





# **Tax Laws Amendment (2013 Measures No. 1) Act 2013**

**No. 119, 2013**

**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 (2013 Measures No. 1) Act 2013**

**No. 119, 2013**

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

[Assented to 29 June 2013]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2013 Measures No. 1) Act 2013*.

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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 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2013
2. Schedule 1	The day after this Act receives the Royal Assent.	30 June 2013
3. Schedule 2	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of Part 1 of Schedule 2 to the <i>Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	29 June 2013 (paragraph (a) applies)
4. Schedule 3	The day this Act receives the Royal Assent.	29 June 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

#### **4 Amendment of assessments**

- (1) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:
  - (a) the assessment was made before the commencement of Part 1 or 2 of Schedule 1 to this Act; and
  - (b) the amendment is made within 2 years after that commencement; and
  - (c) the amendment is made for the purpose of giving effect to that Part.
  
- (2) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:
  - (a) the assessment was made before the commencement of subitem 20(2) of Schedule 1 to this Act; and
  - (b) the amendment is made within 2 years after that commencement; and
  - (c) the amendment is made for the purpose of giving effect to a choice made under that subitem.

Note: Schedule 1 to this Act deals with the scrip for scrip roll-over, small business entity and other concessions.

## **Schedule 1—Strengthening scrip for scrip roll-over, small business entity and other concessions**

### **Part 1—Scrip for scrip roll-over**

#### *Income Tax Assessment Act 1997*

**1 Paragraphs 124-783(6)(b) and (c)**

Omit “for their own benefit”.

**2 Subsection 124-783(6) (note)**

Repeal the note.

**3 Subsection 124-783(7)**

Omit “for their own benefit”.

**4 Paragraphs 124-783(9)(b) and (c) and (10)(a) and (b)**

Omit “for their own benefit”.

**5 Application of amendments**

The amendments made by this Part apply in relation to CGT events happening after 7:30 pm (by legal time in the Australian Capital Territory) on 10 May 2011.

**6 Previous interpretation preserved**

To avoid doubt, the amendments of the *Income Tax Assessment Act 1997* made by this Part do not affect by implication the interpretation of that Act before the amendments.

## **Part 2—Meaning of connected with an entity**

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

#### **7 Paragraphs 328-125(2)(a) and (b)**

Omit “beneficially own, or have the right to acquire the beneficial”, substitute “own, or have the right to acquire the”.

#### **8 Paragraph 328-125(8)(e)**

Omit “beneficially”.

#### **9 Application of amendments**

The amendments made by this Part apply:

- (a) to the extent the amendments affect the *A New Tax System (Wine Equalisation Tax) Act 1999*—in relation to financial years commencing on or after the commencement of this item; and
- (b) to the extent the amendments affect Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about capital gains and losses)—in relation to CGT events happening after 7:30 pm (by legal time in the Australian Capital Territory) on 10 May 2011; and
- (c) otherwise—in relation to the 2011-12 income year and later income years.

#### **10 Previous interpretation preserved**

To avoid doubt, the amendments of the *Income Tax Assessment Act 1997* made by this Part do not affect by implication the interpretation of that Act before the amendments.

## **Part 3—Entity making the gain or loss**

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

#### **11 Subsection 104-10(7)**

Repeal the subsection.

#### **12 Subsection 106-30(1)**

After “Part and Part 3-3”, insert “(about capital gains and losses) and Subdivision 328-C (What is a small business entity)”.

#### **13 Subsection 106-30(2)**

Omit “Part and Part 3-3”, substitute “Part, Part 3-3 and Subdivision 328-C”.

#### **14 Subsection 106-30(2)**

Omit “it had been done by the individual”, substitute “the act had been done by the individual (instead of by the trustee etc.)”.

#### **15 At the end of section 106-30**

Add:

Example: A CGT asset of an individual vests in a trustee because of the bankruptcy of the individual. No CGT event happens as a result of the vesting.

The trustee later sells the CGT asset. Any capital gain or loss is made by the individual, not the trustee.

#### **16 Section 106-35**

Repeal the section, substitute:

#### **106-35 Effect of liquidation**

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity), the vesting of a company’s \*CGT assets in a liquidator, or the holder of a similar office under a \*foreign law, is ignored.
- (2) This Part, Part 3-3 and Subdivision 328-C apply to an act done by a liquidator of a company, or the holder of a similar office under a

\*foreign law, as if the act had been done by the company (instead of by the liquidator etc.).

Example: Ben, a liquidator of a company, sells a CGT asset of the company. Any capital gain or loss is made by the company, not by Ben.

