



Taxation Administration Act 1953

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This compilation is in 4 volumes

Volume 1: sections 1–18

Schedule 1 (sections 6-1 to 21-5)

Volume 2: Schedule 1 (sections 45-1 to 298-110)

Volume 3: Schedule 1 (sections 308-1 to 990-5)

Volume 4: Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Taxation Administration Act 1953* that shows the text of the law as amended and in force on 11 December 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Schedule 1—Collection and recovery of income tax and other liabilities

Chapter 2—Collection, recovery and administration of income tax

Part 2-10—Pay as you go (PAYG) instalments

Division 45—Instalment payments

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Guide to Division 45

45-1 What this Division is about

If you have business or investment income, you must pay instalments towards your income tax liability. However, you do not have to do so unless the Commissioner has given you an instalment rate. Generally, instalments are payable for each quarter of your income year. Alternatively, instalments could be payable monthly or annually.

Your instalments may be based on your previous year's income tax liability and notified to you by the Commissioner, or on your estimate of your income tax liability for the current income year. (In this case, you are a quarterly payer who pays on the basis of GDP adjusted notional tax). Generally, four quarterly instalments are payable annually on this basis, but you may only be required to pay two.

If you are not eligible to pay instalments on that basis, or if you are so eligible but choose not to do so, you must work out the amount of your quarterly instalment by multiplying your instalment income for an instalment quarter by the rate the Commissioner gave you, or by a rate you choose yourself. (In this case, you are a quarterly payer who pays on the basis of instalment income).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

If your business or investment income exceeds a certain limit, you may have to pay an instalment after the end of each month. (In this case, you are a monthly payer).

If you are not required to be registered for GST purposes, you may be able to choose to pay an annual instalment after the end of the income year. (In this case, you are an annual payer).

The amount of annual instalment can be your instalment income for the income year multiplied by the rate the Commissioner gave you, or an amount based on your previous year's income tax liability and notified to you by the Commissioner, or your own estimate of your income tax liability for the income year.

Subdivision 45-A—Basic rules

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45-20	Information to be given to the Commissioner by certain payers
45-25	Penalty for failure to notify Commissioner
45-30	Credit for instalments payable

45-5 Object of this Part

- (1) The object of this Part is to ensure the efficient collection of:
 - (a) income tax; and
 - (b) *Medicare levy; and
 - (ca) amounts of liabilities to the Commonwealth under Chapter 4 of the *Higher Education Support Act 2003*; and
 - (caa) amounts of liabilities to the Commonwealth under Part 3A of the *VET Student Loans Act 2016*; and
 - (cb) amounts of liabilities to the Commonwealth under Chapter 2AA of the *Social Security Act 1991*; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (cc) amounts of liabilities to the Commonwealth under Part 2 of the *Student Assistance Act 1973*; and
 - (cd) amounts of liabilities to the Commonwealth under Chapter 3 of the *Australian Apprenticeship Support Loans Act 2014*; and
 - (d) amounts of liabilities to the Commonwealth under Part 2B.3 of the *Social Security Act 1991*; and
 - (e) amounts of liabilities to the Commonwealth under Division 6 of Part 4A of the *Student Assistance Act 1973*;
- through the application of the principles set out in the rest of this section.

- (2) As you earn *instalment income, you pay instalments after the end of each *instalment quarter worked out on the basis of your instalment income for that quarter if you are required or choose to work out your instalment on this basis. However, you may be able to pay an amount notified by the Commissioner. (There are exceptions to this).

(2A) Alternatively:

- (a) you may be required to pay instalments after the end of each *instalment month worked out on the basis of your instalment income for that month; or
 - (b) you may be able to choose to pay an annual instalment for the income year.
- (3) The total of your instalments for an income year is as close as possible to the total of your liabilities for the income year that are covered by subsection (1), except so far as the amounts of those liabilities are attributable to a *net capital gain. (The exception does not apply to the entities listed in subsections 45-120(2) and (2A) or the net capital gains specified in subsection 45-120(2B).)
- (4) Consequently, the additional amounts you have to pay to discharge those liabilities, after an assessment of your income tax for the income year is made, are as low as possible.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (5) If you are a *quarterly payer who pays on the basis of instalment income, the amount of each of your instalments for an income year is the same proportion (as nearly as possible, subject to the principles in subsections (3) and (4)) of the total of those instalments as your *instalment income for that *instalment quarter is of your total instalment income for the income year.
- (5A) If you are a *monthly payer, the amount of each of your instalments for an income year is the same proportion (as nearly as possible, subject to the principles in subsections (3) and (4)) of the total of those instalments as your *instalment income for that *instalment month is of your total instalment income for the income year.
- (6) When instalments are payable, and how their amount is calculated, are the same for different kinds of entities, except as expressly provided.

Note: Subdivision 45-P penalises an entity whose tax position, so far as it relates to PAYG instalments and related matters, is altered by a scheme that is inconsistent with the object of this Part.

45-10 Application of Part

This Part applies to individuals, companies, and the entities listed in items 4 to 10, and 12 and 13, of the table in section 9-1 of the *Income Tax Assessment Act 1997* (which lists the entities that must pay income tax).

Note 1: Section 45-450 provides for how this Part applies to a trustee covered by any of items 4 to 8, and 12 and 13, of the table in section 9-1 of the *Income Tax Assessment Act 1997*. In most respects, the trust is treated like a company.

Note 2: This Part also applies to a trustee covered by item 11 of the table in section 9-1 of the *Income Tax Assessment Act 1997*, but only to the extent set out in section 45-455, and the rest of Subdivision 45-N, in this Schedule.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-15 Liability for instalments

- (1) The Commissioner may give you an instalment rate from time to time, by giving you written notice of the rate.

- (2) You are liable to pay instalments under this Division if the Commissioner has given you an instalment rate.

Note 1: The instalment rate that the Commissioner gives you is worked out under section 45-320 or 45-775.

Note 2: If your assessable income has always consisted wholly of withholding payments (other than non-quotation withholding payments), the Commissioner will not give you an instalment rate.

Note 3: Work out the amount of your instalments under Subdivision 45-C.

Note 4: If the Commissioner withdraws the rate under section 45-90, you are not liable to pay further instalments.

Note 5: For provisions about collection and recovery of amounts you are liable to pay under this Part, see Part 4-15.

45-20 Information to be given to the Commissioner by certain payers

- (1) If you are liable to pay an instalment for a period (even if it is a nil amount), you must notify the Commissioner of the amount of your *instalment income for the period.

- (2) You must notify the Commissioner in the *approved form and on or before the day when the instalment is due (regardless of whether it is paid).

- (2A) If you are a *monthly payer for the period, you must give the notification electronically, unless the Commissioner otherwise approves.

Note: A penalty applies if you fail to give the notification electronically as required—see section 288-10.

- (2B) The notification is given electronically if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Exceptions

- (3) Subsection (1) does not apply to:
- (a) a quarterly instalment worked out under section 45-112 (on the basis of GDP-adjusted notional tax or estimated benchmark tax); or
 - (b) an annual instalment, unless it is worked out under paragraph 45-115(1)(a) (based on the Commissioner's rate and your instalment income for the income year).

45-25 Penalty for failure to notify Commissioner

- (1) If you fail to notify the Commissioner of an amount as required by section 45-20, or you notify an amount that is less than the correct amount, you are liable to pay the *failure to notify penalty on the amount, or on the shortfall, multiplied by the instalment rate that you are required to use to work out the instalment for the period, for each day in the period that:
- (a) started at the beginning of the day by which the amount was due to be paid; and
 - (b) finishes at the end of the day before you notify the Commissioner of the correct amount, or he or she otherwise becomes aware of it.
- (2) This section does not apply to a notification required to be lodged on or after 1 July 2000.

Note: See instead Division 286 in Schedule 1 to the *Taxation Administration Act 1953*.

45-30 Credit for instalments payable

- (1) You are entitled to a credit when the Commissioner makes an assessment of the income tax you are liable to pay for an income year or an assessment that no income tax is payable by you for an income year.
- (2) The credit is equal to:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- the total of each instalment payable by you for the income year (even if you have not yet paid it);
- reduced by:
- the total of each credit that you have claimed under section 45-215 or 45-420 in respect of such an instalment.
- (3) The making of the assessment, and the resulting credit entitlement, do not affect the liability to pay an instalment.
- Note: How the credit is applied is set out in Division 3 of Part IIB.
- (4) If:
- (a) you are a *subsidiary member of a *consolidated group at any time during a *consolidation transitional year for you; and
 - (b) an amount of instalment payable by you, or an amount of credit claimed by you under section 45-215 or 45-420, is taken into account in working out a credit to which the *head company of that consolidated group is entitled under section 45-865 for a consolidation transitional year for the head company;
- that amount, to the extent to which it is so taken into account under that section, is not to be taken into account in working out any credit to which you are entitled under this section for any year.

Subdivision 45-B—When instalments are due

Table of sections

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45-65	Meaning of <i>instalment month</i>
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45-72	Means of payment of instalment
45-75	Instalments recoverable in same way as income tax
45-80	General interest charge on late payment
45-90	Commissioner may withdraw instalment rate

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-50 Liability to pay instalments

- (1) Subject to subsection (4), you are liable to pay an instalment for an *instalment quarter in an income year if, at the end of that instalment quarter, you are:
 - (a) a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax; or
 - (b) a *quarterly payer who pays on the basis of instalment income.
- (2) Subject to subsection (4), you are liable to pay an instalment for an *instalment quarter that is the third or fourth instalment quarter in an income year if, at the end of that quarter, you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax.
- (2A) Subject to subsection (4), you are liable to pay an instalment for an *instalment month if, at the end of that month, you are a *monthly payer.
- (3) Subject to subsection (4), you are liable to pay an instalment for an income year if, at the end of the *starting instalment quarter in that year, you are an *annual payer.
- (4) You are only liable to pay an instalment for an *instalment quarter, an *instalment month or an income year if:
 - (a) the Commissioner has given you an instalment rate; and
 - (b) the Commissioner has not withdrawn your instalment rate before the end of that quarter, month or year.

45-60 Meaning of *instalment quarter*

For an income year (whether it ends on 30 June or not), the following are the *instalment quarters*:

- (a) your first *instalment quarter* consists of the first 3 months of the income year; and
- (b) your second *instalment quarter* consists of the fourth, fifth and sixth months of the income year; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) your third *instalment quarter* consists of the seventh, eighth and ninth months of the income year; and
- (d) your fourth *instalment quarter* consists of the tenth, 11th and 12th months of the income year.

45-61 When quarterly instalments are due—payers of quarterly instalments

You are not a deferred BAS payer

- (1) Subject to subsection (2), if you are:
 - (a) a *quarterly payer who pays on the basis of instalment income; or
 - (b) a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax; or
 - (c) a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax;the instalment for an *instalment quarter that you are liable to pay is due on or before the 21st day of the month after the end of that quarter.

Note: You are only liable to pay instalments for the third and fourth instalment quarters in an income year if you are a quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax. See section 45-50.

You are a deferred BAS payer

- (2) If:
 - (a) subsection (1) would, but for this subsection, have applied to you in relation to an *instalment quarter; but
 - (b) you are a *deferred BAS payer on the 21st day of the month after the end of that quarter;the instalment for that quarter is instead due on or before:
 - (c) the 28th day of the month after the end of that quarter unless all or a part of a December falls within the last month of that quarter; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (d) if all or a part of a December falls within the last month of that quarter—the next 28 February.

- Note 1: You are only liable to pay instalments for the third and fourth instalment quarters in an income year if you are a quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax. See section 45-50.
- Note 2: If you are the head company of a consolidated group to which Subdivision 45-Q applies, the instalment is due on or before the 21st day of the month after the end of the quarter: see section 45-715.

45-65 Meaning of *instalment month*

For an income year (whether it ends on 30 June or not), the following are *instalment months*:

- (a) the month that starts on the first day of the income year;
- (b) each subsequent month.

Note: For the meaning of *month*, see section 2G of the *Acts Interpretation Act 1901*.

45-67 When monthly instalments are due—payers of monthly instalments

You are not a deferred BAS payer

- (1) If you are a *monthly payer, the instalment for an *instalment month that you are liable to pay is due on or before the 21st day of the next instalment month.
- (2) If:
 - (a) subsection (1) would, but for this subsection, have applied to you in relation to an *instalment month; but
 - (b) you are a *deferred BAS payer on the 21st day of the next instalment month;the instalment for the month mentioned in paragraph (a) is instead due on or before:
 - (c) the 28th day of that next instalment month unless that next instalment month is January; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (d) if that next instalment month is January—the next 28 February.

Note: If you are the head company of a consolidated group to which Subdivision 45-Q applies, the instalment is due on or before the 21st day of that next month: see section 45-715 (as it has effect because of section 45-703).

45-70 When annual instalments are due

- (1) This section applies if you are liable to pay an annual instalment for the 2002-03 income year or a later income year.
- (2) If the income year ends on 30 June, the instalment is due on or before the next 21 October.
- (3) If the income year ends on a day other than 30 June, the instalment is due on or before the 21st day of the fourth month after the end of the income year.

45-72 Means of payment of instalment

You must pay an instalment by *electronic payment, or any other means approved in writing by the Commissioner.

45-75 Instalments recoverable in same way as income tax

Instalments are to be treated as income tax for the purposes of sections 254 and 255 of the *Income Tax Assessment Act 1936*.

45-80 General interest charge on late payment

If you fail to pay some or all of an instalment by the time by which the instalment is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the day by which the instalment was due to be paid; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the instalment;
 - (ii) general interest charge on any of the instalment.

45-90 Commissioner may withdraw instalment rate

- (1) The Commissioner may:
 - (a) by giving you written notice, withdraw your instalment rate; or
 - (b) by legislative instrument, withdraw the instalment rate of a class of entities that includes you.

Note: If the Commissioner does so, you cease to be liable to pay instalments (even if you have chosen a rate under section 45-205). See subsection 45-50(4).

- (2) If the Commissioner withdraws your instalment rate and later gives you another one:
 - (a) you are again liable to pay instalments in accordance with section 45-50; and
 - (b) this Division has effect as if the Commissioner has given you an instalment rate for the first time.

Subdivision 45-C—Working out instalment amounts

Table of sections

45-110	How to work out amount of quarterly instalment on instalment income basis
45-112	Amount of instalment for quarterly payer who pays on basis of GDP-adjusted notional tax
45-114	How to work out amount of monthly instalment
45-115	How to work out amount of annual instalment
45-120	Meaning of <i>instalment income</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-110

45-110 How to work out amount of quarterly instalment on instalment income basis

- (1) Work out the amount of an instalment you are liable to pay for an *instalment quarter as follows if, at the end of that instalment quarter, you are a *quarterly payer who pays on the basis of instalment income:

Applicable instalment rate × Your *instalment income for that quarter

- (2) For the purposes of the formula in subsection (1):

Applicable instalment rate means:

- (a) unless paragraph (b) or (c) applies—the most recent instalment rate given to you by the Commissioner under section 45-15 before the end of that quarter; or
- (b) if you have chosen an instalment rate for that quarter under section 45-205—that rate; or
- (c) if you have chosen an instalment rate under section 45-205 for an earlier *instalment quarter in that income year (and paragraph (b) does not apply)—that rate.

Note: If you believe the Commissioner's rate is not appropriate for the current income year, you may choose a different instalment rate under Subdivision 45-F.

45-112 Amount of instalment for quarterly payer who pays on basis of GDP-adjusted notional tax

- (1) If, at the end of an *instalment quarter in an income year, you are a *quarterly payer who pays on the basis of GDP-adjusted notional tax who is liable to pay an instalment for that quarter, the amount of your instalment for that quarter is:
- (a) unless paragraph (b) or (c) applies—the amount that the Commissioner works out under Subdivision 45-L, and notifies to you, as the amount of the instalment; or
 - (b) if you choose to work out the amount of the instalment on the basis of your estimate of your *benchmark tax for that income year, and you notify the Commissioner in accordance

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- with subsection (2)—the amount worked out under Subdivision 45-M; or
- (c) if paragraph (b) applied to your instalment for an earlier *instalment quarter in that income year—the amount that the Commissioner works out under Subdivision 45-M, and notifies to you, as the amount of the instalment.
- (2) If the amount of the instalment is worked out under paragraph (1)(b) on the basis of your estimate of your *benchmark tax for the income year, you must notify the Commissioner in the *approved form, on or before the day when the instalment is due (disregarding subsection (3)), of the amount of that estimate.
- (3) If:
- (a) *after* the end of an *instalment quarter the Commissioner notifies you of an amount as the amount of your instalment for that quarter; and
- (b) the amount of your instalment for that quarter is *not* worked out under paragraph (1)(b);
- the instalment is due on or before the 21st day after the day on which the notice is given.

45-114 How to work out amount of monthly instalment

- (1) Work out the amount of an instalment you are liable to pay for an *instalment month as follows if, at the end of that instalment month, you are a *monthly payer:

$$\text{Applicable instalment rate} \times \frac{\text{Your *instalment income}}{\text{for that instalment month}}$$

- (2) For the purposes of the formula in subsection (1):

applicable instalment rate means:

- (a) unless paragraph (b) or (c) applies—the most recent instalment rate given to you by the Commissioner under section 45-15 before the end of that month; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) if you have chosen an instalment rate for that month under section 45-205—that rate; or
- (c) if you have chosen an instalment rate under section 45-205 for an earlier *instalment month in that income year (and paragraph (b) does not apply)—that rate.

Note: If you believe the Commissioner's rate is not appropriate for the current income year, you may choose a different instalment rate under Subdivision 45-F.

- (3) The Commissioner may, by legislative instrument, determine one or more specified additional methods by which a specified class of entity that is a *monthly payer at the end of an *instalment month may work out, in specified circumstances, the amount of an instalment that it is liable to pay for the instalment month.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (4) You may choose a method specified in the determination:
 - (a) unless paragraph (b) applies—for any *instalment month; or
 - (b) if the determination provides that that method can be chosen only for the first instalment month in an *instalment quarter—for the first instalment month in an instalment quarter.
- (5) The determination may provide that an entity that chooses a method in accordance with paragraph (4)(b) for the first *instalment month in an *instalment quarter is taken to have chosen that method under subsection (4) for the other instalment months in that quarter. The determination has effect accordingly.
- (6) Subsection (7) applies if:
 - (a) the Commissioner has made a determination under subsection (3); and
 - (b) at the end of an *instalment month, you are a *monthly payer; and
 - (c) you choose under subsection (4), for that month:
 - (i) if the determination specifies one additional method to work out that amount—that method; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) if the determination specifies more than one additional method to work out that amount—one of those methods.
- (7) Despite subsection (1), work out the amount of an instalment you are liable to pay for that *instalment month in accordance with the method that you chose for that month under subsection (4).

45-115 How to work out amount of annual instalment

- (1) The amount of an instalment you are liable to pay for the 2002-03 income year or a later income year is whichever of the following you choose:
- (a) the amount worked out using the formula:
- $$\text{*Commissioner's instalment rate} \times \frac{\text{Your *instalment income for the income year}}{\text{for the income year}}$$
- (b) your most recent *notional tax notified by the Commissioner before the end of the income year;
- (c) the amount that you estimate will be your *benchmark tax for the income year.
- Note 1: You cannot choose a different instalment rate under Subdivision 45-F if you are an annual payer. Instead you can work out the amount of your instalment under paragraph (c).
- Note 2: You may be liable to general interest charge under section 45-235 if working out your instalment under paragraph (c) leads you to pay an instalment that is less than 85% of your benchmark tax for the income year (worked out by the Commissioner under section 45-365).
- (2) **Commissioner's instalment rate** for an income year means the most recent instalment rate given to you by the Commissioner before the end of the income year.
- (3) If you choose to work out your instalment under paragraph (1)(c), you must notify the Commissioner, in the *approved form, of the amount of the instalment on or before the day when it is due.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-120

45-120 Meaning of *instalment income*

General rule

- (1) Your ***instalment income*** for a period includes your *ordinary income *derived during that period, but only to the extent that it is assessable income of the income year that is or includes that period.

Note 1: No other amount is instalment income unless it is covered by another provision of this section or by Subdivision 45-H or 45-I.

Note 1A: The operation of this section and other provisions relating to instalment income is affected by sections 45-855 and 45-860 (about a member of a consolidated group during a period before the members of the group are treated as a single entity for the purposes of this Part.)

Note 2: If during that period you are a partner in a partnership, or a beneficiary of a trust, your instalment income also includes some of the partnership's or trust's instalment income for the period (except in some cases). See Subdivision 45-H or 45-I.

Statutory income included for some entities

- (2) The ***instalment income*** of:
- (a) a *complying approved deposit fund or a *non-complying approved deposit fund; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund; or
 - (c) a *pooled superannuation trust;
- for a period also includes the entity's *statutory income, to the extent that:
- (d) it is reasonably attributable to that period; and
 - (e) it is assessable income of the income year that is or includes that period.
- (2A) The instalment income of a *life insurance company for a period also includes any part of its *statutory income that:
- (a) is reasonably attributable to that period; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) is included in the *complying superannuation class of its taxable income for the income year that is or includes that period.

Net gains under Subdivision 250-E of the Income Tax Assessment Act 1997 included in instalment income

- (2B) Your instalment income for a period also includes the difference between:
 - (a) a gain (or gains) you make from a *financial arrangement to the extent to which it is (or they are):
 - (i) assessable under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period; and
 - (b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):
 - (i) allowable to you as a deduction under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period.

This is so only if the gain (or gains) referred to in paragraph (a) exceeds the loss (or losses) referred to in paragraph (b).

Effect of Division 230 of the Income Tax Assessment Act 1997 on instalment income

- (2C) Your instalment income for a period also includes the difference between:
 - (a) a gain (or gains) you make from a *financial arrangement to the extent to which it is (or they are):
 - (i) assessable under Division 230 of the *Income Tax Assessment Act 1997*; and
 - (ii) reasonably attributable to that period; and
 - (b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-120

(i) allowable to you as a deduction under Division 230 of the *Income Tax Assessment Act 1997*; and

(ii) reasonably attributable to that period.

This is so only if the gain (or gains) referred to in paragraph (a) equals or exceeds the loss (or losses) referred to in paragraph (b).

(2D) However, your instalment income for a period is worked out disregarding subsection (2C) if any of the following apply:

(a) you are an individual;

(b) the only gains and losses that would be taken into account under subsection (2C) for the period are from *financial arrangements that are *qualifying securities.

(2E) A gain or loss that is taken into account under subsection (2C) in working out an amount (including a nil amount) to be included in your instalment income for a period is not to be, to any extent, taken into account again under another provision of this section in calculating your instalment income for the same or any other period.

Exclusion: amounts in respect of withholding payments

(3) Your **instalment income** for a period does not include amounts in respect of:

(a) *withholding payments (except *non-quotation withholding payments) made to you during that period; and

(b) amounts included in your assessable income under section 86-15 of the *Income Tax Assessment Act 1997* for which there are amounts required to be paid under Division 13; and

(c) which a penalty is applicable under section 12-415.

Farm management deposits: effect of making and repayment

(4) Your **instalment income** for a period is reduced (but not below nil) by a *farm management deposit made during that period, but only to the extent that, at the end of that period, you can reasonably expect to be able to deduct the deposit under section 393-5 of the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Income Tax Assessment Act 1997 for the income year that is or includes that period.

- (5) Your **instalment income** for a period also includes an amount that section 393-10 of the *Income Tax Assessment Act 1997* includes in your assessable income, for the income year that is or includes that period, because of a repayment during that period of all or some of a *farm management deposit.

Gross proceeds on disposal of registered emissions units included in instalment income

- (5A) Your **instalment income** for a period also includes an amount that section 420-25 of the *Income Tax Assessment Act 1997* includes in your assessable income, for the income year that is or includes that period, because you cease to *hold a *registered emissions unit during that period.

Instalment income of entity that is not liable for instalments

- (6) An entity can have *instalment income for a period even if the entity is not liable to pay an instalment for that period.

Note: For example, although a partnership does not pay instalments, it is necessary to work out the partnership's instalment income in order to work out instalments payable by the partners. See Subdivision 45-H.

Subdivision 45-D—Quarterly payers

Table of sections

45-125	Quarterly payer who pays instalments on the basis of instalment income
45-130	Quarterly payer who pays on the basis of GDP-adjusted notional tax
45-132	Quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax
45-134	Quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-125

45-125 Quarterly payer who pays instalments on the basis of instalment income

- (1) You are a *quarterly payer who pays on the basis of instalment income* if:
- (a) at the end of the *starting instalment quarter in an income year, you are not a *quarterly payer who pays on the basis of GDP-adjusted notional tax and you are not a *monthly payer or an *annual payer; or
 - (b) but for this section, you would be a quarterly payer who pays on the basis of GDP-adjusted notional tax at the end of the starting instalment quarter in an income year but you choose to pay quarterly instalments on the basis of your instalment income.
- Note: The entity must make the choice mentioned in paragraph (b) in accordance with subsection (4).
- (2) The *starting instalment quarter* in an income year (the *current year*) is:
- (a) if the Commissioner gives you an instalment rate for the first time during an *instalment quarter in the current year—that instalment quarter (even if it is not the first instalment quarter in the current year); or
 - (b) if the Commissioner has given you an instalment rate during a previous income year and your instalment rate has not been withdrawn—the first instalment quarter in the current year.

How and when you become such a payer

- (3) You become a *quarterly payer who pays on the basis of instalment income just before the end of the *starting instalment quarter if paragraph (1)(a) or (b) is satisfied.
- (4) You must make the choice mentioned in paragraph (1)(b) by notifying the Commissioner in the *approved form on or before the day on which the instalment for that quarter is due (disregarding subsection 45-112(3)).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

How and when you stop being such a payer

- (5) If you are a *quarterly payer who pays on the basis of instalment income because of paragraph (1)(a), you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
 - (i) a quarterly payer who pays on the basis of GDP-adjusted notional tax; or
 - (ii) an *annual payer; or
 - (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

No quarterly payer status in quarter if monthly payer in following month

- (5A) Despite subsections (1) and (3), you cannot be a *quarterly payer who pays on the basis of instalment income at a time in an *instalment quarter if you are a *monthly payer at a time in the first *instalment month that ends after that quarter.
- (6) If you are a *quarterly payer who pays on the basis of instalment income because of paragraph (1)(b), you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) you become an *annual payer at the end of that quarter; or
 - (b) both of the following conditions apply:
 - (i) you choose not to be a quarterly payer who pays on the basis of instalment income;
 - (ii) you become a *quarterly payer who pays on the basis of GDP-adjusted notional tax at the end of that quarter.
- (7) You may only make the choice mentioned in paragraph (6)(b) if you would otherwise satisfy paragraph 45-130(1)(a), (b), (c) or (d) at the end of that quarter. You must make that choice by notifying the Commissioner in the *approved form on or before the day on which the instalment for that quarter is due (disregarding subsection 45-112(3)).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-130

45-130 Quarterly payer who pays on the basis of GDP-adjusted notional tax

- (1) You are a *quarterly payer who pays on the basis of GDP-adjusted notional tax* if, at the end of the *starting instalment quarter in an income year:
- (a) you are an individual who is not an *annual payer, a *monthly payer or a *quarterly payer who pays on the basis of instalment income; or
 - (b) you are a *self-assessment entity:
 - (i) that is not an *annual payer or a *quarterly payer who pays on the basis of instalment income; and
 - (ii) your base assessment instalment income (within the meaning of section 45-320) for the *base year is \$2 million or less; or
 - (c) you satisfy all of the following conditions:
 - (i) you are a self-assessment entity whose base assessment instalment income (within the meaning of section 45-320) for the *base year is more than \$2 million;
 - (ii) you are not an annual payer, but you satisfy the conditions set out in subsection 45-140(1) for an annual payer;
 - (iia) you are not a *monthly payer;
 - (iii) you are not a quarterly payer who pays on the basis of instalment income; or
 - (d) for the 2009-10 income year or a later income year—you are one of the following kinds of entity (an *eligible business entity*):
 - (i) a *small business entity (other than because of subsection 328-110(4) of the *Income Tax Assessment Act 1997*);
 - (ii) an entity covered by subsection (1A) of this section.

Note: Paragraph (a) may apply to you if you are a multi-rate trustee. See section 45-468.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (1A) An entity is covered by this subsection for an income year if:
- (a) the entity is not a *small business entity (other than because of subsection 328-110(4) of the *Income Tax Assessment Act 1997*) for the income year; and
 - (b) the entity would be such a small business entity for the income year if:
 - (i) each reference in Subdivision 328-C (about what is a small business entity) of that Act to \$10 million were instead a reference to \$50 million; and
 - (ii) the reference in paragraph 328-110(5)(b) of that Act to a small business entity were instead a reference to an entity covered by this subsection.

How and when you become such a payer

- (2) You become such a payer just before the end of the *starting instalment quarter if paragraph (1)(a), (b), (c) or (d) is satisfied.
- (2A) For the purposes of subsection (2), you satisfy proposed paragraph (1)(d) at the end of the *starting instalment quarter in an income year if you are an eligible business entity for the income year that includes that instalment quarter.

How and when you stop being such a payer

- (3) You stop being a *quarterly payer who pays on the basis of GDP-adjusted notional tax at the start of the first *instalment quarter in the *next* income year if you fail to satisfy paragraph (1)(a), (b), (c) or (d) at the end of that quarter.
- (3A) For the purposes of subsection (3), you fail to satisfy proposed paragraph (1)(d) at the end of the first *instalment quarter in an income year if you are not an eligible business entity for the income year that includes that instalment quarter.
- (4) In addition, you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-132

- (i) a *quarterly payer who pays on the basis of instalment income; or
- (ii) an *annual payer; or
- (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

No quarterly payer status in quarter if monthly payer in following month

- (5) Despite subsections (1) and (2), you cannot be a *quarterly payer who pays on the basis of GDP-adjusted notional tax at a time in an *instalment quarter if you are a *monthly payer at a time in the first *instalment month that ends after that quarter.

45-132 Quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax

- (1) You are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax* if, at the end of the *starting instalment quarter in an income year:
 - (a) you satisfy the conditions to be a *quarterly payer who pays on the basis of GDP-adjusted notional tax under section 45-130; and
 - (b) you do not satisfy the conditions to be a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax under section 45-134.

How and when you become such a payer

- (2) You become such a payer just before the end of the *starting instalment quarter if paragraphs (1)(a) and (b) are satisfied.

How and when you stop being such a payer

- (3) You stop being a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the start of the first *instalment quarter in the *next* income year if you fail to satisfy paragraphs (1)(a) and (b) at the end of that quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (4) In addition, you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
 - (i) a *quarterly payer who pays on the basis of instalment income; or
 - (ii) an *annual payer; or
 - (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

45-134 Quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax

- (1) You are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax* if, at the end of the *starting instalment quarter in an income year, you are an individual that is a *quarterly payer who pays on the basis of GDP-adjusted notional tax and one or more of the following paragraphs apply:
- (a) both of the following conditions are satisfied:
 - (i) you are carrying on a *primary production business in the income year;
 - (ii) the assessable income that was *derived from, or resulted from, a primary production business that you carried on in the *base year exceeded the amount of so much of your deductions in that year that are reasonably related to that income;
 - (b) both of the following conditions are satisfied:
 - (i) you are a *special professional in the income year;
 - (ii) your *assessable professional income in the base year exceeded the amount of so much of your deductions in that year that are reasonably related to that income.

Note: This section may apply to you if you are a multi-rate trustee. See section 45-468.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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How and when you become such a payer

- (2) You become such a payer just before the end of the *starting instalment quarter if subsection (1) is satisfied.

How and when you stop being such a payer

- (3) You stop being a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax at the start of the first *instalment quarter in the *next* income year if you fail to satisfy subsection (1) at the end of that quarter.
- (4) In addition, you stop being such a payer at the start of the first *instalment quarter in the *next* income year if:
- (a) at the end of that quarter, you become:
 - (i) a *quarterly payer who pays on the basis of instalment income; or
 - (ii) an *annual payer; or
 - (b) at the end of the first *instalment month of that quarter, you become a *monthly payer.

Subdivision 45-DA—Monthly payers

Table of sections

45-136	Monthly payer
45-138	Monthly payer requirement

45-136 Monthly payer

- (1) You are a ***monthly payer*** at a time if:
- (a) you were a monthly payer immediately before that time; or
 - (b) if paragraph (a) does not apply—you satisfy the requirement in subsection 45-138(1) for the income year in which that time occurs.

Note: If paragraph (b) applies, see subsection (3) for the time at which you become a monthly payer.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The **starting instalment month** in an income year (the **current year**) is:
- (a) if the Commissioner gives you an instalment rate for the first time during an *instalment month in the current year—the next instalment month in the current year; or
 - (b) if the Commissioner has given you an instalment rate during a previous income year and your instalment rate has not been withdrawn—the first instalment month in the current year.

How and when you become such a payer

- (3) Despite subsection (1), if paragraph (1)(b) applies, you become a *monthly payer just before the end of the *starting instalment month in the income year.

How and when you stop being such a payer

- (4) Despite subsection (1), you stop being a *monthly payer at the start of the first *instalment month in a later income year if:
- (a) you do not satisfy the requirement in subsection 45-138(1) for that later income year; and
 - (b) you give the Commissioner a notice (the **MP stop notice**) in the *approved form for that later income year before the start of that later income year.

45-138 Monthly payer requirement

- (1) You satisfy the requirement in this subsection for an income year if at the start of your *MPR test day for that income year, your base assessment instalment income (within the meaning of section 45-320) for the *base year equals or exceeds:
- (a) \$20 million; or
 - (b) if regulations made for the purposes of this paragraph specify a different amount—that amount.
- (2) However, you do *not* satisfy the requirement in subsection (1) for an income year if, at the start of your *MPR test day for that income year:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) you have (or, if you are a *member of a *GST group, the *representative member of the GST group has) an obligation to give the Commissioner a *GST return for a quarterly *tax period; and
 - (b) you are *not* the *head company of a *consolidated group nor the *provisional head company of a *MEC group; and
 - (c) your base assessment instalment income (within the meaning of section 45-320) for the *base year is less than \$100 million.
- (3) For the purposes of subsections (1) and (2), at the start of an entity's *MPR test day:
 - (a) determine the amount of the entity's base assessment instalment income (within the meaning of section 45-320) for the *base year only on the basis of the information provided by the Commissioner to the entity before that start of that day; and
 - (b) in determining on that day whether an entity has an obligation mentioned in paragraph (2)(a), disregard any creation or removal of such an obligation after that day (even if that change is made retrospective to that day).
- (4) An entity's **MPR test day** for an income year is:
 - (a) if the Commissioner gives the entity an instalment rate for the first time during an *instalment month in the income year—the last day of that month; or
 - (b) otherwise—the first day of the third last month of the previous income year.
- (5) Subsection (6) applies if, disregarding that subsection, an entity does *not* satisfy the requirement in subsection (1) for an income year.
- (6) For the purposes of this section, in determining the entity's base assessment instalment income (within the meaning of section 45-320) for the *base year:
 - (a) disregard subsection 45-120(2C); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) disregard paragraph (3)(a) of this section, to the extent that that paragraph relates to the operation of subsection 45-120(2C).
- (7) If, because of subsection (6), the entity satisfies the requirement in subsection (1) for an income year, the entity must give the Commissioner a notice in the *approved form in respect of that income year before:
 - (a) if the *starting instalment month in the income year is determined under paragraph 45-136(2)(a)—the end of that starting instalment month; or
 - (b) if the starting instalment month in the income year is determined under paragraph 45-136(2)(b)—the start of that starting instalment month.

Subdivision 45-E—Annual payers

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When you start and stop being an annual payer

45-140 Choosing to pay annual instalments

- (1) You may choose to pay instalments annually instead of quarterly if, at the end of the *starting instalment quarter, you satisfy the following conditions:
 - (a) you are neither registered, nor *required to be registered, under Part 2-5 of the *GST Act; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) you are not a partner in a partnership that is registered, or required to be registered, under that Part; and
- (c) your most recent *notional tax notified by the Commissioner is less than \$8,000; and
- (d) in the case of a company—the company is not a *participant in a *GST joint venture under Division 51 of that Act; and
- (e) in the case of a company—the company is not part of an *instalment group.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

- (1A) You may also choose at a time (subject to subsection (2)) to pay instalments annually instead of quarterly if at that time either:
- (a) an *annual tax period election of yours has effect and, if you are a partner in one or more partnerships that are registered under Part 2-5 of the *GST Act, an annual tax period election of each of those partnerships has effect; or
 - (b) all of the following subparagraphs apply:
 - (i) you are neither registered, nor *required to be registered, under Part 2-5 of the GST Act;
 - (ii) you are a partner in one or more partnerships that are registered under that Part;
 - (iii) an annual tax period election of each of those partnerships has effect;

and at the end of the *starting instalment quarter, you satisfy the following conditions:

- (c) you are not a partner in a partnership that is required to be registered under Part 2-5 of the GST Act;
- (d) your most recent *notional tax notified by the Commissioner is less than \$8,000;
- (e) in the case of a company—the company is not a *participant in a *GST joint venture under Division 51 of that Act;
- (f) in the case of a company—the company is not part of an *instalment group.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

- (2) You must make the choice under subsection (1) or (1A) by notifying the Commissioner, in the *approved form, on or before the day on which that instalment would otherwise be due.
- (3) You become an **annual payer** just before the end of the *starting instalment quarter if:
 - (a) you satisfy the conditions in subsection (1) or (1A); and
 - (b) you choose to pay instalment annually.

45-145 Meaning of instalment group

- (1) An **instalment group** consists of:
 - (a) a company:
 - (i) that has *majority control of at least one other company; but
 - (ii) of which no other company has *majority control; and
 - (b) any other company of which the first-mentioned company has *majority control.
- (2) A company has **majority control** of another company if, and only if:
 - (a) the first company is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or
 - (b) the first company has the power to appoint or remove the majority of the directors of the other company; or
 - (c) the other company is, or a majority of its directors are, accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the first company.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-150 Entity stops being annual payer if involved with GST registration or instalment group

- (1) You stop being an *annual payer if, during an *instalment quarter that is in an income year that starts after the commencement of this section:
 - (a) you become *required to be registered under Part 2-5 of the *GST Act; or
 - (b) you become a partner in a partnership that is required to be registered under that Part; or
 - (c) a partnership in which you are a partner becomes required to be registered under that Part; or
 - (d) in the case of a company—the company becomes a *participant in a *GST joint venture under Division 51 of that Act; or
 - (e) in the case of a company—the company becomes part of an *instalment group; or
 - (f) an *annual tax period election of yours, or of a partnership in which you are a partner, ceases to have effect.
- (2) If you stop being an *annual payer under subsection (1):
 - (a) you must still pay an annual instalment for the income year mentioned in that subsection; and
 - (b) you must pay an instalment for each instalment quarter in the next income year for which subsection 45-50(1) or (2) requires you to do so.
- (3) You may again become an *annual payer if:
 - (a) after you stop being an *annual payer under subsection (1), you satisfy the conditions in subsection 45-140(1) or (1A); and
 - (b) you again choose under section 45-140 to pay instalments annually.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-155 Entity stops being annual payer if notional tax is \$8,000 or more, or entity chooses to pay quarterly

- (1) You stop being an *annual payer at the start of the first *instalment quarter in an income year (the *current year*) if:
 - (a) after the end of the first instalment quarter in the previous income year and before the end of the first instalment quarter in the current year, the Commissioner notifies you of your *notional tax, and it is \$8,000 or more; or
 - (b) you choose to pay instalments quarterly instead of annually.
- (1A) You must make the choice by notifying the Commissioner, in the *approved form, on or before the day on which the instalment for the first *instalment quarter for the current year would otherwise be due (disregarding subsection 45-112(3)).
- (2) You must pay an instalment for the first *instalment quarter of the *next* income year, and later instalment quarters, in accordance with Subdivision 45-B.
- (3) You must still pay an annual instalment for the previous income year referred to in subsection (1).
- (4) You may again become an *annual payer at the end of the first *instalment quarter in a later income year if:
 - (a) at that time, you satisfy the conditions in subsection 45-140(1) or in paragraphs 45-140(1A)(c), (d), (e) and (f); and
 - (b) you again choose under section 45-140 to pay annually.

45-160 Head company of a consolidated group stops being annual payer

- (1) You stop being an *annual payer at the start of an *instalment quarter if Subdivision 45-Q starts applying to you as the *head company of a *consolidated group during that quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) You must pay an instalment for that *instalment quarter and later instalment quarters in accordance with Subdivision 45-B.
- (3) You may again become an *annual payer if:
 - (a) after you stop being an *annual payer under subsection (1), you satisfy the conditions in subsection 45-140(1) or (1A); and
 - (b) you again choose under section 45-140 to pay instalments annually.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

Subdivision 45-F—Varying the instalment rate for quarterly or monthly payers who pay on the basis of instalment income

Table of sections

45-200	Application
45-205	Choosing a varied instalment rate
45-210	Notifying Commissioner of varied instalment rate
45-215	Credit on using varied rate in certain cases

45-200 Application

- (1) This Subdivision applies if you are a *quarterly payer who pays on the basis of instalment income at the end of an *instalment quarter.
- (2) If you are a *monthly payer, this Subdivision has effect in relation to you in respect of an *instalment month in the same way in which it has effect in relation to a *quarterly payer in respect of an *instalment quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-205 Choosing a varied instalment rate

- (1) You may choose an instalment rate for working out under section 45-110 the amount of your instalment for an *instalment quarter in an income year.
- (2) If you do so, you must use that instalment rate to work out the amount of that instalment. (You cannot later choose another instalment rate for working out that amount.)
 - Note 1: If choosing a rate leads you to pay an instalment that is too low, you may be liable to general interest charge under section 45-230.
 - Note 2: If you choose a rate under this section, you must use it even if the Commissioner later gives you a new instalment rate.
- (3) You must also use that instalment rate to work out the amount of the instalment that you are liable to pay for each later *instalment quarter in that income year, unless you choose another instalment rate under subsection (1) for working out that amount.
 - Note 1: If you choose a rate under this section, you must use it even if the Commissioner later gives you a new instalment rate.
 - Note 2: If a rate you have chosen for an instalment quarter is not appropriate for a later instalment quarter in the same income year, you should choose another rate under subsection (1) for the later quarter. If the earlier rate is too low, you may be liable to general interest charge under section 45-230.
- (4) However, for working out under section 45-110 the amount of your instalment for an *instalment quarter in a later income year, you must use the most recent instalment rate given to you by the Commissioner before the end of that quarter, unless you again choose another instalment rate under subsection (1).
- (5) Subsection (6) applies if you are a monthly payer.
- (6) Treat the references in subsections (1) and (4) to section 45-110 as instead being references to section 45-114.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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45-210 Notifying Commissioner of varied instalment rate

If you work out the amount of an instalment using an instalment rate you have chosen under section 45-205, you must specify that rate in the notice about your instalment income that you must give the Commissioner under section 45-20.

