:
- (a) the replacement entity for the arrangement knows, or could reasonably be expected to know:
    - (i) that a roll-over under section 124-780 has been, or will be, obtained in relation to the arrangement; and
    - (ii) that there is a \*common stakeholder for the arrangement (disregarding subsections 124-783(4) and (5)); and
  - (b) subsection (2) is satisfied for the arrangement.

Note: If this section applies, the first element of the cost base and reduced cost base of interests in the original entity acquired under the arrangement is worked out under section 124-784B.

- (2) This subsection is satisfied for the \*arrangement if the result of step 2 is more than 80% of the result of step 3.

*Method statement*

- Step 1. Add up the \*market value just after the \*arrangement was completed (the **completion time**) of all of the replacement interests issued by the replacement entity under the arrangement in exchange for the following interests (the **qualifying interests**):
- (a) original interests in the original entity;
  - (b) any interests issued by the original entity to an acquiring entity under the arrangement in respect of other original interests in the original entity cancelled under the arrangement.
- Step 2. Add to the result of step 1 the \*market value at the completion time of all of the replacement interests issued by the replacement entity under any earlier arrangement for which this section applied in exchange for qualifying interests in the original entity.
- Step 3. Add up the \*market value at the completion time of all of the:
- (a) \*shares \*on issue by the replacement entity; and
  - (b) options, rights and similar interests issued by the replacement entity that give the holder an entitlement to acquire a share in the replacement entity at or after the completion time.

*Application if an entity is listed*

- (3) For the purposes of:
- (a) subsection (2); and
  - (b) step 5 of the method statement in subsection 124-784B(2);
- if interests in an entity are listed for quotation in the official list of an \*approved stock exchange at the completion time, then the replacement entity may choose that the \*market value at that time of an interest in the first-mentioned entity is taken to be the \*officially quoted price of the interest at that time.

*Application if more than one original entity*

- (4) If qualifying interests in more than one original entity are \*acquired under the \*arrangement, then, for the purposes of subsections (1) and (2):
- (a) those interests of each of those original entities are taken to have been acquired under separate arrangements; and
  - (b) those separate arrangements are taken to have happened in the same order as the acquisitions.
- (5) If qualifying interests in more than one original entity:
- (a) would be taken by subsection (4) to have been \*acquired under separate \*arrangements happening at the same time; or
  - (b) are acquired under separate arrangements that commence at the same time;
- then, for the purposes of subsections (1) and (2), the replacement entity must choose the order in which those separate arrangements are to have happened.

*Meaning of officially quoted price*

- (6) An interest in an entity has an **officially quoted price** at a particular time if, during the one week period starting on the day in which that time occurred, there was at least one transaction on the relevant stock exchange in interests of that class. That price is the weighted average of the prices at which those interests were traded on that stock exchange during that period.
- (7) For the purposes of subsection (6), if an interest is quoted on 2 or more \*approved stock exchanges on that day, the **officially quoted price** of the interest is determined under subsection (6) in respect of whichever of those the entity chooses.

**124-784B What is the cost base and reduced cost base when arrangement is a restructure?**

- (1) This section applies in relation to each qualifying interest in the original entity:
- (a) \*acquired by an acquiring entity under an \*arrangement to which section 124-784A applies; and
  - (b) for which the first element of the \*cost base of the acquiring entity is not worked out under section 124-782.

Note: Section 124-782 applies when an original interest holder is a significant stakeholder or a common stakeholder.

*First element of cost base—qualifying interests acquired in exchange for replacement interests only*

- (2) The first element of the \*cost base of the acquiring entity for the qualifying interest in the original entity is worked out as follows:

*Method statement*

Step 1. Add up:

- (a) the \*market value, at the completion time, of the original entity's \*pre-CGT assets (except \*trading stock); and
- (b) the \*cost bases, at the completion time, of the original entity's \*post-CGT assets (except trading stock); and
- (c) for the original entity's \*CGT assets (except trading stock) that had no cost base—the maximum amount of consideration the original entity would need to receive if it were to dispose, at the completion time, of those assets without an amount being assessable income of, or deductible to, the original entity; and
- (d) the amount worked out under steps 2 and 3.

Step 2. For the original entity's \*trading stock, add up:

- (a) the \*value of the trading stock at the start of the income year containing the completion time; and
- (b) for \*livestock acquired by natural increase during that income year but before the completion time—the \*cost of that livestock; and
- (c) the amount of any outgoing incurred in connection with acquiring an item of trading stock during that

income year but before the completion time (except livestock acquired by natural increase); and

- (d) the amount of any outgoings forming part of the cost of the trading stock incurred by the entity during its current holding of the trading stock but before the completion time.