## **17 Subdivisions 106-C and 106-D**

Repeal the Subdivisions, substitute:

### **Subdivision 106-C—Absolutely entitled beneficiaries**

#### **Table of sections**

106-50 Absolutely entitled beneficiaries

#### **106-50 Absolutely entitled beneficiaries**

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity), from just after the time you become absolutely entitled to a \*CGT asset as against the trustee of a trust (disregarding any legal disability), the asset is treated as being your asset (instead of being an asset of the trust).
- (2) This Part, Part 3-3 and Subdivision 328-C apply, from just after the time you become absolutely entitled to a \*CGT asset as against the trustee of a trust (disregarding any legal disability), to an act done in relation to the asset by the trustee as if the act had been done by you (instead of by the trustee).

Example: An individual becomes absolutely entitled to a CGT asset of a trust. The trustee later sells the asset. Any capital gain or loss from the sale is made by the individual, not the trustee.

### **Subdivision 106-D—Securities, charges and encumbrances**

#### **Table of sections**

106-60 Effect of assets being held by security holders

#### **106-60 Securities, charges and encumbrances**

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity):
  - (a) the vesting of a \*CGT asset in an entity is ignored, if:

**Schedule 1** Strengthening scrip for scrip roll-over, small business entity and other concessions

**Part 3** Entity making the gain or loss

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- (i) the vesting is for the purpose of enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset; and
  - (ii) the security, charge or encumbrance remains over the asset just after the vesting; and
  - (b) a CGT asset is treated as vesting in an entity at the time a security, charge or encumbrance ceases to be over the asset, if:
    - (i) the entity holds the asset just after that time because the asset vested in the entity at an earlier time; and
    - (ii) that earlier vesting was ignored under paragraph (a) because it was for the purpose of enforcing, giving effect to or maintaining the security, charge or encumbrance.
- (2) This Part, Part 3-3 and Subdivision 328-C apply to an act done by an entity (or an \*agent of the entity) in relation to a \*CGT asset for the purpose of enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset as if the act had been done by the entity that provided the security (instead of by the first-mentioned entity or its agent).

Example: A CGT asset of a borrower vests in a lender as security for a loan. No CGT event happens as a result of the vesting.

If the borrower fails to make payments on the loan and the lender sells the CGT asset under the security arrangement, any capital gain or loss is made by the borrower, not the lender.

**18 Section 109-15**

Repeal the section.

**19 At the end of subsection 328-125(1)**

Add:

- Note 1: See Subdivision 106-B if a CGT asset of yours is vested in a trustee in bankruptcy or a liquidator.
- Note 2: See Subdivision 106-C if you are absolutely entitled to a CGT asset as against the trustee of a trust.
- Note 3: See Subdivision 106-D if you provided security over an asset to another entity.

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## **20 Application of amendments**

- (1) The amendments made by this Part apply:
  - (a) to the extent the amendments affect the *A New Tax System (Wine Equalisation Tax) Act 1999*—in relation to financial years commencing on or after the commencement of this item; and
  - (b) to the extent the amendments affect Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about capital gains and losses)—in relation to CGT events happening on or after the commencement of this item; and
  - (c) otherwise—in relation to income years commencing on or after the commencement of this item.
  
- (2) An entity may choose to have the amendments also apply, in relation to the entity:
  - (a) to the extent the amendments affect Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*—in relation to CGT events happening during the 2008-09 income year and later income years; and
  - (b) other than to the extent the amendments affect those Parts or the *A New Tax System (Wine Equalisation Tax) Act 1999*—in relation to the 2008-09 income year and later income years.

## Schedule 2—Ex-gratia payments for natural disasters

### *Income Tax Assessment Act 1997*

#### **1 Section 51-30 (table item 5.4)**

Repeal the item, substitute:

- |     |   |   |
|-----|---|---|
| 5.4 | an individual in receipt of an ex-gratia payment from the Commonwealth known as Disaster Income Recovery Subsidy for a disaster occurring during the period:<br>(a) starting on 3 January 2013;<br>and<br>(b) ending on 30 September 2013 | the payment<br>the payment must be claimed:<br>(a) after 3 January 2013; and<br>(b) before 1 April 2014 |
|-----|---|---|

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## Schedule 3—Deductible gift categories

### *Income Tax Assessment Act 1997*

#### **1 Subsection 30-25(1) (after table item 2.1.9)**

Insert:

- |        |   |                                      |      |
|--------|---|--------------------------------------|------|
| 2.1.9A | a public fund established and maintained solely for the purpose of providing education in ethics: | the public fund must be:             | none |
|        | (a) in government schools in Australia; and   | (a) a *registered charity; or        |      |
|        | (b) as an alternative to religious instruction, in accordance with *State law or *Territory law   | (b) operated by a registered charity |      |

#### **2 Section 30-315 (after table item 48)**

Insert:

- |      |                  |               |
|------|------------------|---------------|
| 48AA | Ethics education | section 30-25 |
|------|------------------|---------------|

#### **3 Application of amendments**

The amendments made by this Schedule apply in relation to gifts, and contributions, made on or after the commencement of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 15 May 2013  
Senate on 17 June 2013]*

(97/13)

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