45-215 Credit on using varied rate in certain cases

- (1) You are entitled to claim a credit if:
- (a) the amount of your instalment for an *instalment quarter (the **current quarter**) in an income year is to be worked out using an instalment rate you chose under section 45-205; and
 - (b) that rate is lower than the instalment rate you used to work out the amount of your instalment for the previous instalment quarter (if any) in the same income year; and
 - (c) the amount worked out using the method statement is greater than nil.

Method statement

- Step 1. Add up the instalments you are liable to pay for the earlier *instalment quarters in the income year (even if you have not yet paid all of them).
- Step 2. Subtract from the step 1 amount each earlier credit that you have claimed under this section or section 45-420 in respect of the income year.
- Step 3. Multiply the total of your *instalment income for those earlier *instalment quarters by the instalment rate to be used for the current quarter.
- Step 4. Subtract the step 3 amount from the step 2 amount.
- Step 5. If the result is a positive amount, it is the amount of the credit you can claim.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) A claim for a credit must be made in the *approved form on or before the day on which the instalment for the current quarter is due.

Note: How the credit is applied is set out in Division 3 of Part IIB.

- (3) The credit entitlement does not affect your liability to pay an instalment.

Subdivision 45-G—General interest charge payable in certain cases if instalments are too low

Table of sections

45-225	Effect of Subdivision in relation to monthly payers
45-230	Liability to GIC on shortfall in quarterly instalment worked out on the basis of varied rate
45-232	Liability to GIC on shortfall in quarterly instalment worked out on the basis of estimated benchmark tax
45-233	Reduction in GIC liability under section 45-232 if shortfall is made up in later instalment
45-235	Liability to GIC on shortfall in annual instalment
45-240	Commissioner may remit general interest charge

45-225 Effect of Subdivision in relation to monthly payers

If you are a *monthly payer, this Subdivision has effect in relation to you in respect of an *instalment month in the same way in which it has effect in relation to a *quarterly payer in respect of an *instalment quarter.

45-230 Liability to GIC on shortfall in quarterly instalment worked out on the basis of varied rate

- (1) You are liable to pay the *general interest charge under this section if:
- (a) you use an instalment rate (the *varied rate*) under section 45-205 to work out the amount of your instalment for an *instalment quarter (the *variation quarter*) in an income year; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the varied rate is less than 85% of your *benchmark instalment rate for that income year that the Commissioner works out under Subdivision 45-K.

- (2) You are liable to pay the *general interest charge on the amount worked out as follows:

$$\left[\begin{array}{c} \text{Rate} \\ \text{discrepancy} \end{array} \times \begin{array}{c} \text{Your *instalment income} \\ \text{for the variation quarter} \end{array} \right] + \begin{array}{c} \text{Credit} \\ \text{Adjustment} \end{array}$$

where:

rate discrepancy means the difference between the varied rate and the lesser of:

- (a) the most recent instalment rate given to you by the Commissioner before the end of the variation quarter; and
(b) your *benchmark instalment rate for that income year.

credit adjustment means:

- (a) if, as a result of using the varied rate for the variation quarter, you claimed a credit under section 45-215—the amount worked out as follows:

$$\begin{array}{c} \text{Rate} \\ \text{discrepancy} \end{array} \times \begin{array}{c} \text{Your *instalment income for the earlier} \\ \text{instalment quarters in that income year} \end{array}$$

or the amount of the credit, whichever is less; and

- (b) otherwise—nil.

- (2A) If the variation quarter is in a *consolidation transitional year for you as a *subsidiary member of a *consolidated group, a reference in subsection (2) to:

- (a) your *instalment income for the variation quarter; or
(b) your instalment income for the earlier instalment quarters in the income year;

is taken to be a reference to so much of that income as is reasonably attributable to the period in that quarter or those quarters (as appropriate) during which you are not a subsidiary member of the group.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) You are liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the variation quarter was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (4) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2). You must pay the charge within 14 days after the notice is given to you.
- (5) If any of the *general interest charge to which you are liable under subsection (2) remains unpaid at the end of the 14 days referred to in subsection (4), you are also liable to pay the *general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

45-232 Liability to GIC on shortfall in quarterly instalment worked out on the basis of estimated benchmark tax

- (1) You are liable to pay the *general interest charge under this section if:
 - (a) the amount of your instalment for an *instalment quarter (the **variation quarter**) in an income year is worked out under paragraph 45-112(1)(b) or (c) on the basis of your estimate of your *benchmark tax for that income year; and
 - (b) the estimate used is less than 85% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

Amount on which the charge is payable

- (2) You are liable to pay the *general interest charge on the amount worked out as follows (if it is a positive amount):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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*Acceptable amount of the instalment – Actual amount
where:

acceptable amount, of your instalment for an *instalment quarter in an income year, has the meaning given by subsections (3), (3A), (3B), (3C) and (3D).

actual amount means:

- (a) the amount of your instalment, as worked out on the basis of the estimate; or
 - (b) if, as a result of using the estimate, you claimed a credit under section 45-420 for the variation quarter—the amount of the credit, expressed as a negative amount.
- (3) If you are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax, the **acceptable amount** of your instalment for that instalment quarter is:
- (a) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
 - (b) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the first in that income year for which you are liable to pay an instalment	the lower of: (a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and (b) 25% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
2	the second in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the *acceptable amount of your instalment for the earlier instalment quarter in that income year; <p>from:</p> <ul style="list-style-type: none"> 50% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
3	the third in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the total of the *acceptable amounts of your instalments for the earlier instalment quarters in that income year; <p>from:</p> <ul style="list-style-type: none"> 75% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
4	the fourth in that income year for which you are liable to pay an instalment	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the total of the *acceptable amounts of your instalments for the earlier instalment quarters in that income year; <p>from:</p> <ul style="list-style-type: none"> 100% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

- (3A) Subject to subsections (3B), (3C) and (3D), if you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax, the ***acceptable amount*** of your instalment for an *instalment quarter in an income year is:
- (a) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
- (b) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Acceptable amount of an instalment

Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the third *instalment quarter in that income year	the lower of: (a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and (b) 75% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
2	the fourth *instalment quarter in that income year	the lower of: (a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and (b) the amount worked out by subtracting: <ul style="list-style-type: none"> the *acceptable amount of your instalment for the earlier instalment quarter in that income year; from: <ul style="list-style-type: none"> 100% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

(3B) If:

- (a) you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax; and
- (b) the Commissioner first gives you an instalment rate during the second *instalment quarter in an income year;

the ***acceptable amount*** of your instalment for an instalment quarter in that income year is:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
- (d) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter.

Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the third *instalment quarter in that income year	<p>the lower of:</p> <p>(a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and</p> <p>(b) 50% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).</p>
2	the fourth *instalment quarter in that income year	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the *acceptable amount of your instalment for the earlier instalment quarter in that income year; <p>from:</p> <ul style="list-style-type: none"> 75% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(3C) If:

- (a) you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax; and
- (b) the Commissioner first gives you an instalment rate during the third *instalment quarter in an income year;

the **acceptable amount** of your instalment for an instalment quarter in that income year is:

- (c) if the amount of the instalment is worked out under paragraph 45-112(1)(b) or (c)—the amount worked out using the table in this subsection (which can be a negative amount); or
- (d) otherwise—the amount notified to you by the Commissioner under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter.

Acceptable amount of an instalment

Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
1	the third *instalment quarter in that income year	the lower of: <ul style="list-style-type: none">(a) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter; and(b) 25% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Acceptable amount of an instalment		
Item	If the *instalment quarter is:	The acceptable amount of your instalment for that instalment quarter is:
2	the fourth *instalment quarter in that income year	<p>the lower of:</p> <p>(a) the amount that the Commissioner <i>would have</i> notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that *instalment quarter if the amounts of all your instalments for that income year had been required to be worked out under Subdivision 45-L; and</p> <p>(b) the amount worked out by subtracting:</p> <ul style="list-style-type: none"> the *acceptable amount of your instalment for the earlier instalment quarter in that income year; <p>from:</p> <ul style="list-style-type: none"> 50% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

(3D) If:

- (a) you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax; and
- (b) the Commissioner first gives you an instalment rate during the fourth *instalment quarter in an income year;

the **acceptable amount** of your instalment for an instalment quarter in that income year is the lower of the following amounts:

- (c) the amount that the Commissioner notified to you under paragraph 45-112(1)(a) as the amount of your instalment for that instalment quarter;
- (d) 25% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).

Period for which the charge is payable

- (4) You are liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the variation quarter was due to be paid; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.

Commissioner to notify you

- (5) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2). You must pay the charge within 14 days after the notice is given to you.

Further charge if charge under subsection (2) remains unpaid

- (6) If any of the *general interest charge to which you are liable under subsection (2) remains unpaid at the end of the 14 days referred to in subsection (5), you are also liable to pay the *general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

Modifications for subsidiary member of consolidated group

- (7) Subsections (1) to (6) apply to you with the modifications set out in subsections (8) to (10) if the variation quarter is in a *consolidation transitional year for you as a *subsidiary member of a *consolidated group.
- (8) For the purposes of subsection (7), a reference in subsection (1), (3), (3A), (3B), (3C) and (3D) to your *benchmark tax for that year is taken to be a reference to the amount worked out as follows:

$$\frac{\text{Your *benchmark tax for that year}}{\text{Number of days in that year when you are not a *subsidiary member of the group}} \times 365$$

- (9) For the purposes of subsection (7), a reference in this section to:
- (a) the acceptable amount of your instalment for an *instalment quarter in an income year; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the acceptable amount of your instalment for the earlier instalment quarter in an income year; or
- (c) the acceptable amounts of your instalments for the earlier instalment quarters in an income year;

is taken to be a reference to so much of the acceptable amount of instalment or acceptable amounts of instalments, worked out under subsection (3), (3A), (3B), (3C) or (3D) for that quarter or those quarters (as appropriate), as is reasonably attributable to the period in that quarter or those quarters (as appropriate) during which you are not a *subsidiary member of the group.

- (10) For the purposes of subsection (7), a reference to the actual amount in subsection (2) is taken to be a reference to so much of the actual amount worked out under that subsection as is reasonably attributable to the period in the variation quarter during which you are not a *subsidiary member of the group.

45-233 Reduction in GIC liability under section 45-232 if shortfall is made up in later instalment

- (1) This section reduces the amount (the *shortfall*) on which you are liable to pay the *general interest charge under subsection 45-232(2) if, for a later *instalment quarter (the *later quarter*) that is in the same income year as the variation quarter, the amount worked out as follows is a negative amount:

$$\begin{array}{rcl} \text{*Acceptable amount of} & & \\ \text{your instalment for} & - & \text{Actual amount of your instalment} \\ \text{the later quarter} & & \text{for the later quarter} \end{array}$$

That amount (expressed as a positive number) is called the *top up*.

- (2) For the purposes of the formula in subsection (1):

actual amount of your instalment for the later quarter means:

- (a) the amount of your instalment for the later quarter, as worked out under section 45-112; or
- (b) if you claimed a credit under section 45-420 for the later quarter—the amount of the credit, expressed as a negative amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Amount of the reduction

- (3) The shortfall is reduced by applying so much of the top up as does not exceed the shortfall.
- (4) However, if some of the top up has already been applied (under any other application or applications of this section) to reduce the amount on which you are liable to pay the *general interest charge under subsection 45-232(2) as it applies to a different *instalment quarter, the shortfall is reduced by applying so much of the top up as has not already been applied, and does not exceed the shortfall.

Period for which reduction has effect

- (5) The reduction has effect for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the later quarter was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.

45-235 Liability to GIC on shortfall in annual instalment

- (1) You are liable to pay the *general interest charge under this section if:
 - (a) you choose to estimate the amount of your instalment (the ***estimated instalment amount***) for an income year under paragraph 45-115(1)(c) or former paragraph 45-175(1)(b); and
 - (b) that amount is less than 85% of your *benchmark tax for the income year (which the Commissioner works out under section 45-365).
- (2) If you estimated the amount of the instalment under former paragraph 45-175(1)(b), you are liable to pay the *general interest charge on the difference between the estimated instalment amount and the lower of the following amounts:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) your most recent *notional tax notified by the Commissioner at least 30 days before the day on which the instalment was due;
 - (b) your *benchmark tax for the income year.
- (3) If you estimated the amount of the instalment under paragraph 45-115(1)(c), you are liable to pay the *general interest charge on the difference between the estimated instalment amount and the lowest of the following amounts:
 - (a) the amount of your instalment worked out using the most recent instalment rate given to you by the Commissioner before the end of the income year;
 - (b) your most recent *notional tax notified by the Commissioner before the end of the income year under subsection 45-320(5);
 - (c) your *benchmark tax for the income year.
- (4) You are liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for the income year was due to be paid; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (5) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (2) or (3). You must pay the charge within 14 days after the notice is given to you.
- (6) If any of the *general interest charge to which you are liable under subsection (2) or (3) remains unpaid at the end of the 14 days referred to in subsection (5), you are also liable to pay the *general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) general interest charge on the unpaid amount.

45-240 Commissioner may remit general interest charge

The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under subsection 45-230(2) or 45-232(2) or subsection 45-235(2) or (3).

Subdivision 45-H—Partnership income

45-260 Instalment income for a period in which you are in a partnership

- (1) Your *instalment income* for a period (the *current period*) includes an amount for each partnership in which you are a partner at any time during the current period. The amount is worked out using the formula:

$$\frac{\text{Your assessable income from the partnership for the last income year}}{\text{Partnership's *instalment income for that income year}} \times \frac{\text{Partnership's *instalment income for the current period}}{\text{Partnership's *instalment income for the current period}}$$

- (2) For the purposes of the formula in subsection (1):

your assessable income from the partnership for the last income year means so much of your individual interest in the partnership's net income for an income year as was included by section 92 of the *Income Tax Assessment Act 1936* in your assessable income for the most recent income year:

- (a) that ended before the start of the current period; and
 - (b) for which you have an assessment, or for which the Commissioner has notified you that you do not have a taxable income.
- (3) However, if for any reason the component defined in subsection (2) does not exist or is a nil amount, or the partnership

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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had no *instalment income for that income year, your ***instalment income*** for the current period includes, for that partnership, an amount that is fair and reasonable having regard to:

- (a) the extent of your interest in the partnership during the current period; and
- (b) the partnership's *instalment income for the current period; and
- (c) any other relevant circumstances.

Exception for corporate limited partnerships

- (4) Your ***instalment income*** for the current period does *not* include an amount for a partnership that is a *corporate limited partnership for the income year that is or includes that period.

Note: Your instalment income will still include a distribution by the partnership that is ordinary income. See section 45-120.

Subdivision 45-I—Trust income included in instalment income of beneficiary

Table of sections

45-280	Instalment income for a period in which you are a beneficiary of a trust
45-285	Instalment income includes distributions by certain resident unit trusts
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45-287	When trusts are disqualified due to concentrated ownership
45-288	Resident investment trusts for beneficiaries who are absolutely entitled
45-290	Exceptions to exclusion of trust capital gains from beneficiary's instalment income

45-280 Instalment income for a period in which you are a beneficiary of a trust

- (1) Your ***instalment income*** for a period (the ***current period***) includes an amount for each trust of which you are a beneficiary at any time during the current period. The amount is worked out using the formula:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

$$\frac{\text{Your assessable income from the trust for the last income year}}{\text{Trust's *instalment income for that income year}} \times \text{Trust's *instalment income for the current period}$$

- (2) For the purposes of the formula in subsection (1):

your assessable income from the trust for the last income year means so much of a share of the trust's net income for an income year as:

- (a) Division 6 of Part III of the *Income Tax Assessment Act 1936* included in your assessable income for the most recent income year:
 - (i) that ended before the start of the current period; and
 - (ii) for which you have an assessment, or for which the Commissioner has notified you that you do not have a taxable income; and
- (b) is *not* attributable to a *capital gain made by the trust.

Note: For exceptions to paragraph (b), see section 45-290.

- (3) However, if for any reason the component defined in subsection (2) does not exist or is a nil amount, or the trust had no *instalment income for that income year, your ***instalment income*** for the current period includes, for that trust, an amount that is fair and reasonable having regard to:
- (a) the extent of your interest in the trust, and your interest in the income of the trust, during the current period; and
 - (b) the trust's *instalment income for the current period; and
 - (c) any other relevant circumstances.

Exception for corporate unit trusts and public trading trusts

- (4) Your ***instalment income*** for the current period does *not* include an amount for a trust if the trustee is liable to be assessed, and to pay tax, under section 102S of the *Income Tax Assessment Act 1936* for the income year that is or includes that period.

Note: Your instalment income will still include a distribution by the trust that is ordinary income. See section 45-120.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Exception for certain resident unit trusts

- (5) Your **instalment income** for the current period does *not* include an amount for a trust under subsection (1) if the conditions in either subsection 45-285(1) or (2) are satisfied for you for that trust for that period.

Note: Your instalment income will instead include a distribution by the trust: see section 45-285.

Exception for trusts whose beneficiary is absolutely entitled

- (6) Your **instalment income** for the current period does *not* include an amount for a trust under subsection (1) if, throughout the current period:

- (a) the trustee of the trust did not have any active duties to perform in the management of the trust (other than the duty to deal with the trust income and capital in accordance with any requests made or directions given by the beneficiary or beneficiaries); and
- (b) if there was only one beneficiary, the beneficiary:
 - (i) was absolutely entitled to the trust assets; and
 - (ii) had a vested and indefeasible interest in any trust income arising from time to time; and
- (c) if there was more than one beneficiary, each beneficiary:
 - (i) was absolutely entitled to that beneficiary's interest in the trust assets; and
 - (ii) had a vested and indefeasible interest in a proportion of any trust income arising from time to time, being a proportion that corresponded to the beneficiary's proportional interest in the trust capital.

Instead, your **instalment income** for the current period includes the following amount:

Your proportion of the vested and
indefeasible interests in the trust
income arising from time to time × Trust's *instalment income
for the current period

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-285 Instalment income includes distributions by certain resident unit trusts

- (1) Your **instalment income** for a period includes trust income or trust capital that a unit trust distributes to you, or applies for your benefit, during that period if:
- (a) the unit trust is a resident unit trust (within the meaning of section 102Q of the *Income Tax Assessment Act 1936*) for the income year of the trust that is or includes that period; and
 - (b) throughout that period:
 - (i) any of the units in the trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere; or
 - (ii) any of the units in the trust were offered to the public; or
 - (iii) the units in the trust were held by at least 50 persons; and
 - (c) section 45-287 in this Schedule did not apply to the trust at any time during that period; and
 - (d) throughout that period, the trust's activities consisted only of activities listed in the definition of **eligible investment business** in section 102M of the *Income Tax Assessment Act 1936*.
- (It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)
- (2) Your **instalment income** for a period also includes trust income or trust capital that a unit trust distributes to you, or applies for your benefit, during that period if:
- (a) the income or capital is *not* included in your instalment income under subsection (1); and
 - (b) the unit trust is a resident unit trust (within the meaning of section 102Q of the *Income Tax Assessment Act 1936*) for the income year of the trust that is or includes that period; and
 - (c) throughout that period, the trust's activities consisted only of activities listed in the definition of **eligible investment**

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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business in section 102M of the *Income Tax Assessment Act 1936*; and

(d) throughout that period, either:

- (i) you are yourself the trustee of a unit trust that satisfies each of paragraphs (1)(a) to (d) of this section; or
- (ii) you are yourself the trustee of one or more trusts covered by section 45-288; or
- (iii) you are exempt from tax; or
- (iv) you are a *complying superannuation entity or a statutory fund of a *life insurance company.

(It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)

Extension—nominee and bare trust situations

- (3) In determining, for the purposes of subparagraph (1)(b)(iii), how many persons hold units in a unit trust, if:
- (a) another trust (the **holding trust**) is a unit holder in the unit trust; and
 - (b) the holding trust is a trust of the kind covered by subsection 45-280(6); and
 - (c) the beneficiary's or beneficiaries' absolute entitlement exists at all times while the holding trust is in existence;
- the beneficiary or beneficiaries count as persons who hold units in the unit trust, and the trustee of the holding trust does not.

45-286 Instalment income includes distributions by certain managed investment trusts

Your **instalment income** for a period includes trust income or trust capital that a trust distributes to you, or applies for your benefit, during that period if:

- (a) the income or capital is not included in your instalment income under section 45-280 or 45-285; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) the trust satisfies the condition in paragraph 275-10(3)(a) of the *Income Tax Assessment Act 1997* in relation to the income year that is or includes that period; and
- (c) the trust is a *managed investment trust for that income year; and
- (d) the trust meets the requirement in section 275-110 of that Act throughout the income year.

(It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)

45-287 When trusts are disqualified due to concentrated ownership

Concentrated ownership

- (1) This section applies to a trust if an individual holds, or up to 20 individuals hold between them directly or indirectly and for their own benefit, interests in the trust:
 - (a) carrying *fixed entitlements to:
 - (i) at least 75% of the trust's income; or
 - (ii) at least 75% of the trust's capital; or
 - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

Single individual

- (2) Subsection (1) operates as if all of these were a single individual:
 - (a) an individual, whether or not the individual holds interests in the trust; and
 - (b) the individual's *associates; and
 - (c) for any interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Concentrated ownership—potential due to possible variation of rights etc.

(3) This section also applies to a trust if, because of:

- (a) any provision in the trust's constituent document, or in any contract, agreement or instrument:
 - (i) authorising the variation or abrogation of rights attaching to any of the interests in the trust; or
 - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those interests; or
- (b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those interests; or
- (c) any power, authority or discretion in a person in relation to the rights attaching to any of those interests;

it is reasonable to conclude that the rights attaching to any of the interests are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, the trust would be disqualified under subsection (1).

Tracing

(4) In applying this section:

- (a) if a *complying superannuation fund, *approved deposit fund or *superannuation fund for foreign residents has more than 50 members and has, directly or indirectly, a *fixed entitlement to any of the trust's income or capital—that entitlement is taken to be held by more than 20 individuals for their own benefit; and
- (b) if a complying superannuation fund, approved deposit fund or superannuation fund for foreign residents has 50 or fewer members and has, directly or indirectly, a fixed entitlement to any of the trust's income or capital—each of the members is taken to have a share of that entitlement, in equal proportions, for his or her own benefit.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-288 Resident investment trusts for beneficiaries who are absolutely entitled

This section covers a trust if:

- (a) the trust is a resident unit trust within the meaning of section 102Q of the *Income Tax Assessment Act 1936*; and
- (b) the trust is of the kind covered by subsection 45-280(6) in this Schedule; and
- (c) the requests or directions that beneficiaries may give the trustee are limited to requests or directions as to which of the activities listed in the definition of ***eligible investment business*** in section 102M of the *Income Tax Assessment Act 1936* the trustee should engage in; and
- (d) all of the trust's beneficiaries became beneficiaries as a result of a public offer to invest in the trust; and
- (e) either:
 - (i) the trust has 50 or more beneficiaries; or
 - (ii) if the trustee of the trust is also the trustee of one or more other trusts that satisfy paragraphs (a), (b), (c) and (d) of this section—all those trusts together have a total of 50 or more beneficiaries.

45-290 Exceptions to exclusion of trust capital gains from beneficiary's instalment income

- (1) This section sets out cases where paragraph (b) of the definition of ***your assessable income from the trust for the last income year*** in subsection 45-280(2) does *not* apply.
- (2) It does not apply in the case of:
 - (a) a *complying approved deposit fund or a *non-complying approved deposit fund for the income year that is or includes the current period; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund for that year; or
 - (c) a *pooled superannuation trust for that year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (3) It does not apply in the case of a *life insurance company to the extent that the share of the trust's net income is included in the *complying superannuation class of its taxable income for the income year that is or includes the current period.

Subdivision 45-J—How Commissioner works out your instalment rate and notional tax

Table of sections

45-320	Working out instalment rate
45-325	Working out your <i>notional tax</i>
45-330	Working out your <i>adjusted taxable income</i>
45-335	Working out your <i>adjusted withholding income</i>
45-340	<i>Adjusted tax</i> on adjusted taxable income or on adjusted withholding income

45-320 Working out instalment rate

- (1) Except as provided by section 45-775, an instalment rate that the Commissioner gives you must be the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your *notional tax}}{\text{Base assessment instalment income}} \times 100$$

However, the instalment rate must be a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

base assessment instalment income means so much of your assessable income, as worked out for the purposes of the *base assessment, as the Commissioner determines is *instalment income for the *base year.

- (3) The ***base assessment*** is the latest assessment for your most recent income year for which an assessment has been made. However, if the Commissioner is satisfied that there is a later income year for which you do not have a taxable income, the ***base assessment*** is

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

the latest return or other information from which an assessment for that income year would have been made.

- (4) The **base year** is the income year to which the *base assessment relates.
- (5) When the Commissioner gives you the instalment rate, he or she must also notify you of the amount of your *notional tax, as worked out for the purposes of working out the instalment rate.

45-325 Working out your notional tax

Notional tax if you have no withholding income

- (1) Your **notional tax** is your *adjusted tax (worked out under section 45-340) on your *adjusted taxable income (worked out under section 45-330) for the *base year.

Notional tax if you have no-TFN contributions income

- (1A) In working out the **notional tax** of a *complying superannuation fund, *non-complying superannuation fund or *RSA provider for the *base year, assume that the entity had no *no-TFN contributions income for the base year and that the entity was not entitled to a *tax offset for the base year under Subdivision 295-J of the *Income Tax Assessment Act 1997*.

Notional tax if you have withholding income

- (2) However, your **notional tax** (as worked out under subsection (1)) is reduced if your assessable income for the *base assessment includes amounts in respect of *withholding payments (except *non-quotation withholding payments).
- (3) It is reduced (but not below nil) by your *adjusted tax (worked out under section 45-340) on your *adjusted withholding income (worked out under section 45-335) for the *base year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Commissioner may take into account effect of the law, as applying to income years after base year

- (4) For the purposes of working out your *notional tax, the Commissioner may work out an amount as if provisions of an Act or regulations, as they may reasonably be expected to apply for the purposes of your assessment for a later income year, had applied for the purposes of the *base assessment.

Commissioner may take into account proposed changes to the law so as to reduce instalment rate

- (5) For the purposes of working out your *notional tax, the Commissioner may work out an amount as if provisions of an Act or regulations that, in the Commissioner's opinion, are likely to be enacted or made had applied for the purposes of the *base assessment. But the Commissioner may do so only if, as a result, the instalment rate given to you is reduced.
- (6) If the *base year is the income year immediately preceding the income year in which 1 July 2000 occurred, subsections (4) and (5) apply for the purpose of working out the *base assessment instalment income of a *life insurance company in the same way as they apply for the purpose of working out such a company's *notional tax.

45-330 Working out your *adjusted taxable income*

- (1) Your ***adjusted taxable income*** for the *base year is your total assessable income for the *base assessment, reduced by:
- (a) any *net capital gain included in that assessable income; and
 - (b) your deductions for the base year (except *tax losses), as used in making that assessment; and
 - (c) the amount of any tax loss, to the extent that it is *unutilised at the end of the base year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Exception: superannuation entities and net capital gains

- (2) Paragraph (1)(a) does not apply in the case of:
- (a) a *complying approved deposit fund or a *non-complying approved deposit fund for the *base year; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund for that year; or
 - (c) a *pooled superannuation trust for that year.

Special rule for some entities

- (2A) If an entity:
- (a) has *tax losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; or
 - (b) is a *corporate tax entity at any time during the *base year; the **adjusted taxable income** of the entity for the base year is worked out under subsection (1) as if paragraph (1)(c) were replaced by the following provision:
 - (c) the lesser of the following amounts:
 - (i) the amount of any tax loss, to the extent that it is *unutilised at the end of the base year;
 - (ii) the amount of the deductions for tax losses used in making your *base assessment.

Amounts assessable under Subdivision 250-E of the Income Tax Assessment Act 1997

- (2AA) To avoid doubt, paragraph (1)(a) does not apply to a *net capital gain that is included in your assessable income under Subdivision 250-E of the *Income Tax Assessment Act 1997*.

Special rule for life insurance companies

- (3) The **adjusted taxable income** of a *life insurance company for the *base year is worked out as follows:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Method statement

- Step 1. Recalculate the taxable income of the *ordinary class for the *base assessment on the basis that it did not include any *net capital gain.
- Step 2. Add to the step 1 result the deductions for *tax losses of the *ordinary class that were used in making the *base assessment.
- Step 3. Reduce the step 2 result by the lesser of the following amounts:
- (a) the amount of any *tax losses of the *ordinary class, to the extent that they are *unutilised at the end of the *base year;
 - (b) deductions for tax losses of the ordinary class that were used in making the *base assessment.
- Step 4. Add to the step 3 result the taxable income of the *complying superannuation class for the *base assessment.
- Step 5. Add to the step 4 result the deductions for *tax losses of the *complying superannuation class that were used in making the *base assessment.
- Step 6. Reduce the step 5 result by the lesser of the following amounts:
- (a) the amount of any *tax losses of the *complying superannuation class, to the extent that they are *unutilised at the end of the *base year;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) deductions for tax losses of the complying superannuation class that were used in making the *base assessment.

The result of this step is the **adjusted taxable income** of the company for the *base year.

45-335 Working out your **adjusted withholding income**

Your **adjusted withholding income** for the *base year is:

- the total of the amounts included in your assessable income for the *base assessment in respect of *withholding payments (except *non-quotation withholding payments);

reduced by:

- your deductions for that year, as used in making that assessment, to the extent that they reasonably relate to those amounts.

45-340 **Adjusted tax on adjusted taxable income or on adjusted withholding income**

Your **adjusted tax** on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out as follows:

Method statement

Step 1. The income tax payable on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out disregarding any *tax offset under:

- (aa) section 61-110 of the *Income Tax Assessment Act 1997* (the Low Income tax offset); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) Subdivision 61-G of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or
 - (da) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); or
 - (db) Division 160 of the *Income Tax Assessment Act 1997* (the corporate loss carry back tax offset for 2020-21, 2021-22 or 2022-23 for businesses with turnover under \$5 billion); or
 - (e) section 205-70 of the *Income Tax Assessment Act 1997* (the tax offset for *franking deficit tax liabilities); or
 - (g) section 290-230 of the *Income Tax Assessment Act 1997* (the tax offset for superannuation contributions made for a spouse); or
 - (ga) Subdivision 360-A of the *Income Tax Assessment Act 1997* (the tax offset for early stage investors in innovation companies); or
 - (h) Subdivision 418-B of the *Income Tax Assessment Act 1997* (the junior minerals exploration incentive tax offset).
- Step 2. The *Medicare levy payable on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out disregarding sections 8B, 8C, 8D, 8E, 8F and 8G of the *Medicare Levy Act 1986* (which increase Medicare levy in certain cases).
- Step 3. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

HELP debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

Step 3AAA. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated VETSL debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

Step 3AA. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated SSL debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

Step 3AB. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated ABSTUDY SSL debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

Step 3AC. The amount (if any) that you would have been liable to pay for the *base year in respect of an *accumulated AASL debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Step 3A. The amount (if any) that you would have been liable to pay for the *base year by way of an *FS assessment debt if your taxable income for the base year had been your *adjusted taxable income, or your *adjusted withholding income, for that year is worked out.

Step 4. The results of steps 1, 2, 3, 3AAA, 3AA, 3AB, 3AC and 3A are added together. The result is your **adjusted tax** on your *adjusted taxable income, or on your *adjusted withholding income.

Subdivision 45-K—How Commissioner works out your benchmark instalment rate and benchmark tax

Table of sections

45-355	When Commissioner works out benchmark instalment rate and benchmark tax
45-360	How Commissioner works out <i>benchmark instalment rate</i>
45-365	Working out your <i>benchmark tax</i>
45-370	Working out your <i>adjusted assessed taxable income</i> for the variation year
45-375	<i>Adjusted assessed tax</i> on adjusted assessed taxable income

45-355 When Commissioner works out benchmark instalment rate and benchmark tax

- (1) The Commissioner may work out your *benchmark instalment rate for an income year (the **variation year**) if, under section 45-205, you choose an instalment rate to work out the amount of your instalment for an *instalment quarter in that year.
- (1A) The Commissioner may work out your *benchmark tax for an income year (the **variation year**) if, under paragraph 45-112(1)(b) or (c), the amount of your instalment for an *instalment quarter in an income year is worked out on the basis of your estimate of your *benchmark tax for that income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The Commissioner may work out your *benchmark tax for an income year (the **variation year**) if, under paragraph 45-115(1)(c), you estimate the amount of your annual instalment for that year.

45-360 How Commissioner works out *benchmark instalment rate*

- (1) Your **benchmark instalment rate** for the variation year is the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your *benchmark tax}}{\text{Variation year instalment income}} \times 100$$

However, your **benchmark instalment rate** is a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

variation year instalment income means so much of your assessable income for the variation year as the Commissioner determines is *instalment income for that year.

45-365 Working out your *benchmark tax*

Benchmark tax if you had no withholding income

- (1) Your **benchmark tax** is your *adjusted assessed tax (worked out under section 45-375) on your *adjusted assessed taxable income (worked out under section 45-370) for the variation year.

Benchmark tax if you have no-TFN contributions income

- (1A) In working out the **benchmark tax** of a *complying superannuation fund, *non-complying superannuation fund or *RSA provider for the variation year, assume that the entity had no *no-TFN contributions income for the variation year and that the entity was not entitled to a *tax offset for the variation year under Subdivision 295-J of the *Income Tax Assessment Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Benchmark tax if you had withholding income

- (2) However, your **benchmark tax** (as worked out under subsection (1)) is reduced if your assessable income for the variation year includes amounts in respect of *withholding payments.
- (3) It is reduced (but not below nil) by the sum of:
 - (a) the total amount of the credits to which you are entitled for the variation year under section 18-15 (for amounts withheld from withholding payments made to you during the variation year); and
 - (b) the total amount of the credits to which you are entitled for the variation year under section 18-27 (for amounts paid under Division 13 in respect of amounts included in your assessable income under section 86-15 of the *Income Tax Assessment Act 1997*).

45-370 Working out your *adjusted assessed taxable income* for the variation year

- (1) Your **adjusted assessed taxable income** for the variation year is your taxable income for the year, reduced by any *net capital gain included in your assessable income for the year.

Exception: superannuation entities and net capital gains

- (2) In working out the **adjusted assessed taxable income**, taxable income is not reduced by any *net capital gain in the case of:
 - (a) a *complying approved deposit fund or a *non-complying approved deposit fund for the variation year; or
 - (b) a *complying superannuation fund or a *non-complying superannuation fund for the variation year; or
 - (c) a *pooled superannuation trust for the variation year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Special rule for life insurance companies

- (3) The **adjusted assessed taxable income** of a *life insurance company for the variation year is worked out as follows:

Method statement

- Step 1. Recalculate the *ordinary class of the taxable income for the variation year on the basis that the assessable income that relates to the class did not include any *net capital gain.
- Step 2. Add to the step 1 result the *complying superannuation class of the taxable income for the variation year.

45-375 Adjusted assessed tax on adjusted assessed taxable income

Your **adjusted assessed tax** on your *adjusted assessed taxable income for the variation year is worked out as follows:

Method statement

- Step 1. The income tax payable on your *adjusted assessed taxable income for the variation year is worked out disregarding any *tax offset under:
- (aa) section 61-110 of the *Income Tax Assessment Act 1997* (the Low Income tax offset); or
 - (a) Subdivision 61-G of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or
 - (ca) Subdivision 61-L of the *Income Tax Assessment Act 1997* (tax offset for Medicare levy surcharge (lump sum payments in arrears)); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (d) section 205-70 of the *Income Tax Assessment Act 1997* (the tax offset for *franking deficit tax liabilities); or
 - (f) section 290-230 of the *Income Tax Assessment Act 1997* (the tax offset for superannuation contributions made for a spouse); or
 - (fa) Subdivision 360-A of the *Income Tax Assessment Act 1997* (the tax offset for early stage investors in innovation companies); or
 - (g) Subdivision 418-B of the *Income Tax Assessment Act 1997* (the junior minerals exploration incentive tax offset).
- Step 2. The *Medicare levy payable on your *adjusted assessed taxable income for the variation year is worked out disregarding sections 8B, 8C, 8D, 8E, 8F and 8G of the *Medicare Levy Act 1986* (which increase Medicare levy in certain cases).
- Step 3. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated HELP debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.
- Step 3AAA. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated VETSL debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.
- Step 3AA. The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated SSL debt if your taxable income for that year had been

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

	your *adjusted assessed taxable income for that year is worked out.
Step 3AB.	The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated ABSTUDY SSL debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.
Step 3AC.	The amount (if any) that you would have been liable to pay for the variation year in respect of an *accumulated AASL debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.
Step 3A.	The amount (if any) that you would have been liable to pay for the variation year by way of an *FS assessment debt if your taxable income for that year had been your *adjusted assessed taxable income for that year is worked out.
Step 4.	The results of steps 1, 2, 3, 3AAA, 3AA, 3AB, 3AC and 3A are added together. The result is your <i>adjusted assessed tax</i> on your *adjusted assessed taxable income for the variation year.

Subdivision 45-L—How Commissioner works out amount of quarterly instalment on basis of GDP-adjusted notional tax

Table of sections

45-400	Working out amount of instalment—payers of 4 quarterly instalments
45-402	Working out amount of instalment—payers of 2 quarterly instalments
45-405	Working out your <i>GDP-adjusted notional tax</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-400

45-400 Working out amount of instalment—payers of 4 quarterly instalments

Scope

- (1) This section applies if you are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year (the **current year**).

Working out amount of instalment

- (2) The amount of your instalment for that *instalment quarter which the Commissioner must work out and notify to you under paragraph 45-112(1)(a) is:
- (a) the amount worked out in accordance with the table if it is positive; or
 - (b) otherwise—nil.

Amount of quarterly instalment worked out on basis of GDP-adjusted notional tax

Item	If the instalment quarter is:	The amount of the instalment is:
1	the first in that income year for which you are liable to pay an instalment	25% of your *GDP-adjusted notional tax
2	the second in that income year for which you are liable to pay an instalment	50% of your *GDP-adjusted notional tax, reduced by the amount of your instalment for the earlier *instalment quarter in that income year
3	the third in that income year for which you are liable to pay an instalment	75% of your *GDP-adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Amount of quarterly instalment worked out on basis of GDP-adjusted notional tax

Item	If the instalment quarter is:	The amount of the instalment is:
4	the fourth in that income year for which you are liable to pay an instalment	100% of your *GDP-adjusted notional tax, reduced by the total of your instalments for earlier *instalment quarters in that income year

Note: Your instalments for earlier instalment quarters may have been worked out on a basis other than GDP-adjusted notional tax.

Amount reduced in circumstances specified by regulations

- (3) In the circumstances (if any) specified by the regulations, the amount worked out in accordance with the table in subsection (2) is reduced by the amount worked out under the regulations.
- (4) Without limiting subsection (3), the regulations may specify circumstances by:
 - (a) specifying the particular *instalment quarter to which the reduction applies; or
 - (b) specifying the kind of payers to whom the reduction applies.
- (5) In working out, under subsection (2), the amount of your instalment for an *instalment quarter in an income year, assume that there had not been any reductions under subsection (3) for earlier instalment quarters in that year.

45-402 Working out amount of instalment—payers of 2 quarterly instalments

- (1) This section applies if you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year (the *current year*).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-402

- (2) If you are liable to pay an instalment for that *instalment quarter, the amount of that instalment which the Commissioner must work out and notify to you under paragraph 45-112(1)(a) is:
- (a) the amount worked out in accordance with this section if it is positive; or
 - (b) otherwise—nil.

Amount of instalment

- (3) Subject to subsections (4) to (6), the amount of that instalment is worked out in accordance with the following table:

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
1	the third *instalment quarter in the income year	75% of your *GDP-adjusted notional tax
2	the fourth *instalment quarter in the income year	100% of your *GDP-adjusted notional tax, reduced by your instalment for earlier instalment quarter in that income year

You receive instalment rate for the first time in second quarter

- (4) If the Commissioner gives you an instalment rate for the first time during the second *instalment quarter in that income year, the amount of the instalment is worked out in accordance with the following table:

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
1	the third *instalment quarter in the income year	50% of your *GDP-adjusted notional tax

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
2	the fourth *instalment quarter in the income year	75% of your *GDP-adjusted notional tax, reduced by your instalment for the earlier instalment quarter in that income year

You receive instalment rate for the first time in third quarter

- (5) If the Commissioner first gives you an instalment rate during the third *instalment quarter in that income year, the amount of the instalment is worked out in accordance with the following table:

Amount of quarterly instalment		
Item	If the *instalment quarter is:	the amount of the instalment is:
1	the third *instalment quarter in the income year	25% of your *GDP-adjusted notional tax
2	the fourth *instalment quarter in the income year	50% of your *GDP-adjusted notional tax, reduced by your instalment for the earlier instalment quarter in that income year

You receive instalment rate for the first time in fourth quarter

- (6) If the Commissioner first gives you an instalment rate during the fourth *instalment quarter in that income year, the amount of the instalment must be equal to 25% of your *GDP-adjusted notional tax.

45-405 Working out your *GDP-adjusted notional tax*

- (1) Except as provided by section 45-775, your ***GDP-adjusted notional tax*** is worked out in the same way as your *notional tax would be worked out for the purposes of working out an instalment rate if that instalment rate were to be given to you at the same time

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-405

as notice of the amount of the instalment referred to in section 45-400 or 45-402 (as appropriate).

(2) However, for the purposes of subsection (1):

- (a) your *adjusted taxable income for the *base year; and
- (b) your *adjusted withholding income (if any) for the *base year;

are each increased in accordance with the formula:

$$\text{Original amount} \times (1 + \text{GDP adjustment})$$

(3) For the purposes of the formula in subsection (2):

original amount means the amount that, apart from subsection (2), would be your *adjusted taxable income for the *base year, or your *adjusted withholding income for the *base year, as appropriate.

GDP adjustment means:

- (a) the percentage (rounded to the nearest whole number, rounding down a number ending in .5) worked out using the following formula; or
- (b) if the percentage worked out using the formula is negative—0%:

$$\left(100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}} \right) - 100$$

(4) For the purposes of the formula in subsection (3):

sum of GDP amounts (current year) means the sum of the *GDP amounts, for the *quarters in the last calendar year (the **later calendar year**) ending at least 3 months before the start of the current year, specified in the document referred to in subsection (6).

sum of GDP amounts (previous year) means the sum of the *GDP amounts, for the *quarters in the calendar year (the **earlier calendar year**) before the later calendar year, specified in the document referred to in subsection (6).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (5) The **GDP amount** for a *quarter is the amount published by the Australian Statistician as the original gross domestic product at current prices for that quarter.
- (6) The **GDP adjustment** must be worked out on the basis of the first document that:
 - (a) is published by the Australian Statistician after the end of the later calendar year; and
 - (b) sets out the *GDP amounts for all the *quarters in both the later calendar year and the earlier calendar year.
- (7) To avoid doubt, subsections 45-325(4) and (5) also have effect for the purposes of working out your *GDP-adjusted notional tax.