Step 3. For any asset of the original entity not covered by steps 1 and 2, work out the amount that would be the asset's \*cost base at the completion time if it were a \*CGT asset.

Step 4. Subtract from the result of step 1 the original entity's liabilities (if any) at the completion time in respect of those assets.

Step 5. If there is one class of \*membership interests in the original entity, divide the result of step 4 by the total number of those membership interests at the completion time.

If there are 2 or more classes of membership interests in the original entity, allocate a portion of the result of step 4 to each class in proportion to the \*market value of all the membership interests in that class and divide that result by the total number of membership interests in that class at the completion time.

Note 1: For the purposes of this subsection, Division 701 (Core rules for consolidated groups) is disregarded for an original entity that becomes a subsidiary member of a consolidated group or MEC group under the arrangement (see paragraph 715-910(1)(a)).

Note 2: If the original entity is the head company of a consolidated group or MEC group, then subsection 701-1(1) (the single entity rule) and section 701-5 (the entry history rule) apply in relation to that group when working out steps 1 and 2 (see subsection 715-910(2)).

Note 3: For step 5, the replacement entity may choose to use the officially quoted price of the qualifying interests as their market value (see subsection 124-784A(3)).

*First element of cost base—interests acquired in exchange for replacement interests and cash etc.*

- (3) However, if the qualifying interest was acquired under the \*arrangement partly in exchange for one or more replacement interests and partly for something else, subsection (2) applies only for working out the first element of that part of the \*cost base of the qualifying interest that is attributable to the replacement interests.

Note 1: This means that the acquiring entity will have to apportion the cost base amount worked out under subsection (2) according to the relative values of the replacement interests and the other component.

Note 2: The first element of that part of the cost base, and reduced cost base, of the qualifying interest that is attributable to cash etc. is worked out using the general rules about cost base.

*Liabilities*

- (4) For the purposes of step 4 of subsection (2), a liability of the original entity that is not a liability in respect of a specific asset or assets of the entity is taken to be a liability in respect of all the assets of the entity.
- (5) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the *market values of all the assets that the liability is in respect of}}$$

*First element of reduced cost base*

- (6) The first element of the \*reduced cost base of the acquiring entity for the qualifying interest in the original entity is worked out similarly.

*Rights and options to acquire membership interests*

- (7) For the purposes of step 5 of subsection (2), if at the completion time a person holds an option, right or similar interest (including a contingent option, right or interest), created or issued by the original entity, to acquire a \*membership interest in the original entity, that option, right or interest is treated as if it were a membership interest in the original entity.

### **124-784C Cost base of equity or debt given by acquiring entity to ultimate holding company**

*Purpose*

- (1) This section allocates an appropriate \*cost base to equity issued, or new debt owed, by an acquiring entity under the \*arrangement to the \*ultimate holding company of a \*wholly-owned group where the cost base of the acquiring entity for a qualifying interest was worked out under section 124-784B.

*Allocation of cost base*

- (2) The first element of the \*cost base of the equity or debt for the \*ultimate holding company is that part of the cost base of the qualifying interest worked out under section 124-784B as:
  - (a) may be reasonably allocated to the equity or debt; and
  - (b) is not more than the \*market value of the equity or debt at the completion time.

*No capital gain on debt repayment*

- (3) Any \*capital gain of the \*ultimate holding company from the repayment of new debt owed by an acquiring entity under the \*arrangement is disregarded to the extent that it relates to the difference between the part of the \*cost base worked out under section 124-784B and the \*market value of the debt at the completion time.

Note: If the debt is assigned or exchanged, there may be a capital gain.

### **3 At the end of section 124-795**

Add:

- (4) You cannot obtain the roll-over for the \*CGT event happening in relation to the exchange of your qualifying interest if:
  - (a) the replacement entity makes a choice to that effect under this subsection; and
  - (b) that entity or the original entity notifies you in writing of the choice before the exchange.