Nil GDP adjustment for 2020-21 income year

- (8) Despite subsections (3) and (6), if the current year is the 2020-21 income year, then for the purposes of the formula in subsection (2) the **GDP adjustment** is 0%.

Note: This subsection will be repealed on 1 July 2025: see Part 2 of Schedule 5 to the *Treasury Laws Amendment (2020 Measures No. 3) Act 2020*.

Reduced GDP adjustment for 2022-23 income year

- (9) Despite subsections (3) and (6), if the current year is the 2022-23 income year, then for the purposes of the formula in subsection (2) the **GDP adjustment** is 2%.

Note: This subsection will be repealed on 1 July 2027: see Part 2 of Schedule 5 to the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*.

Reduced GDP adjustment for 2023-24 income year

- (10) Despite subsections (3) and (6), if the current year is the 2023-24 income year, then for the purposes of the formula in subsection (2) the **GDP adjustment** is 6%.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-410

Note: This subsection will be repealed on 1 July 2028: see Part 2 of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 2) Act 2023*.

Subdivision 45-M—How amount of quarterly instalment is worked out on basis of your estimate of your benchmark tax

Table of sections

45-410	Working out amount of instalment—payers of 4 quarterly instalments
45-412	Working out amount of instalment—payers of 2 quarterly instalments
45-415	Estimating your benchmark tax
45-420	Credit in certain cases where amount of instalment is nil

45-410 Working out amount of instalment—payers of 4 quarterly instalments

(1A) This section applies if you are a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year (the *current year*).

- (1) For the purposes of paragraph 45-112(1)(b) or (c), the amount of your instalment for that *instalment quarter in an income year is:
- (a) the amount worked out, in accordance with this section, on the basis of the estimate of your *benchmark tax for that income year that section 45-415 requires to be used, if that amount is positive; or
 - (b) otherwise—nil.

Note: If the amount is negative, you can claim a credit under section 45-420.

First instalment quarter

- (2) If the *instalment quarter is the first in that income year for which you are liable to pay an instalment, the amount is 25% of the estimate of your *benchmark tax.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Second instalment quarter

- (3) If the *instalment quarter is the second in that income year for which you are liable to pay an instalment, the amount is worked out by subtracting:
- the amount of your instalment under section 45-112 for the earlier *instalment quarter in that income year;
- from:
- 50% of the estimate of your *benchmark tax.

Third instalment quarter

- (4) If the *instalment quarter is the third in that income year for which you are liable to pay an instalment, the amount is worked out using this method statement.

Method statement

- Step 1. The total of your instalments under section 45-112 for earlier *instalment quarters in that income year is subtracted from 75% of the estimate of your *benchmark tax.
- Step 2. If you were entitled to claim a credit under section 45-420 for the second of those earlier *instalment quarters, the amount of the credit is added to the step 1 amount.

Fourth instalment quarter

- (5) If the *instalment quarter is the fourth in that income year for which you are liable to pay an instalment, the amount is worked out using this method statement.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-412

Method statement

- Step 1. The total of your instalments under section 45-112 for earlier *instalment quarters in that income year is subtracted from the estimate of your *benchmark tax.
- Step 2. For each credit that you were entitled to claim under section 45-420 for any of those earlier *instalment quarters, the amount of the credit is added to the step 1 amount.

45-412 Working out amount of instalment—payers of 2 quarterly instalments

- (1) This section applies if you are a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax at the end of an *instalment quarter in an income year.
- (2) If you are liable to pay an instalment for that quarter, the amount of that instalment for the purposes of paragraph 45-112(1)(b) or (c) is:
 - (a) the amount worked out, in accordance with this section, on the basis of the estimate of your *benchmark tax for that income year that section 45-415 requires to be used, if that amount is positive; or
 - (b) otherwise—nil.

Note: If the amount is negative, you can claim a credit under section 45-420.

Instalment for third quarter

- (3) Subject to subsections (5) to (9), the amount of the instalment for the third *instalment quarter in that year is 75% of the estimate of your *benchmark tax.

Instalment for fourth quarter

- (4) Subject to subsections (5) to (9), the amount of the instalment for the fourth *instalment quarter in that year is worked out by subtracting:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(a) the amount of your instalment for the earlier instalment quarter in that year;

from:

(b) the estimate of your *benchmark tax.

You receive instalment rate for the first time in second quarter

(5) If the Commissioner gives you an instalment rate for the first time during the second *instalment quarter in the income year, the amount of the instalment for the third *instalment quarter in that year is 50% of the estimate of your *benchmark tax.

(6) If the Commissioner gives you an instalment rate for the first time during the second *instalment quarter in the income year, the amount of the instalment for the fourth instalment quarter in that year is worked out by subtracting:

(a) the amount of your instalment for the earlier instalment quarter in that year;

from:

(b) 75% of the estimate of your *benchmark tax.

You receive instalment rate for the first time in third quarter

(7) If the Commissioner gives you an instalment rate for the first time during the third *instalment quarter in the income year, the amount of the instalment for the third instalment quarter in that year is 25% of the estimate of your *benchmark tax.

(8) If the Commissioner gives you an instalment rate for the first time during the third *instalment quarter in the income year, the amount of the instalment for the fourth instalment quarter in that year is worked out by subtracting:

(a) the amount of your instalment for the earlier instalment quarter in that year;

from:

(b) 50% of the estimate of your *benchmark tax.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-415

You receive instalment rate for the first time in fourth quarter

- (9) If the Commissioner gives you an instalment rate for the first time during the fourth *instalment quarter in the income year, the amount of the instalment for that quarter is 25% of the estimate of your *benchmark tax.

45-415 Estimating your benchmark tax

- (1) If you choose under paragraph 45-112(1)(b) to work out the amount of your instalment for an *instalment quarter in an income year on the basis of your estimate of your *benchmark tax for that income year, you must make the estimate on or before the day on which the instalment is due (disregarding subsection 45-112(3)).
- (2) Having done so, you must use that estimate to work out the amount of that instalment. (You cannot later make another estimate for working out that amount.)

Note: If your estimate leads you to pay an instalment that is too low, you may be liable to general interest charge under section 45-232.

- (3) The Commissioner must also use that estimate to work out under this Subdivision the amount of each instalment:
- (a) that you are liable to pay for a later *instalment quarter in that income year; and
- (b) whose amount he or she must notify to you under paragraph 45-112(1)(c);

unless a later application of this subsection requires him or her to use a later estimate you make under subsection (1) of this section.

Note: This means that if an estimate you have made is not appropriate for a later instalment quarter in the same income year, you should choose under paragraph 45-112(1)(b) to work out the amount of your instalment for that later quarter on the basis of a new estimate under this section. If the instalment that the Commissioner works out on the basis of the earlier estimate is too low, you may be liable to general interest charge under section 45-232.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-420 Credit in certain cases where amount of instalment is nil

- (1) You are entitled to claim a credit if the amount of your instalment for an *instalment quarter (the *current quarter*) in an income year is nil because the amount worked out for the current quarter in accordance with section 45-410 or 45-412 (as appropriate) is negative. The amount of the credit is equal to that amount, expressed as a positive amount.
- (2) A claim for a credit must be made in the *approved form on or before the day on which the instalment for the current quarter is due.

Note: How the credit is applied is set out in Division 3 of Part IIB.

Subdivision 45-N—How this Part applies to the trustee of a trust

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-450

How Commissioner works out benchmark instalment rate and benchmark tax for a multi-rate trustee

- 45-525 When Commissioner works out benchmark instalment rate and benchmark tax
- 45-530 How Commissioner works out *benchmark instalment rate*
- 45-535 Working out your *benchmark tax*

Trustees to whom this Part applies

45-450 Trustees to whom a single instalment rate is given

- (1) This Part applies to a trustee covered by any of items 4 to 8, and 12 and 13, of the table in section 9-1 of the *Income Tax Assessment Act 1997*.
- (2) Such a trustee is called a ***single-rate trustee***.
- (3) This Part applies to the trustee of a trust that is a *public trading trust, for an income year as if the trustee had a taxable income for the income year equal to the net income of the trust for the income year.

45-455 Trustees to whom several instalment rates are given

Trustee previously assessed in respect of beneficiary

- (1) This Part also applies for an income year (the ***current year***), to the trustee of a trust, in respect of a beneficiary of the trust, if for a previous income year the trustee of the trust was liable to be assessed, and to pay tax, under subsection 98(1) or (2) of the *Income Tax Assessment Act 1936* in respect of that beneficiary.
- (2) However, this Part does not apply for the current year to the trustee in respect of that beneficiary if:
 - (a) for that previous income year the trustee was liable to be assessed, and to pay tax, under subsection 98(1) of the *Income Tax Assessment Act 1936* in respect of that beneficiary; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) that beneficiary will no longer be under a legal disability, or it is reasonable to expect that he or she will no longer be under a legal disability, at the end of the current year.

Trustee previously assessed under section 99 or 99A

- (3) This Part also applies for an income year to the trustee of a trust if for a previous income year the trustee was liable to be assessed, and to pay tax, under section 99 or 99A of the *Income Tax Assessment Act 1936*.

Multiple applications of this Part to the same trustee for the same income year

- (4) The application of this Part for an income year, to the trustee of a trust, in respect of a beneficiary of the trust, because of subsection (1), is distinct from, and additional to, each of the following:
 - (a) the application of this Part for that income year, to the trustee of the trust, in respect of another beneficiary;
 - (b) the application of this Part for that income year, to the trustee of the trust, because of subsection (3);
 - (c) the application of this Part for that income year to a beneficiary of the trust.
- (5) The application of this Part for an income year, to the trustee of a trust, because of subsection (3), is distinct from, and additional to, each of the following:
 - (a) the application of this Part for that income year, to the trustee of the trust, in respect of a beneficiary of the trust, because of subsection (1);
 - (b) the application of this Part for that income year to a beneficiary of the trust.
- (6) A **multi-rate trustee** is a trustee to whom this Part applies because of this section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-460

45-460 Rest of Subdivision applies only to multi-rate trustees

The rest of this Subdivision applies to you if, and only if, you are a *multi-rate trustee. (It applies instead of Subdivisions 45-J and 45-K.)

Note: Except as provided in the rest of this Subdivision or elsewhere, this Part applies according to its terms to a multi-rate trustee. For example, a multi-rate trustee can become an annual payer under Subdivision 45-E.

45-465 Meaning of *instalment income*

Your *instalment income* for a period is the whole of the trust's *instalment income for that period.

45-468 Multi-rate trustee may pay quarterly instalments

Subdivision 45-D (about quarterly payers) applies to you in the same way as it applies to an individual.

Note: This means that a multi-rate trustee may pay instalments on the basis of GDP-adjusted notional tax if the trustee otherwise satisfies the relevant test that applies to an individual.

How Commissioner works out instalment rate and notional tax for a multi-rate trustee

45-470 Working out instalment rate

- (1) An instalment rate that the Commissioner gives you must be the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your *notional tax}}{\text{Base assessment instalment income}} \times 100$$

However, the instalment rate must be a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

base assessment instalment income means so much of the assessable income of the trust, as worked out for the purposes of the **base assessment*, as the Commissioner determines is **instalment income* of the trust for the **base year*.

- (3) The ***base assessment*** is the latest assessment for the most recent income year for which an assessment has been made of the tax payable by you:
- (a) under subsection 98(1) or (2) of the *Income Tax Assessment Act 1936* in respect of the same beneficiary; or
 - (b) under section 99 or 99A of the *Income Tax Assessment Act 1936*;
- as appropriate.
- (4) However, if the Commissioner is satisfied that there is a later income year for which no tax is payable as mentioned in subsection (3), the ***base assessment*** is the latest return or other information from which an assessment of tax so payable for that income year would have been made.
- (5) The ***base year*** is the income year to which the **base assessment* relates.

45-473 Commissioner must notify you of notional tax

When the Commissioner gives you the instalment rate, he or she must also notify you of the amount of your **notional tax*, as worked out for the purposes of working out the instalment rate.

45-475 Working out your *notional tax*

Notional tax if no withholding income

- (1) Your ***notional tax*** is your **adjusted tax* (worked out under section 45-340) on your **adjusted taxable income* (worked out under section 45-480) for the **base year*.

**For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.*

Section 45-480

Notional tax if trust has withholding income

- (2) However, your **notional tax** (as worked out under subsection (1)) is reduced if the trust's assessable income for the *base assessment includes amounts in respect of *withholding payments (except *non-quotation withholding payments).
- (3) It is reduced (but not below nil) by your *adjusted tax (worked out under section 45-340) on your *adjusted withholding income (worked out under section 45-485) for the *base year.

Commissioner may take into account actual and proposed changes to the law

- (4) Subsections 45-325(4) and (5) apply for the purposes of working out your *notional tax under this section.

45-480 Working out your adjusted taxable income

- (1) Your **adjusted taxable income** for the *base year is worked out using the formula:

$$\begin{array}{c} \text{Adjusted net income} \\ \text{of the trust} \end{array} \times \frac{\text{Relevant share}}{\text{Reduced net income of the trust}}$$

- (2) For the purposes of the formula in subsection (1):

adjusted net income of the trust means the net income of the trust, as worked out for the purposes of the *base assessment and:

- (a) reduced by any *net capital gain included in the trust's assessable income as so worked out; and
- (b) increased by any deductions for *tax losses that were made in so working out that net income; and
- (c) reduced by the amount of any tax loss, to the extent that it is *unutilised at the end of the *base year.

reduced net income of the trust means the net income of the trust, as worked out for the purposes of the *base assessment and reduced

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

by any ^{*}net capital gain included in the trust's assessable income as so worked out.

relevant share means the ^{*}reduced beneficiary's share, or the ^{*}reduced no beneficiary's share, as appropriate, of the net income of the trust, as worked out for the purposes of the ^{*}base assessment.

45-483 Meaning of *reduced beneficiary's share* and *reduced no beneficiary's share*

- (1) If the trustee of a trust is liable to be assessed, and to pay tax, for an income year under subsection 98(1) or (2) of the *Income Tax Assessment Act 1936* in respect of a particular beneficiary, the **reduced beneficiary's share** of the net income is the amount on which the trustee is so liable to be assessed and to pay tax, except so much of that amount as is attributable to a ^{*}net capital gain included in the trust's assessable income for that income year.
- (2) If the trustee of a trust is liable to be assessed, and to pay tax, for an income year under section 99 or 99A of the *Income Tax Assessment Act 1936*, the **reduced no beneficiary's share** of the net income is the amount on which the trustee is so liable to be assessed and to pay tax, except so much of that amount as is attributable to a ^{*}capital gain made by the trust during that income year.

45-485 Working out your *adjusted withholding income*

- (1) Your **adjusted withholding income** for the ^{*}base year is worked out using the formula:

$$\frac{\text{Net withholding income of the trust}}{\text{of the trust}} \times \frac{\text{Relevant share}}{\text{Reduced net income of the trust}}$$

- (2) For the purposes of the formula in subsection (1):

net withholding income of the trust means:

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-525

- the total of the amounts included in the trust's assessable income for the *base assessment in respect of *withholding payments (except *non-quotation withholding payments);

reduced by:

- the trust's deductions for that year, as used in making that assessment, to the extent that they reasonably relate to those amounts.

reduced net income of the trust has the meaning given by subsection 45-480(2).

relevant share has the meaning given by subsection 45-480(2).

How Commissioner works out benchmark instalment rate and benchmark tax for a multi-rate trustee

45-525 When Commissioner works out benchmark instalment rate and benchmark tax

- (1) The Commissioner may work out your *benchmark instalment rate for an income year (the *variation year*) if, under section 45-205, you choose an instalment rate to work out the amount of your instalment for an *instalment quarter in that year.
- (2) The Commissioner may work out your *benchmark tax for an income year (the *variation year*) if, under paragraph 45-112(1)(b) or (c), the amount of your instalment for an *instalment quarter in an income year is worked out on the basis of your estimate of your *benchmark tax for that income year.
- (3) The Commissioner may work out your *benchmark tax for an income year (the *variation year*) if, under paragraph 45-115(1)(c), you estimate the amount of your annual instalment for that year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-530 How Commissioner works out *benchmark instalment rate*

- (1) Your ***benchmark instalment rate*** for the variation year is the percentage worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Your *benchmark tax}}{\text{Variation year instalment income}} \times 100$$

However, your ***benchmark instalment rate*** is a nil rate if either component of the formula is nil.

- (2) For the purposes of the formula in subsection (1):

variation year instalment income means so much of the trust's assessable income for the variation year as the Commissioner determines is *instalment income for that year.

45-535 Working out your *benchmark tax*

Benchmark tax if no withholding income

- (1) Your ***benchmark tax*** is your *adjusted assessed tax (worked out under section 45-375) on the *reduced beneficiary's share, or the *reduced no beneficiary's share, as appropriate, of the net income of the trust for the variation year.

Benchmark tax if you had withholding income

- (2) However, your ***benchmark tax*** (as worked out under subsection (1)) is reduced if the trust's assessable income for the variation year includes amounts in respect of *withholding payments.
- (3) It is reduced (but not below nil) by the total amount of the credits to which you are entitled for the variation year under section 18-25 (for amounts withheld from the withholding payments).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-595

Subdivision 45-P—Anti-avoidance rules

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45-620	Amount on which GIC is payable, and period for which it is payable
45-625	Credit if you also got a tax detriment from the scheme
45-630	When do you get a <i>tax detriment</i> from a scheme?
45-635	No tax benefit or detriment results from choice for which income tax law expressly provides
45-640	Commissioner may remit general interest charge in special cases

45-595 Object of this Subdivision

- (1) The object of this Subdivision is to penalise an entity whose ^{*}tax position, so far as it relates to ^{*}PAYG instalments (and related credits and ^{*}general interest charge), is altered by a ^{*}scheme that is inconsistent with:
 - (a) the purposes and objects of this Part ; or
 - (b) the purposes and objects of any relevant provisions of this Part;(whether those purposes and objects are stated expressly or not).
- (2) This Subdivision is *not* intended to apply to a straightforward use of structural features of this Part if that use is consistent with the purposes and objects mentioned in subsection (1).
- (3) This Subdivision is to be interpreted and applied accordingly.

45-597 Effect of Subdivision in relation to instalment months

This Subdivision has effect in relation to an ^{*}instalment month in the same way in which it has effect in relation to an ^{*}instalment quarter.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-600 General interest charge on tax benefit relating to instalments

- (1) You are liable to pay the *general interest charge under section 45-620 if:
- (a) you get a *tax benefit from a *scheme; and
 - (b) the tax benefit relates to a *component of your *tax position for an income year, and that component is covered by section 45-610; and
 - (c) having regard to the matters referred to in subsection (3), it would be concluded that an entity that entered into or carried out the scheme (or part of it) did so for the sole or dominant purpose of:
 - (i) an entity (whether you, that entity or another entity) getting one or more tax benefits from the scheme; or
 - (ii) 2 or more entities (whether or not including you or that entity) each getting one or more tax benefits from the scheme.
- (2) It does not matter:
- (a) whether or not you entered into or carried out the *scheme (or part of it); or
 - (b) whether the entity that entered into or carried out the scheme (or part of it) did so alone or together with one or more others; or
 - (c) whether the scheme (or any part of it) was entered into or carried out inside or outside Australia; or
 - (d) whether or not the *tax benefit you got is of the same kind as a tax benefit mentioned in paragraph (1)(c).

Matters to be considered in determining purpose of scheme

- (3) In considering an entity's purpose in entering into or carrying out a *scheme (or part of one), have regard to these matters:
- (a) the manner in which the scheme or part was entered into or carried out;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-605

- (b) the form and substance of the scheme, including:
 - (i) the legal rights and obligations involved in the scheme;
and
 - (ii) the economic and commercial substance of the scheme;
- (c) the purposes and objects of this Part and of any relevant provisions of this Part (whether those purposes and objects are stated expressly or not);
- (d) the timing of the scheme;
- (e) the period over which the scheme was entered into and carried out;
- (f) the effect that this Act would have in relation to the scheme apart from this Subdivision;
- (g) any change in your financial position that has resulted from the scheme, or may reasonably be expected to result from it;
- (h) any change that has resulted from the scheme, or may reasonably be expected to result from it, in the financial position of an entity that has or had a connection or dealing with you, whether the connection or dealing is or was of a family, business or other nature;
- (i) any other consequence for you, or for such an entity, of the scheme having been entered into or carried out;
- (j) the nature of the connection between you and such an entity, including the question whether the dealing is or was at *arm's length.

GIC is payable on each of 2 or more tax benefits

- (4) If you get 2 or more *tax benefits from the *scheme, this section has a separate application to each of them.

45-605 When do you get a *tax benefit* from a scheme?

- (1) This section describes how to work out whether you get a ***tax benefit*** from a *scheme and, if so, the amount of the tax benefit.
- (2) First, determine your actual *tax position for an income year (apart from this Subdivision).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) Next, determine your *hypothetical tax position for the same income year (apart from this Subdivision).
- (4) Then compare each *component of the 2 positions. If the amount of that component of the actual *tax position is *lower* than the amount of that component of the *hypothetical tax position, the difference between the 2 amounts is a ***tax benefit*** that you get from the *scheme.

Note 1: The difference between the 2 amounts is *not* a tax benefit to the extent that it is attributable to certain things for which the income tax law expressly provides. See section 45-635.

Note 2: An entity may get 2 or more tax benefits from the same scheme. One reason is that the scheme may affect 2 or more components of the entity's tax position for an income year. Another reason is that the scheme may affect the tax position for 2 or more income years.

45-610 What is your *tax position* for an income year?

Your ***tax position*** for an income year consists of a number of ***components***. The table sets out each component, and how to work out the amount of the component.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-610

Components of your tax position that relate to PAYG instalments and credits		
Item	Each of these is a <i>component</i>:	The amount of that component is:
1	Your instalment for each *instalment quarter in the income year is a <i>quarterly instalment component</i> .	<p>The amount worked out as follows:</p> <p>(a) if you are liable to pay an instalment for that instalment quarter—the amount of the instalment; or</p> <p>(b) if for any reason you are not liable to pay an instalment for that instalment quarter—nil (even if you are an *annual payer or a *quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax); or</p> <p>(c) if you are entitled to claim a credit for that instalment quarter under section 45-420 (because the instalment for that quarter is to be worked out on the basis of your estimated benchmark tax)—the amount of the credit (expressed as a negative amount).</p>
2	Your annual instalment for the income year is the <i>annual instalment component</i> .	<p>The amount worked out as follows:</p> <p>(a) if you are liable to pay an annual instalment for the income year—the amount of the instalment; or</p> <p>(b) if for any reason you are not liable to pay an annual instalment for the income year—nil (even if you are a *quarterly payer).</p>
3	A <i>variation credit component</i> is a credit arising under section 45-215 because the amount of your instalment for an *instalment quarter in the income year is to be worked out using an instalment rate you chose under section 45-205.	<p>The amount worked out as follows:</p> <p>(a) if you are entitled to the credit—the amount of the credit (expressed as a negative amount); or</p> <p>(b) otherwise—nil.</p>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-610

Components of your tax position that relate to PAYG instalments and credits

Item	Each of these is a <i>component</i> :	The amount of that component is:
4	<p>A <i>variation GIC component</i> is the *general interest charge you are liable to pay under:</p> <p>(a) subsection 45-230(2) (varied instalment rate); or</p> <p>(b) subsection 45-232(2) (estimated benchmark tax); or</p> <p>(c) subsection 45-235(2) or (3) (annual instalment);</p> <p>because of how your instalment for an *instalment quarter in the income year, or for the income year, was worked out.</p>	<p>The amount worked out as follows:</p> <p>(a) if you are liable to pay the charge—the amount of the charge; or</p> <p>(b) otherwise—nil.</p>

Example: A scheme results in X Pty Ltd being able to choose to be an annual payer for the 2000-01 income year.

The following table shows the actual tax position of X Pty Ltd for that year, and also its hypothetical tax position as defined in section 45-615. X Pty Ltd has got 4 tax benefits from the scheme: one for each of the 4 instalment quarters.

2000-01 income year

For this component:	The amount of that component of the actual tax position is:	The amount of that component of the hypothetical tax position is:
Quarterly instalment component for first instalment quarter	nil	\$3,000
Quarterly instalment component for second instalment quarter	nil	\$4,000

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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2000-01 income year		
For this component:	The amount of that component of the actual tax position is:	The amount of that component of the hypothetical tax position is:
Quarterly instalment component for third instalment quarter	nil	\$3,000
Quarterly instalment component for fourth instalment quarter	nil	\$2,000
Annual instalment component	\$12,000	nil

45-615 What is your *hypothetical tax position* for an income year?

Your *hypothetical tax position* for an income year is what would have been, or what could reasonably be expected to have been, your **tax position* for the income year if the **scheme* had not been entered into or carried out.

45-620 Amount on which GIC is payable, and period for which it is payable

- (1) You are liable to pay the **general interest charge* on twice the **tax benefit* mentioned in paragraph 45-600(1)(a).

Note 1: To the extent that you also got a tax detriment from the scheme, you get a credit: see section 45-625.

Note 2: In special circumstances the Commissioner can remit some or all of the general interest charge: see section 45-640.

- (2) You are liable to pay the charge for each day in the period that:
- (a) started at the beginning of the day by which your instalment for the period mentioned in the applicable item of the table in section 45-610 was due to be paid, or would have been due to be paid if you had been liable to pay an instalment for that period; and

**For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.*

- (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (3) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (1). You must pay the charge within 14 days after the notice is given to you.
- (4) If any of the *general interest charge to which you are liable under subsection (1) remains unpaid at the end of the 14 days referred to in subsection (3), you are also liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.

45-625 Credit if you also got a tax detriment from the scheme

- (1) You are entitled to a credit if:
 - (a) you are liable to pay *general interest charge under section 45-620 because you got one or more *tax benefits from the *scheme; and
 - (b) the Commissioner is satisfied that:
 - (i) you got a *tax detriment from the scheme; and
 - (ii) the tax detriment relates to a *component of your *tax position for an income year, and that component is covered by section 45-610.

(It does not matter whether that income year is the same as the one referred to in section 45-600.)

Note: How the credit is applied is set out in Division 3 of Part IIB.
- (2) The credit is equal to the *general interest charge on twice the amount of the *tax detriment for each day in the period that:
 - (a) started at the beginning of the day by which your instalment for the period mentioned in the item of the table in

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-630

section 45-610 that applies for the purposes of working out the amount of the tax detriment:

- (i) was due to be paid; or
 - (ii) would have been due to be paid if you had been liable to pay an instalment for that period; and
 - (b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.
- (3) However, the credit cannot exceed the total *general interest charge you are liable to pay under section 45-620 because you got one or more *tax benefits from the *scheme.

Credit for each of 2 or more tax detriments

- (4) If you get 2 or more *tax detriments from the scheme, subsections (1) and (2) have a separate application to each of them. However, the total of the credits cannot exceed the total *general interest charge referred to in subsection (3).

45-630 When do you get a *tax detriment* from a scheme?

- (1) This section describes how to work out whether you get a ***tax detriment*** from a *scheme and, if so, the amount of the tax detriment.
- (2) First, determine your actual *tax position for an income year (apart from this Subdivision).
- (3) Next, determine your *hypothetical tax position for the same income year (apart from this Subdivision).
- (4) Then compare each *component of the 2 positions. If the amount of that component of the actual *tax position is *higher* than the amount of that component of the *hypothetical tax position, the difference between the 2 amounts is a ***tax detriment*** that you get from the *scheme.

Example: In the fact situation in the example in section 45-610, X Pty Ltd gets a tax detriment from the scheme for the annual instalment component of its tax position for the income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- Note 1: The difference between the 2 amounts is *not* a tax detriment to the extent that it is attributable to certain things for which the income tax law expressly provides. See section 45-635.
- Note 2: An entity may get 2 or more tax detriments from the same scheme. One reason is that the scheme may affect 2 or more components of the entity's tax position for an income year. Another reason is that the scheme may affect the tax position for 2 or more income years.

45-635 No tax benefit or detriment results from choice for which income tax law expressly provides

Choice under the income tax law generally

- (1) The difference between the 2 amounts referred to in subsection 45-605(4) or 45-630(4) is *not* a *tax benefit or *tax detriment if there would have been no difference between the 2 amounts but for one or more matters covered by subsection (3).
- (2) The difference between the 2 amounts is *not* a *tax benefit or *tax detriment to the extent that the difference between the 2 amounts would have been less but for one or more matters covered by subsection (3).
- (3) This subsection covers:
 - (a) an entity making an agreement, choice, declaration, election or selection; or
 - (b) an entity giving a notice or exercising an option;for which this Act expressly provides. However, this subsection does *not* cover an entity doing such a thing under:
 - (c) Subdivision 126-B (about CGT roll-overs involving certain companies in the same wholly-owned group) of the *Income Tax Assessment Act 1997*; or
 - (d) Subdivision 170-B of that Act (about transferring a net capital loss between certain companies in the same wholly-owned group).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Matters excluded in applying subsection (1) or (2)

- (4) Subsection (1) or (2) does not apply to a matter covered by subsection (3) if an entity entered into or carried out the *scheme (or part of it) for the sole or dominant purpose of creating a circumstance or state of affairs whose existence is necessary for the entity referred to in subsection (3):
- (a) to make the agreement, choice, declaration, election or selection; or
 - (b) to give the notice or exercise the option.

Choice under some CGT provisions

- (5) The difference between the 2 amounts is *not* a *tax benefit or *tax detriment if:
- (a) there would have been no difference between the 2 amounts but for one or more matters covered by subsection (7); and
 - (b) the *scheme consisted wholly of that matter or those matters.
- (6) Also, the difference between the 2 amounts is *not* a *tax benefit or *tax detriment to the extent that the difference between the 2 amounts would have been less but for one or more matters covered by subsection (7), but only if the *scheme consisted wholly of that matter or those matters.
- (7) This subsection covers:
- (a) a choice made under Subdivision 126-B (about CGT roll-overs involving certain companies in the same wholly-owned group) of the *Income Tax Assessment Act 1997*; or
 - (b) an agreement made under Subdivision 170-B of that Act (about transferring a net capital loss between certain companies in the same wholly-owned group);

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-640 Commissioner may remit general interest charge in special cases

- (1) The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under section 45-620.
- (2) If the Commissioner does so, section 45-625 (about credits for tax detriments from schemes) applies, and is taken always to have applied, as if the remitted amount had never been payable.

Subdivision 45-Q—General rules for consolidated groups

Guide to Subdivision 45-Q

45-700 What this Subdivision is about

This Subdivision allows the members of a consolidated group to be treated as a single entity for the purposes of Pay as you go (PAYG) instalments. Generally, the head company of the group is the entity liable to pay PAYG instalments.

The PAYG instalments provisions in this Part apply to the head company in much the same way as they apply to any other company. However, the operation of some of these provisions is modified by this Subdivision.

This Subdivision also contains special rules to deal with changes in the membership of the group.

Note 1: Subdivision 45-R contains special rules that apply to members of a consolidated group before they are treated as a single entity for the purposes of this Part. It also contains special rules that affect the operation of this Subdivision (see sections 45-880 and 45-885).

Note 2: Subdivision 45-S extends the operation of this Subdivision so that it can apply to members of a MEC group. It contains modifications of this Subdivision for the purposes of that extended operation.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Application of Subdivision

45-703 Effect of this Subdivision and Subdivision 45-R in relation to monthly payers

(1) If:

(a) a company is the *head company of a *consolidated group;
and

(b) the company is a *monthly payer;

this Subdivision and Subdivision 45-R have effect in relation to the company as the head company of the group in respect of an *instalment month in the same way in which they have effect in relation to a company that is a *quarterly payer as the head company of a consolidated group in respect of an *instalment quarter.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(2) If:

(a) an entity is a *subsidiary member of a *consolidated group;
and

(b) the entity is a *monthly payer;

this Subdivision and Subdivision 45-R have effect in relation to the entity in respect of an *instalment month in the same way in which they have effect in relation to an entity that is a *quarterly payer in respect of an *instalment quarter.

(3) However, those effects are subject to any modifications set out in those Subdivisions.

Note: Subdivision 45-S can also have effect in relation to a monthly payer because of the operation of this section and section 45-910.

45-705 Application of Subdivision to head company

Period during which Subdivision applies to head company

(1) Subject to sections 45-880 and 45-885, this Subdivision applies to a company as the *head company of a *consolidated group during the period:

(a) starting at the start of the *instalment quarter of the company determined under subsection (2), (3) or (4); and

(b) ending:

(i) at the end of the instalment quarter of the company determined under paragraph (5)(a) or (b); or

(ii) just before the instalment quarter of the company determined under paragraph (5)(c) or (d).

When the period begins—initial head company instalment rate

(2) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter under this subsection if, during that quarter, the Commissioner gives the company (as that head company) the *initial head company instalment rate.

Note: The operation of this subsection may be affected by section 45-885.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-705

When the period begins—group created from MEC group

- (3) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter (the **starting quarter**) under this subsection if all of the following conditions are satisfied:
- (a) the consolidated group is *created from a *MEC group during the starting quarter;
 - (b) the company is the head company of the consolidated group when the consolidated group is created from the MEC group;
 - (c) either of the following applies:
 - (i) this Subdivision applied, in accordance with Subdivision 45-S, to the *provisional head company of the MEC group at the end of the previous instalment quarter;
 - (ii) the Commissioner gives the *initial head company instalment rate to the provisional head company of the MEC group during the starting quarter.

Note: For the application of this Subdivision to a provisional head company of a MEC group: see section 45-915.

When the period begins—new head company

- (4) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter (the **starting quarter**) under this subsection if all of the following conditions are satisfied:
- (a) the company is an interposed company mentioned in subsection 615-30(2) of the *Income Tax Assessment Act 1997*;
 - (b) the company chooses under that subsection that the consolidated group is to continue in existence at and after the completion time mentioned in that subsection;
 - (c) the completion time occurs during the starting quarter;
 - (d) one of the following subparagraphs applies:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) this Subdivision applied to the original entity mentioned in that subsection (as the head company of the consolidated group) at the end of the previous instalment quarter;
- (ii) the Commissioner gives the *initial head company instalment rate to the original entity mentioned in that subsection (as the head company of the consolidated group) during the starting quarter;
- (iii) the consolidated group is *created from a *MEC group during the starting quarter and this Subdivision applied to the *provisional head company of the MEC group at the end of the previous instalment quarter;
- (iv) the consolidated group is created from a MEC group during the starting quarter and the Commissioner gives the initial head company instalment rate to the provisional head company of the MEC group during the starting quarter.

When the period begins—modified timing for head company that is monthly payer

- (4A) Subsection (4B) applies if:
- (a) apart from subsection (4B), this Subdivision starts to apply to a company as the *head company of a *consolidated group at a particular time because of the operation of subsection (2), (3) or (4); and
 - (b) the company is a *monthly payer; and
 - (c) the Commissioner gave the *initial head company instalment rate as mentioned in subsection (2), subparagraph (3)(c)(ii), subparagraph (4)(d)(ii) or subparagraph (4)(d)(iv) in an *instalment month.
- (4B) Treat subsection (2), (3) or (4) (as the case requires) as providing that this Subdivision starts to apply to the company as the *head company of the group at the start of the *next* *instalment month.

Note: For the application of this Subdivision to a monthly payer, see section 45-703.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-705

When the period ends

- (5) This Subdivision stops applying to a company as the *head company of a *consolidated group at the earliest of the following times after the company becomes the head company:
- (a) the end of the *instalment quarter during which the consolidated group ceases to exist (other than because a *MEC group is *created from the consolidated group);
 - (b) the end of the instalment quarter during which the Commissioner is notified of the creation of a MEC group from the consolidated group if the MEC group is created during that instalment quarter;
 - (c) just before the instalment quarter during which the Commissioner is notified of the creation of a MEC group from the consolidated group if the MEC group was created before that instalment quarter;
 - (d) just before the instalment quarter that includes the completion time mentioned in subsection 615-30(2) of the *Income Tax Assessment Act 1997* where an interposed company mentioned in that subsection chooses under that subsection that the consolidated group is to continue in existence.
- Note: The operation of this subsection because of paragraph (a) may be affected by section 45-880.
- (6) For the purposes of subsection (5), the Commissioner is notified of the creation of a *MEC group from a *consolidated group when the Commissioner receives a notice of the consolidation of the MEC group under subsection 719-40(1) of the *Income Tax Assessment Act 1997*.
- (7) If this Subdivision stops applying to a company as the *head company of a *consolidated group just before an *instalment quarter under paragraph (5)(c), then, for the purposes of this Part, this Act has effect for the company and other *members of the group as if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the consolidated group had continued to exist until just before the start of that quarter; and
 - (b) the company were the head company of the group until just before the start of that quarter.
- (8) To avoid doubt, this Subdivision does not apply to a company as the *head company of a *consolidated group for any time at all if:
- (a) subsection (2), (3) or (4), and subsection (5), would, apart from this subsection, apply to the company; but
 - (b) the time at which this Subdivision would stop applying to the company under subsection (5) is before the time at which this Subdivision would start to apply to the company under subsection (2), (3) or (4).
- (9) To avoid doubt, and apart from the operation of subsection (7), this Subdivision may apply to a company as the *head company of a *consolidated group at a time when the company is not in fact the head company of the group.

Note: An example of this is when an interposed company becomes the new head company of a consolidated group. Under this section and section 45-740, this Subdivision may start applying to the company as if it had already become the head company when it is not yet such a company.

Usual operation of this Part for consolidated group members

45-710 Single entity rule

If an entity is a *subsidiary member of a *consolidated group for any period during which this Subdivision applies to the *head company of the group:

- (a) that entity; and
 - (b) any other subsidiary member of the group;
- are taken for the purposes of this Part to be parts of that head company (rather than separate entities) during that period.

Note: That means, amongst other things, the head company would be liable to pay instalments for that period as if the subsidiary members were parts of the head company.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-715

45-715 When instalments are due—modification of section 45-61

- (1) If:
 - (a) the *head company of a *consolidated group is liable to pay an instalment for an *instalment quarter; and
 - (b) this Subdivision applies to the head company during that quarter;then, despite subsection 45-61(2), the instalment is due on or before the 21st day of the month after the end of that quarter whether or not the head company is a *deferred BAS payer on that day.
- (2) Subsection (3) applies if section 45-703 applies to the *head company of the *consolidated group (because it is a *monthly payer).
- (3) Treat the reference in subsection (1) to subsection 45-61(2) as instead being a reference to subsection 45-67(2).

45-720 Head company cannot be an annual payer—modification of section 45-140

Despite any other provisions in this Part, the *head company of a *consolidated group cannot choose to be an *annual payer under section 45-140 while this Subdivision applies to the head company.

Note: You stop being an annual payer when this Subdivision starts applying to you as the head company of a consolidated group: see section 45-160.

Membership changes

45-740 Change of head company

Object

- (1) The object of this section (except subsection (8)) is to ensure that, for the purposes of this Part, when a company becomes the new *head company of a *consolidated group:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the company inherits the history of the former head company of the group; and
 - (b) the history of the new head company is effectively ignored.
- (2) This section applies to a *head company of a *consolidated group if:
 - (a) the company is an interposed company mentioned in subsection 45-705(4) (an interposed company that chooses under subsection 615-30(2) of the *Income Tax Assessment Act 1997* that the consolidated group is to continue in existence at and after the completion time mentioned in that subsection); and
 - (b) the conditions in subsection 45-705(4) are satisfied in relation to the interposed company (whether or not this Subdivision applies to the company as the head company of the group for any period of time).
- (3) Everything that happened before the completion time in relation to the company (the **original company**) that was the *head company of the *consolidated group immediately before the completion time:
 - (a) is taken to have happened in relation to the interposed company instead of in relation to the original company; and
 - (b) is taken to have happened in relation to the interposed company instead of what would (apart from this section) be taken to have happened in relation to the interposed company before the completion time;just as if, at all times before the completion time:
 - (c) the interposed company had been the original company; and
 - (d) the original company had been the interposed company.
- (4) To avoid doubt, subsection (3) also covers everything that, immediately before the completion time, was taken to have happened in relation to the original company because of:
 - (a) section 701-1 of the *Income Tax Assessment Act 1997* (single entity rule); or
 - (b) section 701-5 of that Act (entry history rule); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-740

- (c) section 703-75 of that Act (effects of an interposed company becoming the *head company of a *consolidated group); or
 - (d) section 719-90 of that Act (effects of a change of head company of a *MEC group); or
 - (e) section 45-710 in this Schedule (single entity rule for the purposes of this Part), including an application of that section under Subdivision 45-S in this Schedule; or
 - (f) this section; or
 - (g) section 45-920 in this Schedule (effects of a change of *provisional head company of a MEC group for the purposes of this Part); or
 - (h) one or more previous applications of any of the provisions covered by paragraphs (a) to (g).
- (5) In addition, and without affecting subsection (3):
- (a) an assessment of the original company for an income year that ends before the income year that includes the completion time; or
 - (b) an amendment of the assessment;
- is taken to be something that had happened to the interposed company, whether or not the assessment or amendment is made before the completion time.
- (6) This section has effect for the purposes of applying this Part to *members of the *consolidated group in relation to an *instalment quarter of the interposed company that ends after the completion time.
- Note: An assessment mentioned in subsection (5) may therefore be taken to be the base assessment of the interposed company for the purposes of this Part.
- (7) Subsections (1) to (6) are to be disregarded in applying section 45-705 (about the application of this Subdivision to a company as the *head company of a *consolidated group).
- Note: For example, if the Commissioner has given an initial head company instalment rate to the original company during an earlier instalment quarter, the rate is not, despite this section, treated as if it had been

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

given to the interposed company for the purposes of section 45-705.
Subject to the other provisions in that section, this Subdivision
therefore starts applying to the interposed company under
subsection 45-705(4).

Special rule for the original company

- (8) A provision of this Part that applies on an entity becoming a
*subsidiary member of a *consolidated group does not apply to the
original company when it is taken to have become such a member
at the completion time as a result of section 703-70 of the *Income
Tax Assessment Act 1997*.

Note: Section 45-755 (the entry rule) therefore does not apply to the original
company on the company becoming a subsidiary member of the
consolidated group.

**45-755 Entry rule (for an entity that becomes a subsidiary member of a
consolidated group)**

- (1) Despite any other provisions in this Part, an entity is liable to pay
an instalment for an *instalment quarter or income year (as
appropriate) during which the entity becomes a *subsidiary
member of a *consolidated group if:
- (a) this Subdivision applies to the *head company of the group at
any time during that quarter or year (as appropriate); and
 - (b) the entity would otherwise be liable to pay an instalment for
that quarter or year (as appropriate) if it had not become a
subsidiary member of the group; and
 - (c) the entity becomes a subsidiary member of the group on a
day other than the first day of that quarter or the first day of
that year (as appropriate).