### **4 At the end of Division 715**

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Add:

**Subdivision 715-W—Effect on arrangements where CGT roll-overs are obtained**

**Table of sections**

|         |  |
|---------|--|
| 715-910 | Effect on restructures—original entity becomes a subsidiary member   |
| 715-915 | Effect on restructures—original entity is a head company   |
| 715-920 | Effect on restructures—original entity is a head company that becomes a subsidiary member of another group |
| 715-925 | Effect on restructures—original entity ceases being a subsidiary member                                    |

**715-910 Effect on restructures—original entity becomes a subsidiary member**

(1) This section applies if:

- (a) as a result of an \*arrangement to which section 124-784A applies, an original entity (within the meaning of that section) becomes a \*subsidiary member of a \*consolidated group; and
- (b) section 715-920 does not apply.

Note 1: Section 715-920 applies if the original entity was the head company of another consolidated group before the arrangement was completed.

Note 2: Sections 124-784A and 124-784B apply to arrangements for restructures.

(2) For the purposes of section 124-784B:

- (a) the completion time (within the meaning of that section) for the \*arrangement is taken to be the time the original entity becomes a member of the group; and
- (b) disregard Division 701 (Core rules) in relation to the original entity becoming a member of the group.

(3) The \*head company of the group may choose for:

- (a) section 701-10 (cost to head company of assets of joining entity); and
- (b) subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

not to apply to the original entity's assets in respect of the original entity becoming a \*subsidiary member of the group.

Note: This subsection does not affect the application of subsection 701-1(1) (the single entity rule).

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### **715-915 Effect on restructures—original entity is a head company**

If:

- (a) section 124-784A applies in relation to an \*arrangement; and
- (b) the original entity (within the meaning of that section) for the arrangement is the \*head company of a \*consolidated group just before the arrangement was completed; and
- (c) section 715-920 does not apply;

then, for the purposes of section 124-784B, subsection 701-1(1) (the single entity rule) and section 701-5 (the entry history rule) apply in respect of the group.

Note 1: This section does not otherwise affect the application of subsection 701-1(1) or section 701-5.

Note 2: Sections 124-784A and 124-784B apply to arrangements for restructures.

### **715-920 Effect on restructures—original entity is a head company that becomes a subsidiary member of another group**

(1) This section applies if:

- (a) section 124-784A applies in relation to an \*arrangement; and
- (b) the original entity (within the meaning of that section) for the arrangement is the \*head company of a \*consolidated group (the ***acquired group***) just before the arrangement was completed; and
- (c) as a result of the arrangement:
  - (i) the original entity; and
  - (ii) the \*subsidiary members of the acquired group just before the arrangement was completed;become subsidiary members of another consolidated group.

Note: Sections 124-784A and 124-784B apply to arrangements for restructures.

(2) For the purposes of section 124-784B:

- (a) the original entity is taken to be the \*head company of the acquired group at the completion time (within the meaning of that section) for the \*arrangement; and
- (b) the operation of this Part for the head company core purposes (mentioned in subsection 701-1(2)) in relation to:
  - (i) the original entity; and

- (ii) the entities that were \*subsidiary members of the acquired group just before the arrangement was completed;  
continue to have effect at the completion time for the arrangement; and
- (c) the completion time for the arrangement is taken to be the time the original entity becomes a member of the other group; and
- (d) disregard Division 701 (Core rules) in relation to the original entity becoming a member of the other group.

Note: Paragraph (b) means that, for the purposes of section 124-784B, the subsidiary members of the acquired group are treated as part of the original entity.

- (3) The \*head company of the other group may choose for:
  - (a) section 701-10 (cost to head company of assets of joining entity); and
  - (b) subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

not to apply to the original entity's assets in respect of the original entity becoming a \*subsidiary member of the other group.

Note: This subsection does not affect the application of subsection 701-1(1) (the single entity rule).

**715-925 Effect on restructures—original entity ceases being a subsidiary member**

If, as a result of an \*arrangement to which section 124-784A applies, an original entity (within the meaning of that section):

- (a) ceases to be a \*subsidiary member of a \*consolidated group after the completion time (within the meaning of that section) for the arrangement; and
  - (b) does not become a member of another consolidated group;
- then, for the purposes of section 124-784B, the completion time for the arrangement is taken to happen at the time of the cessation.

Note: Sections 124-784A and 124-784B apply to arrangements for restructures.

**5 Subsection 995-1(1)**

Insert:

*officially quoted price* has the meaning given by subsections 124-784A(6) and (7).