Note: Under paragraph (b), this section could apply to an entity that, at the
time of becoming a subsidiary member of the group, was not a
subsidiary member of another consolidated group, or was a member of
another consolidated group but this Subdivision did not apply to the
head company of that other group at that time.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-760

Modifications for a quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax

- (2) Subsections (3) and (4) apply to the entity if:
- (a) the entity would have been a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of the *instalment quarter mentioned in subsection (1) if it had not become a *subsidiary member of the group; and
 - (b) the amount of the instalment payable by the entity for that quarter would have been worked out under paragraph 45-112(1)(b); and
 - (c) that quarter is not the fourth instalment quarter in an income year.
- (3) For the purposes of working out the amount of the instalment payable by the entity for that *instalment quarter, subsection 45-410(5) applies to the entity as if that quarter were the fourth instalment quarter in the income year for which the entity is liable to pay an instalment.
- (4) For the purposes of working out the *acceptable amount of the entity's instalment for that instalment quarter, subsection 45-232(3) applies to the entity as if that quarter were the fourth instalment quarter in the income year for which the entity is liable to pay an instalment.

45-760 Exit rule (for an entity that ceases to be a subsidiary member of a consolidated group)

- (1) This section applies to an entity if all of the following conditions are satisfied:
- (a) the entity ceases to be a *subsidiary member of a *consolidated group during an *instalment quarter of the *head company of the group;
 - (b) this Subdivision applies to the head company of the group during that instalment quarter;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) the entity does not, at the time it ceases to be a subsidiary member of the group, become:
 - (i) a subsidiary member of another consolidated group the head company of which is one to which this Subdivision applies at that time; or
 - (ii) a member (other than the *provisional head company) of a *MEC group the provisional head company of which is one to which this Subdivision applies, in accordance with Subdivision 45-S, at that time;
 - (d) this Part applies to the entity under section 45-10.
- (2) This Part applies to the entity as if:
- (a) the Commissioner had given the entity an instalment rate equal to the most recent instalment rate given to the *head company mentioned in paragraph (1)(a) before the end of the *instalment quarter mentioned in that paragraph; and
 - (b) the entity were a *quarterly payer who pays on the basis of instalment income at the end of that instalment quarter, and of each subsequent instalment quarter, until:
 - (i) if the Commissioner first gives the entity an instalment rate worked out on the basis of the *base assessment covered by subsection (3) during the first instalment quarter of an income year—immediately before the end of that first instalment quarter; or
 - (ii) if that rate is given to the entity during any other instalment quarter of an income year—immediately after the end of the last instalment quarter of that year.
- (3) This section only covers the first *base assessment of the entity for an income year that is, or includes, a period after the entity ceases to be a *subsidiary member of the group.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-775

45-775 Commissioner's power to work out different instalment rate or GDP-adjusted notional tax

- (1) This section applies if any of the following changes (the *membership change*) occurs in relation to a *consolidated group while this Subdivision applies to the *head company of the group:
 - (a) an entity becomes a *subsidiary member of the group or a number of entities become subsidiary members of the group;
 - (b) an entity ceases to be a subsidiary member of the group or a number of entities cease to be subsidiary members of the group.
- (2) If the Commissioner, having regard to the object of this Part and the membership change, is of the opinion that it would be reasonable to do so, the Commissioner may work out:
 - (a) an instalment rate that is higher, or lower, than the most recent instalment rate given by the Commissioner to the *head company under section 45-15; or
 - (b) an amount of *GDP-adjusted notional tax that is higher, or lower, than the amount of GDP-adjusted notional tax worked out for the purposes of the most recent amount of instalment notified by the Commissioner to the head company under paragraph 45-112(1)(a).
- (3) The new instalment rate or amount of *GDP-adjusted notional tax must be a rate or amount that, in the opinion of the Commissioner, is reasonable having regard to the object of this Part and the membership change.

Note 1: Subdivision 45-J does not apply for the purpose of working out an instalment rate under this section.

Note 2: Section 45-405 does not apply for the purpose of working out an amount of GDP-adjusted notional tax under this section.

Additional applications of subsection (2)

- (4) If, after exercising the power in relation to the membership change under subsection (2) for the first time, and on the basis of an assessment (including an amendment) of the *head company for

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

the income year in which the change occurs, or for an earlier year, the Commissioner has worked out:

- (a) another instalment rate under section 45-320 for the company (whether or not the Commissioner has given that rate to the company); or
- (b) another amount of *GDP-adjusted notional tax under section 45-405 for the company (whether or not the Commissioner has notified the company an amount of instalment based on that other amount);

the Commissioner may again exercise the power under subsection (2) in relation to the membership change, as if:

- (c) the rate mentioned in paragraph (a) were the most recent instalment rate mentioned in paragraph (2)(a); and
 - (d) the amount of GDP-adjusted notional tax mentioned in paragraph (b) were the amount of GDP-adjusted notional tax worked out for the purposes of the most recent amount of instalment that is mentioned in paragraph (2)(b).
- (5) To avoid doubt, in relation to the membership change, the Commissioner:
- (a) may exercise the power under subsection (2) by applying subsection (4) more than once; but
 - (b) must not exercise that power more than once in relation to a particular instalment rate mentioned in paragraph (4)(a) or a particular amount of *GDP-adjusted notional tax mentioned in paragraph (4)(b).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-850

Subdivision 45-R—Special rules for consolidated groups

Guide to Subdivision 45-R

45-850 What this Subdivision is about

This Subdivision deals with the application of this Part to members of a consolidated group after the group has come into existence but before the members are treated as a single entity for the purposes of this Part.

This Subdivision also contains special rules in relation to the application of Subdivision 45-Q to members of a consolidated group in these circumstances:

- (a) a group whose members were treated as a single entity under that Subdivision (a **mature group**) is acquired by another group (see section 45-880); or
- (b) a member of a mature group ceases to be such a member and becomes the head company of a new group (see section 45-885).

Note: Subdivision 45-S extends the operation of this Subdivision so that it can apply to members of a MEC group. It contains modifications of this Subdivision for the purposes of that extended operation.

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Operative provisions

45-855 Section 701-1 disregarded for certain purposes

If:

- (a) an amount is required to be worked out for the purpose of determining the *instalment income of an entity that is a *member of a *consolidated group for a period that is all or a part of a *consolidation transitional year for the entity; and
- (b) the period ends before Subdivision 45-Q starts to apply, because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv), to the *head company of the group;

that amount must be worked out without regard to any application of section 701-1 of the *Income Tax Assessment Act 1997* to the entity in relation to the period.

45-860 Member having a different instalment period

Different instalment period—instalment quarter

(1) If:

- (a) but for Subdivision 45-Q, a *subsidiary member of a *consolidated group would be liable to pay an instalment for an *instalment quarter of the subsidiary member that includes the starting time; and
- (b) that quarter starts before the start of the instalment quarter of the *head company of the group that includes the starting time;

then, despite section 45-710, the subsidiary member is liable to pay an instalment for that quarter.

Different instalment period—income year

(2) If:

- (a) but for Subdivision 45-Q, a *subsidiary member of a *consolidated group would be liable to pay an annual

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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instalment for an income year of the subsidiary member that includes the starting time; and

- (b) that year ends before the end of the income year of the *head company of the group that includes the starting time;

then, despite section 45-710, the subsidiary member is liable to pay an instalment for that year.

Assumptions for working out amount of instalment

- (3) The amount of the instalment must be worked out on the following assumptions:
- (a) that the *instalment quarter or income year of the *subsidiary member (as appropriate) consists only of the period that is the part of the quarter or year occurring before the starting time;
- (b) that an amount required to be worked out for the purpose of determining the *instalment income of the subsidiary member for that period is worked out under section 45-855.
- (4) For the purposes of this section, the **starting time** is the time at which Subdivision 45-Q starts to apply to the *head company of the group because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv).

45-865 Credit rule

- (1) When the Commissioner makes an assessment:
- (a) of the income tax that the *head company of a *consolidated group is liable to pay for a *consolidation transitional year for the head company; or
- (b) that no income tax is payable by the head company for that year;
- the head company is, in addition to any credit to which it is entitled under section 45-30 for that year, entitled to a credit in relation to instalments payable by an entity that is a *subsidiary member of the group at any time during that year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The credit is equal to:
- (a) the sum of so much of each instalment payable by the entity (even if it has not paid it) for an *instalment quarter of a *consolidation transitional year for the entity, or for that year, as is reasonably attributable to so much of that quarter or year:
 - (i) which is, or is included in, the consolidation transitional year for the *head company; and
 - (ii) during which the entity is a *subsidiary member of the group;
 - minus
 - (b) the sum of so much of each credit that the entity has claimed under section 45-215 or 45-420 for each instalment quarter covered by paragraph (a) as is reasonably attributable to:
 - (i) for a credit under section 45-215—so much of the preceding instalment quarters of that consolidation transitional year for the entity which is covered by subparagraphs (a)(i) and (ii); or
 - (ii) for a credit under section 45-420—so much of that instalment quarter and the preceding instalment quarters of that consolidation transitional year for the entity which is covered by subparagraphs (a)(i) and (ii).
- (3) To avoid doubt, if:
- (a) during the *instalment quarter or the *consolidation transitional year mentioned in paragraph (2)(a), the entity is a *subsidiary member of:
 - (i) 2 or more *consolidated groups; or
 - (ii) one or more consolidated groups and one or more *MEC groups; and
 - (b) an amount is taken into account under that paragraph or paragraph (2)(b) in working out the credit to which the *head company of one of the groups is entitled under subsection (1);

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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that amount is not to be taken into account in working out the credit to which the head company of another of those groups is entitled under that subsection.

- (4) A reference in subsection (3) to subsection (1) or paragraph (2)(a) or (b) includes a reference to that provision in its extended operation in relation to a *MEC group under Subdivision 45-S.

Note: This section applies to members of a MEC group with the modifications set out in section 45-930.

45-870 Head company's liability to GIC on shortfall in quarterly instalment

Liability for the general interest charge

- (1) Subject to subsections (3) and (4), the *head company of a *consolidated group is liable to pay the *general interest charge under this section for an *instalment quarter in a *consolidation transitional year for the head company if:
- (a) the instalment payable by at least one *member of the group for that quarter is worked out:
 - (i) under paragraph 45-112(1)(b) or (c); or
 - (ii) by using an instalment rate under section 45-205; and
 - (b) the sum of instalments payable by the members of the group for that quarter, reduced by credits claimed by those members under section 45-215 or 45-420 for that quarter, is less than $\frac{17}{80}$ of the head company's *benchmark tax for that consolidation transitional year.

Note: $\frac{17}{80}$ of the head company's benchmark tax represents an amount that is 85% of one quarter of that benchmark tax.

Amount on which the charge is payable

- (2) Subject to subsections (3) and (4), the *general interest charge is payable on the amount worked out in accordance with the following method statement (if the amount is a positive amount).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Method statement

- Step 1. Work out the amount that is $\frac{1}{4}$ of the *benchmark tax of the *head company for that *consolidation transitional year of that head company.
- Step 2. Work out the sum of instalments that would have been payable by all the *members of the group for that *instalment quarter of that *head company if none of the members had worked out its instalment for that quarter under paragraph 45-112(1)(b) or (c) or by using an instalment rate under section 45-205.
- Step 3. Work out the sum of instalments payable by all the *members of the group for that *instalment quarter, reduced by credits claimed by the members under section 45-215 or 45-420 for that quarter.
- Step 4. Reduce the lesser of the results of steps 1 and 2 by the result of step 3. The result of this step is the amount on which the *general interest charge is payable if it is a positive amount. No general interest charge is payable if the result of this step is nil or a negative amount.

Amounts of instalments or credits that are taken into account

- (3) In working out an amount of instalment or credit for a *subsidiary member of the group for the purposes of any of the following provisions:
- (a) paragraph (1)(b);
 - (b) step 2 or 3 of the method statement;
- take into account only an amount of instalment or credit covered by that provision that is reasonably attributable to a period in that *consolidation transitional year of the *head company during which it is a subsidiary member of the group.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-870

Members having different instalment quarters

- (4) In working out an amount of instalment or credit for a *subsidiary member whose *instalment quarters differ from those of the *head company for the purposes of any of the following provisions:
- (a) paragraph (1)(a) or (b);
 - (b) step 2 or 3 of the method statement;
- a reference to an instalment quarter in a *consolidation transitional year of the head company in any of those provisions includes a reference to the last instalment quarter of that subsidiary member ending before the end of that instalment quarter of the head company.
- (5) Subsections (6) and (7) apply if:
- (a) the *head company of the *consolidated group is a *monthly payer at a time in an *instalment month (the **current month**); and
 - (b) any of the other *members of the group (the **subsidiary quarterly payers**) are *quarterly payers at a time in the *instalment quarter (the **current quarter**) in which the current month starts.
- (6) Apply the following rules:
- (a) treat the reference in subsection (1) to an *instalment quarter as being a reference to the current month;
 - (b) treat the references in this section to that quarter (or that instalment quarter) as being references to the current month.
- (7) Also apply the following rules, for the purposes of subsections (1) to (5):
- (a) treat the subsidiary quarterly payers as *monthly payers for each *instalment month (a **notional instalment month**) that starts (disregarding paragraph (6)(a)) in the current quarter;
 - (b) apply this section separately in relation to each of those notional instalment months;
 - (c) treat the amount of instalment or credit for a subsidiary quarterly payer in respect of a notional instalment month as

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

being the extent to which the amount of instalment or credit for the subsidiary quarterly payer for the current quarter is attributable to that notional instalment month.

45-875 Other rules about the general interest charge

- (1) The *general interest charge under section 45-870 for an *instalment quarter in an income year is payable by the *head company for each day in the period that:
 - (a) started at the beginning of the day by which the instalment for that quarter was due to be paid; and
 - (b) finishes at the end of the day on which the head company's assessed tax for that income year is due to be paid.
- (2) The Commissioner must give the *head company written notice of the *general interest charge. The head company must pay the charge within 14 days after the notice is given to the head company.
- (3) If any of the *general interest charge remains unpaid at the end of the 14 days, the *head company is also liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (a) starts at the end of those 14 days; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on the unpaid amount.
- (4) The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under section 45-870.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-880

45-880 Continued application of Subdivision 45-Q to the head company of an acquired group

- (1) This section applies to a company for which all of the following conditions are satisfied in relation to a particular time (the **takeover time**):
 - (a) just before the takeover time, Subdivision 45-Q applied to the company as the *head company of a *consolidated group;
 - (b) at the takeover time, the company becomes a *wholly-owned subsidiary of a *member of another consolidated group or *MEC group;
 - (c) that other group is consolidated at or before the takeover time under section 703-50 or 719-50 of the *Income Tax Assessment Act 1997*;
 - (d) the Commissioner receives the choice (or notice) under that section for the consolidation of that other group not later than 28 days after the takeover time, or within such further period (if any) as the Commissioner allows;
 - (e) at the takeover time, Subdivision 45-Q (including that Subdivision as applied under Subdivision 45-S) does not apply to the head company or the *provisional head company of that other group.
- (2) For the purposes of this Part only, this Act has effect in relation to the company and the other *members of the *consolidated group mentioned in paragraph (1)(a) (the **preserved group**) as if, during the period covered by subsection (5):
 - (a) the preserved group had continued to exist as a consolidated group; and
 - (b) the company were still the *head company of the preserved group; and
 - (c) Subdivision 45-Q had continued to apply to the company as the head company of the preserved group; and
 - (d) an entity, while being a *subsidiary member of the preserved group, were not treated as a member of the group mentioned in paragraph (1)(b) (the **new group**).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) Subsection (2) does not stop the company from being a member of the new group for the purposes of this Part during the period covered by subsection (5).

Note: This means, for example, sections 45-855 and 45-860 apply to the head company as a member of the new group.

- (4) However, for the purposes of applying section 45-855 to the company, a reference in that section to an application of section 701-1 of the *Income Tax Assessment Act 1997* to the company in relation to the period mentioned in section 45-855 is taken to be:
- (a) a reference only to an application of section 701-1 of that Act to the company as a member of the new group during that period; and
 - (b) not a reference to an application (because of subsection (2) of this section) of section 701-1 of that Act to the company as the *head company of the preserved group during that period.
- (5) This subsection covers the period that starts from the start of the *instalment quarter of the company that includes the takeover time and ends at the earlier of the following times:
- (a) the end of the instalment quarter of the company during which the company ceases to be a member of the new group;
 - (b) just before the instalment quarter of the company during which the Commissioner gives the *initial head company instalment rate to the *head company, or the *provisional head company, of the new group.
- (6) The Commissioner may, on the application of the company made not later than 28 days after the takeover time, allow such extension of time for the purposes of paragraph (1)(d) as he or she considers appropriate.
- (7) To avoid doubt, nothing in this section prevents the operation of section 45-755 or 45-760 to *members of the preserved group while it continues to exist under subsection (2).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-885

45-885 Early application of Subdivision 45-Q to the head company of a new group

- (1) This section applies to a company for which all of the following conditions are satisfied in relation to a particular time (the *starting time*):
- (a) just before the starting time, the company was a *subsidiary member of a *consolidated group, or a member of a *MEC group;
 - (b) just before the starting time, the consolidated group or MEC group was a mature group (see subsection (4));
 - (c) at the starting time, either of the following applies:
 - (i) the company ceases to be a subsidiary member of the consolidated group, or a member of the MEC group;
 - (ii) the group ceases to exist (otherwise than because a MEC group or consolidated group is *created from the group, or because its *head company or *provisional head company becomes a *wholly-owned subsidiary of a member of another mature group);
 - (d) at the starting time, the company is the head company of another consolidated group;
 - (e) within 28 days after the starting time, or within such further period (if any) as the Commissioner allows, the Commissioner receives the notice under section 703-58 of the *Income Tax Assessment Act 1997* in relation to the choice to consolidate, at and after the starting time, that other consolidated group under section 703-50 of the *Income Tax Assessment Act 1997*.
- (2) For the purposes of this Part:
- (a) the instalment rate that the Commissioner is taken to have given to the company under paragraph 45-760(2)(a) has effect as if it were the *initial head company instalment rate for the company as the *head company of the *consolidated group mentioned in paragraph (1)(d); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) an instalment rate that would otherwise be the initial head company instalment rate for the company as the head company of that consolidated group is not to be treated as that initial head company instalment rate.

Note: This means, subject to the provisions in section 45-705, Subdivision 45-Q starts applying to the company as the head company of the consolidated group at the start of the instalment quarter that includes the starting time: see subsection (2) of that section and paragraph 45-760(2)(a).

- (3) The Commissioner may, on the application of the company made within 28 days after the starting time, allow such extension of time for the purposes of paragraph (1)(e) as he or she considers appropriate.

Mature group

- (4) For the purposes of this section, a *consolidated group or a *MEC group is a **mature group** at a particular time if:
- (a) for a consolidated group—Subdivision 45-Q applies to its *head company at that time; or
 - (b) for a MEC group—Subdivision 45-Q, as applied under Subdivision 45-S, applies to its *provisional head company at that time.

Subdivision 45-S—MEC groups

Guide to Subdivision 45-S

45-900 What this Subdivision is about

This Subdivision sets out how this Part applies in relation to MEC groups and their members.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-905

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Preliminary

45-905 Objects of Subdivision

The objects of this Subdivision are to:

- (a) extend the operation of this Part (except sections 45-705 and 45-740 and this Subdivision) so that it can apply in relation to *MEC groups and their members; and
- (b) modify the rules in this Part for that extended operation so that they take account of the special characteristics of MEC groups.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

General modification rules

45-910 Extended operation of Part to cover MEC groups

- (1) This Part (except sections 45-705 and 45-740 and this Subdivision) has effect in relation to members of a *MEC group in the same way in which it has effect in relation to *members of a *consolidated group.
- (2) However, that effect is subject to the modifications set out in the following table and elsewhere in this Subdivision.

Modifications of this Part		
Item	A reference in this Part to:	Is taken to be a reference to:
1	a *consolidated group	a *MEC group
2	the *head company of a *consolidated group	the *provisional head company of a *MEC group
3	a *subsidiary member of a *consolidated group	a member (other than the *provisional head company) of a *MEC group

Exceptions

- (3) The modifications set out in the table do not apply to the following provisions:
 - (a) this Subdivision;
 - (b) subsection 45-30(4) (see section 45-930);
 - (d) note 2 at the end of section 45-700;
 - (e) sections 45-705 and 45-740 (see sections 45-913, 45-915 and 45-920);
 - (f) subparagraphs 45-760(1)(c)(i) and (ii);
 - (g) the note at the end of section 45-850;
 - (h) sections 45-865 and 45-870 (see section 45-930);
 - (i) paragraphs (1)(b), (c), (d) and (e), and subsection (5), of section 45-880;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (j) paragraphs (1)(a), (b) and (c), and subsection (4), of section 45-885.

Note: The provisions covered by paragraphs (d), (f), (g), (i) and (j) apply to members of a MEC group without any modifications.

Extended operation of Subdivision 45-Q

45-913 Sections 45-705 and 45-740 do not apply to members of MEC groups

In applying Subdivision 45-Q to members of a *MEC group, the Subdivision has effect as if:

- (a) section 45-705 had no effect and section 45-915 had effect instead; and
- (b) section 45-740 had no effect and section 45-920 had effect instead.

45-915 Application of Subdivision 45-Q to provisional head company

Period during which Subdivision applies to provisional head company

- (1) Subject to sections 45-880 and 45-885 (as applied under this Subdivision), Subdivision 45-Q applies to a company as the *provisional head company of a *MEC group during the period:
 - (a) starting at the start of the *instalment quarter of the company determined under subsection (2), (3) or (4); and
 - (b) ending:
 - (i) at the end of the instalment quarter of the company determined under paragraph (6)(a) or (b); or
 - (ii) just before the instalment quarter of the company determined under paragraph (6)(c).

Note: The application of Subdivision 45-Q to the provisional head company is subject to the modifications set out in this section and elsewhere in this Subdivision.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

When the period begins—initial head company instalment rate

- (2) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter under this subsection if, during that quarter, the Commissioner gives the company (as that provisional head company) the *initial head company instalment rate.

Note: The operation of this subsection may be affected by section 45-885 (as applied under this Subdivision).

When the period begins—group created from consolidated group

- (3) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter (the **starting quarter**) under this subsection if all of the following conditions are satisfied:
- (a) during the starting quarter, the Commissioner is notified of the creation of the MEC group from a *consolidated group (see subsection (5));
 - (b) the company is the provisional head company of the MEC group when the Commissioner is so notified;
 - (c) either of the following applies:
 - (i) Subdivision 45-Q applied to the *head company of the consolidated group at the end of the previous instalment quarter;
 - (ii) the Commissioner gives the *initial head company instalment rate to the head company of the consolidated group during the starting quarter.

Note: For the application of Subdivision 45-Q to a head company of a consolidated group: see section 45-705.

When the period begins—new provisional head company

- (4) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter (the **starting quarter**) under this subsection if both of the following conditions are satisfied:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) the company is appointed as the provisional head company of the MEC group under subsection 719-60(3) of the *Income Tax Assessment Act 1997* during the starting quarter;
- (b) one of the following applies:
 - (i) Subdivision 45-Q applied to the former provisional head company of the MEC group at the end of the previous instalment quarter;
 - (ii) the Commissioner gives the *initial head company instalment rate to the former provisional head company of the MEC group during the starting quarter;
 - (iii) the Commissioner is notified during the starting quarter of the creation of the MEC group from a *consolidated group and Subdivision 45-Q applied to the *head company of the consolidated group at the end of the previous instalment quarter;
 - (iv) the Commissioner is notified during the starting quarter of the creation of the MEC group from a consolidated group and the Commissioner gives the initial head company instalment rate to the head company of the consolidated group during the starting quarter.

When the period begins—modified timing for provisional head company that is monthly payer

- (4A) Subsection (4B) applies if:
 - (a) apart from subsection (4B), Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at a particular time because of the operation of subsection (2), (3) or (4); and
 - (b) the company is a *monthly payer; and
 - (c) the Commissioner gave the *initial head company instalment rate as mentioned in subsection (2), subparagraph (3)(c)(ii), subparagraph (4)(b)(ii) or subparagraph (4)(b)(iv) in an *instalment month.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (4B) Treat subsection (2), (3) or (4) (as the case requires) as providing that Subdivision 45-Q starts to apply to the company as the *provisional head company of the *MEC group at the start of the *next* *instalment month.

Note: For the application of this Subdivision to a monthly payer, see sections 45-703 and 45-910.

Notification of creation of MEC group from consolidated group

- (5) For the purposes of subsections (3) and (4), the Commissioner is notified of the creation of a *MEC group from a *consolidated group when the Commissioner receives a notice of the consolidation of the MEC group under subsection 719-40(1) of the *Income Tax Assessment Act 1997*.

When the period ends

- (6) Subdivision 45-Q stops applying to a company as the *provisional head company of a *MEC group at the earliest of the following times after the company becomes the provisional head company:
- (a) the end of the *instalment quarter during which the MEC group ceases to exist (other than because a *consolidated group is *created from the MEC group);
 - (b) the end of the instalment quarter during which a consolidated group is created from the MEC group;
 - (c) just before the instalment quarter during which another company is appointed as the provisional head company of the MEC group under subsection 719-60(3) of the *Income Tax Assessment Act 1997*.

Note: The operation of this subsection because of paragraph (a) may be affected by section 45-880 (as applied under this Subdivision).

- (7) To avoid doubt, Subdivision 45-Q does not apply to a company as the *provisional head company of a *MEC group for any time at all if:
- (a) subsection (2), (3) or (4), and subsection (6), would, apart from this subsection, apply to the company; but

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 45-917

- (b) the time at which Subdivision 45-Q would stop applying to the company under subsection (6) is before the time at which that Subdivision would start to apply to the company under subsection (2), (3) or (4).
- (8) To avoid doubt, Subdivision 45-Q may apply to a company as the *provisional head company of a *MEC group at a time when the company is not in fact the provisional head company of the group.

Note: An example of this is when a company replaces another company as the provisional head company of a MEC group. Under this section and section 45-920, Subdivision 45-Q may start applying to the company as if it had already become the provisional head company when it is not yet such a company.

45-917 Assumption for applying section 45-710 (single entity rule)

In applying section 45-710 to members of a *MEC group at a particular time, the company that is the *provisional head company of the group at that time must be assumed to be the *head company of the group at all times during the period:

- (a) throughout which the group is in existence; and
- (b) that is all or a part of the income year of the company that includes that particular time.

45-920 Change of provisional head company

Object

- (1) The object of this section (except subsection (9)) is to ensure that, for the purposes of this Part, when a company becomes the new *provisional head company of a *MEC group:
 - (a) the company inherits the history of the former provisional head company; and
 - (b) the history of the new provisional head company is effectively ignored.
- (2) This section applies to a *provisional head company of a *MEC group (the ***new provisional head company***) that is appointed under

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

subsection 719-60(3) of the *Income Tax Assessment Act 1997* if one of the following conditions is satisfied:

- (a) the conditions in subsection 45-915(4) are satisfied in relation to the new provisional head company (whether or not Subdivision 45-Q applies to the company as the provisional head company of the group for any period of time);
- (b) the new provisional head company is so appointed during the *instalment quarter of the company in which the MEC group is *created from a *consolidated group and either:
 - (i) the Commissioner gives the *initial head company instalment rate to the *head company of the consolidated group during that instalment quarter; or
 - (ii) Subdivision 45-Q applied to the head company of the consolidated group at the end of the previous instalment quarter.
- (3) Everything that happened before the starting time in relation to the company (the **former company**) that was the *provisional head company of the *MEC group immediately before the starting time:
 - (a) is taken to have happened in relation to the new provisional head company instead of in relation to the former company; and
 - (b) is taken to have happened in relation to the new provisional head company instead of what would (apart from this section) be taken to have happened in relation to the new provisional head company before the starting time;just as if, at all times before the starting time:
 - (c) the new provisional head company had been the former company; and
 - (d) the former company had been the new provisional head company.
- (4) For the purposes of this section, the **starting time** is the time at which the *cessation event happened to the former company (the event that results in the appointment of the new provisional head company).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (5) To avoid doubt, subsection (3) also covers everything that, immediately before the starting time, was taken to have happened in relation to the former company because of:
- (a) section 701-1 of the *Income Tax Assessment Act 1997* (single entity rule); or
 - (b) section 701-5 of that Act (entry history rule); or
 - (c) section 703-75 of that Act (effects of an interposed company becoming the *head company of a *consolidated group); or
 - (d) section 719-90 of that Act (effects of a change of head company of a *MEC group); or
 - (e) section 45-710 in this Schedule (single entity rule for the purposes of this Part), including an application of that section under this Subdivision; or
 - (f) section 45-740 in this Schedule (effects of an interposed company becoming the head company of a consolidated group for the purposes of this Part); or
 - (g) this section; or
 - (h) one or more previous applications of any of the provisions covered by paragraphs (a) to (g).
- (6) In addition, and without affecting subsection (3):
- (a) an assessment of the former company for an income year that ends before the income year that includes the starting time; or
 - (b) an amendment of the assessment;
- is taken to be something that had happened to the new provisional head company, whether or not the assessment or amendment is made before the starting time.
- (7) This section has effect for the purposes of applying this Part to members of the *MEC group in relation to an *instalment quarter of the new provisional head company that ends after the starting time.

Note: An assessment mentioned in subsection (6) may therefore be taken to be the base assessment of the new provisional head company for the purposes of this Part.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (8) Subsections (1) to (7) are to be disregarded in applying section 45-915 (about the application of Subdivision 45-Q to a company as the *provisional head company of a *MEC group).

Note: For example, if the Commissioner has given an initial head company instalment rate to the former company during an earlier instalment quarter, the rate is not, despite this section, treated as if it had been given to the new provisional head company for the purposes of section 45-915. Subject to the other provisions in that section, Subdivision 45-Q therefore starts applying to the new provisional head company under subsection 45-915(4).

Special rule for the former company

- (9) A provision of this Part that applies on an entity becoming a member (other than the *provisional head company) of a *MEC group does not apply to the former company when it becomes such a member at the starting time.

Note: Section 45-755 (the entry rule, as applied under this Subdivision) therefore does not apply to the former company on the company becoming such a member of the MEC group.

45-922 Life insurance company

In applying Subdivision 45-Q to members of a *MEC group for an *instalment quarter of the *provisional head company of the group in an income year of the provisional head company, the company is taken to be a *life insurance company for that quarter if:

- (a) one or more life insurance companies are members of the group at any time during that quarter; or
- (b) one or more life insurance companies were members of the group at any time during a previous instalment quarter of the company in that year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Extended operation of Subdivision 45-R

45-925 Additional modifications of sections 45-855 and 45-860

In applying sections 45-855 and 45-860 to members of a *MEC group, those sections have effect as if, in addition to the modifications set out in the table in section 45-910:

- (a) a reference in those sections to subsection 45-705(2) were a reference to subsection 45-915(2); and
- (b) a reference in those sections to subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv) were a reference to subparagraph 45-915(3)(c)(ii), (4)(b)(ii) or (iv).

45-930 Modifications of sections 45-865 and 45-870 and a related provision

- (1) In applying sections 45-865 and 45-870, and subsection 45-30(4) (which is related to section 45-865), to members of a *MEC group, those provisions have effect as if:

- (a) a reference in those provisions to a *consolidated group were a reference to a *MEC group; and
- (b) a reference in those provisions to a MEC group were a reference to a consolidated group.

Note: This means a reference in those provisions to the head company of a consolidated group has effect as if it were a reference to the head company of a MEC group. Similarly, a reference in those provisions to a subsidiary member of a consolidated group has effect as if it were a reference to a subsidiary member of a MEC group.

- (2) However, the modifications in subsection (1) do not apply to subsection 45-865(4) and the note at the end of section 45-865.

Note: This means subsection 45-865(4) and the note apply to members of a MEC group without any modifications.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

45-935 Additional modifications of section 45-885

In applying section 45-885 to members of a *MEC group, that section has effect as if, in addition to the modifications set out in the table in section 45-910, it had been modified as set out in the following table:

Modifications of section 45-885		
Item	Provision:	Modification:
1	Paragraph 45-885(1)(e)	The paragraph is taken to have been replaced by the following paragraph: (e) within 28 days after the starting time, or within such further period (if any) as the Commissioner allows, the Commissioner receives a notice under section 719-76 of the <i>Income Tax Assessment Act 1997</i> in relation the consolidation of that other MEC group, at and after the starting time, under section 719-50 of the <i>Income Tax Assessment Act 1997</i> .
2	Subsection 45-885(2) (including the note at the end of the subsection)	A reference to paragraph 45-760(2)(a) is taken to be a reference to that paragraph as applied under this Subdivision
3	The note at the end of subsection 45-885(2)	The reference to section 45-705 is taken to be a reference to section 45-915

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 70-1

Part 2-15—Returns and assessments

Division 70—Tax receipts

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70-A	Tax receipts

Guide to Division 70

70-1 What this Division is about

The Commissioner must provide you with a tax receipt for an income year if you are an individual taxpayer and the total tax assessed to you for the income year is \$100 or more (or such other amount as determined by the Commissioner from time to time).

The tax receipt must include information about how the total tax assessed to you for the income year is notionally used to finance different categories of Commonwealth government expenditure.

The tax receipt must also include information about the total amount of Commonwealth government debt, for the current and previous financial years, and the expected total amount of interest to be paid on that debt during the current financial year.

Subdivision 70-A—Tax receipts

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

70-5 Tax receipt to be provided to certain individual taxpayers

- (1) The Commissioner must give you a *tax receipt in respect of an income year if:
 - (a) the Commissioner is required to give you a notice of assessment in respect of the income year and has not previously given you a notice in respect of the income year; and
 - (b) you are an individual; and
 - (c) the amount of income tax you owe (as worked out under step 4 of subsection 4-10(3) of the *Income Tax Assessment Act 1997*) for the *financial year that corresponds to the income year is equal to or greater than:
 - (i) if subparagraph (ii) does not apply—\$100; or
 - (ii) if the Commissioner has made a determination under subsection (2)—the amount specified in the determination; and
 - (d) the notice is given to you within the period of 18 months after the end of the income year.
- (2) The Commissioner may, by legislative instrument, make a determination that specifies an amount for the purposes of subparagraph (1)(c)(ii).
- (3) The *tax receipt must include the following information:
 - (a) your name;
 - (b) the amount mentioned in paragraph (1)(c);
 - (c) how the amount mentioned in paragraph (1)(c) is notionally used to finance different categories of Commonwealth government expenditure (other than expenditure that relates to amounts collected under the *GST law that are paid to the States and Territories);
 - (d) an estimate of the total face value of Commonwealth stock and securities on issue at the end of the previous *financial year;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 70-5

- (e) an estimate of the expected total face value of Commonwealth stock and securities on issue at the end of the financial year;
- (f) the expected total interest to be paid during the financial year in respect of the Commonwealth stock and securities referred to in paragraph (e).

Note: The allocation of how the total tax assessed to you is spent is a notional calculation and may not represent how the tax assessed to you is actually spent.

- (4) For the purposes of determining the amounts in paragraphs (2)(d) to (f), the Commissioner must use the information in the budget economic and fiscal outlook report prepared for the purpose of section 10 of the *Charter of Budget Honesty Act 1998* in respect of the *financial year referred to in paragraph (1)(c).
- (5) For the purposes of determining the form of the information to be included in the *tax receipt, the Commissioner must seek the advice of the Minister and take that advice into account.
- (6) The Commissioner must give you the *tax receipt as soon as practicable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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

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

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

- (a) *Medicare levy;
- (b) *Medicare levy (fringe benefits) surcharge.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 97-1

Part 2-35—Excess superannuation contributions

Division 97—Excess contributions determinations

Table of Subdivisions

- 97-A Excess concessional contributions determinations
- 97-B Excess non-concessional contributions determinations

Subdivision 97-A—Excess concessional contributions determinations

Guide to Subdivision 97-A

97-1 What this Subdivision is about

The Commissioner must give you a determination stating the amount of your excess concessional contributions.

Table of sections

Operative provisions

- 97-5 Determination of excess concessional contributions
- 97-10 Review

Operative provisions

97-5 Determination of excess concessional contributions

- (1) If you have *excess concessional contributions for a *financial year, the Commissioner must make a written determination stating the amount of those excess concessional contributions.
- (2) A determination under this section is an ***excess concessional contributions determination***.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) The Commissioner may amend a determination at any time.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

97-10 Review

If you are dissatisfied with an *excess concessional contributions determination made in relation to you, you may object against the determination in the manner set out in Part IVC.

Subdivision 97-B—Excess non-concessional contributions determinations

Guide to Subdivision 97-B

97-20 What this Subdivision is about

The Commissioner must give you a determination stating:

- (a) the amount by which your non-concessional contributions exceed your non-concessional contributions cap; and
- (b) a proxy amount for your associated earnings on this excess; and
- (c) the total amount that can be released from your superannuation interests in relation to this excess and those earnings.

Table of sections

Operative provisions

97-25	Excess non-concessional contributions determinations
97-30	Associated earnings
97-35	Review

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 97-25

Operative provisions

97-25 Excess non-concessional contributions determinations

- (1) If your *non-concessional contributions for a *financial year (the **contributions year**) exceed your *non-concessional contributions cap for the contributions year, the Commissioner must make a written determination stating:
 - (a) the amount of the excess; and
 - (b) the amount of your associated earnings worked out under section 97-30; and
 - (c) the following amount (the **total release amount**):
$$\text{Amount of the excess} + \left(0.85 \times \frac{\text{Amount of your associated earnings}}{\text{}} \right)$$
- (2) A determination under this section is an **excess non-concessional contributions determination**.
- (3) The Commissioner may amend a determination at any time.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

97-30 Associated earnings

- (1) You are taken to have associated earnings equal to the sum (rounded down to the nearest dollar) of the amounts worked out under the following formula for each of the days during the period:
 - (a) starting on the first day of the contributions year; and
 - (b) ending on the day the Commissioner makes the first *excess non-concessional contributions determination you receive for the contributions year.

$$\text{Proxy rate} \times \left(\text{Excess} + \text{Sum of earlier daily proxy amounts} \right)$$

where:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

excess means the amount of the excess referred to in paragraph 97-25(1)(a).

proxy rate means the lower of:

- (a) the rate worked out under subsection 8AAD(1) for the first day of that period as if the base interest rate (within the meaning of subsection 8AAD(2)) for that day were the average of the base interest rates for each of the days of the contributions year; and
- (b) a rate determined under subsection (2) for the contributions year.

sum of earlier daily proxy amounts means the sum of the amounts worked out under the formula for each of the earlier days (if any) during that period.

Note: Any excess non-concessional contributions determination you receive after the first one for the contributions year is an amended determination.

- (2) The Minister may, by legislative instrument, determine a rate for a specified *financial year.

97-35 Review

If you are dissatisfied with an *excess non-concessional contributions determination made in relation to you, you may object against the determination in the manner set out in Part IVC.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-1

Chapter 3—Collection, recovery and administration of other taxes

Part 3-10—Indirect taxes

Division 105—General rules for indirect taxes

Table of Subdivisions

Guide to Division 105

105-D General interest charge and penalties

105-F Indirect tax refund schemes

105-G Other administrative provisions

Guide to Division 105

105-1 What this Division is about

This Division contains rules relating to the administration of the indirect tax laws.

Note 1: Administration rules relevant to particular indirect tax laws are in Divisions 110, 111 and 112.

Note 2: For assessment of assessable amounts under indirect tax laws, see Division 155.

The rules in this Division deal with the following:

- (c) limits on credits, refunds and recovering amounts;
- (e) the effect of not passing on refunds of overpaid amounts;
- (f) charges and penalties;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- | | |
|-----|--|
| (h) | refunding indirect tax because of Australia's international obligations; |
| (i) | requirements for notifications. |

Subdivision 105-D—General interest charge and penalties

Table of sections

105-80	General interest charge
105-85	Amending Acts cannot impose penalties or general interest charge earlier than 28 days after Royal Assent

105-80 General interest charge

- (1) If any of an amount (the *liability*) to which this section applies remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount of the liability for each day in the period that:
- (a) started at the beginning of the day by which the liability was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the liability;
 - (ii) general interest charge on any of the liability.
- Note: The general interest charge is worked out under Division 1 of Part IIA.
- (2) This section applies to either of the following amounts that you are liable to pay:
- (a) an *assessed net fuel amount;
 - (b) an assessed amount of *indirect tax (including an *assessed net amount).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-85

105-85 Amending Acts cannot impose penalties or general interest charge earlier than 28 days after Royal Assent

- (1) An Act that amends an *indirect tax law does not have the effect of making you liable to:
 - (a) a penalty for an offence against an indirect tax law; or
 - (b) *general interest charge under section 105-80;for any act or omission that happens before the 28th day (the **postponed day**) after the day on which the amending Act receives the Royal Assent.
- (2) If the amending Act would (apart from this section) have the effect of making you liable to such a penalty or charge because you contravened a requirement to do something:
 - (a) within a specified period ending before the postponed day; or
 - (b) before a specified time happening before the postponed day;the requirement has effect instead by reference to a period ending at the start of the postponed day, or by reference to the start of the postponed day, as the case requires.
- (3) This section does not relieve you from liability to such a penalty or charge to the extent to which the liability would have existed if the amending Act had not been enacted.

Subdivision 105-F—Indirect tax refund schemes

Table of sections

105-120	Refund scheme—defence related international obligations
105-125	Refund scheme—international obligations

105-120 Refund scheme—defence related international obligations

- (1) The Commissioner must, on behalf of the Commonwealth, pay you an amount equal to the amount of *indirect tax borne by you in respect of an acquisition (within the meaning of the *GST Act) if:
 - (a) you are in a class of entities determined by the *Defence Minister; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) the acquisition is covered by a determination of the Defence Minister; and
 - (c) the acquisition is made:
 - (i) by or on behalf of a *visiting force that is; or
 - (ii) by a member (within the meaning of the *Defence (Visiting Forces) Act 1963*) of the visiting force who is; or
 - (iii) by any other entity that is; covered by a determination of the Defence Minister; and
 - (d) at the time of the acquisition, it was intended for:
 - (i) the official use of the visiting force; or
 - (ii) the use of a member (within the meaning of the *Defence (Visiting Forces) Act 1963*) of the visiting force; or
 - (iii) any other use; and that use is covered by a determination of the Defence Minister; and
 - (e) you claim the amount in the *approved form.
- (2) The amount is payable:
- (a) in accordance with the conditions and limitations; and
 - (b) within the period and manner; determined by the *Defence Minister.
- (3) The *Defence Minister may only determine an entity under subparagraph (1)(c)(iii) or a use under subparagraph (1)(d)(iii) if the Commonwealth is under an international obligation to grant *indirect tax concessions in relation to the kind of entity or the kind of use.
- (4) A determination under this section is a legislative instrument.