## 6 Application

- (1) The amendments made by this Schedule apply in relation to an arrangement that is or relates to a takeover bid (within the meaning of the *Corporations Act 2001*) if:
- (a) for an off-market bid (within the meaning of that Act)—step 4 of the table in subsection 633(1) of that Act; or
  - (b) for a market bid (within the meaning of that Act)—step 2 of the table in subsection 635(1) of that Act;
- is completed after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.
- (2) The amendments made by this Schedule apply in relation to an arrangement if:
- (a) a court orders, under subsection 411(1) of the *Corporations Act 2001*, a meeting or meetings of:
    - (i) a company's members; or
    - (ii) one or more classes of a company's members; about the arrangement; and
  - (b) the application for the order was made after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.
- (3) The amendments made by this Schedule apply in relation to an arrangement if:
- (a) the arrangement is not, and does not relate to, a takeover bid (within the meaning of the *Corporations Act 2001*); and
  - (b) a court does not order, under subsection 411(1) of the *Corporations Act 2001*, a meeting or meetings of:
    - (i) a company's members; or
    - (ii) one or more classes of a company's members; about the arrangement; and
  - (c) a decision to enter into the arrangement was not made before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.

## **Schedule 2—Mutual assistance in collection**

### ***Taxation Administration Act 1953***

#### **1 After subsection 263-30(1) in Schedule 1**

Insert:

- (1A) To avoid doubt, the amount owed by the debtor may not be the same as the amount (if any) entered in the Register.

#### **2 Subsection 263-30(2) in Schedule 1**

Omit “That amount”, substitute “The amount owed by the debtor”.

#### **3 Section 263-35 in Schedule 1 (heading)**

Repeal the heading, substitute:

#### **363-35 Amending the Register etc.**

#### **4 After subsection 263-35(2) in Schedule 1**

Insert:

- (2A) To avoid doubt, the Commissioner may reduce an amount to be recovered from a debtor under paragraph (2)(b) without amending the Register.

#### **5 Subsection 263-35(5) in Schedule 1**

Repeal the subsection, substitute:

- (5) If the Commissioner removes particulars of a \*foreign revenue claim relating to the recovery of an amount from the Register under paragraph (2)(a) or subsection (4), the debtor is entitled to a credit for the purposes of Part IIB equal to the sum of:
- (a) the amount (as reduced by any previous application of subsection (6)); and
  - (b) any \*general interest charge for which the debtor is liable as a result of the foreign revenue claim.

Note: How the credit is applied is set out in Part IIB.

#### **6 Subsection 263-35(6) in Schedule 1**

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Omit “the amount of the reduction is taken never to have been payable by the debtor”, substitute “the debtor is entitled to a credit for the purposes of Part IIB equal to the amount of the reduction”.

**7 At the end of subsection 263-35(6) in Schedule 1**

Add:

Note: How the credit is applied is set out in Part IIB.

**8 At the end of section 263-40 in Schedule 1**

Add:

- (3) The Commissioner may also pay to the competent authority all or part of an amount that the Commissioner has received and that is attributable to any of the following in relation to the claim:
  - (a) judgment interest;
  - (b) costs that:
    - (i) have been recovered in the course of legal proceedings;  
and
    - (ii) represent an amount that has previously been paid by the competent authority to the Commonwealth in relation to the recovery of the claim.

**9 Application**

The amendments made by this Schedule apply to foreign revenue claims, the particulars of which are in the Register at the commencement of this Schedule or are entered in the Register after that commencement.

## **Schedule 3—Late payment offset for superannuation guarantee contributions**

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

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

Repeal the paragraph, substitute:

- (a) the contribution is made:
  - (i) after the end of the period of 28 days after the end of a quarter; and
  - (ii) before the employer's original assessment for that quarter is made; and

#### **2 Paragraph 23A(2)(b)**

Omit "superannuation guarantee charge for the quarter became payable", substitute "original assessment for the quarter is made".

#### **3 Subsection 23A(3)**

After "The contribution is offset", insert " , at the time the employer's original assessment for the quarter is made,".

#### **4 Subsection 49(3A)**

Repeal the subsection, substitute:

- (3A) To avoid doubt, for the purposes of this section and subsection 8AAC(3) of the *Taxation Administration Act 1953*, an election under section 23A in relation to the superannuation guarantee has effect from the time the employer's original assessment for the quarter is made.

#### **5 Application**

The amendments made by this Schedule apply to elections under section 23A of the *Superannuation Guarantee (Administration) Act 1992* made on or after the commencement of this Schedule.

## Schedule 4—Minor amendments

### Part 1—General

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

##### 1 Section 195-1 (definition of *hospital treatment*)

Repeal the definition, substitute:

*hospital treatment* has the same meaning as in the *Private Health Insurance Act 2007*.