105-125 Refund scheme—international obligations

- (1) The Commissioner must, on behalf of the Commonwealth, pay you, or an entity in a class of entities determined by the Commissioner, an amount equal to the amount of *indirect tax

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 105-145

borne by you in respect of an acquisition (within the meaning of the *GST Act) made by you if:

- (a) you are a kind of entity specified in the regulations; and
 - (b) the acquisition is of a kind specified in the regulations; and
 - (c) you or the entity claims the amount in the *approved form.
- (2) The amount is payable:
- (a) in accordance with the conditions and limitations; and
 - (b) within the period and manner;
- set out in the regulations.
- (3) The regulations may only specify a kind of entity for the purposes of paragraph (1)(a) or a kind of acquisition for the purposes of paragraph (1)(b) if the Commonwealth is under an international obligation to grant *indirect tax concessions in relation to the kind of entity or the kind of acquisition.
- (4) A determination by the Commissioner under subsection (1) is not a legislative instrument.

Subdivision 105-G—Other administrative provisions

Table of sections

105-145 Commissioner must give things in writing

105-145 Commissioner must give things in writing

- (1) Any notice, approval, direction, authority or declaration that the Commissioner may give, or must give, to you under an *indirect tax law must be in writing.
- (2) However, this does not prevent the Commissioner giving any of those things to you by electronic transmission if a provision of an *indirect tax law allows the Commissioner to do so.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 110—Goods and services tax

Table of Subdivisions

Guide to Division 110
110-F Review of GST decisions

Guide to Division 110

110-1 What this Division is about

This Division gives you the right to object against reviewable GST decisions that relate to you. Section 110-50 sets out the reviewable GST decisions.

Subdivision 110-F—Review of GST decisions

Table of sections

110-50 Reviewable GST decisions

110-50 Reviewable GST decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is:
 - (a) a *reviewable GST decision relating to you; or
 - (b) a *reviewable GST transitional decision relating to you.
- (2) Each of the following decisions is a **reviewable GST decision**:

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
1	refusing to register you	subsection 25-5(1)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 3 Collection, recovery and administration of other taxes

Part 3-10 Indirect taxes

Section 110-50

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
2	registering you	subsection 25-5(2)
3	deciding the date of effect of your registration	section 25-10
4	refusing to cancel your registration	subsection 25-55(1)
5	cancelling your registration	subsection 25-55(2)
6	refusing to cancel your registration	section 25-57
7	deciding the date on which the cancellation of your registration takes effect	section 25-60
8	determining that the *tax periods that apply to you are each individual month	subsection 27-15(1)
9	deciding the date of effect of a determination	subsection 27-15(2)
10	refusing to revoke your election under section 27-10	subsection 27-22(1)
11	deciding the date of effect of a revocation	subsection 27-22(3)
12	refusing to revoke a determination under section 27-15	subsection 27-25(1)
13	deciding the date of effect of a revocation	subsection 27-25(2)
14	determining that a specified period is a *tax period that applies to you	section 27-30
15	refusing a request for a determination	section 27-37
16	revoking a determination under section 27-37	subsection 27-38(1)
17	deciding the date of a revocation	subsection 27-38(2)
18	refusing to permit you to account on a cash basis	subsection 29-45(1)
19	deciding the date of effect of your permission to account on a cash basis	subsection 29-45(2)
20	revoking your permission to account on a cash basis	subsection 29-50(3)
21	deciding the date of effect of the revocation of your permission to account on a cash basis	subsection 29-50(4)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 110-50

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
22	refusing an application for a decision that an event is a *fund-raising event	paragraph 40-165(1)(c)
23	approving another day of effect	paragraph 48-71(1)(b)
24	revoking an approval of a day of effect	subsection 48-71(2)
29	refusing an application for approval	section 49-5
30	refusing an application for approval or revocation	subsection 49-70(1)
31	revoking an approval under Division 49	subsection 49-70(2)
32	refusing an application for revocation	subsection 49-75(1)
33	revoking the approval of a *GST religious group	subsection 49-75(2)
34	deciding the date of effect of any approval, or any revocation of an approval, under Division 49	section 49-85
35	approving another day of effect	paragraph 51-75(1)(b)
36	revoking an approval of a day of effect	subsection 51-75(2)
42	refusing an application for registration	section 54-5
43	deciding the date of effect of registration as a *GST branch	section 54-10
44	refusing to cancel the registration of a *GST branch	subsection 54-75(1)
45	cancelling the registration of a *GST branch	subsection 54-75(2)
46	deciding the date of effect of the cancellation of the registration of a *GST branch	section 54-80
47	cancelling the registration of an Australian resident agent	subsection 57-25(1)
48	determining that the *tax periods that apply to a resident agent are each individual month	subsection 57-35(1)
49	deciding the date of effect of a determination	subsection 57-35(2)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 110-50

Reviewable GST decisions under GST Act		
Item	Decision	Provision of GST Act under which decision is made
49A	cancelling the registration of a *representative of an *incapacitated entity	subsection 58-25(1)
49B	deciding to direct a *representative of an *incapacitated entity to give to the Commissioner a *GST return	paragraph 58-50(1)(b)
50	cancelling the registration of a *non-profit sub-entity	subsection 63-35(1)
51	refusing to allow, or allowing, a further period within which to make an agreement that the margin scheme is to apply	paragraph 75-5(1A)(b)
52	refusing a request to allow an annual apportionment election to take effect from the start of another *tax period	paragraph 131-10(2)(b)
53	disallowing an annual apportionment election	subsection 131-20(3)
53A	refusing to make requested decision about excess GST	subsection 142-15(1)
55	refusing a request to allow an annual *tax period election to take effect from the start of another tax period	paragraph 151-10(2)(b)
56	refusing a request to be allowed to make an annual *tax period election on a specified day	subsection 151-20(3)
57	disallowing an annual *tax period election	subsection 151-25(3)
58	refusing a request to allow an election to pay *GST by instalments to take effect from the start of another *tax period	paragraph 162-15(2)(b)
59	refusing a request to be allowed to make an election on a specified day	subsection 162-25(3)
60	disallowing an election to pay *GST by instalments	subsection 162-30(3)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Reviewable GST decisions under GST Act

Item	Decision	Provision of GST Act under which decision is made
62	making a declaration to negate or reduce a GST disadvantage	subsection 165-45(3)
63	deciding whether to grant a request for a declaration to negate or reduce a GST disadvantage	subsection 165-45(5)

- (3) A decision under section 24B of the *A New Tax System (Goods and Services Tax Transition) Act 1999* refusing an application for a determination under that section, or making a determination under that section, is a ***reviewable GST transitional decision***.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 111-1

Division 111—Wine tax and luxury car tax

Table of Subdivisions

Guide to Division 111

111-C Review of wine tax decisions

111-D Effect on contracts from amendments to laws

Guide to Division 111

111-1 What this Division is about

This Division gives you the right to object against decisions that relate to you disallowing the whole or part of a claim for a wine tax credit.

It also explains how contracts to supply wine or a luxury car are affected if a wine tax law or luxury car tax law changes.

Subdivision 111-C—Review of wine tax decisions

Table of sections

111-50 Reviewable wine tax decisions

111-50 Reviewable wine tax decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a ^{*}reviewable wine tax decision relating to you.
- (2) Each of the following decisions is a ***reviewable wine tax decision***:

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 111-60

Reviewable wine tax decisions

Item	Decision	Provision of Wine Tax Act under which decision is made
1	disallowing the whole or a part of your claim for a * wine tax credit	section 17-45
2	deciding the date of effect of your approval as a New Zealand participant	section 19-7
3	refusing to approve you as a New Zealand participant	section 19-7
4	revoking your approval as a New Zealand participant	section 19-8
5	deciding the date of effect of revocation of your approval as a New Zealand participant	section 19-8

Subdivision 111-D—Effect on contracts from amendments to laws

Table of sections

111-60	Alteration of contracts if cost of complying with agreement is affected by later alteration to wine tax or luxury car tax laws
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111-60 Alteration of contracts if cost of complying with agreement is affected by later alteration to wine tax or luxury car tax laws

- (1) If, after a contract involving a *supply, or a *taxable dealing in relation to *wine, has been made, an alteration to the *wine tax law or the *luxury car tax law happens and the alteration directly causes an increase or decrease in the cost to a party to the agreement of complying with the agreement, then the contract is altered as follows:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 111-60

- (a) if the cost is increased—by allowing the party to add the increase to the contract price;
 - (b) if the cost is decreased—by allowing the other party to deduct the decrease from the contract price.
- (2) The contract is not altered if:
 - (a) the contract has express written provision to the contrary; or
 - (b) it is clear from the terms of the contract that the alteration of the *wine tax law or the *luxury car tax law has been taken into account in the agreed contract price.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 112—Fuel tax

Table of Subdivisions

- Guide to Division 112
112-E Review of fuel tax decisions

Guide to Division 112

112-1 What this Division is about

This Division gives you the right to object against reviewable fuel tax decisions that relate to you. Section 112-50 sets out the reviewable fuel tax decisions.

Subdivision 112-E—Review of fuel tax decisions

Table of sections

- 112-50 Reviewable fuel tax decisions

112-50 Reviewable fuel tax decisions

- (1) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is a **reviewable fuel tax decision* relating to you.
- (2) Each of the following decisions is a *reviewable fuel tax decision*:

Reviewable fuel tax decisions		
Item	Decision	Provision of the <i>Fuel Tax Act 2006</i> under which decision is made
2	making a declaration to negate or reduce a <i>*fuel tax disadvantage</i>	subsection 75-45(3)

**For definition, see section 995-1 of the Income Tax Assessment Act 1997.*

Section 112-50

Reviewable fuel tax decisions

Item	Decision	Provision of the <i>Fuel Tax Act 2006</i> under which decision is made
3	deciding whether or not to grant a request to negate or reduce a *fuel tax disadvantage	subsection 75-45(5)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 3-15—Major bank levy

Division 115—General provisions relating to the major bank levy

115-1 What this Division is about

An ADI that is liable to pay levy under the *Major Bank Levy Act 2017* must give quarterly returns to the Commissioner.

An amount of levy is due and payable when an ADI's last PAYG instalment within an instalment quarter is due.

Table of sections

115-5	Returns
115-10	When major bank levy is due and payable

115-5 Returns

- (1) An *ADI that is liable to pay levy for a *quarter under the *Major Bank Levy Act 2017* must give to the Commissioner a return relating to the levy, in the *approved form.
- (2) The return must be given on or before the *MBL reporting day for the *quarter.
- (3) The **MBL reporting day** for the *quarter is the day by which the *ADI is required to give to *APRA a report, in accordance with a standard determined by APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*, that:
 - (a) relates to the *quarter; and
 - (b) states the total liabilities amount (within the meaning of the *Major Bank Levy Act 2017*) for the quarter in relation to the ADI.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 115-10

115-10 When major bank levy is due and payable

- (1) An amount of levy under the *Major Bank Levy Act 2017* that an *ADI is liable to pay for a *quarter is due and payable on the first day:
 - (a) that occurs on or after the *MBL reporting day for the quarter; and
 - (b) on which the last instalment that the ADI is liable to pay within an *instalment quarter is due under Subdivision 45-B.
- (2) If that amount remains unpaid after it is due and payable, the *ADI is liable to pay *general interest charge on the unpaid amount for each day in the period that:
 - (a) started at the beginning of the day by which the amount was due to be paid; and
 - (b) finishes at the end of the last day at the end of which either of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 117—Anti-avoidance

Table of Subdivisions

	Guide to Division 117
117-A	Application of this Division
117-B	Commissioner may negate effects of schemes for MBL benefits

Guide to Division 117

117-1 What this Division is about

This Division applies to deter schemes that give entities MBL benefits.

If the sole or dominant purpose of entering into a scheme is to give an entity such a benefit, the Commissioner may negate the MBL benefit an entity gets from the scheme by making a determination.

Subdivision 117-A—Application of this Division

Table of sections

117-5	Object of this Division
117-10	Application of this Division
117-15	Meaning of MBL benefit
117-20	Matters to be considered in determining purpose

117-5 Object of this Division

The object of this Division is to deter *schemes to give entities benefits that reduce or defer liabilities to levy under the *Major Bank Levy Act 2017*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 117-10

117-10 Application of this Division

- (1) This Division applies if:
 - (a) an entity gets or got an *MBL benefit from a *scheme; and
 - (b) taking account of the matters described in section 117-20, it is reasonable to conclude that an entity that (whether alone or with others) entered into or carried out the scheme, or part of the scheme, did so for the sole or dominant purpose of that entity or another entity getting an MBL benefit from the scheme; and
 - (c) the scheme:
 - (i) has been or is entered into at or after 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017; or
 - (ii) has been or is carried out or commenced at or after that time (other than a scheme that was entered into before that time).
- (2) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

117-15 Meaning of *MBL benefit*

- (1) An entity gets an ***MBL benefit*** from a *scheme, if:
 - (a) an amount of levy under the *Major Bank Levy Act 2017* that is payable by the entity under this Act apart from this Division is, or could reasonably be expected to be, smaller than it would be apart from the scheme or a part of the scheme; or
 - (b) all or part of an amount of levy under the *Major Bank Levy Act 2017* that is payable by the entity under this Act apart from this Division is, or could reasonably be expected to be, payable later than it would have been apart from the scheme or a part of the scheme.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) To avoid doubt, a smaller liability mentioned in paragraph (1)(a) includes a case where the liability is zero, or there is no such liability for a particular *quarter.

117-20 Matters to be considered in determining purpose

The following matters are to be taken into account under section 117-10 in considering an entity's purpose in entering into or carrying out the *scheme, or part of the scheme:

- (a) the manner in which the scheme was entered into or carried out;
- (b) the form and substance of the scheme;
- (c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;
- (d) the effect that the *Major Bank Levy Act 2017*, and any other *taxation law to the extent that it applies in relation to that Act, would have in relation to the scheme apart from this Division;
- (e) any change in the financial position of the entity that has resulted, or may reasonably be expected to result, from the scheme;
- (f) any change that has resulted, or may reasonably be expected to result, from the scheme in the financial position of an entity (a **connected entity**) that has or had a connection or dealing with the entity, whether the connection or dealing is or was of a business or other nature;
- (g) any other consequence for the entity or a connected entity of the scheme having been entered into or carried out;
- (h) the nature of the connection (whether of a business or other nature) between the entity and a connected entity.

Subdivision 117-B—Commissioner may negate effects of schemes for MBL benefits

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117-25 Commissioner may negate entity's MBL benefits

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- 117-35 Commissioner may disregard scheme in making determinations
- 117-40 One determination may cover several quarters etc.
- 117-45 Commissioner must give copy of determination to entity affected
- 117-50 Objections

117-25 Commissioner may negate entity's MBL benefits

- (1) For the purpose of negating an *MBL benefit the entity mentioned in paragraph 117-10(1)(a) gets or got from the *scheme, the Commissioner may:
 - (a) make a determination stating the amount that is (and has been at all times) the entity's liability for levy under the *Major Bank Levy Act 2017*, for a specified *quarter that has ended; or
 - (b) make a determination stating the amount that is (and has been at all times) a particular amount mentioned in paragraph 5(2)(a) or (b) of that Act, for a specified quarter that has ended.
- (2) A determination under this section is not a legislative instrument.
- (3) The Commissioner may take such action as the Commissioner considers necessary to give effect to the determination.

117-30 Determination has effect according to its terms

For the purpose of making an *assessment, a statement in a determination under this Subdivision has effect according to its terms, despite the provisions of a *taxation law outside of this Division.

117-35 Commissioner may disregard scheme in making determinations

For the purposes of making a determination under this Subdivision, the Commissioner may:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) treat a particular event that actually happened as not having happened; and
- (b) treat a particular event that did not actually happen as having happened and, if appropriate, treat the event as:
 - (i) having happened at a particular time; and
 - (ii) having involved particular action by a particular entity; and
- (c) treat a particular event that actually happened as:
 - (i) having happened at a time different from the time it actually happened; or
 - (ii) having involved particular action by a particular entity (whether or not the event actually involved any action by that entity).

117-40 One determination may cover several quarters etc.

To avoid doubt, statements relating to different *quarters and different *MBL benefits may be included in a single determination under this Subdivision.

117-45 Commissioner must give copy of determination to entity affected

- (1) The Commissioner must give a copy of a determination under this Subdivision to the entity whose liability for levy under the *Major Bank Levy Act 2017* is stated in the determination.
- (2) A failure to comply with subsection (1) does not affect the validity of the determination.

117-50 Objections

If the entity whose liability for levy under the *Major Bank Levy Act 2017* is stated in a determination under this Subdivision is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Part 3-17—Laminaria and Corallina decommissioning levy

Division 125—General provisions relating to Laminaria and Corallina decommissioning levy

125-1 What this Division is about

You must give the Commissioner a return relating to Laminaria and Corallina decommissioning levy if you are a leviable entity for a financial year.

An amount of levy is due and payable 21 days after the day the Commissioner gives you a notice of assessment.

This Division contains other rules relating to the administration of the levy, including rules dealing with charges and assessments.

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125-10	When Laminaria and Corallina decommissioning levy and related charges are due and payable
125-15	Assessments of Laminaria and Corallina decommissioning levy

Operative provisions

125-5 Returns

- (1) You must give the Commissioner a return relating to *Laminaria and Corallina decommissioning levy in the *approved form if you are a leviable entity (within the meaning of the *Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Act 2022*) for a financial year that is a levy year (within the meaning of that Act).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: You are required to give the Commissioner a return in accordance with this subsection even if the amount of that levy you are liable to pay is nil.

- (2) The return must be given within 6 months after the end of the financial year.

125-10 When Laminaria and Corallina decommissioning levy and related charges are due and payable

Original assessments

- (1) If you are liable to pay an amount of *Laminaria and Corallina decommissioning levy for a financial year, the amount is due and payable 21 days after the day the Commissioner gives you a notice of assessment for the financial year.

Amended assessments

- (2) If the Commissioner amends your assessment of an amount of *Laminaria and Corallina decommissioning levy, any extra levy resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

Shortfall interest charge

- (3) If you are liable to pay an amount of *shortfall interest charge under section 280-102D, the amount is due and payable 21 days after the day the Commissioner gives you notice of the charge.

General interest charge

- (4) If an amount of levy or *shortfall interest charge payable under this section remains unpaid after it is due and payable, you are liable to pay *general interest charge on the unpaid amount for each day in the period that:
- (a) started at the beginning of the day by which the amount was due to be paid; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) finishes at the end of the last day at the end of which any of the following remains unpaid:
 - (i) the amount of levy or shortfall interest charge;
 - (ii) general interest charge on any of the amount of levy or shortfall interest charge.

125-15 Assessments of Laminaria and Corallina decommissioning levy

- (1) In applying Division 155 in relation to an amount of *Laminaria and Corallina decommissioning levy:
 - (a) apply the provisions of that Division with the modification set out in subsection (2) of this section; and
 - (b) disregard section 155-70.
- (2) Despite subsection 155-35(2), the *period of review*, for an assessment of an amount of *Laminaria and Corallina decommissioning levy, is:
 - (a) the period:
 - (i) starting on the day on which the Commissioner first gives notice of the assessment to you under section 155-10; and
 - (ii) ending on the last day of the period of 6 months starting the day after that day; or
 - (b) if the period of review is extended under subsection 155-35(3) or (4)—the period as so extended.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 3-18—Australian IIR/UTPR tax and Australian DMT tax

Division 127—General provisions relating to Australian IIR/UTPR tax and Australian DMT tax

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127-C	GloBE Excluded Entities

Guide to Division 127

127-1 What this Division is about

Certain Group Entities of an Applicable MNE Group must give the Commissioner a GloBE Information Return, Australian IIR/UTPR tax return and Australian DMT tax return.

An amount of Australian IIR/UTPR tax and Australian DMT tax for a Fiscal Year is usually due and payable on the last day of the 15th month after the end of the Fiscal Year.

This Division contains other rules relating to the administration of the taxes, including rules dealing with charges and assessments.

Subdivision 127-A—Returns

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GloBE Information Returns

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- 127-15 Meaning of *Designated Local Entity*
- 127-20 GloBE Information Returns given to foreign government agencies
- 127-25 Meaning of *Designated Filing Entity*
- 127-30 GloBE Information Returns given to foreign government agencies—notification requirement

Australian IIR/UTPR tax returns

- 127-35 Australian IIR/UTPR tax returns
- 127-40 Australian IIR/UTPR tax returns given by Designated Local Entities

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- 127-45 Australian DMT tax returns
- 127-50 Australian DMT tax returns given by Designated Local Entities
- 127-55 GloBE Joint Ventures and GloBE JV Subsidiaries

Other provisions

- 127-60 When returns must be given
- 127-65 GloBE Main Entities and GloBE Permanent Establishments

GloBE Information Returns

127-5 GloBE Information Returns

Giving GloBE Information Returns

- (1) A *Group Entity of an *Applicable MNE Group for a *Fiscal Year must give the Commissioner a *GloBE Information Return in respect of the Applicable MNE Group for the Fiscal Year if the Group Entity is *GloBE located in Australia for the Fiscal Year.

Note: The Group Entity is required to give the Commissioner a GloBE Information Return even if the amount of Australian IIR/UTPR tax and Australian DMT tax the Group Entity is liable to pay in relation to the Fiscal Year is nil.

- (2) The *GloBE Information Return given under subsection (1) must:
 - (a) be *lodged electronically; and
 - (b) be in the *approved form.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) A **GloBE Information Return**, in respect of an *Applicable MNE Group for a *Fiscal Year, is a return that:
- (a) if a determination under subsection (4) specifies requirements—is in accordance with those requirements; and
 - (b) if paragraph (a) does not apply—is in accordance with the standardised return developed in accordance with the *GloBE Implementation Framework, as amended from time to time; and
 - (c) contains the following information concerning the Applicable MNE Group:
 - (i) identification of the *Constituent Entities of the Applicable MNE Group, including the jurisdiction in which they are *GloBE located for the Fiscal Year and their status under the *GloBE Rules;
 - (ii) information on the overall corporate structure of the Applicable MNE group in the Fiscal Year;
 - (iii) information relevant to the determination of Effective Tax Rates (within the meaning of the GloBE Rules), Top-up Tax (within the meaning of the GloBE Rules) and allocation of Top-up Tax for the Fiscal Year;
 - (iv) elections made, for the Fiscal Year, in accordance with the relevant provisions of the GloBE Rules;
 - (v) other information that is agreed as part of the GloBE Implementation Framework and is necessary to carry out the administration of the GloBE Rules.
- (4) For the purposes of paragraph (3)(a), the Commissioner may, by legislative instrument, make a determination specifying requirements for a return.

127-10 GloBE Information Returns given by Designated Local Entities

- (1) This section applies if a *Designated Local Entity in relation to a *GloBE Information Return in respect of an *Applicable MNE

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Group for a *Fiscal Year gives the GloBE Information Return to the Commissioner in accordance with subsection 127-5(2).

- (2) Each other *Group Entity of the *Applicable MNE Group that is *GloBE located in Australia for the *Fiscal year is taken to give the *GloBE Information Return to the Commissioner at the time the *Designated Local Entity gives the GloBE Information Return to the Commissioner.

127-15 Meaning of *Designated Local Entity*

A ***Designated Local Entity***, of an *Applicable MNE Group for a *Fiscal Year, is a *Group Entity of the Applicable MNE Group that:

- (a) is *GloBE located in Australia for the Fiscal Year; and
- (b) has been appointed by every other Group Entity of the Applicable MNE Group that is GloBE located in Australia for the Fiscal Year to give to the Commissioner:
 - (i) the *GloBE Information Return in respect of the Applicable MNE Group for the Fiscal Year; or
 - (ii) a notice mentioned in paragraph 127-20(2)(b) in respect of the Applicable MNE Group for the Fiscal Year.

127-20 GloBE Information Returns given to foreign government agencies

- (1) This section applies in relation to an *Applicable MNE Group for a *Fiscal Year if:
- (a) either:
 - (i) the *GloBE Ultimate Parent Entity of the Applicable MNE Group is *GloBE located in a foreign country or part of a foreign country that has a *Qualifying Competent Authority Agreement in effect with Australia for the Fiscal Year; or
 - (ii) a *Designated Filing Entity in relation to the *GloBE Information Return in respect of the Applicable MNE Group for the Fiscal Year is GloBE located in a foreign

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- country or part of a foreign country that has a Qualifying Competent Authority Agreement in effect with Australia for the Fiscal Year; and
- (b) the GloBE Ultimate Parent Entity or Designated Filing Entity gives a GloBE Information Return in respect of the Applicable MNE Group for the Fiscal Year to a *foreign government agency of the foreign country or part of the foreign country no later than the time specified in section 127-60 in relation to the Fiscal Year.
- (2) Each *Group Entity of the *Applicable MNE Group that is required to give a *GloBE Information Return in respect of the Applicable MNE Group for the *Fiscal Year to the Commissioner:
- (a) is taken to give the GloBE Information Return to the Commissioner, in accordance with subsection 127-5(2), at the time the *GloBE Ultimate Parent Entity or *Designated Filing Entity gives the GloBE Information Return to the *foreign government agency; and
- (b) must give the Commissioner a notice in accordance with subsection 127-30(1) in respect of the Applicable MNE Group for the Fiscal Year.
- (3) A foreign country or part of a foreign country has a ***Qualifying Competent Authority Agreement*** in effect with Australia for a *Fiscal Year if an agreement or arrangement that:
- (a) is between 2 or more competent authorities:
- (i) at least one of which is a competent authority of Australia; and
- (ii) at least one of which is a competent authority of that foreign country or part of a foreign country; and
- (b) provides for the automatic exchange of annual *GloBE Information Returns for the Fiscal Year;
- is in effect.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 127-25

Commissioner may require Group Entity to give GloBE Information Return

(4) If:

- (a) under subsection (2), a *Group Entity of the *Applicable MNE Group is taken to give a *GloBE Information Return in respect of the Applicable MNE Group for the *Fiscal Year to the Commissioner because the GloBE Information Return is given to a *foreign government agency; and
- (b) the relevant *Qualifying Competent Authority Agreement provides for the GloBE Information Return to be given to the Commissioner by a specified time; and
- (c) that time has passed, but the GloBE Information Return has not been given to the Commissioner under the Qualifying Competent Authority Agreement;

the Commissioner may, by written notice given to the Group Entity, request the Group Entity to give to the Commissioner a GloBE Information Return in respect of the Applicable MNE Group for the Fiscal Year in accordance with subsection 127-5(2).

- (5) The *Group Entity must comply with the request in accordance with subsection (6).
- (6) The *GloBE Information Return given under subsection (5) must be *lodged electronically.

127-25 Meaning of *Designated Filing Entity*

A ***Designated Filing Entity***, in relation to a *GloBE Information Return in respect of an *Applicable MNE Group for a *Fiscal Year, is a *Group Entity of the Applicable MNE Group that has been appointed by the Applicable MNE Group to file the GloBE Information Return on behalf of the Applicable MNE Group.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

127-30 GloBE Information Returns given to foreign government agencies—notification requirement

- (1) For the purposes of paragraph 127-20(2)(b), the notice mentioned in that paragraph:
 - (a) must be given to the Commissioner no later than the time specified in section 127-60 in relation to the *Fiscal Year; and
 - (b) must state:
 - (i) the identity of the *GloBE Ultimate Parent Entity or *Designated Filing Entity that gives the *GloBE Information Return to the *foreign government agency; and
 - (ii) the jurisdiction in which that GloBE Ultimate Parent Entity or Designated Filing Entity is *GloBE located; and
 - (c) must be in the *approved form; and
 - (d) must be *lodged electronically.
- (2) Subsection (3) applies if a *Designated Local Entity of the *Applicable MNE Group gives the notice mentioned in subsection (1) in accordance with that subsection.
- (3) Each other *Group Entity of the *Applicable MNE Group that is *GloBE located in Australia for the *Fiscal year is taken to give the notice to the Commissioner at the time the *Designated Local Entity gives the notice to the Commissioner.

Australian IIR/UTPR tax returns

127-35 Australian IIR/UTPR tax returns

- (1) The purpose of this section is to provide, for the purposes of administering the *Australian IIR/UTPR tax, for a return that supplements the *GloBE Information Return.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) Subject to subsection (4), a *Group Entity of an *Applicable MNE Group for a *Fiscal Year must give the Commissioner a return under this subsection (an *Australian IIR/UTPR tax return*) for the Fiscal Year if the Group Entity has an *Australian IIR/UTPR tax amount for the Fiscal Year (including a nil amount).
- (3) The return must:
 - (a) be *lodged electronically; and
 - (b) be in the *approved form.
- (4) However, the return need not be lodged in circumstances set out in a determination under subsection (5).
- (5) The Commissioner may, by legislative instrument, make a determination specifying circumstances in which a *Group Entity need not lodge a return under subsection (2).

127-40 Australian IIR/UTPR tax returns given by Designated Local Entities

- (1) This section applies if:
 - (a) a *Designated Local Entity of an *Applicable MNE Group for a *Fiscal Year has been appointed, by each *Group Entity of the Applicable MNE Group that is required to give the Commissioner an *Australian IIR/UTPR tax return for the Fiscal Year, to give an Australian IIR/UTPR tax return for the Fiscal Year to the Commissioner on behalf of the Group Entity; and
 - (b) the Designated Local Entity gives an Australian IIR/UTPR tax return for the Fiscal Year to the Commissioner on behalf of those Group Entities in accordance with subsection 127-35(3).
- (2) Each of those *Group Entities is taken to give the *Australian IIR/UTPR tax return to the Commissioner at the time at which the *Designated Local Entity gives the Australian IIR/UTPR tax return to the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Australian DMT tax returns

127-45 Australian DMT tax returns

- (1) The purpose of this section is to provide, for the purposes of administering the *Australian DMT tax, for a return that supplements the *GloBE Information Return.
- (2) Subject to subsection (5), a *Group Entity of an *Applicable MNE Group for a *Fiscal Year must give the Commissioner a return under this subsection (an ***Australian DMT tax return***) for the Fiscal Year if the Group Entity has a *Australian DMT tax amount for the Fiscal Year (including a nil amount).

Note: The Group Entity is required to give the Commissioner a DMT return if the Group Entity has an Australian DMT tax amount for the Fiscal Year, even if the amount of Australian DMT tax the Group Entity is liable to pay in relation to the Fiscal Year is nil.

- (3) The return must:
 - (a) be *lodged electronically; and
 - (b) be in the *approved form.
- (4) However, the return need not be lodged in circumstances set out in a determination under subsection (5).
- (5) The Commissioner may, by legislative instrument, make a determination specifying circumstances in which a *Group Entity need not lodge a return under subsection (2).

127-50 Australian DMT tax returns given by Designated Local Entities

- (1) This section applies if:
 - (a) a *Designated Local Entity of an *Applicable MNE Group for a *Fiscal Year has been appointed, by each *Group Entity of the Applicable MNE Group that is required to give the Commissioner an *Australian DMT tax return for the Fiscal

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 127-55

Year, to give an Australian DMT tax return for the Fiscal Year to the Commissioner on behalf of the Group Entity; and

- (b) the Designated Local Entity gives an Australian DMT tax return for the Fiscal Year to the Commissioner on behalf of those Group Entities in accordance with subsection 127-45(3).
- (2) Each of those *Group Entities is taken to give the *Australian DMT tax return to the Commissioner at the time at which the *Designated Local Entity gives the Australian DMT tax return to the Commissioner.

127-55 GloBE Joint Ventures and GloBE JV Subsidiaries

- (1) This section applies if, in relation to an *Applicable MNE Group, any of the following has an *Australian DMT tax amount for a Fiscal Year (including a nil amount):
- (a) a *GloBE Joint Venture of the Applicable MNE Group;
 - (b) a *GloBE JV Subsidiary of a GloBE Joint Venture of the *Applicable MNE Group.
- (2) In addition to the application that they have under this subsection, sections 127-45 and 127-50 apply, for the Fiscal Year, in relation to the *GloBE Joint Venture or the *GloBE JV Subsidiary in the same way they apply in relation to a *Group Entity of an Applicable MNE Group.
- (3) For the purposes of subsection (2), treat:
- (a) the *GloBE Joint Venture and its *GloBE JV Subsidiaries as *Group Entities of a separate *Applicable MNE Group for the *Fiscal Year; and
 - (b) the GloBE Joint Venture as the *GloBE Ultimate Parent Entity of that separate Applicable MNE Group.
- (4) Subsection (5) applies if:
- (a) a *Designated Local Entity of the *Applicable MNE Group mentioned in subsection (1) for a *Fiscal Year has been appointed, by each Entity mentioned in paragraphs (1)(a) and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) that is required to give the Commissioner an *Australian DMT tax return for the Fiscal Year (each of which is a **reporting Entity**), to give an Australian DMT tax return for the Fiscal Year to the Commissioner on behalf of the reporting Entity; and
 - (b) the Designated Local Entity gives an Australian DMT tax return for the Fiscal Year to the Commissioner on behalf of those reporting Entities in accordance with subsection 127-45(3).
- (5) Each of the reporting Entities is taken to give the *Australian DMT tax return to the Commissioner at the time at which the *Designated Local Entity gives the Australian DMT tax return to the Commissioner.
- (6) However, subsection (5) does not apply to the reporting Entities if any reporting Entity appoints more than one *Designated Local Entity under paragraph (4)(a) for the Fiscal Year.

Note: In these circumstances, section 127-50 may still apply.

Other provisions

127-60 When returns must be given

- (1) A *GloBE Information Return, *Australian IIR/UTPR tax return or *Australian DMT tax return for a *Fiscal Year must be given to the Commissioner no later than 15 months after the end of the Fiscal Year.
- (2) However:
- (a) if the *Fiscal Year is the relevant *Applicable MNE Group's *GloBE Transition Year, the *GloBE Information Return, *Australian IIR/UTPR tax return or *Australian DMT tax return must be given to the Commissioner no later than 18 months after the end of the Fiscal Year; and
 - (b) a GloBE Information Return that a *Group Entity is required to give to the Commissioner under subsection 127-20(5) must be given no later than the later of:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) the day by which the Group Entity would, apart from section 127-20, be required to give the GloBE Information Return to the Commissioner under section 127-5; and
 - (ii) 21 days after the Commissioner gives the request under subsection 127-20(4) to the Group Entity.
- (3) Section 388-55 (Commissioner may defer time for lodgment) does not apply to the requirement to give a *GloBE Information Return or a notice under paragraph 127-20(2)(b).

127-65 GloBE Main Entities and GloBE Permanent Establishments

- (1) This section applies if a *Group Entity of an *Applicable MNE Group for a *Fiscal year is a *GloBE Main Entity in respect of a *GloBE Permanent Establishment.
- (2) This Subdivision:
 - (a) applies to the *Group Entity in its own capacity; and
 - (b) also applies to the Group Entity in its capacity as the *GloBE Main Entity in respect of the *GloBE Permanent Establishment.
- (3) If the *Group Entity is not *GloBE located in Australia and the *GloBE Permanent Establishment is GloBE located in Australia, sections 127-5 to 127-30 apply in relation to the Group Entity in the same way that they apply in relation to a Group Entity that is GloBE located in Australia.

Subdivision 127-B—When taxes are due and payable etc.

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Operative provisions

127-70 When Australian IIR/UTPR tax and Australian DMT tax and related charges are due and payable

Original assessments

- (1) If a *Group Entity of an *Applicable MNE Group is liable to pay an amount of *Australian IIR/UTPR tax or *Australian DMT tax for a *Fiscal Year, the amount is due and payable on the last day of the 15th month after the end of the Fiscal Year.
- (2) However, if the *Fiscal Year is the *Applicable MNE Group's *GloBE Transition Year, the amount is due and payable on the last day of the 18th month after the end of the Fiscal Year.

Amended assessments

- (3) If the Commissioner amends a *Group Entity's assessment of an amount of *Australian IIR/UTPR tax or *Australian DMT tax, any extra such tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives the Group Entity notice of the amended assessment.

Shortfall interest charge

- (4) If a *Group Entity is liable to pay an amount of *shortfall interest charge under section 280-102E, the amount is due and payable 21 days after the day the Commissioner gives the Group Entity notice of the charge.

General interest charge

- (5) If an amount of *Australian IIR/UTPR tax or *Australian DMT tax or *shortfall interest charge payable under this section remains unpaid after it is due and payable, the *Group Entity is liable to pay *general interest charge on the unpaid amount for each day in the period that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) started at the beginning of the day by which the amount was due to be paid; and
- (b) finishes at the end of the last day at the end of which any of the following remains unpaid:
 - (i) the amount of such tax or shortfall interest charge;
 - (ii) general interest charge on any of the amount of such tax or shortfall interest charge.

127-75 Assessments of Australian IIR/UTPR tax and Australian DMT tax

- (1) In applying Division 155 in relation to an amount of *Australian IIR/UTPR tax or *Australian DMT tax, apply the provisions of that Division with the modification set out in subsection (2) of this section.
- (2) Despite subsection 155-35(2), the ***period of review***, for an assessment of an amount of *Australian IIR/UTPR tax for a *Fiscal Year, is:
 - (a) the period of 4 years starting on the later of:
 - (i) the day on which the *GloBE Information Return for the relevant *Applicable MNE Group for the Fiscal Year is given to the Commissioner; and
 - (ii) the day on which the *Australian IIR/UTPR tax return for the relevant *Group Entity for the Fiscal Year is given to the Commissioner; or
 - (b) if the period of review is extended under subsection 155-35(3) or (4)—the period as so extended.
- (3) Despite subsection 155-35(2), the ***period of review***, for an assessment of an amount of *Australian DMT tax for a *Fiscal Year, is:
 - (a) the period of 4 years starting on the later of:
 - (i) the day on which the *GloBE Information Return for the relevant *Applicable MNE Group for the Fiscal Year is given to the Commissioner; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) the day on which the *Australian DMT tax return for the relevant *Group Entity for the Fiscal Year is given to the Commissioner; or
- (b) if the period of review is extended under subsection 155-35(3) or (4)—the period as so extended.

Subdivision 127-C—GloBE Excluded Entities

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Operative provisions

127-80 Provisions do not apply to GloBE Excluded Entities

A reference in this Division to a *Group Entity does not include a reference to a *GloBE Excluded Entity.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 128-1

**Division 128—Extended application of tax laws relating to
Australian IIR/UTPR tax and Australian DMT tax**

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Guide to Division 128

128-1 What this Division is about

This Division extends onto other entities the obligations and liabilities of various entities under the Minimum Tax law.

**Subdivision 128-A—Additional liability of Entities in Group or
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128-5 Additional liability of Group Entities of Applicable MNE Group

128-10 Additional liability of Entities in a JV Group

**128-5 Additional liability of Group Entities of Applicable MNE
Group**

- (1) If an amount is payable under the *Minimum Tax law by a *Group Entity of an *Applicable MNE Group for a *Fiscal Year:
- (a) that Group Entity; and
 - (b) each other Group Entity of the Applicable MNE Group (other than a Group Entity excluded by subsection (2));
- are jointly and severally liable to pay the amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) For the purposes of subsection (1), a *Group Entity is excluded by this subsection if it is, at the time the amount becomes due and payable, prohibited according to the effect of an *Australian law from entering into any arrangement under which the Group Entity becomes subject to a liability referred to in that subsection.

128-10 Additional liability of Entities in a JV Group

- (1) Subsection (2) applies if an amount is payable under the *Minimum Tax law by any of the following:
- (a) a *GloBE Joint Venture of an *Applicable MNE Group;
 - (b) a *GloBE JV Subsidiary of a GloBE Joint Venture of an Applicable MNE Group.
- (2) Each of the following Entities (other than an Entity excluded by subsection (3)) is jointly and severally liable to pay the amount:
- (a) the *GloBE Joint Venture;
 - (b) a *GloBE JV Subsidiary of the GloBE Joint Venture;
 - (c) a *Group Entity of the *Applicable MNE Group that holds a Direct Ownership Interest (within the meaning of the *Minimum Tax Act) in the GloBE Joint Venture.
- (3) For the purposes of subsection (2), an Entity is excluded by this subsection if it is, at the time the amount becomes due and payable, prohibited according to the effect of an *Australian law from entering into any arrangement under which the Entity becomes subject to a liability referred to in subsection (2).

Subdivision 128-B—Extended application to certain types of entity

Table of sections

128-15	Trusts
128-20	Partnerships
128-25	Unincorporated GloBE Joint Ventures, etc. and certain unincorporated Group Entities

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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128-15 Trusts

Obligations

- (1) Subject to subsection (2), if an obligation is imposed under the *Minimum Tax law on a trust, the obligation is imposed on each of the following entities, but may be discharged by any such entity:
- (a) an entity that is the trustee of the trust at the time the obligation arises;
 - (b) an entity that is the trustee of the trust at a time that is:
 - (i) after the obligation arises; and
 - (ii) before the obligation has been discharged.

Liabilities to pay an amount

- (2) If an amount is payable under the *Minimum Tax law by a trust, joint and several liability to pay the amount is imposed as set out in the table:

Amounts payable by trusts		
Item	Column 1 If the amount is:	Column 2 then the following entities are jointly and severally liable to pay the amount:
1	* Australian IIR/UTPR tax or * Australian DMT tax for a * Fiscal Year	each of the following entities: <ul style="list-style-type: none">(a) an entity that is the trustee of the trust at the end of the Fiscal Year;(b) an entity that is the trustee of the trust at a time that is:<ul style="list-style-type: none">(i) after the end of the Fiscal Year; and(ii) before the tax has been paid.
2	* general interest charge on the unpaid amount of * Australian IIR/UTPR tax or * Australian DMT tax for a * Fiscal Year	each of the following entities: <ul style="list-style-type: none">(a) an entity that is the trustee of the trust at the end of the Fiscal Year;(b) an entity that is the trustee of the trust at a time that is:

* For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Amounts payable by trusts

Item	Column 1 If the amount is:	Column 2 then the following entities are jointly and severally liable to pay the amount:
		(i) after the end of the Fiscal Year; and (ii) before the general interest charge has been paid.
3	*shortfall interest charge in relation to a *Fiscal Year	each of the following entities: (a) an entity that is the trustee of the trust at the end of the Fiscal Year; (b) an entity that is the trustee of the trust at a time that is: (i) after the end of the Fiscal Year; and (ii) before the shortfall interest charge has been paid.

Commissioner has direct access to trust assets

- (3) For the purpose of ensuring the payment of an amount payable by an entity under this section in relation to a liability of a trust, the Commissioner has the same remedies against the property of the trust as the Commissioner would have against the property of the entity.

Right of indemnity

- (4) An entity that pays an amount of a liability it has under this section is entitled to be indemnified out of the assets of the trust for the liability.

Offences

- (5) Any offence against the *Minimum Tax law that is committed by a trust is taken to have been committed by the trustee of the trust, or, if the trust has more than one trustee, by each of the trustees.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (6) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (5), it is a defence if the entity proves that the entity:
- (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (6) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (6): see section 13.4 of the *Criminal Code*.

128-20 Partnerships

Application

- (1) This section applies in relation to a *GloBE partnership that is *not*:
- (a) a *GloBE Joint Venture of an *Applicable MNE Group; or
 - (b) a *GloBE JV Subsidiary of a GloBE Joint Venture of an Applicable MNE Group.

Obligations

- (2) Subject to subsection (3), if an obligation is imposed under the *Minimum Tax law on the *GloBE partnership, the obligation is imposed on each partner of the GloBE partnership, but may be discharged by any such partner.

Liabilities to pay an amount

- (3) If an amount is payable under the *Minimum Tax law by the *GloBE partnership, the partners of the GloBE partnership are jointly and severally liable to pay the amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Offences

- (4) Any offence against the *Minimum Tax law that is committed by the *GloBE partnership is taken to have been committed by each partner of the GloBE partnership.
- (5) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (4), it is a defence if the entity proves that the entity:
 - (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (5) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (5): see section 13.4 of the *Criminal Code*.

*Meaning of **GloBE partnership***

- (6) A **GloBE partnership** is a partnership (within the meaning of paragraph 13(1)(b) of the *Minimum Tax Act).
- (7) To avoid doubt, section 94K of the *Income Tax Assessment Act 1936* (about corporate limited partnerships) does not apply in relation to this section.

128-25 Unincorporated GloBE Joint Ventures, etc. and certain unincorporated Group Entities

Obligations

- (1) Subject to subsection (2), if an obligation is imposed under the *Minimum Tax law on a *GloBE Entity of a kind specified in an item in the table in subsection (5), the obligation is imposed on each liable entity specified in the item, but may be discharged by any such entity.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Liabilities to pay an amount

- (2) If an amount is payable under the *Minimum Tax law by a *GloBE Entity of a kind specified in an item in the table in subsection (5), the liable entities specified in the item are jointly and severally liable to pay the amount.

Offences

- (3) Any offence against the *Minimum Tax law that is committed by a *GloBE Entity of a kind specified in an item in the table in subsection (5) is taken to have been committed by each liable entity specified in the item.
- (4) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (3), it is a defence if the entity proves that the entity:
- (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note 1: The defence in subsection (4) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (4): see section 13.4 of the *Criminal Code*.

Liable entities

- (5) For the purposes of subsections (1) to (3), the following kinds of *GloBE Entity and liable entities are specified:

Liable Entities		
Item	Kind of *GloBE Entity	Liable entity
1	unincorporated *GloBE Joint Venture of an *Applicable MNE Group that is a *GloBE partnership	each partner of the unincorporated GloBE Joint Venture that is a *Group Entity of the Applicable

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Liable Entities		
Item	Kind of *GloBE Entity	Liable entity
		MNE Group
2	unincorporated *GloBE Joint Venture of an *Applicable MNE Group, that is not a trust or a *GloBE partnership	each *Group Entity of the Applicable MNE Group that holds a Direct Ownership Interest (within the meaning of the *Minimum Tax Act) in the GloBE Joint Venture
3	unincorporated *GloBE JV Subsidiary of a *GloBE Joint Venture of an *Applicable MNE Group, where the GloBE JV Subsidiary is a *GloBE partnership	each partner of the unincorporated GloBE JV Subsidiary that is: (a) the GloBE Joint Venture; or (b) another GloBE JV Subsidiary of the GloBE Joint Venture; or (c) a *Group Entity of the Applicable MNE Group
4	unincorporated *GloBE JV Subsidiary of a *GloBE Joint Venture of an *Applicable MNE Group, where the GloBE JV Subsidiary is not a trust or a *GloBE partnership	each of the following: (a) the GloBE Joint Venture; (b) a *Group Entity of the Applicable MNE Group that holds a Direct Ownership Interest (within the meaning of the *Minimum Tax Act) in the GloBE Joint Venture
5	unincorporated *Group Entity of an *Applicable MNE Group that is not a trust or a *GloBE partnership	each Group Entity of the Applicable MNE Group: (a) to which a portion of the unincorporated Group Entity's assets, income, expenses, cash flows and liabilities belong; or (b) that is a member of the committee of management of the unincorporated Group Entity

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 128-30

Subdivision 128-C—Miscellaneous

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Operative provisions

128-30 Provisions do not apply to GloBE Excluded Entities

128-35 Joint and several liability does not extend to GloBE Securitisation Entities

Operative provisions

128-30 Provisions do not apply to GloBE Excluded Entities

A reference in this Division to a *Group Entity does not include a reference to a *GloBE Excluded Entity.

128-35 Joint and several liability does not extend to GloBE Securitisation Entities

- (1) For the purposes of paragraph 128-5(1)(b), treat a *Group Entity that is a *GloBE Securitisation Entity as being a Group Entity excluded by subsection 128-5(2).
- (2) For the purposes of subsection 128-10(2), treat a *Group Entity that is a *GloBE Securitisation Entity as being an Entity excluded by subsection 128-10(3).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 3-20—Superannuation

Division 131—Releasing money from superannuation

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131-A Releasing money from superannuation

Subdivision 131-A—Releasing money from superannuation

Guide to Subdivision 131-A

131-1 What this Subdivision is about

You may request the Commissioner to require the release of an amount from your superannuation interests if you are given:

- (a) an excess concessional contributions determination or excess non-concessional contributions determination; or
- (b) a notice of assessment of an amount of Division 293 tax; or
- (c) a first home super saver determination.

The Commissioner may also require the release of an amount from your superannuation interests in related circumstances.

Superannuation providers must usually pay the amount required to be released. However, for defined benefit superannuation interests the provider may choose whether or not to pay.

Released amounts are paid to the Commissioner. You get a credit for the released amount. Surplus credits are refunded to you under Division 3A of Part IIB.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 131-1

Table of sections

Requesting a release authority

- 131-5 Requesting the release of amounts from superannuation interests
- 131-10 Restrictions on the total amount you can request to be released
- 131-12 Withdrawing or amending your request for a release authority relating to an FHSS determination

Issuing a release authority to superannuation provider

- 131-15 Issuing release authorities
- 131-20 Amount to be stated in a release authority
- 131-25 Contents of a release authority
- 131-30 Varying or revoking a release authority

Complying with a release authority

- 131-35 Obligations of superannuation providers
- 131-40 Voluntary compliance with a release authority relating to defined benefit interests
- 131-45 Meaning of maximum available release amount
- 131-50 Notifying Commissioner
- 131-55 Notifying you
- 131-60 Compensation for acquisition of property

Consequences of releasing amounts

- 131-65 Entitlement to credits
- 131-70 Interest for late payments of money received by the Commissioner in accordance with release authority
- 131-75 Income tax treatment of amounts released—proportioning rule does not apply

Repayments if your entitlement to a credit ceases for a release authority relating to an FHSS determination

- 131-80 Repayments if your entitlement to a credit ceases for a release authority relating to an FHSS determination

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Requesting a release authority

131-5 Requesting the release of amounts from superannuation interests

- (1) You may make a request under this section for a *financial year if you are given any of the following:
 - (a) an *excess concessional contributions determination for the financial year;
 - (b) an *excess non-concessional contributions determination for the financial year;
 - (c) a notice of assessment of an amount of *Division 293 tax payable for the income year that corresponds to the financial year;
 - (d) a *first home super saver determination.
- (2) You make the request by:
 - (a) notifying the Commissioner of the total amount to be released; and
 - (b) identifying your *superannuation interest or interests from which that total amount is to be released; and
 - (c) if you identify more than one superannuation interest—stating the amount to be released from each such interest.
- (3) The request must:
 - (a) ensure that the total amount to be released for the determination or assessment complies with section 131-10; and
 - (b) be in the *approved form; and
 - (c) be given to the Commissioner within:
 - (i) 60 days after the Commissioner issues the determination or notice referred to in subsection (1); or
 - (ii) a further period allowed by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Unsuccessful requests—making a further request

- (4) If:
- (a) you make a valid request under this section; and
 - (b) the Commissioner gives you a notice under subsection 131-55(1) stating an amount (the ***unreleased amount***) that a *superannuation provider did not pay in relation to a release authority issued for that request;
- you may make a further request to release the unreleased amount from another of your *superannuation interests.
- (5) The further request must comply with subsection (2) and paragraphs (3)(a) and (b), and must be given to the Commissioner within:
- (a) 60 days after the Commissioner issues the notice mentioned in paragraph (4)(b); or
 - (b) a further period allowed by the Commissioner.

Most requests are irrevocable

- (6) Subject to section 131-12 (about requests relating to FHSS determinations), a request under this section is irrevocable.

131-10 Restrictions on the total amount you can request to be released

- (1) The total amount you can request to be released complies with this section if that amount:
- (a) if item 1, 3 or 4 of the following table applies—does not exceed the relevant amount referred to in that item; or
 - (b) if item 2 of the following table applies—is nil or equals the relevant amount referred to in that item.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Amount you can request to be released

Item	If the request relates to this kind of determination or assessment (see subsection 131-5(1)):	The relevant amount is:
1	an *excess concessional contributions determination	85% of the contributions stated in that determination
2	an *excess non-concessional contributions determination	the *total release amount stated in that determination
3	an assessment of an amount of *Division 293 tax	that amount of Division 293 tax
4	a *first home super saver determination	the *FHSS maximum release amount stated in that determination

- (2) However, for an amended determination or assessment, reduce the relevant amount referred to in the above table by any amount released under this Subdivision for an earlier determination or assessment of that kind that you are given for the *financial year or corresponding income year.
- (3) An amendment of a determination or assessment does not affect the validity of a request you make under section 131-5 before you are given the amended determination or the notice of the amended assessment.

131-12 Withdrawing or amending your request for a release authority relating to an FHSS determination

- (1) You may, by notifying the Commissioner in the *approved form, withdraw or amend your valid request made under section 131-5 if:
- (a) your request relates to a *first home super saver determination given to you; and
 - (b) in the case of amending your request—you satisfy paragraphs 138-10(2)(a) and (b); and
 - (c) the Commissioner has not already issued a release authority in relation to your request.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) Your amended request is treated as a valid request under section 131-5 if it complies with subsection 131-5(2) and paragraphs 131-5(3)(a) and (c).
- (3) Withdrawing your request does not prevent you from making a later request under section 131-5 in relation to the *first home super saver determination.

Issuing a release authority to superannuation provider

131-15 Issuing release authorities

Issuing in response to a valid request

- (1) If you make a valid request under section 131-5, the Commissioner must issue a release authority to each *superannuation provider that holds a *superannuation interest identified in the request.

Issuing if you do not make a valid request in response to an excess non-concessional contributions determination etc.

- (2) If:
 - (a) on a particular day, the Commissioner issues you with:
 - (i) an *excess non-concessional contributions determination for a *financial year; or
 - (ii) a notice to which paragraph 131-5(4)(b) applies for such a determination; and
 - (b) within 60 days after that day, you do not make a valid request under section 131-5 for that determination;the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

Issuing if you are liable to pay excess non-concessional contributions tax

- (3) If you are given a notice of an *excess non-concessional contributions tax assessment for a *financial year, the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Commissioner may issue a release authority to one or more
*superannuation providers that hold *superannuation interests for
you.

*Issuing if you have an unpaid amount of assessed Division 293 tax
that is not deferred to a debt account*

- (4) If:
- (a) for an income year, you are given a notice of assessment of
an amount of *Division 293 tax that is not *deferred to a debt
account for a *superannuation interest; and
 - (b) on the 60th day after the day the Commissioner issues that
notice, the sum of the following falls short of that amount of
tax:
 - (i) any payments of that tax for the income year that you
have already made;
 - (ii) any amounts that have already been released under this
Subdivision for that assessment;
- the Commissioner may issue a release authority to one or more
*superannuation providers that hold superannuation interests for
you.

131-20 Amount to be stated in a release authority

- (1) The amount to be released from one or more *superannuation
interests under a release authority issued under section 131-15
must be:
- (a) for a release authority issued under subsection 131-15(1)—
the amount stated in the request; or
 - (b) otherwise—worked out so that the total amount stated for all
release authorities for the applicable determination or
assessment does not exceed:
 - (i) for a release authority issued under
subsection 131-15(2)—the *total release amount stated
in the determination referred to in that subsection; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) for a release authority issued under subsection 131-15(3) or (4)—the amount of tax stated in the assessment referred to in that subsection.
- (2) For the purposes of paragraph (1)(b), disregard an amount stated in another release authority to the extent that a notice given under subsection 131-50(2) states that the amount will not be paid.

131-25 Contents of a release authority

Each release authority issued under section 131-15 must:

- (a) be issued to a single *superannuation provider; and
- (b) state the amount to be released from each *superannuation interest under the release authority; and
- (c) be dated; and
- (d) contain any other information that the Commissioner considers relevant.

131-30 Varying or revoking a release authority

Release authority not relating to an FHSS determination

- (1) The Commissioner may decide to vary or revoke a release authority issued:
 - (a) under section 131-15; and
 - (b) in relation to a determination, or assessment, mentioned in paragraph 131-5(1)(a), (b) or (c) and given to you;at any time before the Commissioner is given a notice under section 131-50 relating to the release authority.

Release authority relating to an FHSS determination

- (2) For a release authority issued under section 131-15 in relation to a *first home super saver determination given to you, the Commissioner may decide to:
 - (a) vary the release authority if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) the varied release authority would be consistent with paragraph 131-5(3)(a); and
 - (ii) you satisfy paragraphs 138-10(2)(a) and (b); or
- (b) revoke the release authority;
at any time before the Commissioner begins treating, under Division 3 of Part IIB, any credit to which you have become entitled under section 131-65 in relation to the release authority.
- (3) The Commissioner may make a decision under subsection (2):
 - (a) on the Commissioner's own initiative; or
 - (b) on application by you to the Commissioner in the *approved form.
- (4) If a release authority is varied or revoked under subsection (2) at a particular time, then any entitlement under section 131-65 you had to a credit relating to the release authority ceases at that time.
- (5) The revocation of a release authority under subsection (2) does not prevent you from making a later request under section 131-5 in relation to the same *first home super saver determination.

Reissuing varied release authorities

- (6) If the Commissioner varies a release authority under this section at a particular time, then:
 - (a) at that time, the release authority (as issued before the variation) ceases to be in force; and
 - (b) the Commissioner must reissue the release authority (as varied) under section 131-15.

Review

- (7) If you are dissatisfied with a decision under subsection (2) by the Commissioner in relation to you:
 - (a) to vary or revoke a release authority; or
 - (b) not to vary or revoke a release authority;you may object against it in the manner set out in Part IVC of this Act.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 131-35

Complying with a release authority

131-35 Obligations of superannuation providers

- (1) A *superannuation provider issued with a release authority under section 131-15 must, within 10 *business days after the release authority is issued (or a further period allowed by the Commissioner), pay to the Commissioner the lesser of:
- (a) the amount stated in the release authority; and
 - (b) the sum of the *maximum available release amounts for each *superannuation interest held by the superannuation provider for you in *superannuation plans.

Note 1: Subsection 288-95(3) provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see section 131-75.

Exception—defined benefit interests not subject to compulsory release

- (2) However, the *maximum available release amount for a *superannuation interest is not to be included in the sum worked out under paragraph (1)(b) if the interest is a *defined benefit interest.

131-40 Voluntary compliance with a release authority relating to defined benefit interests

- (1) A *superannuation provider issued with a release authority under section 131-15 may, within 10 *business days after the release authority is issued (or a further period allowed by the Commissioner), pay to the Commissioner the lesser of:
- (a) the amount stated in the release authority; and
 - (b) the sum of the *maximum available release amounts for each *defined benefit interest held by the superannuation provider for you in *superannuation plans.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) For the purposes of paragraph (1)(a), reduce the amount mentioned in that paragraph by any amount the provider pays under section 131-35 in relation to the release authority.

131-45 Meaning of maximum available release amount

The *maximum available release amount* for a *superannuation interest at a particular time is the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

131-50 Notifying Commissioner

- (1) A *superannuation provider issued with a release authority under section 131-15 must notify the Commissioner of a payment made in accordance with this Subdivision.
- (2) A *superannuation provider that:
- (a) has been issued with a release authority under section 131-15; and
 - (b) is not required to pay an amount under section 131-35, or is required under that section to pay an amount less than the amount stated in the release authority;
- must notify the Commissioner that the provider is not required to comply with the release authority.
- (3) A notice under this section must be given in the *approved form within the period applying under subsection 131-35(1) or 131-40(1) for the release authority.

Note: Subsection 286-75(1) provides for an administrative penalty for failing to comply with this section.

131-55 Notifying you

- (1) The Commissioner must notify you if, in relation to a release authority issued under section 131-15 in relation to you, the Commissioner:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) is given a notice from a *superannuation provider under section 131-50; or
 - (b) does not receive a payment from a superannuation provider of the full amount stated in the release authority within the time mentioned in subsection 131-35(1) or 131-40(1).
- (2) A notice under subsection (1) must:
 - (a) be in writing; and
 - (b) identify the *superannuation provider; and
 - (c) state how much of the amount stated in the release authority was not paid within the applicable time.

131-60 Compensation for acquisition of property

- (1) If the operation of section 131-35 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.
- (2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in:
 - (a) the Federal Court of Australia; or
 - (b) the Supreme Court of a State or Territory;for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Consequences of releasing amounts

131-65 Entitlement to credits

- (1) If a *superannuation provider pays an amount in relation to a release authority issued under section 131-15 in relation to you, you are entitled to a credit equal to that amount.

Note: Division 3 of Part IIB provides for the treatment of credits that you are entitled to under a taxation law.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) The credit arises on the day the Commissioner receives the amount.

Exception for voluntary payments of Division 293 tax debt account

- (3) However, if the amount paid in relation to the release authority relates to an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest:
- (a) subsection (1) does not apply in relation to the payment; and
 - (b) treat the payment as if it were a voluntary payment under section 133-70 in relation to that debt account.

131-70 Interest for late payments of money received by the Commissioner in accordance with release authority

- (1) You are entitled to an amount of interest worked out under subsection (2) if:
- (a) the Commissioner is required under Division 3A of Part IIB to refund all or part of a credit you are entitled to under section 131-65; and
 - (b) the Commissioner does not so refund all or part of that credit within 60 days after receiving the payment that gave rise to the credit.
- (2) The interest is to be calculated:
- (a) on so much of the amount of the credit as the Commissioner fails to refund under that Division; and
 - (b) for the period:
 - (i) beginning 60 days after the day the Commissioner receives the amount; and
 - (ii) ending on the day the Commissioner refunds the amount mentioned in paragraph (1)(a); and
 - (c) on a daily basis; and
 - (d) at the *base interest rate for the day the interest is calculated.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 131-75

131-75 Income tax treatment of amounts released—proportioning rule does not apply

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Subdivision.

Note: The income tax treatment of released amounts is also affected by Subdivision 292-B, and section 303-15, of that Act.

Repayments if your entitlement to a credit ceases for a release authority relating to an FHSS determination

131-80 Repayments if your entitlement to a credit ceases for a release authority relating to an FHSS determination

Repaying the superannuation provider if it still holds a superannuation interest for you

- (1) If:
- (a) a *superannuation provider pays an amount (the **released amount**) to the Commissioner under section 131-35 or 131-40 in relation to you; and
 - (b) your entitlement under section 131-65 to a credit relating to the released amount ceases under subsection 131-30(4) or 138-13(3); and
 - (c) the Commissioner reasonably believes that the provider still holds a *superannuation interest for you; and
 - (d) the Commissioner reasonably believes that, were the released amount to be repaid to the provider, the provider:
 - (i) could allocate the repayment (the **repaid amount**) to that superannuation interest; and
 - (ii) could later pay an amount equal to the repaid amount in response to a release authority issued under this Division in relation to a later *first home super saver determination given to you;
- the Commissioner must repay the released amount to the provider.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 131-80

- (2) The Commissioner must make the repayment within 30 *business days after the day the Commissioner starts holding the reasonable belief necessary to satisfy both paragraphs (1)(c) and (d).

What happens if the original provider cannot be repaid

- (3) However, if the Commissioner cannot repay the released amount under subsection (1), the Commissioner must only pay an equivalent amount to the released amount if an item of the following table applies.

When the Commissioner must pay the equivalent amount

Item	If the Commissioner reasonably believes that:	then the Commissioner must pay the equivalent amount to:
1	<p>(a) another release authority has been issued under section 131-15:</p> <ul style="list-style-type: none"> (i) to another *superannuation provider in relation to you; and (ii) in relation to a *first home super saver determination (an <i>FHSS determination</i>) given to you; and <p>(b) the other provider still holds a *superannuation interest for you; and</p> <p>(c) were the equivalent amount to be paid to the other provider, the other provider:</p> <ul style="list-style-type: none"> (i) could allocate the equivalent amount to that superannuation interest; and (ii) could later pay an amount equal to the equivalent amount in response to a release authority issued under this Division in relation to a later FHSS determination given to you 	the other *superannuation provider.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 131-80

When the Commissioner must pay the equivalent amount		
Item	If the Commissioner reasonably believes that:	then the Commissioner must pay the equivalent amount to:
2	(a) another *superannuation provider holds a *superannuation interest for you; and (b) you or your *legal personal representative has notified the Commissioner of this in the *approved form	the other *superannuation provider.
3	(a) you satisfy a condition of release, with a nil cashing restriction, of benefits specified in a standard referred to in paragraph 31(2)(h) of the <i>Superannuation Industry (Supervision) Act 1993</i> ; and (b) you or your *legal personal representative has notified the Commissioner of this in the *approved form	you or your *legal personal representative (as applicable).
(4) The Commissioner must pay the equivalent amount:		
(a) in accordance with the item of the table that is the first to so apply; and		
(b) within 30 *business days after the day that item starts to so apply.		

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 133—Division 293 tax

Table of Subdivisions

	Guide to Division 133
133-A	Deferral determination
133-B	Debt account
133-C	Compulsory payment

Guide to Division 133

133-1 What this Division is about

Payment of Division 293 tax is deferred to the extent to which the tax is attributable to defined benefit interests from which no superannuation benefit has yet become payable.

This reflects the fact that money generally cannot be released from defined benefit interests until a superannuation benefit is paid, usually upon retirement.

Subdivision 133-A—Deferral determination

Guide to Subdivision 133-A

133-5 What this Subdivision is about

The Commissioner determines the amount of your tax that is deferred to a debt account by working out the extent to which your assessed tax is attributable to defined benefit interests.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-10

Table of sections

Operative provisions

133-10	Determination of tax that is <i>deferred to a debt account</i>
133-15	<i>Defined benefit tax</i>
133-20	How to attribute the defined benefit tax to defined benefit interests
133-25	Determination reducing tax deferred to a debt account
133-30	General provisions applying to determinations under this Subdivision

Operative provisions

133-10 Determination of tax that is *deferred to a debt account*

- (1) The Commissioner must make a determination specifying the amount the Commissioner has ascertained as being the extent to which your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For general provisions, including review, see section 133-30.
- (2) The amount of *assessed Division 293 tax specified in the determination is *deferred to a debt account* for the *superannuation interest.
- (3) However, the Commissioner must not make a determination under this section in relation to a *superannuation interest if, at the time the determination is to be made, the *end benefit for the superannuation interest has become payable.

Note: For the meaning of *end benefit*, see section 133-130.
- (4) Subsection (1) does not apply if the Commissioner ascertains that no part of your *assessed Division 293 tax for an income year is *defined benefit tax attributable to a *superannuation interest.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

133-15 *Defined benefit tax*

- (1) Your **defined benefit tax** for an income year is the amount worked out using the formula:

$$\frac{\text{*Division 293 tax for the income year}}{\text{*Taxable contributions for the income year}} \times \frac{\text{Defined benefit contribution component}}{\text{*Taxable contributions for the income year}}$$

where:

defined benefit contribution component means the amount worked out as follows:

- (a) work out the lesser of the following for the corresponding *financial year:
- (i) your *low tax contributions;
 - (ii) the total amount of your *defined benefit contributions in respect of all *defined benefit interests you have in the financial year;
- (b) subtract from the result of paragraph (a) the difference (if any) between:
- (i) your *taxable contributions for the income year; and
 - (ii) your low tax contributions for the corresponding financial year.

Note: A difference may exist for paragraph (b) because of the \$250,000 high income threshold: see subsection 293-20(1) of the *Income Tax Assessment Act 1997*.

Exception—defined benefit contribution component is nil or less

- (2) However, if the defined benefit contribution component mentioned in subsection (1) is nil, or a negative amount, no part of the *Division 293 tax for the income year is **defined benefit tax**.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-20

133-20 How to attribute the defined benefit tax to defined benefit interests

- (1) If you have one *defined benefit interest in a *financial year, your *defined benefit tax for the corresponding income year is attributable to that interest.
- (2) If you have more than one *defined benefit interest in a *financial year, your *defined benefit tax for the corresponding income year is attributable to each such interest in proportion to the *defined benefit contributions for the interest for the financial year.

133-25 Determination reducing tax deferred to a debt account

- (1) If an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest is reduced as a result of an amended assessment, the Commissioner must make a determination under this section in respect of the reduced amount.
- (2) The amount so determined is a *deferral reversal* for the *superannuation interest.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

133-30 General provisions applying to determinations under this Subdivision

- (1) The Commissioner must:
 - (a) make a determination as soon as practicable after:
 - (i) for a determination under section 133-10—assessing the amount (whether by way of a first assessment or an amended assessment); or
 - (ii) for a determination under section 133-25—amending the assessment; and
 - (b) give you notice in writing of the determination as soon as practicable after making it.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-55

- (3) The validity of the determination is not affected because any of the provisions of this Act have not been complied with.

Review

- (4) If you are dissatisfied with a determination made under this Subdivision in relation to you, you may object against the determination in the manner set out in Part IVC.
- (5) If you are dissatisfied with a decision the Commissioner makes not to make a determination under this Subdivision:
- (a) you may object against the decision in the manner set out in Part IVC; and
 - (b) for the purpose of working out the period within which the objection must be lodged, notice of the decision is taken to have been served on you on the day notice is given to you of:
 - (i) for a determination under section 133-10—the assessment of the amount; or
 - (ii) for a determination under section 133-25—the amended assessment.

Note: For the period within which objections must be lodged, see section 14ZW.

Subdivision 133-B—Debt account

Guide to Subdivision 133-B

133-55 What this Subdivision is about

The Commissioner keeps debt accounts for tax that is deferred to a debt account for a superannuation interest.

You can make voluntary payments of the debt account.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-60

Table of sections

Operative provisions

133-60	Debt account to be kept for deferred tax
133-65	Interest on debt account balance
133-70	Voluntary payments
133-75	Commissioner must notify superannuation provider of debt account

Operative provisions

133-60 Debt account to be kept for deferred tax

Accounts to be kept

- (1) The Commissioner is to keep a debt account for *Division 293 tax for you for a *superannuation interest, if an amount of your *assessed Division 293 tax is *deferred to a debt account for the superannuation interest.

Account to be debited for Division 293 tax

- (2) The Commissioner must debit the debt account for the amount of *assessed Division 293 tax that is *deferred to a debt account for the *superannuation interest.

133-65 Interest on debt account balance

Interest to be debited at end of financial year

- (1) If a debt account for a *superannuation interest is in debit at the end of a *financial year, the Commissioner is to debit the account for interest on the amount by which the account is in debit, calculated at the *long term bond rate for that financial year.

Note: Interest would not be debited to a debt account that is no longer being kept by the Commissioner because the assessed Division 293 tax liability being tracked in the account has been finally discharged as mentioned in subsection 133-105(3).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-70

Remission of interest—deferral reversal

- (2) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, from a debt account under subsection (1) if:
- (a) the debt account is credited:
 - (i) under section 133-70 because of a *deferral reversal; or
 - (ii) because a determination under section 133-10 is varied or revoked; and
 - (b) the Commissioner is satisfied that, because of that credit, it would be fair and reasonable to do so.

Remission of interest—special circumstances

- (3) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, to a debt account under subsection (1) if the Commissioner is satisfied that, because special circumstances exist, it would be fair and reasonable to do so.

133-70 Voluntary payments

- (1) You may make payments to the Commissioner for the purpose of reducing the amount by which a debt account for a *superannuation interest is in debit.
- (2) The Commissioner is to:
- (a) acknowledge receipt of the payment to you; and
 - (b) credit the payment to the debt account; and
 - (c) notify you of the revised balance of the debt account.
- The credit mentioned in paragraph (b) is to be made when the payment is received.
- (3) The amount of a *deferral reversal for the *superannuation interest is to be treated as if it were a voluntary payment under this section in relation to the debt account for that interest. However, paragraphs (2)(a) and (c) do not apply in relation to that amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-75

133-75 Commissioner must notify superannuation provider of debt account

If the Commissioner starts to keep a debt account for *Division 293 tax for you for a *superannuation interest, the Commissioner must give the *superannuation provider in relation to the superannuation interest a notice saying so.

Subdivision 133-C—Compulsory payment

Guide to Subdivision 133-C

133-100 What this Subdivision is about

The deferred tax liability must be paid when a superannuation benefit becomes payable from the superannuation interest.

In some cases, the amount that must be paid is capped.

Table of sections

Debt account discharge liability

- 133-105 Liability to pay debt account discharge liability
- 133-110 When debt account discharge liability must be paid
- 133-115 General interest charge
- 133-120 Meaning of *debt account discharge liability*
- 133-125 Notice of debt account discharge liability

End benefit

- 133-130 Meaning of *end benefit*
- 133-135 Superannuation provider may request debt account status
- 133-140 End benefit notice—superannuation provider
- 133-145 End benefit notice—material changes or omissions

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Debt account discharge liability

133-105 Liability to pay debt account discharge liability

- (1) You are liable to pay the amount of your *debt account discharge liability for a *superannuation interest if the *end benefit for the interest becomes payable.
 - (2) The liability arises:
 - (a) unless paragraph (b) applies—at the time the *end benefit becomes payable; or
 - (b) if the end benefit is a *superannuation death benefit—just before you die.
- Note 1: For paragraph (a), a release authority allows money to be released from the superannuation plan to pay this amount: see subsection 135-10(1).
- Note 2: For paragraph (b), the debt will be recovered from your estate: see Subdivision 260-E.
- (3) Payment of your *debt account discharge liability for a *superannuation interest discharges your liability for so much of your total *assessed Division 293 tax for all income years as is *deferred to a debt account for the superannuation interest.

133-110 When debt account discharge liability must be paid

The amount of your *debt account discharge liability for a *superannuation interest is due and payable at the end of 21 days after the day on which the *end benefit for the superannuation interest is paid.

133-115 General interest charge

If your *debt account discharge liability remains unpaid after the time by which it is due and payable, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-120

- (a) begins on the day on which the debt account discharge liability was due to be paid; and
- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the debt account discharge liability;
 - (ii) general interest charge on any of the debt account discharge liability.

Note: The general interest charge is worked out under Part IIA.

133-120 Meaning of *debt account discharge liability*

- (1) The ***debt account discharge liability*** for a *superannuation interest for which the Commissioner keeps a debt account is the amount by which the debt account is in debit at the time the *end benefit for the superannuation interest becomes payable.
 - (1A) However, if the end benefit cap for the *superannuation interest stated in a notice given to the Commissioner under subsection (2) of this section or section 133-140 is less than the amount mentioned in subsection (1) of this section, the ***debt account discharge liability*** for the superannuation interest is an amount equal to the end benefit cap.
 - (2) If requested by the Commissioner, the *superannuation provider in relation to a *superannuation interest must give the Commissioner notice of the amount (the ***end benefit cap***) that is 15% of the employer-financed component of any part of the *value of the superannuation interest that accrued after 1 July 2012.
- Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint under the AFCA scheme (within the meaning of the *Corporations Act 2001*).
- (3) For the purposes of subsection (2), the *value of the *superannuation interest is to be worked out at the end of the *financial year before the financial year in which the *end benefit becomes payable.
 - (4) A notice under subsection (2) must be given:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) in the *approved form; and
- (b) within 14 days of the Commissioner making the request.

133-125 Notice of debt account discharge liability

- (1) The Commissioner must give you a notice under this section if the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account.
- (2) The notice must state that you are liable to pay your *debt account discharge liability for the *superannuation interest and specify:
 - (a) the amount of that debt; and
 - (b) the day on which that debt is due and payable; and
 - (c) whether the amount of that debt is:
 - (i) the amount by which the debt account is in debit as mentioned in subsection 133-120(1); or
 - (ii) the end benefit cap mentioned in subsection 133-120(1A).
- (3) If you are dissatisfied with a notice given under this section in relation to you, you may object against it in the manner set out in Part IVC of this Act.
- (4) However, you cannot object against a notice stating that the amount you are liable to pay is the amount by which the debt account is in debit, unless you are seeking to be liable to pay the end benefit cap specified in a notice given to the Commissioner by the *superannuation provider under subsection (2) or section 133-140 (as the case requires).

End benefit

133-130 Meaning of *end benefit*

- (1) A *superannuation benefit is the ***end benefit*** for a *superannuation interest if it is the first superannuation benefit to become payable from the interest, disregarding a benefit that is any of the following:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-135

- (a) a *roll-over superannuation benefit paid to a *complying superannuation plan that is a *successor fund;
 - (b) a benefit that becomes payable under the condition of release specified in item 105 of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (about severe financial hardship);
 - (c) a benefit that becomes payable under the condition of release specified in item 107 of that table (about compassionate ground);
 - (d) a benefit specified in an instrument under subsection (2).
- (2) The Minister may, by legislative instrument, specify a *superannuation benefit for the purposes of paragraph (1)(d).

133-135 Superannuation provider may request debt account status

- (1) If:
- (a) a *superannuation provider has been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for a *superannuation interest; and
 - (b) the superannuation provider receives a request to pay the *end benefit from the superannuation interest or the end benefit becomes payable from the superannuation interest;
- the superannuation provider may, in the *approved form, request the Commissioner to advise as to the status of the debt account.
- (2) If the Commissioner receives a request, the Commissioner must advise the *superannuation provider as soon as practicable whether or not the debt account is in debit.

133-140 End benefit notice—superannuation provider

- (1) If the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account, the *superannuation provider in relation to the interest must give the Commissioner a notice stating:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) unless subsection (1A) applies—the amount of the end benefit cap mentioned in subsection 133-120(2) for the superannuation interest; and
- (b) the expected date of payment of the benefit.

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint under the AFCA scheme (within the meaning of the *Corporations Act 2001*).

- (1A) The notice does not need to state the amount of the end benefit cap if:
 - (a) the *superannuation provider has already given the Commissioner notice of the end benefit cap under subsection 133-120(2); or
 - (b) before the end of the period mentioned in subsection (2), the Commissioner has advised the superannuation provider under subsection 133-135(2) that the debt account is not in debit.
- (2) The notice must be given within 14 days after the earlier of:
 - (a) the *superannuation provider receiving a request (if any) to pay the *superannuation benefit; and
 - (b) the superannuation benefit becoming payable.
- (3) However, this section does not apply if the *superannuation provider has not been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for the *superannuation interest.
- (4) A notice under this section must be given in the *approved form.

133-145 End benefit notice—material changes or omissions

- (1) If an entity that gives the Commissioner a notice under section 133-140 becomes aware of a material change or material omission in any information given to the Commissioner in the notice, the entity must:
 - (a) tell the Commissioner of the change in the *approved form; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 133-145

- (b) give the omitted information to the Commissioner in the approved form.
- (2) Information required by this section must be given no later than 7 days after the entity becomes aware of the change or omission.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 135—Releasing money from superannuation

Table of Subdivisions

	Guide to Division 135
135-A	When the Commissioner must issue a release authority
135-B	When a release authority can be given to a superannuation provider
135-C	Release of superannuation money under a release authority

Guide to Division 135

135-1 What this Division is about

This Division contains rules about release authorities, which allow money to be released from a superannuation plan to pay your debt account discharge liability.

Subdivision 135-A—When the Commissioner must issue a release authority

Guide to Subdivision 135-A

135-5 What this Subdivision is about

The Commissioner must issue you with a release authority to allow money to be released from a superannuation plan to pay your debt account discharge liability.

Table of sections

	Operative provisions
135-10	Release authorities

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 135-10

Operative provisions

135-10 Release authorities

- (1) If the condition mentioned in column 1 of an item in the following table is satisfied:
- (a) the Commissioner must issue you with a release authority under that item; and
 - (b) you have a **release entitlement**:
 - (i) equal to the amount mentioned in column 2 of that item; and
 - (ii) arising at the time mentioned in column 3 of that item.

Release entitlement			
Item	Column 1 Condition:	Column 2 Amount of the release entitlement:	Column 3 Time at which the release entitlement arises:
3	You become liable to pay your *debt account discharge liability for a *superannuation interest	The amount of your debt account discharge liability	On the giving of the notice under section 133-125

Note: A release authority issued under item 3 of the table can only be given to the superannuation provider that holds the superannuation interest to which the debt account relates: see subsection 135-40(3).

Requirements for release authority

- (2) A release authority must:
- (a) state the amount of the *release entitlement in respect of which it is given; and
 - (b) be dated; and
 - (c) contain any other information that the Commissioner considers relevant.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Commissioner may issue a further release authority

- (3) The Commissioner may at any time issue you with a further release authority in respect of a *release entitlement if:
- (a) the Commissioner is satisfied that it is reasonable in the circumstances to do so; and
 - (b) the Commissioner has issued you with an earlier release authority in respect of that release entitlement.

Despite paragraph (2)(a), the further release authority must state the amount the Commissioner considers reasonable in the circumstances, but not exceeding the amount of the release entitlement.

Note: For variation and revocation of release authorities, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Release authority not to be issued to trustee of deceased estate

- (4) To avoid doubt, this section does not require or permit the Commissioner to issue a release authority to the trustee of a deceased estate.

Subdivision 135-B—When a release authority can be given to a superannuation provider

Guide to Subdivision 135-B

135-35 What this Subdivision is about

You may give a release authority to a superannuation provider within 120 days of being issued with it.

Table of sections

Operative provisions

135-40 When you may give release authority to superannuation provider

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 135-40

Operative provisions

135-40 When you may give release authority to superannuation provider

- (1) You may give the release authority to a *superannuation provider that holds a *superannuation interest for you within 120 days after the date of the release authority.
- (2) You may request the *superannuation provider, in writing, to pay a specified amount in relation to the release authority.

Note 1: For the amount that the provider pays under a release authority, see section 135-85.

Note 2: If excess amounts are paid in relation to a release authority:

- (a) the excess is assessable income (see section 304-20 of the *Income Tax Assessment Act 1997*); and
- (b) you are liable to an administrative penalty (see section 288-100 in this Schedule).

- (3) However, a release authority issued under item 3 of the table in subsection 135-10(1) (for debt account discharge liability) may only be given to the *superannuation provider that holds the *superannuation interest to which the debt account relates.

Subdivision 135-C—Release of superannuation money under a release authority

Guide to Subdivision 135-C

135-70 What this Subdivision is about

This Subdivision sets out a general requirement for a superannuation provider to comply with a release authority.

The Subdivision also includes provisions about how much must be paid, who it must be paid to, which interest it is to be paid from, and how the payments are treated by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Table of sections

Operative provisions

135-75	Requirement for superannuation provider to release money
135-80	Compensation for acquisition of property
135-85	Release amount
135-90	How the Commissioner applies amounts received under a release authority
135-95	Defined benefit interests—releasing amounts to pay debt account discharge liability
135-100	Income tax treatment of amounts released—proportioning rule does not apply

Operative provisions

135-75 Requirement for superannuation provider to release money

- (1) If:
- (a) a *superannuation provider has been given a release authority in accordance with Subdivision 135-B; and
 - (b) the amount mentioned in section 135-85 (the ***release amount***) is greater than nil;
- the superannuation provider must pay the release amount within 30 days after receiving the release authority.

Who superannuation provider pays the amount to

- (2) The release amount must be paid to the Commissioner.

- Note 1: Section 288-95 provides for an administrative penalty for failing to comply with this section.
- Note 2: For the taxation treatment of the payment, see sections 303-20 and 304-20 of the *Income Tax Assessment Act 1997*.
- Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in this Schedule.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 135-80

Which superannuation interest the amount is to be paid from

- (4) The payment must be made out of one or more *superannuation interests (other than a *defined benefit interest) held by the *superannuation provider for the individual.

135-80 Compensation for acquisition of property

- (1) If the operation of section 135-75 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.
- (2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

135-85 Release amount

The amount is the least of the following amounts:

- (a) the amount stated in the release authority, as issued by the Commissioner;
- (b) if the individual or Commissioner requests the *superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
- (c) the sum of the *maximum available release amounts for each *superannuation interest (other than a *defined benefit interest) held by the superannuation provider for the individual in *superannuation plans.

Note: For the *maximum available release amount*, see section 131-45.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

135-90 How the Commissioner applies amounts received under a release authority

If the Commissioner receives a payment under a release authority, it is taken for the purposes of Part IIB to have been received in respect of a current or anticipated tax debt of the individual.

Note: Part IIB is about running balance accounts and the application of payments and credits.

135-95 Defined benefit interests—releasing amounts to pay debt account discharge liability

The exclusion of *defined benefit interests from subsection 135-75(4) and paragraph 135-85(c) is to be disregarded for a release authority issued under item 3 of the table in subsection 135-10(1) (about debt account discharge liability).

135-100 Income tax treatment of amounts released—proportioning rule does not apply

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Division.

Note: Further provisions about the income tax treatment of amounts released are in sections 303-20 and 304-20 of that Act.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 136-1

Division 136—Transfer balance cap

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Guide to Division 136

136-1 What this Division is about

If you have excess transfer balance in your transfer balance account, the Commissioner may require you and your superannuation income stream provider to reduce the total amount of your superannuation income streams that are in the retirement phase.

Subdivision 136-A—Excess transfer balance determinations

Guide to Subdivision 136-A

136-5 What this Subdivision is about

If your transfer balance account exceeds the transfer balance cap, the excess must be reduced by commuting in full or in part your superannuation income streams that are in the retirement phase.

If you have more than one superannuation income stream, you may choose which one to commute.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Operative provisions

136-10 Excess transfer balance determination

- (1) If you have *excess transfer balance in your *transfer balance account at the end of a day, the Commissioner may make a written determination stating the amount of that excess transfer balance.

Note: It is not necessary for the Commissioner to issue a determination under this subsection if the Commissioner becomes aware that you no longer have an excess transfer balance. You are still liable to pay excess transfer balance tax if no determination is issued: see Subdivision 294-F of the *Income Tax Assessment Act 1997*.

- (2) A determination under this section is an ***excess transfer balance determination***.
- (3) The amount of *excess transfer balance stated in an *excess transfer balance determination is a ***crystallised reduction amount***.
- (4) The Commissioner may amend or revoke an *excess transfer balance determination at any time before a commutation authority relating to the determination is issued under section 136-55.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Determination to include default commutation notice

- (6) A determination made under subsection (1) must include a notice:
- (a) stating that, if you do not make an election under section 136-20 within the period specified in that section, the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Commissioner will issue one or more commutation authorities; and

(b) specifying:

- (i) the *superannuation income stream provider or providers to whom a commutation authority will be issued; and
- (ii) the *superannuation income stream or streams that the providers will be obliged to commute in full or in part; and
- (iii) if more than one commutation authority will be issued—the amount to be stated in each commutation authority, or the method the Commissioner will use to work out the amount to be stated in each commutation authority.