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

##### 2 Subsection 5C(3) (method statement, steps 3 and 4)

Repeal the steps, substitute:

Step 3. Identify the excluded fringe benefits (other than an amortised fringe benefit) for the year of tax in respect of each of the employer's employees that are GST-creditable benefits, and add up the taxable values of all those excluded fringe benefits.

Note 1: Subsection 5E(3) explains what is an excluded fringe benefit.

Note 2: Section 149A explains what is a GST-creditable benefit.

Step 4. Add the total from step 2 to the total from step 3.

Note: The result of step 4 is the employer's type 1 aggregate fringe benefits amount if there are no amortised amounts in relation to the employer.

Step 5. Add to the total from step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax that are GST-creditable benefits. The total amount is the employer's ***type 1 aggregate fringe benefits amount*** for the year of tax.

Note: Section 65CA explains what is an amortised fringe benefit.

### 3 Subsection 5C(4) (method statement, steps 3 and 4)

Repeal the steps, substitute:

Step 3. Identify, in respect of each of the employer's employees, the excluded fringe benefits (other than an amortised fringe benefit) for the year of tax that are not taken into account under step 3 of the method statement in subsection (3), and add up the taxable values of all those excluded fringe benefits.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from step 2 to the total from step 3.

Note: The result of step 4 is the employer's type 2 aggregate fringe benefits amount if there are no amortised amounts or reducible fringe benefits in relation to the employer.

Step 5. Add to the total from step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax that is not taken into account under step 5 of the method statement in subsection (3).

Note 1: The result of step 5 is the employer's type 2 aggregate fringe benefits amount if there are no reducible fringe benefits in relation to the employer.

Note 2: Section 65CA explains what is an amortised fringe benefit.

Step 6. Subtract from the total from step 5 the reduction amount for the year of tax of each reducible fringe benefit (if any) relating to an employee of the employer, the employer and the year of tax. The total amount is the employer's ***type 2 aggregate fringe benefits amount*** for the year of tax.

### 4 Application

- (1) The amendments made by items 2 and 3 apply to the year of tax starting on 1 April 2000 and later years of tax.
- (2) Despite section 74 of the *Fringe Benefits Tax Assessment Act 1986*, the Commissioner may amend an assessment at any time within the period

of 3 years after the commencement of this item for the purpose of giving effect to the amendments made by items 2 and 3.

**5 At the end of subparagraph 58PB(4)(c)(i)**

Add “, or to death benefits dependants (within the meaning of the *Income Tax Assessment Act 1997*) or legal personal representatives (within the meaning of that Act) of those persons”.

***Income Tax Assessment Act 1936***

**6 Paragraph 23AB(5)(a)**

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

**7 Subsection 23AG(1)**

Omit “is exempt from tax”, substitute “are exempt from tax”.

**8 Subsection 73A(6) (definition of *Research Secretary*)**

Omit “*Education Research Act 1970*”, substitute “*Australian Research Council Act 2001*”.

**9 Subsection 82KZMGA(1)**

Repeal the subsection, substitute:

- (1) A taxpayer cannot deduct expenditure in relation to which the requirements in section 82KZMG (apart from paragraph 82KZMG(2)(a)) are met if:
  - (a) the taxpayer holds the taxpayer’s interest in the agreement mentioned in section 82KZMG as an initial participant in the agreement; and
  - (b) a CGT event happens in relation to that interest within 4 years after the end of the year of income in which the taxpayer first incurred expenditure under the agreement; and
  - (c) the expenditure is incurred on or before 30 June 2008.

**10 Subsection 102T(27) (definition of *unit trust distribution*)**

Omit “subsection 102M(1)”, substitute “section 102M”.

***Income Tax Assessment Act 1997***

**11 Subsection 20-55(1) (table item 1)**

Omit “an allowable deduction” (wherever occurring), substitute “a deduction”.

**12 Subsection 20-55(1) (table item 6)**

Omit “allowed or allowable as a deduction”, substitute “you have deducted or can deduct”.

**13 Subsection 25-5(8)**

Omit “an allowable deduction”, substitute “a deduction”.

**14 Paragraphs 25-7(b) and (c)**

Repeal the paragraphs, substitute:

- (b) you lodge the claim for family tax benefit with an officer of the Australian Taxation Office (within the meaning of that Act) for determination by such an officer.

**15 Subsection 36-17(5) (example)**

Omit “allowable deductions”, substitute “deductions”.