(7) A notice included with an *excess transfer balance determination in accordance with subsection (6) is a **default commutation notice**.

136-15 Review

- (1) If you are dissatisfied with an *excess transfer balance determination made in relation to you, you may object against the determination in the manner set out in Part IVC.
- (2) However, for the purposes of Part IVC, the *default commutation notice does not form part of the taxation decision.

136-20 Electing to commute a different superannuation income stream

- (1) This section applies to you if:
 - (a) you receive an *excess transfer balance determination under section 136-10; and
 - (b) you are the *retirement phase recipient of 2 or more *superannuation income streams.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) You may elect which of those *superannuation income streams is to be fully or partially commuted for the purpose of reducing the *transfer balance in your *transfer balance account by the *crystallised reduction amount.

Requirements for election

- (3) You make an election under subsection (2) by:
- (a) identifying the *superannuation income stream or streams to be commuted in full or in part and the *superannuation income stream provider for each such stream; and
 - (b) if you identify more than one superannuation income stream—stating the amount to be commuted from each such income stream.
- (4) The election must:
- (a) be in the *approved form; and
 - (b) be given to the Commissioner within:
 - (i) 60 days after the *excess transfer balance determination or amended excess transfer balance determination is issued; or
 - (ii) a further period allowed by the Commissioner.

Election is irrevocable

- (5) An election under this section is irrevocable.

136-25 Notifying Commissioner of transfer balance debits

- (1) This section applies to you if you have received an *excess transfer balance determination.
- (2) You may notify the Commissioner in the *approved form of the amount of a *transfer balance debit that arises in your *transfer balance account if the debit arises in the period:
- (a) beginning when the determination is made; and
 - (b) ending at the earlier of:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (i) the time you made an election under section 136-20;
and
- (ii) the end of the period within which an election under section 136-20 may be made.

Subdivision 136-B—Commutation authorities

Guide to Subdivision 136-B

136-50 What this Subdivision is about

The Commissioner must issue a commutation authority to a superannuation income stream provider, unless you have notified the Commissioner that you have already reduced your excess transfer balance by the crystallised reduction amount.

A superannuation income stream provider will usually be required to commute the superannuation income stream stated in the authority.

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Obligations of Commissioner

136-55 Issuing of commutation authorities

Commutation authority must be issued if there is a commutable amount

- (1) The Commissioner must issue a commutation authority under this section to one or more *superannuation income stream providers if:
 - (a) an *excess transfer balance determination has been issued to you; and
 - (b) the excess transfer balance determination has not been revoked; and
 - (c) the period mentioned in subsection 136-20(4) has ended; and
 - (d) an amount (the **commutable amount**) greater than nil remains after reducing the *crystallised reduction amount by the sum of any *transfer balance debits notified to the Commissioner under section 136-25.

Issuing in response to a valid election

- (2) If you have made a valid election under section 136-20, the Commissioner must issue a commutation authority under this section to each *superannuation income stream provider identified in your election.
- (3) If the total of the amounts stated in your election under section 136-20 falls short of the commutable amount, the Commissioner must also issue a commutation authority to one or more *superannuation income stream providers specified in the *default commutation notice.

Issuing if you do not make a valid election

- (4) If you have not made a valid election under section 136-20, the Commissioner must issue a commutation authority to each *superannuation income stream provider specified in the *default commutation notice.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Requirements for commutation authority

- (5) Each commutation authority must:
 - (a) specify the *superannuation income stream that the *superannuation income stream provider is to commute, in full or in part; and
 - (b) state the amount (the **reduction amount**) by which the superannuation income stream is to be reduced; and
 - (c) be dated; and
 - (d) contain any other information that the Commissioner considers relevant.
- (6) The total of all reduction amounts stated in commutation authorities issued under this section relating to an *excess transfer balance determination must not exceed the commutable amount.

136-60 Varying and revoking a commutation authority

The Commissioner may vary or revoke a commutation authority at any time before the Commissioner receives a notice under section 136-85 relating to the commutation authority.

136-65 Issuing further commutation authorities

- (1) The Commissioner may issue a commutation authority under this section to one or more *superannuation income stream providers under this section if:
 - (a) a commutation authority (the **original commutation authority**) was issued under section 136-55; and
 - (b) the *superannuation income stream provider to which the original commutation authority was issued:
 - (i) paid a *superannuation lump sum that fell short of the reduction amount stated in the original commutation authority; or
 - (ii) did not comply with the original commutation authority.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) A commutation authority issued under this section must include the matters set out in subsection 136-55(5).
- (3) The Commissioner may issue a commutation authority under this section to any *superannuation income stream provider of a *superannuation income stream of which you are the *retirement phase recipient.
- (4) The total of all reduction amounts stated in commutation authorities issued under this section relating to an *excess transfer balance determination must not exceed the difference between:
 - (a) the commutable amount mentioned in subsection 136-55(1); and
 - (b) the sum of:
 - (i) any *superannuation lump sums notified to the Commissioner under section 136-85 in respect of the determination; and
 - (ii) any *transfer balance debits arising in your *transfer balance account under item 5 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997* because of any original commutation authority.

136-70 Notifying of non-commutable excess transfer balance

- (1) The Commissioner must notify you in writing if, at the end of a day after the Commissioner has issued an *excess transfer balance determination to you:
 - (a) the sum of all *transfer balance debits arising in your *transfer balance account since the determination was issued falls short of the *crystallised reduction amount; and
 - (b) you have *excess transfer balance in your transfer balance account; and
 - (c) either:
 - (i) the only *superannuation income streams of which you are a *retirement phase recipient are *capped defined benefit income streams; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) you are no longer a retirement phase recipient of any superannuation income stream.

Note: A debit arises in your transfer balance account when the Commissioner issues a notice under this section: see item 7 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997*.

- (2) A notice under subsection (1) must state the amount of the *excess transfer balance mentioned in paragraph (1)(b).

Obligations of superannuation income stream providers

136-80 Obligations on superannuation income stream providers

- (1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must, within 60 days after the commutation authority is issued, pay by way of commutation of the specified *superannuation income stream, a *superannuation lump sum equal to the lesser of:
- (a) the reduction amount stated in the commutation authority; and
 - (b) the *maximum available release amount for the *superannuation interest that supports the specified superannuation income stream.

Exception for capped defined benefit income streams

- (2) Despite subsection (1), if the specified *superannuation income stream is a *capped defined benefit income stream, the *superannuation income stream provider may choose not to comply with the commutation authority.

Exception for deceased member

- (3) Despite subsection (1), if the *retirement phase recipient has died, the *superannuation income stream provider may choose not to comply with the commutation authority.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

136-85 Notifying the Commissioner

- (1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must notify the Commissioner of the amount of a *superannuation lump sum paid in accordance with the commutation authority.
- (2) If a *superannuation income stream provider chooses under subsection 136-80(2) or (3) not to comply with the commutation authority, the provider must notify the Commissioner of that choice.
- (3) A notice under this section must be in the *approved form and must be given within 60 days after the commutation authority is issued.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

136-90 Notifying you

- (1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must notify you if the superannuation income stream provider:
 - (a) pays a *superannuation lump sum in accordance with the commutation authority; or
 - (b) chooses under subsection 136-80(2) not to comply with the commutation authority.
- (2) A notice under this section must be in the *approved form and must be given within 60 days after the commutation authority is issued.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Division 138—First home super saver scheme

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Guide to Division 138

138-1 What this Division is about

If you have had voluntary contributions into superannuation, you may be eligible to have those contributions and their associated earnings released for the purposes of purchasing or constructing your first home.

Subdivision 138-A—First home super saver determination

Guide to Subdivision 138-A

138-5 What this Subdivision is about

If you satisfy particular criteria, you may request that the Commissioner make a determination stating your FHSS maximum release amount and the components that make up that amount.

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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Operative provisions

138-10 First home super saver determination

First home super saver determination

- (1) A **first home super saver determination** is a written determination stating:
- (a) your *FHSS maximum release amount; and
 - (b) the amount of each of the following components that make up your FHSS maximum release amount:
 - (i) your *concessional contributions;
 - (ii) your *non-concessional contributions;
 - (iii) your associated earnings.

Requesting a first home super saver determination

- (2) You may request the Commissioner, in the *approved form, to make a *first home super saver determination if:
- (a) you have never held:
 - (i) a legal interest in an estate in fee simple in real property in Australia; or
 - (ii) a legal interest in a lease of land in Australia (including a renewal or extension of such a lease) as described in paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997*; or
 - (iii) a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land in Australia; and
 - (b) you are 18 years or older; and
 - (c) subsection (2C) applies for you.
- (2A) If the Commissioner determines that you have suffered a financial hardship, you are taken to have satisfied paragraph (2)(a).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2B) The regulations may specify the circumstances in which the Commissioner is to determine that a person has suffered a financial hardship for the purposes of subsection (2A).
- (2C) This subsection applies for you if:
- (a) you have not previously made a valid request for a release authority under Division 131 in relation to a *first home super saver determination made in relation to you; or
 - (b) one of the following subparagraphs applies for each of your previous valid requests for such a release authority:
 - (i) you have withdrawn the request;
 - (ii) the Commissioner has revoked the release authority issued in relation to the request (whether or not the release authority had previously been varied);
 - (iii) after one or more amendments of the request, you have withdrawn the latest of those amended requests;
 - (iv) the Commissioner has revoked the release authority issued in relation to the latest of one or more amendments of the request (whether or not the release authority had previously been varied).

Making a first home super saver determination etc.

- (3) If you make a valid request under subsection (2), the Commissioner must make a *first home super saver determination in relation to you.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

138-12 Withdrawing or amending your request

- (1) You may, by notifying the Commissioner in the *approved form, withdraw or amend your valid request made under section 138-10 if:
- (a) in the case of amending your request—you satisfy paragraphs 138-10(2)(a) to (c); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the Commissioner has not already made a *first home super saver determination in relation to your request.
- (2) Your amended request is treated as a valid request under section 138-10.
- (3) Withdrawing your request does not prevent you from making a later request under section 138-10.

138-13 Amending or revoking a first home super saver determination

- (1) The Commissioner may decide to:
 - (a) amend a *first home super saver determination made in relation to you if you satisfy paragraphs 138-10(2)(a) to (c); or
 - (b) revoke a first home super saver determination made in relation to you;at any time before the Commissioner begins treating, under Division 3 of Part IIB, any credit to which you have become entitled under section 131-65 in relation to a release authority relating to the determination.
- Note: Like other first home super saver determinations, an amended determination will need to comply with Subdivision 138-B.
- (2) The Commissioner may make a decision under subsection (1):
 - (a) on the Commissioner's own initiative; or
 - (b) on application by you to the Commissioner in the *approved form.
 - (3) If a *first home super saver determination is amended or revoked under subsection (1) at a particular time, then at that time:
 - (a) each of the following ceases to be valid or in force:
 - (i) any request under section 131-5 for a release authority in relation to that determination;
 - (ii) any release authority issued in relation to such a request; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) any entitlement under section 131-65 you had to a credit relating to such a request ceases.

Note: Paragraphs (a) and (b) apply to a request or release authority whether or not it has been amended or varied.

- (4) Notice of an amended determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice. For the purposes of paragraph 131-5(3)(c), the Commissioner is treated as issuing the amended determination at the time this notice is given.

138-15 Review

If you are dissatisfied with:

- (a) a *first home super saver determination in relation to you; or
- (b) a decision the Commissioner makes not to make a determination under subsection 138-10(2A); or
- (c) a decision the Commissioner makes under subsection 138-13(1):
 - (i) to amend or revoke a determination; or
 - (ii) not to amend or revoke a determination;

you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC.

Subdivision 138-B—FHSS maximum release amount

Guide to Subdivision 138-B

138-20 What this Subdivision is about

Your FHSS maximum release amount comprises your eligible non-concessional contributions, 85% of your eligible concessional contributions, and your associated earnings.

There are limits on the amount of contributions that may be eligible for release.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Operative provisions

138-25 FHSS maximum release amount

Your ***FHSS maximum release amount*** is the sum of:

- (a) your *FHSS releasable contributions amount worked out under section 138-30; and
- (b) your associated earnings worked out under section 138-40.

138-30 FHSS releasable contributions amount

- (1) Your ***FHSS releasable contributions amount*** is the sum of the following amounts for each *financial year that starts on 1 July 2017 or a later 1 July:
 - (a) your *FHSS eligible non-concessional contributions for the financial year;
 - (b) 85% of your *FHSS eligible concessional contributions for the financial year.

Order of counting contributions

- (2) In determining which contributions are to be counted towards your *FHSS releasable contributions amount, contributions are to be counted in the order in which they were made (from earliest to latest).
- (3) For subsection (2):
 - (a) if an *FHSS eligible concessional contribution, and an *FHSS eligible non-concessional contribution, is made in respect of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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you at the same time, the FHSS eligible non-concessional contribution is taken to have been made first; and

- (b) if, for a particular *financial year, you personally made both *FHSS eligible concessional contributions and *FHSS eligible non-concessional contributions, the FHSS eligible non-concessional contributions are taken to have been made first.

Example: For paragraph (b), in the 2018-2019 financial year, you made voluntary contributions of \$1,000 each fortnight, up to a total of \$25,000. At the end of the financial year, you claim a deduction for \$15,000 (leaving \$10,000 of the contributions as non-concessional contributions).

If all of the non-concessional contributions are eligible to be released under section 138-35, the first 10 contributions made for the financial year are taken to have been the non-concessional contributions, and the later contributions are taken to be the concessional contributions.

138-35 Eligible contributions

Limits on amount of eligible contributions

- (1) For the purposes of this Subdivision:
- (a) the maximum amount of contributions that may be eligible to be released is \$50,000; and
 - (b) the maximum amount of contributions made in a particular *financial year that may be eligible to be released is \$15,000.

Eligible contributions

- (2) A *concessional contribution, or *non-concessional contribution, for a *financial year is not eligible to be released unless it:
- (a) is made in respect of you in the financial year; and
 - (b) is:
 - (i) an employer contribution that is not a mandated employer contribution (within the meaning of Part 5 of the *Superannuation Industry (Supervision) Regulations 1994*); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) a member contribution (within the meaning of that Part) that is made by you;
other than a contribution to the extent it is required to be made because of a law of the Commonwealth or of a State or Territory, or the rules of the relevant *superannuation fund; and
 - (c) is not a contribution made in respect of a *defined benefit interest; and
 - (d) is not a contribution to a *constitutionally protected fund.
- (3) If:
- (a) you have *excess concessional contributions for a *financial year (***your excess amount***); and
 - (b) your excess amount is greater than your *concessional contributions for the financial year that are not eligible to be released under subsection (2) (***your non-eligible contributions***);
- concessional contributions that are equal to the difference between your excess amount and your non-eligible contributions are not eligible to be released.
- (4) If:
- (a) you have *non-concessional contributions for the *financial year that exceed your non-concessional contributions cap for the financial year (***your excess amount***); and
 - (b) your excess amount is greater than your non-concessional contributions for the financial year that are not eligible to be released under subsection (2) (***your non-eligible contributions***);
- non-concessional contributions that are equal to the difference between your excess amount and your non-eligible contributions are not eligible to be released.
- (5) For the purposes of this section, disregard paragraph 292-90(1)(b) of the *Income Tax Assessment Act 1997*.
- Note: Under paragraph 292-90(1)(b) of the *Income Tax Assessment Act 1997*, your non-concessional contributions for a financial year would

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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include the amount of your excess concessional contributions (if any) for the financial year.

138-40 Associated earnings

- (1) You are taken to have associated earnings equal to the sum of the amounts worked out under subsection (2) for each contribution counted in your *FHSS releasable contributions amount.
- (2) The amount for a contribution is equal to the sum (rounded down to the nearest dollar) of the amounts worked out under the following formula for each of the days during the period mentioned in subsection (3).

$$\text{Shortfall interest charge rate} \times \left(\text{Amount of contribution} + \text{Sum of earlier daily proxy amounts} \right)$$

where:

amount of contribution means the amount of the contribution that is counted in your *FHSS releasable contributions amount.

shortfall interest charge rate means the rate, worked out under subsection 280-105(2), for the day.

sum of earlier daily proxy amounts means the sum of the amounts worked out for the contribution under the formula for each of the earlier days (if any) during the period for the contribution.

- (3) The period starts:
 - (a) if the contribution is made in the *financial year starting on 1 July 2017—on 1 July 2017; and
 - (b) if the contribution is made in the financial year starting on 1 July 2018, or a later financial year—on the first day of the month in which the contribution is made or taken to have been made (see subsection 138-30(2));and ends on the day the Commissioner makes the *first home super saver determination for which the associated earnings are being worked out.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 3-30—Diverted profits tax

Division 145—Assessments of diverted profits tax

Guide to Division 145

145-1 What this Division is about

The Commissioner can make an assessment of diverted profits tax. The entity that is the subject of the assessment can appeal to the Federal Court against the Commissioner's decision to make the assessment. Such an appeal can be made generally no earlier than 12 months after the day on which the Commissioner first gives notice of the assessment to the entity.

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145-5 DPT assessments—modified application of Division 155

In applying Division 155 in relation to an amount of *diverted profits tax:

- (a) apply the provisions of that Division with the modifications set out in sections 145-10 to 145-25; and
- (b) disregard sections 155-15, 155-20, 155-25, 155-30, 155-40, 155-45, 155-50, 155-55 and 155-70.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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145-10 When DPT assessments can be made

Despite subsection 155-5(1), the Commissioner can make an assessment (the ***DPT assessment***) of the amount of *diverted profits tax only at a time in the period:

- (a) starting on the day on which the Commissioner first gives the entity that is the subject of the assessment a notice of assessment under Part IV of the *Income Tax Assessment Act 1936* for the income year mentioned in paragraph 177J(1)(a) of the *Income Tax Assessment Act 1936* (as that paragraph applies in relation to the amount of diverted profits tax); and
- (b) ending on the last day of the period of 7 years starting the day after that day.

145-15 Period of review of DPT assessments

- (1) Despite subsection 155-35(2), the ***period of review***, for the *DPT assessment, is:
 - (a) the period:
 - (i) starting on the day on which the Commissioner first gives notice of the assessment to the entity that is the subject of the assessment under section 155-10; and
 - (ii) ending on the last day of the period of 12 months starting the day after that day; or
 - (b) if:
 - (i) the entity, by written notice given to the Commissioner, specifies a shorter period in accordance with subsection (2); and
 - (ii) the Federal Court of Australia has not made an order under subsection (3) in respect of the written notice; that shorter period; or
 - (c) if the period of review is extended under subsection 155-35(3) or (4)—the period as so extended.
- (2) For the purposes of subparagraph (1)(b)(i), the shorter period must:
 - (a) start on the day mentioned in subparagraph (1)(a)(i); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) end on a day that is at least 30 days after the day on which the entity gives the written notice to the Commissioner.
- (3) For the purposes of subparagraph (1)(b)(ii), the Federal Court of Australia may make an order under this subsection in respect of the written notice if:
 - (a) the Commissioner has started to examine the entity's affairs in relation to the assessment; and
 - (b) the Commissioner has not completed the examination within the shorter period specified in the written notice; and
 - (c) the Commissioner, within 30 days after the day on which the entity gives the written notice to the Commissioner, applies to the Court for the order; and
 - (d) the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the shorter period specified in the written notice, because of:
 - (i) any action taken by the entity; or
 - (ii) any failure by the entity to take action that it would have been reasonable for the entity to take.
- (4) Despite subsection 155-35(5), in relation to the *DPT assessment:
 - (a) an order may be made under subsection 155-35(3) only once; and
 - (b) consent may be given under subsection 155-35(4) only once.

145-20 Review of assessments

- (1) Section 155-90 does not apply during the *period of review mentioned in section 145-15.
- (2) In applying Part IVC of this Act as a result of section 155-90 after the end of that *period of review:
 - (a) have regard only to the provisions of that Part mentioned in subsection (3); and
 - (b) apply those provisions with the modifications set out in subsection (4); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) disregard the other provisions of that Part; and
 - (d) apply section 145-25 (restricted DPT evidence).
- (3) For the purposes of paragraph (2)(a), the provisions of that Part are as follows:
 - (a) sections 14ZL and 14ZP;
 - (b) subsection 14ZR(1);
 - (c) subsection 14ZZ(1);
 - (d) Division 5 (apart from section 14ZZS).
- (4) For the purposes of paragraph (2)(b), the modifications are as follows:
 - (a) treat the Commissioner's decision to make the *DPT assessment as an objection decision;
 - (b) treat subsection 14ZZ(1) as reading "The entity that is the subject of the DPT assessment may appeal to the Federal Court of Australia against the objection decision.";
 - (c) treat the reference in section 14ZZN to "within 60 days after the person appealing is served with notice of the decision" as being a reference to "within 60 days after the end of the period of review mentioned in section 145-15 in Schedule 1";
 - (d) disregard paragraph 14ZZO(a);
 - (e) treat paragraph 14ZZO(b) as reading "the appellant has the burden of proving that the DPT assessment is excessive or otherwise incorrect and what the DPT assessment should have been";
 - (f) treat the reference in section 14ZZR to a taxation decision as being a reference to the Commissioner's decision to make the DPT assessment.

145-25 Restricted DPT evidence

- (1) *Restricted DPT evidence is not admissible in evidence in proceedings under Part IVC on an appeal to the Federal Court of Australia related to the *DPT assessment.
- (2) ***Restricted DPT evidence*** means information or documents that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) the entity that is the subject of the *DPT assessment (or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of that entity), had in its custody or under its control at a time before, during or after the *period of review; and
 - (b) the Commissioner did not have in his or her custody or under his or her control at any time in the period of review.
- (3) Subsection (1) does not prevent *restricted DPT evidence from being admissible in evidence in the proceedings if:
- (a) the Commissioner consents to the admission of the restricted DPT evidence in accordance with subsection (4); or
 - (b) the court in which the proceedings take place considers that the admission of the restricted DPT evidence is necessary in the interests of justice; or
 - (c) the restricted DPT evidence is expert evidence that:
 - (i) comes into existence after the *period of review; and
 - (ii) is based on evidence that the Commissioner had in his or her custody or under his or her control at any time in the period of review.
- (4) For the purposes of paragraph (3)(a), the Commissioner may give the consent if the Commissioner considers that it is reasonable to do so.
- (5) In making a decision under paragraph (3)(a) or (b), the Commissioner or the court must have regard to:
- (a) whether, if the *restricted DPT evidence were not admissible in evidence in the proceedings, the remaining information or documents that are relevant to the proceedings are, or are likely to be, misleading; and
 - (b) whether it would have been reasonable for the entity that is the subject of the *DPT assessment (or the associate of that entity mentioned in paragraph (2)(a)) to have given the Commissioner the restricted DPT evidence within the *period of review.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 145-25

- (6) The Commissioner must give a consent for the purposes of paragraph (3)(a) if failure to do so would have the effect, for the purposes of the Constitution, of making any tax or penalty incontestable.
- (7) A consent for the purposes of paragraph (3)(a) is to be in writing.
- (8) If the Commissioner gives a consent for the purposes of paragraph (3)(a), the Commissioner must give the entity that is the subject of the *DPT assessment a copy of the consent as soon as practicable afterwards.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Chapter 4—Generic assessment, collection and recovery rules

Part 4-1—Returns and assessments

Division 155—Assessments

Table of Subdivisions

	Guide to Division 155
155-A	Making assessments
155-B	Amending assessments
155-C	Validity and review of assessments
155-D	Miscellaneous

Guide to Division 155

155-1 What this Division is about

This Division contains rules relating to assessments.

The rules in this Division deal with the following:

- (a) how assessments are made or amended and their effect;
- (b) review of assessments.

Subdivision 155-A—Making assessments

Table of sections

155-5	Commissioner may make assessment
155-10	Commissioner must give notice of assessment

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-5

155-15	Self-assessment
155-20	Assessment of indirect tax on importations and customs dealing
155-25	Special assessment
155-30	Delays in making assessments

155-5 Commissioner may make assessment

- (1) The Commissioner may at any time make an assessment of an *assessable amount (including an assessment that the amount is nil).

Note 1: For amendment of assessments, see Subdivision 155-B.

Note 2: An assessment can be reviewed: see Subdivision 155-C.

- (2) Each of the following is an *assessable amount*:

- (a) a *net amount;
- (b) a *net fuel amount;
- (c) an amount of *indirect tax not included in an amount covered by another paragraph of this subsection;
- (d) a credit under an *indirect tax law not included in an amount covered by another paragraph of this subsection;
- (f) an amount of *Division 293 tax payable for an income year in relation to an individual's *taxable contributions for the income year;
- (g) an amount of *excess exploration credit tax for an income year;
- (h) an amount of *excess transfer balance tax payable for an *excess transfer balance period;
- (i) an amount of levy under the *Major Bank Levy Act 2017* for a *quarter;
- (ia) an amount of *Australian IIR/UTPR tax;
- (ib) an amount of *Australian DMT tax;
- (j) an amount of *diverted profits tax;

Note: This Division has a modified operation in relation to diverted profits tax (see Division 145).

- (k) an amount of *first home super saver tax for an income year;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (l) an amount of *Laminaria and Corallina decommissioning levy for a financial year.

155-10 Commissioner must give notice of assessment

- (1) The Commissioner must give you notice of an assessment of an *assessable amount of yours as soon as practicable after the assessment is made.

Note: This section also applies to an amended assessment: see section 155-80.

- (2) The Commissioner may give you the notice electronically if you are required to lodge, or have lodged, the return (if any) that relates to the *assessable amount electronically.

155-15 Self-assessment

- (1) The Commissioner is treated as having made an assessment under section 155-5 of an *assessable amount mentioned in an item of the following table, if the document mentioned in the item is given to the recipient mentioned in the item:

Self-assessed amounts			
Item	Column 1 Assessable amount	Column 2 Recipient	Column 3 Document
1	your *net amount for a *tax period	the Commissioner	your *GST return for the tax period
2	your *net fuel amount for a *tax period	the Commissioner	your *fuel tax return for the tax period

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 4 Generic assessment, collection and recovery rules

Part 4-1 Returns and assessments

Section 155-15

Self-assessed amounts			
Item	Column 1 Assessable amount	Column 2 Recipient	Column 3 Document
3	the *GST payable by you on a *taxable importation	the Collector (within the meaning of the <i>Customs Act 1901</i>) or the Department administered by the Minister administering Part XII of that Act	return, given as described in one of the following provisions, in relation to the importation: (a) paragraph 69(8)(a), (b), (c) or (da), or 70(7)(a), of the <i>Customs Act 1901</i> ; (b) regulations prescribed for the purposes of paragraph 69(8)(d) of that Act
4	an amount of *excess exploration credit tax for an income year	the Commissioner	return given under section 418-160 for the income year
5	an amount of levy under the <i>Major Bank Levy Act 2017</i> for a *quarter	the Commissioner	return given under section 115-5 for the quarter
6	an amount of *Australian IIR/UTPR tax for a *Fiscal Year	the Commissioner	*Australian IIR/UTPR tax return given under section 127-35 for the Fiscal Year
7	an amount of *Australian DMT tax for a *Fiscal Year	the Commissioner	*Australian DMT tax return given under section 127-45 for the Fiscal Year

Note: There is no self-assessment of Division 293 tax, excess transfer balance tax or first home super saver tax.

- (2) The assessment is treated as having been made on the day the document is given to the recipient mentioned in column 2.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-20

- (3) The amount assessed is:
- (a) if the document is required to state the *assessable amount—the amount (including a nil amount) stated; or
 - (b) otherwise—the amount (including a nil amount) worked out in accordance with the information stated in the document.
- (4) The document is treated as being a notice of the assessment:
- (a) signed by the Commissioner; and
 - (b) given to you under section 155-10 on the day the document is given to the recipient.
- (5) This section does not apply to an *assessable amount if the Commissioner has already assessed the assessable amount on or before the day mentioned in paragraph (4)(b).

155-20 Assessment of indirect tax on importations and customs dealing

- (1) The Commissioner is treated as having made an assessment under section 155-5 of the *GST, *luxury car tax or *wine tax (whichever is applicable) payable by you on a *taxable importation, *taxable importation of a luxury car or *customs dealing, if:
- (a) the document mentioned in column 1 of an item of the following table is communicated to the Department administered by the Minister administering Part XII of the *Customs Act 1901*, in respect of the importation or dealing; and
 - (b) a Collector (within the meaning of the *Customs Act 1901*) gives the document mentioned in column 2 of the item to an entity in respect of the importation or dealing.

Customs documents		
Item	Column 1	Column 2
	Document communicated	Document given to an entity
1	an *import declaration	an *import declaration advice

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-25

Customs documents

Item	Column 1 Document communicated	Column 2 Document given to an entity
2	a self-assessed clearance declaration (within the meaning of the <i>Customs Act 1901</i>)	a *self-assessed clearance declaration advice

- (2) The assessment is treated as having been made on the day a Collector (within the meaning of the *Customs Act 1901*) gives the document mentioned in paragraph (1)(b) to the entity.
- (3) The amount assessed is the amount (including a nil amount) worked out in accordance with the information stated in the 2 documents.
- (4) The 2 documents are treated as together being a notice of the assessment:
- (a) signed by the Commissioner; and
 - (b) given to you under section 155-10 on the day a Collector (within the meaning of the *Customs Act 1901*) gives the document mentioned in paragraph (1)(b) of this section to the entity.
- (5) This section does not apply if the Commissioner has already assessed the *GST, *luxury car tax or *wine tax on or before the day mentioned in paragraph (4)(b).

155-25 Special assessment

For the purposes of making, under section 155-5, an assessment of an *assessable amount that relates to a period (e.g. a tax period), the Commissioner may treat part of the period as being the whole period.

155-30 Delays in making assessments

- (1) You may give the Commissioner a written notice requiring the Commissioner to make an assessment of an *assessable amount of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

yours, if, 6 months after the day on which the relevant return (if any) for the assessable amount is given to the Commissioner, the Commissioner has not given to you notice of an assessment of the assessable amount under section 155-10.

- (2) You may object, in the manner set out in Part IVC of this Act, against the Commissioner's failure to make the assessment if the Commissioner does not make the assessment within 30 days after the day the notice is given under subsection (1).
- (3) This section does not apply to the following *assessable amounts:
 - (a) the *Division 293 tax payable by you in relation to an income year in relation to your *taxable contributions for the income year;
 - (b) the *excess transfer balance tax payable by you for an *excess transfer balance period;
 - (c) the *first home super saver tax payable by you for an income year;
 - (d) the *Laminaria and Corallina decommissioning levy payable by you for a financial year.

Subdivision 155-B—Amending assessments

Table of sections

When Commissioner may amend assessments

155-35	Amendment during period of review
155-40	Amendment during period of review—certain applications taken to be notices
155-45	Amendment on application
155-50	Amendment to give effect to private ruling
155-55	Amendment to give effect to certain anti-avoidance declarations
155-60	Amendment because of review, objection or fraud

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-35

Special rules about amending amended assessments

155-65 Amending amended assessments

155-70 Refreshed period of review

General rules

155-75 Refunds of amounts overpaid

155-80 Amended assessments are assessments

When Commissioner may amend assessments

155-35 Amendment during period of review

Amendment

- (1) The Commissioner may amend an assessment of an *assessable amount within the *period of review for the assessment.

Note 1: An amendment of an assessment can be reviewed: see Subdivision 155-C.

Note 2: This section also applies to amended assessments: see section 155-80. However, there are limits on how amended assessments can be amended: see sections 155-65 and 155-70.

Meaning of period of review

- (2) The **period of review**, for an assessment of an *assessable amount of yours, is:
- (a) the period:
 - (i) starting on the day on which the Commissioner first gives notice of the assessment to you under section 155-10; and
 - (ii) ending on the last day of the period of 4 years starting the day after that day; or
 - (b) if the period of review is extended under subsection (3) or (4) of this section—the period as so extended.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Extensions

- (3) The Federal Court of Australia may order an extension of the *period of review for an assessment of an *assessable amount of yours for a specified period, if:
- (a) the Commissioner has started to examine your affairs in relation to the assessment; and
 - (b) the Commissioner has not completed the examination within the period of review for the assessment; and
 - (c) the Commissioner, during the period of review, applies to the Federal Court of Australia for an order extending the period; and
 - (d) the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the period of review, because of:
 - (i) any action taken by you; or
 - (ii) any failure by you to take action that it would have been reasonable for you to take.
- (4) You may, by written notice given to the Commissioner, consent to the extension of the *period of review for an assessment of an *assessable amount of yours for a specified period, if:
- (a) the Commissioner has started to examine your affairs in relation to the assessment; and
 - (b) the Commissioner has not completed the examination within the period of review for the assessment; and
 - (c) the Commissioner, during the period of review, requests you to consent to extending the period of review.
- (5) An order may be made under subsection (3), or consent given under subsection (4), in relation to an assessment of an *assessable amount more than once.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-40

155-40 Amendment during period of review—certain applications taken to be notices

- (1) An application made by you for an amendment of an assessment of an *assessable amount of yours is treated as being a notice of the amended assessment given to you by the Commissioner under section 155-10, if:
 - (a) the application is in the *approved form; and
 - (b) the Commissioner makes the amendment:
 - (i) to give effect to the decision on the application; and
 - (ii) during the *period of review for the assessment; and
 - (c) the amendment the Commissioner makes is the entire amendment for which you applied, and nothing else.
- (2) The notice is treated as having been given to you on whichever of the following is applicable:
 - (a) the first day the Commissioner adjusts the balance of an *RBA of yours as a result of the amendment;
 - (b) the day a Collector (within the meaning of the *Customs Act 1901*) gives an *import declaration advice, or a *self-assessed clearance declaration advice, to an entity in respect of the relevant *taxable importation, *taxable importation of a luxury car or *customs dealing as a result of the amendment.

155-45 Amendment on application

The Commissioner may amend an assessment of an *assessable amount of yours at any time, if you apply for an amendment in the *approved form during the *period of review for the assessment. The Commissioner may amend the assessment to give effect to his or her decision on the application.

Note: The Commissioner must give you notice of the amended assessment under section 155-10: see section 155-80.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

155-50 Amendment to give effect to private ruling

The Commissioner may amend an assessment of an *assessable amount of yours at any time, if:

- (a) you apply for a *private ruling during the *period of review for the assessment; and
- (b) the Commissioner makes a private ruling because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

155-55 Amendment to give effect to certain anti-avoidance declarations

The Commissioner may amend an assessment of an *assessable amount at any time, if:

- (a) the Commissioner makes a declaration under subsection 165-45(3) of the *GST Act (about compensating adjustments for anti-avoidance declarations); or
- (b) the Commissioner makes a declaration under subsection 75-45(3) of the *Fuel Tax Act 2006* (about compensating adjustments for anti-avoidance declarations).

The Commissioner may amend the assessment to give effect to the declaration.

155-60 Amendment because of review, objection or fraud

Despite anything in this Subdivision, the Commissioner may amend an assessment of an *assessable amount of yours at any time:

- (a) to give effect to a decision on a review or appeal; or
- (b) as a result of an objection made by you, or pending a review or appeal; or
- (c) if he or she is of the opinion there has been fraud or evasion.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-65

Special rules about amending amended assessments

155-65 Amending amended assessments

The Commissioner cannot amend an amended assessment of an *assessable amount under section 155-35 if the *period of review for the assessment has ended.

Note: The Commissioner can amend amended assessments at any time under sections 155-45 to 155-60.

155-70 Refreshed period of review

- (1) This section applies if the Commissioner has made one or more amendments of an assessment of an *assessable amount of yours under section 155-35 about a particular.
- (2) Despite section 155-65, the Commissioner may amend (the **later amendment**) the amended assessment after the end of the *period of review for the assessment, if:
 - (a) the Commissioner makes the later amendment before the end of the period of 4 years starting on the day after the day on which the Commissioner gave notice of the last of the amendments mentioned in subsection (1) to you under section 155-10; and
 - (b) the later amendment is about the particular mentioned in subsection (1) of this section; and
 - (c) the Commissioner has not previously amended the assessment under this section about that particular.

General rules

155-75 Refunds of amounts overpaid

- (1) This section applies if:
 - (a) an assessment of an *assessable amount of yours is amended; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) as a result of the amendment, a *tax-related liability (the ***earlier liability***) of yours is reduced.
- (2) For the purposes of any *taxation law that applies the *general interest charge, the amount by which the *tax-related liability is reduced is taken never to have been payable.
- Note 1: The general interest charge is worked out under Part IIA of this Act.
- Note 2: Subsection 8AAB(4) of this Act lists the provisions that apply the charge.
- (3) The Commissioner must apply the amount of any *tax-related liability overpaid in accordance with Divisions 3 and 3A of Part IIB of this Act (about running balance accounts and the application of payments and credits).
- (4) However, if:
- (a) a later amendment of an assessment of an *assessable amount is made; and
 - (b) all or some of your earlier liability in relation to a particular is reinstated;
- this section is taken not to have applied to the extent that the earlier liability is reinstated.

155-80 Amended assessments are assessments

An amended assessment of an *assessable amount is an assessment for all purposes of any *taxation law.

Note: The Commissioner must give notice of the amended assessment under section 155-10. Under section 155-40, an application for an amendment is treated as being a notice of the amendment in certain circumstances.

Subdivision 155-C—Validity and review of assessments

Table of sections

155-85	Validity of assessment
155-90	Review of assessments

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 155-85

155-85 Validity of assessment

The validity of any assessment of an *assessable amount is not affected by non-compliance with the provisions of this Act or of any other *taxation law.

155-90 Review of assessments

You may object, in the manner set out in Part IVC of this Act, against an assessment of an *assessable amount of yours if you are dissatisfied with the assessment.

Note: If an individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule, the individual may make a complaint under the AFCA scheme (within the meaning of the *Corporations Act 2001*).

Subdivision 155-D—Miscellaneous

Table of sections

155-95 Entities

155-95 Entities

This Division applies, in relation to an *assessable amount under a *taxation law, to an entity under that taxation law in the same way as the Division applies to an entity under the *Income Tax Assessment Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Part 4-15—Collection and recovery of tax-related liabilities and other amounts

Division 250—Introduction

Table of Subdivisions

- 250-A Guide to Part 4-15
- 250-B Object of this Part

Subdivision 250-A—Guide to Part 4-15

250-1 What this Part is about

This Part deals with the methods by which the Commissioner may collect and recover amounts of taxes and other liabilities.

These rules may affect you if you are liable to pay an amount of a tax-related liability (see, for example, Division 255). Some of the rules may also affect you because of your relationship with someone else who is liable for such an amount (see Division 260).

Table of sections

- 250-5 Some important concepts about tax-related liabilities
- 250-10 Summary of tax-related liabilities

250-5 Some important concepts about tax-related liabilities

- (1) A tax-related liability may arise for an entity before it becomes due and payable by that entity.

Example: Under Part 2-5, an entity's liability to pay a withheld amount may arise before the amount is due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

- (2) For some tax-related liabilities, an assessment needs to be made before the amount of the relevant liability becomes due and payable.

Example: Under Division 5 of the *Income Tax Assessment Act 1997*, an amount of income tax needs to be assessed before it becomes due and payable.

- (3) An amount of a tax-related liability may become payable by an entity (for example, when the amount has been assessed) before it is due and payable by that entity.

250-10 Summary of tax-related liabilities

- (1) The following table is an index of each tax-related liability under the *Income Tax Assessment Act 1936*. The key provision for the liability, as set out in the table, specifies when the liability becomes due and payable.

Note 1: The Commissioner may vary the time at which the amount becomes due and payable. See Subdivision 255-B.

Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).

Tax-related liabilities under the <i>Income Tax Assessment Act 1936</i>		
Item	Topic	Provision
5	trustee beneficiary non-disclosure tax	102UO
10	withholding tax on dividend, interest or royalty	128C(1)
15	special tax payable on dealings by offshore banking units	128NB(3)
20	mining withholding tax	128W(1)
50	late lodgment penalty	former subsection 163A(3)
70	excessive tax offset refunds	172A(2)
80	diverted profits tax	subsection 177P(3)

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Tax-related liabilities under the <i>Income Tax Assessment Act 1936</i>		
Item	Topic	Provision
85	shortfall interest charge for diverted profits tax	section 177R
90	family trust distribution tax	271-75 in Schedule 2F
100	interest payable under section 102AAM (about distributions from non-resident trust estates)	5-5 of the <i>Income Tax Assessment Act 1997</i>

- (2) The following table is an index of each tax-related liability under other Acts. The key provision for the liability, as set out in the table, specifies when the liability becomes due and payable.