**16 Subsection 40-340(1) (after table item 2)**

Insert:

|    |  |  |
|----|--|--|
| 2A | Transfer of a *CGT asset of a trust to a company under a trust restructure | The transferor and transferee are able to choose a roll-over under Subdivision 124-N for the *CGT event. |
|----|--|--|

**17 Application**

The amendment made by item 16 applies to balancing adjustment events happening in the 2008-09 income year or a later income year.

**18 At the end of subsection 40-340(2)**

Add:

- ; and (c) subsection 124-870(5) (which excludes certain assets from roll-over relief under Subdivision 124-N).

**19 Subsection 40-340(5)**

Omit “a person dies”, substitute “you die”.

**20 Subsection 40-340(5)**

Omit “the person’s”, substitute “your”.

**21 Subsections 43-50(1) and (2)**

Omit “an allowable deduction” (wherever occurring), substitute “a deduction”.

**22 Section 43-210 (step 6)**

Omit “allowable deduction”, substitute “deduction”.

**23 Section 43-215 (step 4)**

Omit “allowable deduction”, substitute “deduction”.

**24 Subsection 116-30(2B)**

Omit “Despite paragraph (2)(b), subsection (2) does not apply”, substitute “Subsection (2) does not apply to a situation that would otherwise be covered by paragraph (2)(b)”.

**25 Application**

The amendment made by item 24 applies to CGT events happening after the start of the 2006-07 income year.

**26 Subsection 122-50(1) (example)**

Repeal the example, substitute:

Example: Nick is a small trader. He wants to incorporate his business. He disposes of all its assets to a company and receives 10 shares in return.

Nick acquired all the assets of the business after 20 September 1985.

Trading stock, plant and equipment and office furniture are precluded assets.

The market value of Nick’s trading stock when he disposed of it is \$20,000. The market value of his plant and equipment at that time is \$50,000 and the market value of his office furniture at that time is \$10,000.

The cost bases of Nick’s land and buildings at that time total \$120,000.

Nick has a business overdraft of \$15,000. It is taken to be a liability in respect of all the assets of his business.

The first element of the cost base of the 10 shares is:

$$\left( \$20,000 + \$50,000 + \$10,000 + \$120,000 \right) - \$15,000 = \$185,000$$

The first element of the reduced cost base of the 10 shares is worked out similarly.

**27 Section 240-55 (heading)**

Repeal the heading, substitute:

**240-55 Arrangement payments not to be deductions**

**28 Subsection 290-90(2) (note 2)**

Omit “allowable deductions”, substitute “deductions”.

**29 Subsection 707-310(3)**

Omit “transferee’s income” (wherever occurring), substitute “transferee’s \*ordinary income, \*statutory income”.

**30 Subsection 707-310(3) (table, heading to column 1)**

Omit “income”, substitute “ordinary income, statutory income”.

**31 Subsection 707-310(3) (table item 5)**

Omit “and \*excluded exempt income”.

**32 Paragraph 711-30(3)(a)**

Omit “(the *receivable*)”.

**33 Paragraph 711-30(3)(b)**

Omit “the receivables”, substitute “the asset’s”.

**34 Paragraph 711-30(3)(c)**

Omit “the receivable”, substitute “the asset”.

***Income Tax Rates Act 1986***

**35 Paragraph 23(2)(c)**

Omit “subsection (4C) or (4D)”, substitute “subsection (4) or (5)”.

**36 Application**

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The amendment made by item 35 applies to assessments for the 2007-08 income year and later income years.

***Taxation Administration Act 1953***

**37 Section 16-5 in Schedule 1 (note 2)**

Omit “that section”, substitute “that provision”.

**38 Paragraph 20-35(2)(b) in Schedule 1**

Omit “that section”, substitute “that provision”.

**39 Application**

The amendment made by item 38 applies to fund payments made in relation to the first income year starting on or after 1 July 2008 and later income years.

**40 Section 45-10 in Schedule 1**

Omit “items 3 and 4, and 6 to 12”, substitute “items 4 to 10, and 12 and 13”.

**41 Section 45-10 in Schedule 1 (note 1)**

Omit “items 6 to 12”, substitute “items 4 to 8, and 12 and 13”.

**42 Section 45-10 in Schedule 1 (note 2)**

Omit “item 5”, substitute “item 11”.

**43 Subsection 45-450(1) in Schedule 1**

Omit “items 6 to 12”, substitute “items 4 to 8, and 12 and 13”.

**44 Application**

The amendments made by items 40 to 43 apply to assessments for the 2007-08 income year and later income years.

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

**45 Subsection 3(1) (before paragraph (b) of the definition of *income tax crediting amount*)**

Insert:

- (a) any amount of a credit that does not arise under Division 770 of the *Income Tax Assessment Act 1997* or under the *International Tax Agreements Act 1953*; or

#### **46 Application**

The amendment made by item 45 applies to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008.

#### **47 Subsections 9(2) and (3)**

Omit “subsection 10(1)”, substitute “section 10”.

#### **48 Subsection 10(1)**

Omit “(1)”.

#### **49 Paragraph 10(1)(a)**

Repeal the paragraph, substitute:

- (a) in respect of the period that commenced on the later of the following days:
  - (i) the day on which notice of the assessment, determination or decision, being the assessment, determination or decision in relation to which the decision to which this Act applies was made, was issued to the person by the Commissioner;
  - (ii) the day on which the amount of relevant tax was paid to the Commissioner;and ended on the day on which the amount of the relevant tax or the part of the amount of relevant tax, as the case may be, was so refunded or applied; and

#### **50 Transitional**

If subparagraph 10(1)(a)(iii) of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (as in force before the commencement of item 49) could apply to a taxpayer, that subparagraph continues to apply despite the amendment made by that item.

### ***Tax Laws Amendment (Budget Measures) Act 2008***

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**51 Item 15 of Schedule 1**

Repeal the item, substitute:

**15 Application**

- (1) Subject to subitem (2), the amendment made by item 14 applies in relation to CGT events happening after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the *Budget time*).
- (2) An entity may choose that the amendment made by item 14 applies to a CGT event that happened:
  - (a) after the start of the entity's 1998-99 income year; and
  - (b) before the Budget time.

## Part 2—Asterisking amendments

### *Income Tax Assessment Act 1997*

#### **52 Asterisking amendments of the *Income Tax Assessment Act 1997***

The provisions of the *Income Tax Assessment Act 1997* listed in the table are amended as set out in the table.

| <b>Asterisking amendments</b> |   |                         |                          |
|-------------------------------|---|-------------------------|--------------------------|
| <b>Item</b>                   | <b>Provision</b>  | <b>Omit:</b>            | <b>Substitute:</b>       |
| 1                             | Subparagraph 26-50(3)(b)(iv)  | children                | *children                |
| 2                             | Subsection 30-15(2) (table items 1 and 2) (column headed “How much you can deduct”) | *market value           | market value             |
| 3                             | Subparagraph 51-50(2)(b)(i)   | child                   | *child                   |
| 4                             | Paragraph 52-70(b)  | children                | *children                |
| 5                             | Paragraph 52-105(3)(b)  | children                | *children                |
| 6                             | Paragraph 149-15(1)(b)  | *ultimate owners        | ultimate owners          |
| 7                             | Paragraph 149-15(1)(b)  | *indirectly             | indirectly               |
| 8                             | Paragraph 152-40(1A)(a)   | child                   | *child                   |
| 9                             | Subparagraph 215-10(1)(b)(ii)   | more schemes            | more *schemes            |
| 10                            | Paragraph 215-10(1)(b)  | prudential standards    | *prudential standards    |
| 11                            | Paragraph 215-10(1)(c)  | permanent establishment | *permanent establishment |
| 12                            | Subparagraph 215-10(2)(a)(ii)   | connected entity        | *connected entity        |
| 13                            | Paragraph 295-485(1)(a)   | child                   | *child                   |
| 14                            | Paragraph 320-107(1)(a)   | child                   | *child                   |

## **Part 3—Repeal**

### *Pay-roll Tax Act 1941*

#### **53 The whole of the Act**

Repeal the Act.

## **Schedule 5—Victorian bushfires and North Queensland floods**

### **Part 1—Ex-gratia Income Recovery Subsidy Assistance**

#### **Division 1—Main amendments**

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

#### **1 Subsection 159J(6) (after paragraph (b) of the definition of *separate net income*)**

Insert:

- (ba) does not include an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the Victorian bushfires of January and February 2009; and
- (bb) does not include an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Queensland floods of January and February 2009; and

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

#### **2 Section 11-15 (table item headed “welfare”)**

Before:

maintenance payment ..... 51-30 and 51-50

Insert:

Income Recovery Subsidy for the North Queensland  
floods of January and February 2009..... 51-30  
Income Recovery Subsidy for the Victorian bushfires of  
January and February 2009 ..... 51-30

#### **3 Section 51-30 (at the end of the table)**

Add:

**Schedule 5** Victorian bushfires and North Queensland floods  
**Part 1** Ex-gratia Income Recovery Subsidy Assistance

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|     |  |             |  |
|-----|--|-------------|--|
| 5.2 | an individual in receipt of an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the Victorian bushfires of January and February 2009     | the payment | the payment must be claimed:<br>(a) after 28 January 2009; and<br>(b) before 13 May 2009 |
| 5.3 | an individual in receipt of an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Queensland floods of January and February 2009 | the payment | the payment must be claimed:<br>(a) after 30 January 2009; and<br>(b) before 13 May 2009 |

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**Division 2—Sunsetting on 1 July 2011**

***Income Tax Assessment Act 1936***

**4 Subsection 159J(6) (paragraphs (ba) and (bb) of the definition of *separate net income*)**

Repeal the paragraphs.

***Income Tax Assessment Act 1997***

**5 Section 11-15 (table item headed “welfare”)**

Omit:

|   |       |
|---|-------|
| Income Recovery Subsidy for the North Queensland floods of January and February 2009..... | 51-30 |
| Income Recovery Subsidy for the Victorian bushfires of January and February 2009 .....    | 51-30 |

**6 Section 51-30 (table items 5.2 and 5.3)**

Repeal the items.

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## **Part 2—Gifts**

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

#### **7 Subsection 30-45(1) (table item 4.1.5)**

Repeal the table item, substitute:

- |       |   |                               |
|-------|---|-------------------------------|
| 4.1.5 | a public fund (including a public fund established and maintained by a public benevolent institution):  | see sections 30-45A and 30-46 |
|       | (a) that is established for charitable purposes; and  |                               |
|       | (b) that is established and maintained solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in Australia in distress as a result of a disaster to which subsection 30-45A(1) or 30-46(1) applies |                               |

#### **8 Subsection 30-45(2) (at the end of the table)**

Add:

- |        |   |                                |
|--------|---|--------------------------------|
| 4.2.41 | 2009 Victorian Bushfire Appeal Trust Account (established under section 19 of the <i>Financial Management Act 1994</i> of Victoria) | the gift must be made:         |
|        |   | (a) after 7 February 2009; and |
|        |   | (b) before 6 February 2014     |

#### **9 After section 30-45**

Insert:

##### **30-45A Australian disaster relief funds—declarations by Minister**

- (1) For the purposes of item 4.1.5 of the table in subsection 30-45(1), an event is a disaster to which this subsection applies if the Minister has declared it to be a disaster. The Minister may do so if satisfied that:
- (a) it developed rapidly; and
  - (b) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.

- (2) The Minister's declaration of an event as a disaster:
- (a) must be in writing; and
  - (b) must specify the day (or the first day) of the event; and
  - (c) must be published on the internet or by another method determined by the Minister.
- (3) The Minister's declaration of an event as a disaster is not a legislative instrument.
- (4) You can deduct a gift that you make to a public fund covered by item 4.1.5 of the table in subsection 30-45(1), in relation to a disaster to which subsection (1) of this section applies, only within the 2 years beginning on the day specified in the declaration as the day (or the first day) of the event for which the fund is to provide relief.

Note: Public funds under item 4.1.5 of the table in subsection 30-45(1) are for disaster relief of people in Australia. Public funds may also be established for disaster relief of people in other countries. See items 9.1.1 (which is not limited to disaster relief) and 9.1.2 of the table in section 30-80.

## **10 Section 30-46 (heading)**

Repeal the heading, substitute:

### **30-46 Australian disaster relief funds—declarations under State and Territory law**

## **11 At the end of subsection 30-46(1)**

Add:

; and (d) subsection 30-45A(1) does not apply to it.

## **12 Subsection 30-46(2)**

After "subsection 30-45(1)", insert ", in relation to a disaster to which subsection (1) of this section applies,".

## **13 Section 30-315 (before table item 1AA)**

Insert:

|    |  |             |
|----|--|-------------|
| 1A | 2009 Victorian Bushfire Appeal Trust Account | item 4.2.41 |
|----|--|-------------|

## **Part 3—Application**

### **14 Application of amendments**

- (1) The amendments made by Division 1 of Part 1 of this Schedule apply in relation to the 2008-09 income year.
- (2) The amendments made by Part 2 of this Schedule apply in relation to:
  - (a) the 2008-09 income year; and
  - (b) later income years.

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*[Minister's second reading speech made in—  
House of Representatives on 3 December 2008  
Senate on 10 March 2009]*

(235/08)

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