- Note 1: The Commissioner may vary the time at which the amount becomes due and payable. See Subdivision 255-B.
- Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).
- Note 3: Companies that are or were members of the same wholly-owned group as an NZ franking company may be jointly and severally liable to pay certain tax-related liabilities of the NZ franking company (see Division 220 of the *Income Tax Assessment Act 1997*).
- Note 4: Penalties under Division 175 of the *Australian Charities and Not-for-profits Commission Act 2012*, and related general interest charge, are treated in the same way as tax-related liabilities: see subsection 175-70(2) of that Act.
- Note 5: A liability for a fee that is due and payable under subsection 113(5) of the *Foreign Acquisitions and Takeovers Act 1975* is a tax-related liability if the power of the Treasurer to recover the fee under that subsection is delegated to the Commissioner of Taxation under section 137 of that Act (see subsections 138(1) and (2) of that Act).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities**Chapter 4** Generic assessment, collection and recovery rules**Part 4-15** Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
5	assessed net amount, including amounts in respect of luxury car tax and wine equalisation tax	33-3, 33-5, 35-5(2)	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
10	amount of assessed GST on importations	33-15	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
12A	assessed GST on supplies made in settlement of claims under insurance policies	78-90	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
12B	assessed GST on supplies made in satisfaction of debts	105-20	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
13	repayments of amounts paid under tourist refund scheme	168-10	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
15	amount of assessed luxury car tax on importation	13-20	<i>A New Tax System (Luxury Car Tax) Act 1999</i>
16	excess luxury car tax credits	17-15	<i>A New Tax System (Luxury Car Tax) Act 1999</i>
18	excess wine tax credits	17-25	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
20	amount of assessed wine tax on customs dealings	23-5	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
21	repayments of amounts paid under tourist refund scheme	25-10	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
22A	amount of advance to be repaid	14A	<i>Diesel and Alternative Fuels Grants Scheme Act 1999</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
22B	amount payable as a result of an amended assessment	15E	<i>Diesel and Alternative Fuels Grants Scheme Act 1999</i>
24	excise duty	54	<i>Excise Act 1901</i>
24A	accounting for excisable goods	60(1), (1A), (1B) and (1C)	<i>Excise Act 1901</i>
24B	tobacco leaf stock deficiency	77AA	<i>Excise Act 1901</i>
24C	accounting for spirit	77FH	<i>Excise Act 1901</i>
24CA	penalty for using LPG for excisable LPG use	77M	<i>Excise Act 1901</i>
24D	fee for an action that does not relate to an application or a notice	113(5)	<i>Foreign Acquisitions and Takeovers Act 1975</i> (but see note 5 to this subsection)
24E	vacancy fee	115F	<i>Foreign Acquisitions and Takeovers Act 1975</i>
25	fringe benefits tax	90	<i>Fringe Benefits Tax Assessment Act 1986</i>
35	fringe benefits tax instalments	103	<i>Fringe Benefits Tax Assessment Act 1986</i>
36	assessed net fuel amount	61-5(2), 61-10	<i>Fuel Tax Act 2006</i>
36A	compulsory repayment amount under the <i>Higher Education Support Act 2003</i>	5-5	<i>Income Tax Assessment Act 1997</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 4 Generic assessment, collection and recovery rules

Part 4-15 Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
36AA	compulsory VETSL repayment amount under the <i>VET Student Loans Act 2016</i>	5-5	<i>Income Tax Assessment Act 1997</i>
36B	compulsory SSL repayment amount under the <i>Social Security Act 1991</i>	5-5	<i>Income Tax Assessment Act 1997</i>
36C	compulsory ABSTUDY SSL repayment amount under the <i>Student Assistance Act 1973</i>	5-5	<i>Income Tax Assessment Act 1997</i>
36D	compulsory AASL repayment amount under the <i>Australian Apprenticeship Support Loans Act 2014</i>	5-5	<i>Income Tax Assessment Act 1997</i>
37	income tax	5-5	<i>Income Tax Assessment Act 1997</i>
37AA	shortfall interest charge on income tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AB	shortfall interest charge on excess non-concessional contributions tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AC	shortfall interest charge on Division 293 tax	5-10	<i>Income Tax Assessment Act 1997</i>
37A	untainting tax	197-70	<i>Income Tax Assessment Act 1997</i>
38	franking tax	214-150(1), (2), (3) and (4)	<i>Income Tax Assessment Act 1997</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
38B	excess non-concessional contributions tax	292-385	<i>Income Tax Assessment Act 1997</i>
38BB	Division 293 tax	293-65 and 293-70	<i>Income Tax Assessment Act 1997</i>
38BC	excess transfer balance tax	294-240 and 294-245	<i>Income Tax Assessment Act 1997</i>
38BD	first home super saver tax	313-65 and 313-70	<i>Income Tax Assessment Act 1997</i>
38D	excess exploration credit tax	418-155	<i>Income Tax Assessment Act 1997</i>
39	TSA liability	721-30	<i>Income Tax Assessment Act 1997</i>
39A	managed investment trust withholding tax	840-810(1)	<i>Income Tax Assessment Act 1997</i>
39AA	labour mobility program withholding tax	840-910	<i>Income Tax Assessment Act 1997</i>
39B	managed investment trust withholding tax	840-810(1)	<i>Income Tax (Transitional Provisions) Act 1997</i>
39C	return of PPL superannuation contribution	115G(2)	<i>Paid Parental Leave Act 2010</i>
39D	return of underpaid amount of PPL superannuation contribution	115L(2)	<i>Paid Parental Leave Act 2010</i>
39E	Overpayments of PPL superannuation contribution	115P(3)	<i>Paid Parental Leave Act 2010</i>
39F	general interest charge relating to PPL superannuation contribution	115Q	<i>Paid Parental Leave Act 2010</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities

Chapter 4 Generic assessment, collection and recovery rules

Part 4-15 Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
40	petroleum resource rent tax	82	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
41	shortfall interest charge on petroleum resource rent tax	82	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
45	petroleum resource rent tax instalments	95	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
45A	instalment transfer interest charge	98C(4)	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
45B	liability for excess private health insurance premium reduction or refund	282-18	<i>Private Health Insurance Act 2007</i>
46	amount of advance to be repaid	13	<i>Product Grants and Benefits Administration Act 2000</i>
47	amount payable as a result of an amended assessment	20	<i>Product Grants and Benefits Administration Act 2000</i>
48	penalty under section 35	36	<i>Product Grants and Benefits Administration Act 2000</i>
50	superannuation contributions surcharge	15(3)	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
55	superannuation contributions surcharge	15(8)	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>
60	superannuation guarantee charge	46	<i>Superannuation Guarantee (Administration) Act 1992</i>
65	additional superannuation guarantee charge	47	<i>Superannuation Guarantee (Administration) Act 1992</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
67	Superannuation (Self Managed Funds) Levy	15DB	<i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i>
67A	payment of unclaimed money to the Commissioner	17	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
67B	payment from Commissioner that cannot be credited	18C	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
68	payment in respect of a superannuation interest to the Commissioner	20F	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69	repayment of Commissioner's payment	20M	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69AA	payment of value of inactive low-balance accounts to the Commissioner	20QD	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69AB	payment from Commissioner that cannot be credited	20QL	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69AC	payment of value of eligible rollover fund accounts to the Commissioner	21C	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69AD	payment from Commissioner that cannot be credited	21H	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69AE	payment of amounts to the Commissioner	22	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69AF	payment from	22F	<i>Superannuation (Unclaimed</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities
Chapter 4 Generic assessment, collection and recovery rules
Part 4-15 Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
	Commissioner that cannot be credited		<i>Money and Lost Members) Act 1999</i>
69A	payment of value of lost member accounts to the Commissioner	24E	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69B	payment from Commissioner that cannot be credited	24L	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69BA	payment from Commissioner that cannot be credited	24NB	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
70	general interest charge	8AAE	<i>Taxation Administration Act 1953</i>
85	RBA deficit debt	8AAZH(1)	<i>Taxation Administration Act 1953</i>
90	administrative overpayment made by Commissioner	8AAZN	<i>Taxation Administration Act 1953</i>
95	TFN withholding tax	14-55 in Schedule 1	<i>Taxation Administration Act 1953</i>
100	TFN withholding tax (ESS)	14-155 in Schedule 1	<i>Taxation Administration Act 1953</i>
101	payment of amount to Commissioner	14-200 or 14-205 in Schedule 1	<i>Taxation Administration Act 1953</i>
105	payment of withheld amount to Commissioner	16-75 in Schedule 1	<i>Taxation Administration Act 1953</i>
110	PAYG withholding non-compliance tax	18-145 in Schedule 1	<i>Taxation Administration Act 1953</i>
115	quarterly PAYG instalment	45-61 in Schedule 1	<i>Taxation Administration Act 1953</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
115A	monthly PAYG instalment	45-67 in Schedule 1	<i>Taxation Administration Act 1953</i>
120	annual PAYG instalment	45-70 in Schedule 1	<i>Taxation Administration Act 1953</i>
125	general interest charge on shortfall in quarterly instalment worked out on basis of varied rate	45-230(4) in Schedule 1	<i>Taxation Administration Act 1953</i>
130	general interest charge on shortfall in quarterly instalment worked out on basis of estimated benchmark tax	45-232 in Schedule 1	<i>Taxation Administration Act 1953</i>
135	general interest charge on shortfall in annual instalment	45-235(5) in Schedule 1	<i>Taxation Administration Act 1953</i>
135R	amount in accordance with excess superannuation contributions release authority	131-35 in Schedule 1	<i>Taxation Administration Act 1953</i>
136	amount of major bank levy	115-10 in Schedule 1	<i>Taxation Administration Act 1953</i>
136AA	amount of Laminaria and Corallina decommissioning levy	125-10 in Schedule 1	<i>Taxation Administration Act 1953</i>
136AB	shortfall interest charge on Laminaria and Corallina decommissioning	125-10 in Schedule 1	<i>Taxation Administration Act 1953</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Schedule 1 Collection and recovery of income tax and other liabilities
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Part 4-15 Collection and recovery of tax-related liabilities and other amounts

Section 250-10

Tax-related liabilities under other legislation			
Item	Topic	Provision	Act
	levy		
136AC	Australian IIR/UTPR tax	127-70 in Schedule 1	<i>Taxation Administration Act 1953</i>
136AD	Australian DMT tax	127-70 in Schedule 1	<i>Taxation Administration Act 1953</i>
136AE	shortfall interest charge on Australian IIR/UTPR tax	127-70 in Schedule 1	<i>Taxation Administration Act 1953</i>
136AF	shortfall interest charge on Australian DMT tax	127-70 in Schedule 1	<i>Taxation Administration Act 1953</i>
136A	debt account discharge liability	133-105 in Schedule 1	<i>Taxation Administration Act 1953</i>
137	amount to be recovered from a debtor under a registered foreign revenue claim	263-30 in Schedule 1	<i>Taxation Administration Act 1953</i>
138	estimate of payable amounts	268-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
139	penalty under Subdivision 269-B	269-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
140	administrative penalties	298-15 in Schedule 1	<i>Taxation Administration Act 1953</i>
142	cash flow boost overpayments	subsection 9(3)	<i>Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020</i>
143	overpayments of Coronavirus economic response payments	subsection 9(3)	<i>Coronavirus Economic Response Package (Payments and Benefits) Act 2020</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 250-B—Object of this Part

250-25 Object

The object of this Part is to ensure that unpaid amounts of
*tax-related liabilities and other related amounts are collected or
recovered in a timely manner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-1

Division 255—General rules about collection and recovery

Table of Subdivisions

- 255-A Tax-related liabilities
- 255-B Commissioner's power to vary payment time
- 255-C Service of documents if person absent from Australia or cannot be found
- 255-D Security deposits

Subdivision 255-A—Tax-related liabilities

Table of sections

- 255-1 Meaning of *tax-related liability*
- 255-5 Recovering a tax-related liability that is due and payable

255-1 Meaning of *tax-related liability*

- (1) A ***tax-related liability*** is a pecuniary liability to the Commonwealth arising directly under a *taxation law (including a liability the amount of which is not yet due and payable).

Note 1: See section 250-10 for an index of tax-related liabilities.

Note 2: A taxation law, or a provision of it, may be excluded from being applied to this Part. See section 265-65.

- (2) A civil penalty under Division 290 of this Schedule or Part 5 of the *Tax Agent Services Act 2009* is not a ***tax-related liability***.

255-5 Recovering a tax-related liability that is due and payable

- (1) An amount of a *tax-related liability that is due and payable:
- (a) is a debt due to the Commonwealth; and
 - (b) is payable to the Commissioner.
- (2) The Commissioner, a *Second Commissioner or a *Deputy Commissioner may sue in his or her official name in a court of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

competent jurisdiction to recover an amount of a *tax-related liability that remains unpaid after it has become due and payable.

Note: The tables in section 250-10 set out each provision that specifies when an amount of a tax-related liability becomes due and payable. The Commissioner may vary that time under Subdivision 255-B.

Subdivision 255-B—Commissioner’s power to vary payment time

Table of sections

255-10	To defer the payment time
255-15	To permit payments by instalments
255-20	To bring forward the payment time in certain cases

255-10 To defer the payment time

Deferrals for particular taxpayers

- (1) The Commissioner may, having regard to the circumstances of your particular case, defer the time at which an amount of a *tax-related liability is, or would become, due and payable by you (whether or not the liability has already arisen). If the Commissioner does so, that time is varied accordingly.

Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

- (2) The Commissioner must do so by written notice given to you.

Deferrals for classes of taxpayers

- (2A) The Commissioner, having regard to the circumstances of the case, may, by notice published on the Australian Taxation Office website, defer the time at which amounts of *tax-related liabilities are, or would become, due and payable by a class of taxpayers (whether or not the liabilities have already arisen).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-15

- (2B) If the Commissioner does so, that time is varied accordingly.

Note: General interest charge and any other relevant penalties, if applicable for any unpaid amounts of the liabilities, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

- (2C) A notice published under subsection (2A) is not a legislative instrument.

Deferral does not affect time for giving form

- (3) A deferral under this section does not defer the time for giving an *approved form to the Commissioner.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

255-15 To permit payments by instalments

- (1) The Commissioner may, having regard to the circumstances of your particular case, permit you to pay an amount of a *tax-related liability by instalments under an *arrangement between you and the Commissioner (whether or not the liability has already arisen).
- (2) The *arrangement does not vary the time at which the amount is due and payable.

Note: Despite an arrangement under this section, any general interest charge or other relevant penalty, if applicable for any unpaid amount of the liability, begins to accrue when the liability is due and payable under the relevant taxation law, or at that time as varied under section 255-10 or 255-20.

255-20 To bring forward the payment time in certain cases

- (1) If the Commissioner reasonably believes that you may leave Australia before the time at which an amount of a *tax-related liability becomes due and payable by you, the Commissioner may bring that time forward. If the Commissioner does so, that time is varied accordingly.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

- (2) The Commissioner must do so by written notice given to you.

Subdivision 255-C—Service of documents if person absent from Australia or cannot be found

Guide to Subdivision 255-C

255-35 What this Subdivision is about

This Subdivision deals with the service of documents on people who are absent from Australia or cannot be found.

Table of sections

Operative provisions

255-40 Service of documents if person absent from Australia or cannot be found

Operative provisions

255-40 Service of documents if person absent from Australia or cannot be found

- (1) This section applies if a document needs to be served on a person in respect of a proceeding to recover an amount of a ^{*}tax-related liability, and the Commissioner, after making reasonable inquiries, is satisfied that:
- (a) the person is absent from Australia and does not have any agent in Australia on whom the document can be served; or
 - (b) the person cannot be found.
- (2) The Commissioner may, without the court's leave, serve the document by posting it, or a sealed copy of it, in a letter addressed

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-100

to the person at any Australian address of the person (including the person's Australian place of business or residence) that is last known to the Commissioner.

- (3) If the Commissioner, after making reasonable inquiries, is satisfied that the person has an address in a foreign country, a constituent part of a foreign country or a foreign territory (an ***overseas address***), the Commissioner may, without the court's leave, serve the document on the person at that overseas address in accordance with an agreement between Australia and:
- (a) a foreign country or a constituent part of a foreign country; or
 - (b) a foreign territory;
- that deals with the service of documents on tax matters.

Subdivision 255-D—Security deposits

Table of sections

255-100	Commissioner may require security deposit
255-105	Notice of requirement to give security
255-110	Offence
255-115	Order to comply with requirement
255-120	Offence

255-100 Commissioner may require security deposit

- (1) The Commissioner may require you to give security for the due payment of an existing or future ^{*}tax-related liability of yours if:
- (a) the Commissioner has reason to believe that:
 - (i) you are establishing or ^{*}carrying on an ^{*}enterprise in Australia; and
 - (ii) you intend to carry on that enterprise for a limited time only; or
 - (b) the Commissioner reasonably believes that the requirement is otherwise appropriate, having regard to all relevant circumstances.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: A requirement to give security under this section is *not* a tax-related liability. As such, the collection and recovery provisions in this Part do not apply to it.

- (2) The Commissioner may require you to give the security:
 - (a) by way of a bond or deposit (including by way of payments in instalments); or
 - (b) by any other means that the Commissioner reasonably believes is appropriate.
- (3) The Commissioner may require you to give security under this section:
 - (a) at any time the Commissioner reasonably believes is appropriate; and
 - (b) as often as the Commissioner reasonably believes is appropriate.

Example: The Commissioner may require additional security if he or she reasonably believes that the original security requirement underestimated the amount of the likely tax-related liability.

255-105 Notice of requirement to give security

Commissioner must give notice of requirement to give security

- (1) If the Commissioner requires you to give security under section 255-100, he or she must give you written notice of the requirement.

Content of notice

- (2) The notice must:
 - (a) state that you are required to give the security to the Commissioner; and
 - (b) explain why the Commissioner requires the security; and
 - (c) set out the amount of the security; and
 - (d) describe the means by which you are required to give the security under subsection 255-100(2); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 255-110

- (e) specify the time by which you are required to give the security; and
 - (f) explain how you may have the Commissioner's decision to require you to give the security reviewed.
- (3) To avoid doubt, a single notice may relate to security for the payment of 2 or more existing or future *tax-related liabilities, but must comply with subsection (2) in relation to each of them.

When notice is given

- (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Miscellaneous

- (5) A failure to comply with this section does not affect the validity of the requirement to give the security under section 255-100.

255-110 Offence

You commit an offence if:

- (a) the Commissioner requires you to give security under section 255-100; and
- (b) you fail to give that security as required.

Penalty: 100 penalty units.

255-115 Order to comply with requirement

- (1) The Federal Court of Australia may, on the application of the Commissioner, order you to comply with a requirement to give security under section 255-100, if the Commissioner has given you notice of the requirement under subsection 255-105(1).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) If the Court makes an order under subsection (1), the Court may also order you to comply with such other requirements made, or that could be made, in relation to you under the taxation law as the Court considers necessary to ensure the effectiveness of the requirement referred to in that subsection.
- (3) An order under subsection (1) or (2) may require you to comply with the requirement on or before a day specified in the order.
- (4) If an order under subsection (1) or (2) is not given to you orally by the court, the proper officer of the court must cause a copy of the order to be served on you in the prescribed manner, or otherwise as may be ordered by the court.

255-120 Offence

- (1) You commit an offence if:
 - (a) you are subject to an order under subsection 255-115(1) or (2); and
 - (b) you fail to comply with the order.

Penalty: 50 penalty units or imprisonment for 12 months, or both.
- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (3) Subsection (1) does not apply to the extent that you are not capable of complying with the order.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-1

Division 260—Special rules about collection and recovery

Table of Subdivisions

	Guide to Division 260
260-A	From third party
260-B	From liquidator
260-C	From receiver
260-D	From agent winding up business for foreign resident principal
260-E	From deceased person's estate

Guide to Division 260

260-1 What this Division is about

This Division deals with the collection and recovery of an amount from a person who is not personally liable to pay that amount. Apart from Subdivision 260-A, which covers a wider range of amounts, this Division primarily deals with amounts of tax-related liabilities.

Subdivision 260-A—From third party

Table of sections

260-5	Commissioner may collect amounts from third party
260-10	Notice to Commonwealth, State or Territory
260-15	Indemnity
260-20	Offence

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

260-5 Commissioner may collect amounts from third party

Amount recoverable under this Subdivision

- (1) This Subdivision applies if any of the following amounts (the **debt**) is payable to the Commonwealth by an entity (the **debtor**) (whether or not the debt has become due and payable):
- (a) an amount of a *tax-related liability;
 - (b) a judgment debt for a *tax-related liability;
 - (c) costs for such a judgment debt;
 - (d) an amount that a court has ordered the debtor to pay to the Commissioner following the debtor's conviction for an offence against a *taxation law.

Commissioner may give notice to an entity

- (2) The Commissioner may give a written notice to an entity (the **third party**) under this section if the third party owes or may later owe money to the debtor.

Third party regarded as owing money in these circumstances

- (3) The third party is taken to owe money (the **available money**) to the debtor if the third party:
- (a) is an entity by whom the money is due or accruing to the debtor; or
 - (b) holds the money for or on account of the debtor; or
 - (c) holds the money on account of some other entity for payment to the debtor; or
 - (d) has authority from some other entity to pay the money to the debtor.

The third party is so taken to owe the money to the debtor even if:

- (e) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
- (f) the condition has not been fulfilled.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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How much is payable under the notice

- (4) A notice under this section must:
- (a) require the third party to pay to the Commissioner the lesser of, or a specified amount not exceeding the lesser of:
 - (i) the debt; or
 - (ii) the available money; or
 - (b) if there will be amounts of the available money from time to time—require the third party to pay to the Commissioner a specified amount, or a specified percentage, of each amount of the available money, until the debt is satisfied.

When amount must be paid

- (5) The notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b):
- (a) immediately after; or
 - (b) at or within a specified time after;
- the amount of the available money concerned becomes an amount owing to the debtor.

Debtor must be notified

- (6) The Commissioner must send a copy of the notice to the debtor.

Setting-off amounts

- (7) If an entity other than the third party has paid an amount to the Commissioner that satisfies all or part of the debt:
- (a) the Commissioner must notify the third party of that fact; and
 - (b) any amount that the third party is required to pay under the notice is reduced by the amount so paid.

260-10 Notice to Commonwealth, State or Territory

If the third party is the Commonwealth, a State or a Territory, the Commissioner may give the notice to a person who:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) is employed by the Commonwealth, or by the State or Territory (as appropriate); and
- (b) has the duty of disbursing public money under a law of the Commonwealth, or of the State or Territory (as appropriate).

260-15 Indemnity

An amount that the third party pays to the Commissioner under this Subdivision is taken to have been authorised by:

- (a) the debtor; and
- (b) any other person who is entitled to all or a part of the amount;

and the third party is indemnified for the payment.

260-20 Offence

- (1) The third party must not fail to comply with the Commissioner's notice.

Penalty: 20 penalty units

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commissioner an amount not exceeding that amount.

Subdivision 260-B—From liquidator

Table of sections

260-40	Subdivision does not apply to superannuation guarantee charge
260-45	Liquidator's obligation
260-50	Offence
260-55	Joint liability of 2 or more liquidators

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-40

260-60 Liquidator's other obligation or liability

260-40 Subdivision does not apply to superannuation guarantee charge

This Subdivision does not apply to a *tax-related liability that is superannuation guarantee charge imposed by the *Superannuation Guarantee Charge Act 1992*.

260-45 Liquidator's obligation

- (1) This Subdivision applies to a person who becomes a liquidator of a company.
- (2) Within 14 days after becoming liquidator, the liquidator must give written notice of that fact to the Commissioner.
- (3) The Commissioner must, as soon as practicable, notify the liquidator of the amount (the ***notified amount***) that the Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the company has when the notice is given.
- (4) The liquidator must not, without the Commissioner's permission, part with any of the company's assets before receiving the Commissioner's notice.
- (5) However, subsection (4) does not prevent the liquidator from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
 - (a) the *outstanding tax-related liabilities;
 - (b) any debts of the company which:
 - (i) are unsecured; and
 - (ii) are not required, by an *Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Commissioner's notice, the liquidator must set aside, out of the assets available for paying amounts covered by

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the following formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left(\frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right)$$

where:

amount of remaining ordinary debts means the sum of the company's ordinary debts other than the *outstanding tax-related liabilities.

- (7) The liquidator must, in his or her capacity as liquidator, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the liquidator is required to set aside.
- (8) The liquidator is personally liable to discharge the liabilities, to the extent of that value, if the liquidator contravenes this section.

260-50 Offence

The liquidator must not fail to comply with subsection 260-45(2), (4), (5), (6) or (7).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

260-55 Joint liability of 2 or more liquidators

If there are 2 or more persons who become liquidators of the company, the obligations and liabilities under this Subdivision:

- (a) apply to all the liquidators; but
- (b) may be discharged by any of them.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-60

260-60 Liquidator's other obligation or liability

This Subdivision does not reduce any obligation or liability of a liquidator arising elsewhere.

Subdivision 260-C—From receiver

Table of sections

260-75	Receiver's obligation
260-80	Offence
260-85	Joint liability of 2 or more receivers
260-90	Receiver's other obligation or liability

260-75 Receiver's obligation

- (1) This Subdivision applies to a person (the **receiver**) who, in the capacity of receiver, or of receiver and manager, takes possession of a company's assets for the company's debenture holders.
- (2) Within 14 days after taking possession of the assets, the receiver must give written notice of that fact to the Commissioner.
- (3) The Commissioner must, as soon as practicable, notify the receiver of the amount (the **notified amount**) that the Commissioner considers is enough to discharge any *outstanding tax-related liabilities that the company has when the notice is given.
- (4) The receiver must not, without the Commissioner's permission, part with any of the company's assets before receiving the Commissioner's notice.
- (5) However, subsection (4) does not prevent the receiver from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
 - (a) the *outstanding tax-related liabilities;
 - (b) any debts of the company which:
 - (i) are unsecured; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) are not required, by an ^{*}Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Commissioner's notice, the receiver must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the following formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left(\frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right)$$

where:

amount of remaining ordinary debts means the sum of the company's ordinary debts other than the ^{*}outstanding tax-related liabilities.

- (7) The receiver must, in his or her capacity as receiver, or as receiver and manager, discharge the ^{*}outstanding tax-related liabilities, to the extent of the value of the assets that the receiver is required to set aside.
- (8) The receiver is personally liable to discharge the liabilities, to the extent of that value, if the receiver contravenes this section.

260-80 Offence

The receiver must not fail to comply with subsection 260-75(2), (4), (5), (6) or (7).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-85

260-85 Joint liability of 2 or more receivers

If 2 or more persons (the *receivers*) take possession of a company's assets, for the company's debenture holders, in the capacity of receiver, or of receiver and manager, the obligations and liabilities under this Subdivision apply to:

- (a) all the receivers; but
- (b) may be discharged by any of them.

260-90 Receiver's other obligation or liability

This Subdivision does not reduce any obligation or liability of the receiver or receivers arising elsewhere.

Subdivision 260-D—From agent winding up business for foreign resident principal

Table of sections

260-105	Obligation of agent winding up business for foreign resident principal
260-110	Offence
260-115	Joint liability of 2 or more agents
260-120	Agent's other obligation or liability

260-105 Obligation of agent winding up business for foreign resident principal

- (1) This Subdivision applies to an agent whose principal:
 - (a) is a foreign resident; and
 - (b) has instructed the agent to wind up so much of the principal's business as is carried on in Australia.
- (2) Within 14 days after receiving the instructions, the agent must give written notice of that fact to the Commissioner.
- (3) The Commissioner must, as soon as practicable after receiving the notice, notify the agent of the amount (the *notified amount*) that the Commissioner considers is enough to discharge any

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

*outstanding tax-related liabilities that the principal has when the notice is given.

- (4) Before receiving the Commissioner's notice, the agent must not, without the Commissioner's permission, part with any of the principal's assets that are available for discharging the *outstanding tax-related liabilities.
- (5) After receiving the notice, the agent must set aside:
 - (a) out of the assets available for discharging the *outstanding tax-related liabilities, assets to the value of the notified amount; or
 - (b) all of the assets so available, if their value is less than the notified amount.
- (6) The agent must, in that capacity, discharge the *outstanding tax-related liabilities, to the extent of the value of the assets that the agent is required to set aside.
- (7) The agent is personally liable to discharge the liabilities, to the extent of that value, if the agent contravenes this section.

260-110 Offence

A person must not fail to comply with subsection 260-105(2), (4), (5) or (6).

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of penalty units.

260-115 Joint liability of 2 or more agents

If 2 or more agents are jointly instructed by the principal to wind up the business, the obligations and liabilities under this Subdivision:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 260-120

- (a) apply to all the agents; but
- (b) may be discharged by any of them.

260-120 Agent's other obligation or liability

This Subdivision does not reduce any obligation or liability of the agent or agents arising elsewhere.

Subdivision 260-E—From deceased person's estate

Table of sections

260-140	Administered estate
260-145	Unadministered estate
260-150	Commissioner may authorise amount to be recovered

260-140 Administered estate

- (1) This section applies if:
 - (a) a person has an *outstanding tax-related liability when the person dies; and
 - (b) either of the following is granted after the death:
 - (i) probate of the person's will;
 - (ii) letters of administration of the person's estate.
- (2) The Commissioner may, in respect of the liability, deal with the trustee of the deceased person's estate as if:
 - (a) the deceased person were still alive; and
 - (b) the trustee were the deceased person.
- (3) Without limiting subsection (2), the trustee must:
 - (a) provide any returns and other information that the deceased person was liable to provide, or would have been liable to provide if he or she were still alive; and
 - (b) provide any additional returns or other information relating to the liability that the Commissioner requires; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) in the trustee's representative capacity, discharge the liability and any penalty imposed in respect of the liability under a *taxation law (including any *general interest charge) for which the deceased person would be liable if he or she were still alive.
- (4) If:
 - (a) the amount of the liability requires an *assessment under a *taxation law but the assessment has not been made; and
 - (b) the trustee fails to provide a return or other information in relation to assessing that amount as required by the Commissioner;the Commissioner may assess that amount. If the Commissioner does so, the assessment has the same effect as if it were made under that taxation law.
- (5) A trustee who is dissatisfied with an *assessment under subsection (4) may object in the manner set out in Part IVC.
- (6) Part IVC applies in relation to the objection as if the trustee were the deceased person.

260-145 Unadministered estate

- (1) This section applies if neither of the following is granted within 6 months after a person's death:
 - (a) probate of the person's will;
 - (b) letters of administration of the person's estate.
- (2) The Commissioner may determine the total amount of *outstanding tax-related liabilities that the person had at the time of death.
- (3) The Commissioner must publish notice of the determination in a manner that results in the notice being accessible to the public and reasonably prominent.
- (4) A notice of the determination is conclusive evidence of the *outstanding tax-related liabilities, unless the determination is amended.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (5) A person who is dissatisfied with the determination may object in the manner set out in Part IVC if the person:
 - (a) claims an interest in the estate; or
 - (b) is granted probate of the deceased person's will or letters of administration of the estate.
- (6) Part IVC applies in relation to the objection as if the person making it were the deceased person.

260-150 Commissioner may authorise amount to be recovered

- (1) The Commissioner may, in writing, authorise a person (the **authorised person**) who is:
 - (a) a member or a special member of the Australian Federal Police; or
 - (b) a member of the police force of a State or Territory; or
 - (c) any other person;to recover:
 - (d) the total amount of the *outstanding tax-related liabilities of a deceased person as determined under section 260-145 (about unadministered estates); and
 - (e) any reasonable costs incurred by the authorised person in recovering that amount;by seizing and disposing of any property of the deceased person.
- (2) The authorised person may seize and dispose of the property as prescribed by the regulations.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 263—Mutual assistance in the administration of foreign tax laws

Table of Subdivisions

- 263-A Foreign revenue claims
- 263-B Service of documents in Australia on behalf of foreign revenue authorities

Subdivision 263-A—Foreign revenue claims

Guide to Subdivision 263-A

263-5 What this Subdivision is about

This Subdivision can be activated if there is in force an agreement between Australia and a foreign country or territory that contains an article relating to assistance in collection of foreign tax debts.

The Commissioner can collect from an entity an amount in respect of a tax debt that the person owes to such a country or territory or take action to conserve assets of the entity.

The Commissioner is required to remit amounts collected to the foreign country or territory concerned.

Table of sections

Operative provisions

- 263-10 Meaning of *foreign revenue claim*
- 263-15 Requirements for foreign revenue claims
- 263-20 Foreign Revenue Claims Register
- 263-25 Registering claims
- 263-30 When amount is due and payable
- 263-35 Amending the Register etc.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 263-10

263-40 Payment to competent authority

Operative provisions

263-10 Meaning of foreign revenue claim

A **foreign revenue claim** is a claim made to the Commissioner:

- (a) in accordance with an agreement (the **international agreement**) between Australia and:
 - (i) a foreign country or a constituent part of a foreign country; or
 - (ii) a foreign territory; and
- (b) for one or both of these purposes:
 - (i) the recovery by the Commissioner of an amount from an entity (the **debtor**) in respect of taxes imposed otherwise than by an ^{*}Australian law (including any associated amounts);
 - (ii) the conserving of assets for the purposes of a recovery of that kind.

263-15 Requirements for foreign revenue claims

A ^{*}foreign revenue claim must:

- (a) be made by or on behalf of an entity that is, under the relevant international agreement, the competent authority; and
- (b) be consistent with the provisions of that agreement; and
- (c) be made in the ^{*}approved form; and
- (d) specify the amount owed by the debtor in Australian currency (calculated as at the day the claim is made); and
- (e) be accompanied by a declaration by the competent authority stating that the claim fulfils the requirements of that agreement.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

263-20 Foreign Revenue Claims Register

- (1) The Commissioner must keep a register called the Foreign Revenue Claims Register (the **Register**).
- (2) The regulations may make provision in relation to the form in which the Register may be kept.
- (3) The register is not a legislative instrument.

263-25 Registering claims

If the Commissioner is satisfied that a *foreign revenue claim has been made in accordance with section 263-15, the Commissioner must register the claim by entering particulars of it in the Register within 90 days after receiving the claim.

263-30 When amount is due and payable

- (1) When particulars of a *foreign revenue claim are entered in the Register, the amount owed by the debtor becomes a pecuniary liability to the Commonwealth by the debtor.

Note 1: The amount to be recovered from the debtor will be a primary tax debt for the purposes of Part IIB and the Commissioner may allocate the debt to a running balance account under that Part.

Note 2: For provisions about collection and recovery of the debt, see Part 4-15.
- (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) The amount owed by the debtor becomes due and payable 30 days after notice of the particulars of the *foreign revenue claim is given to the debtor or on a later day specified in the notice.
- (3) If that amount remains unpaid after it is due and payable, the debtor is liable to pay *general interest charge on the unpaid amount for each day in the period that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 263-35

- (a) started at the beginning of the day by which the amount was due to be paid; and
- (b) finishes at the end of the last day at the end of which either of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

263-35 Amending the Register etc.

- (1) The Commissioner may, with the agreement of the relevant competent authority, amend the Register to correct an error.
- (2) The Commissioner may, with the agreement of the relevant competent authority:
 - (a) remove from the Register the particulars of a *foreign revenue claim; or
 - (b) reduce an amount to be recovered from a debtor under the claim.
- (2A) To avoid doubt, the Commissioner may reduce an amount to be recovered from a debtor under paragraph (2)(b) without amending the Register.
- (3) A debtor may, after receiving a copy of the particulars of a *foreign revenue claim entered in the Register, apply to the Commissioner in the *approved form to have those particulars removed from the Register.
- (4) The Commissioner may, after considering the application, remove those particulars from the Register.
- (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

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (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) If the Commissioner reduces the amount to be recovered from a debtor under a *foreign revenue claim under paragraph (2)(b), the debtor is entitled to a credit for the purposes of Part IIB equal to the amount of the reduction.

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

263-40 Payment to competent authority

- (1) The Commissioner must, if the Commissioner recovers all or part of an amount to be recovered from a debtor under a registered *foreign revenue claim, pay that amount to the competent authority concerned or to another entity on behalf of that competent authority.
- (2) 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 *general interest charge in relation to the claim.
- (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.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 263-55

Subdivision 263-B—Service of documents in Australia on behalf of foreign revenue authorities

Guide to Subdivision 263-B

263-55 What this Subdivision is about

This Subdivision can be activated if there is in force an agreement between Australia and a foreign country or foreign territory that deals with service of documents on tax matters.

If a foreign government agency asks the Commissioner to serve a document relating to foreign taxes on an entity in Australia in accordance with the agreement, the Commissioner may serve the document in the same way as a similar document under an Australian taxation law may be served.

Table of sections

Operative provisions

- | | |
|--------|--|
| 263-60 | Meaning of <i>foreign service of document request</i> |
| 263-65 | Service of document subject to foreign service of document request |

Operative provisions

263-60 Meaning of *foreign service of document request*

A *foreign service of document request* is a request made to the Commissioner:

- (a) in accordance with an agreement (the *international agreement*) between Australia and:
 - (i) a foreign country or a constituent part of a foreign country; or
 - (ii) a foreign territory;
- that deals with service of documents on tax matters; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) by a *foreign government agency; and
- (c) for the service of one or more documents on an entity in Australia in relation to taxes imposed otherwise than by an *Australian law.

263-65 Service of document subject to foreign service of document request

- (1) If a *foreign service of document request is made to the Commissioner, the Commissioner may serve a document covered by the request in the same way that a similar document under a *taxation law may be served.
- (2) The Commissioner must also serve a translation of the document into English, or a summary of the document in English, if:
 - (a) the document is in a language other than English; and
 - (b) the Commissioner is satisfied that the entity being served would not understand the language of the document.
- (3) Before serving a translation of the document into English, or a summary of the document in English, the Commissioner must be satisfied that the translation or summary is accurate.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 265-35

Division 265—Other matters

Table of Subdivisions

- 265-A Right of person to seek recovery or contribution
- 265-B Application of laws

Subdivision 265-A—Right of person to seek recovery or contribution

Guide to Subdivision 265-A

265-35 What this Subdivision is about

This Division deals with a person's right to recover from another person an amount paid in discharge of a tax-related liability if:

- the person has paid the amount for or on behalf of the other person;
- the persons are jointly liable to pay the amount.

Table of sections

Operative provisions

- 265-40 Right of recovery if another person is liable
- 265-45 Right of contribution if persons are jointly liable

Operative provisions

265-40 Right of recovery if another person is liable

A person who has paid an amount of a *tax-related liability for or on behalf of another person may:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) recover that amount from the other person as a debt (together with the costs of recovery) in a court of competent jurisdiction; or
- (b) retain or deduct the amount out of money held by the person that belongs to, or is payable to, the other person.

265-45 Right of contribution if persons are jointly liable

- (1) If 2 or more persons are jointly liable to pay an amount of a *tax-related liability, they are each liable for the whole of the amount.
- (2) If one of the persons has paid an amount of the liability, the person may recover in a court of competent jurisdiction, as a debt, from another of those persons:
 - (a) an amount equal to so much of the amount paid; and
 - (b) an amount equal to so much of the costs of recovery under this section;as the court considers just and equitable.

Note: Item 15 of Schedule 6 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* has the effect that, in addition to its normal application in relation to tax-related liabilities arising on or after 1 July 2000, subsection (2) also applies to such liabilities arising before that date, where amounts of the liabilities are paid after the commencement of that item.

Subdivision 265-B—Application of laws

Table of sections

265-65 Non-application of certain taxation laws

265-65 Non-application of certain taxation laws

This Part does not apply in relation to a *taxation law, or a provision of a taxation law, that is prescribed by the regulations.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 265-85

Subdivision 265-C—Direction to pay superannuation guarantee charge

Guide to Subdivision 265-C

265-85 What this Subdivision is about

If you are liable to pay an amount of superannuation guarantee charge or certain related liabilities, the Commissioner may direct you to pay the amount.

If the amount is not paid, you may commit an offence.

Table of sections

265-90	Direction to pay superannuation guarantee charge
265-95	Offence
265-100	Variation or revocation
265-105	Effect of liability being reduced or ceasing to exist
265-110	Taxation objection
265-115	Extension of period to comply if taxation objection made

265-90 Direction to pay superannuation guarantee charge

- (1) The Commissioner may, by written notice, give you a direction requiring you to pay to the Commissioner:
 - (a) an amount of superannuation guarantee charge that is payable by you under the *Superannuation Guarantee (Administration) Act 1992*; or
 - (b) if an estimate under Division 268 in this Schedule of an amount of a liability of yours to pay superannuation guarantee charge for a quarter under section 16 of the *Superannuation Guarantee (Administration) Act 1992* is in force as referred to in subsection 268-10(5)—the amount of the estimate.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note: The direction does not create a separate liability to pay the amount. However, it may result in you committing an offence against subsection 265-95(1) if the amount is not paid.

- (2) In deciding whether to give a direction under subsection (1), the Commissioner must have regard to the following matters:
- (a) your history of compliance with obligations to pay superannuation guarantee charge, and obligations to pay estimates under Division 268 of superannuation guarantee charge;
 - (b) your history of compliance with other obligations under ^{*}taxation laws;
 - (c) whether the amount mentioned in paragraph (1)(a) or (b) is substantial, having regard to the size and nature of your business;
 - (d) any steps that you have taken to discharge the liability to pay the amount or dispute that the liability exists;
 - (e) any other matter that the Commissioner considers relevant.
- (3) The direction must:
- (a) set out the amount that you are required to pay to the Commissioner; and
 - (b) if the amount referred to in paragraph (1)(a) or (b) relates to a ^{*}quarter—set out the quarter; and
 - (c) specify the period before the end of which you must comply with the direction (which must end at least 21 days after the day the direction is given); and
 - (d) explain the consequences of failing to comply with the direction; and
 - (e) explain how you may have the Commissioner's decision to give the direction reviewed.
- (4) To avoid doubt, a single notice may relate to 2 or more directions, but must comply with subsection (3) in relation to each of them.
- (5) A notice given under subsection (1) is not a legislative instrument.

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 265-95

265-95 Offence

- (1) You commit an offence if:
- (a) you are given a direction under subsection 265-90(1); and
 - (b) the liability to pay the amount set out in the direction is not discharged (whether by you or by another entity) before the end of the period specified in the direction under paragraph 265-90(3)(c).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if both of the following apply:
- (a) you took all reasonable steps to comply with the direction before the end of the period specified in the direction under paragraph 265-90(3)(c);
 - (b) you took all reasonable steps to ensure that the liability was discharged before the direction was given.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

265-100 Variation or revocation

- (1) If the Commissioner has given you a direction under subsection 265-90(1), the Commissioner may, at any time before the end of the period specified in the direction under paragraph 265-90(3)(c), by written notice given to you:
- (a) vary the direction to reduce the amount that you are required to pay to the Commissioner in order to comply with the direction; or
 - (b) vary the direction to extend the period specified in the notice of the direction under paragraph 265-90(3)(c); or
 - (c) revoke the direction.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (2) To avoid doubt, the variation or revocation of a direction under subsection (1) does not affect any liability that you may have to pay an amount referred to in the direction.

265-105 Effect of liability being reduced or ceasing to exist

- (1) If:
- (a) you have been given a direction under subsection 265-90(1) requiring you to pay an amount of a liability referred to in that subsection to the Commissioner; and
 - (b) the period specified in the direction under paragraph 265-90(3)(c) has not expired; and
 - (c) the liability is reduced (but not to nil);
- the amount set out in the direction is taken to be reduced by the amount of the reduction referred to in paragraph (c).
- (2) If:
- (a) you have been given a direction under subsection 265-90(1) requiring you to pay an amount of a liability referred to in that subsection to the Commissioner; and
 - (b) the period specified in the direction under paragraph 265-90(3)(c) has not expired; and
 - (c) either:
 - (i) the liability is reduced to nil; or
 - (ii) the liability ceases to exist;
- the direction is taken to be revoked.
- (3) You may be convicted of an offence against subsection 265-95(1) in relation to a direction under subsection 265-90(1) requiring you to pay an amount of a liability referred to in subsection 265-90(1) to the Commissioner even if:
- (a) the liability is reduced, or ceases to exist, after the end of the period specified in the direction under paragraph 265-90(3)(c); or
 - (b) the liability is discharged after the end of that period; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 265-110

- (c) the liability is, after the end of that period, taken never to have existed, or taken not to have existed at a time on or before the end of that period.

265-110 Taxation objection

If you are dissatisfied with a decision of the Commissioner to give you a direction under subsection 265-90(1), you may, at any time before the end of the period specified in the direction under paragraph 265-90(3)(c), object against the decision in the manner set out in Part IVC.

265-115 Extension of period to comply if taxation objection made

- (1) This section applies if:
 - (a) the Commissioner gives you a direction under subsection 265-90(1); and
 - (b) the period specified in the direction under paragraph 265-90(3)(c) has not expired; and
 - (c) you:
 - (i) make an objection in accordance with section 265-110 in relation to the Commissioner's decision to give you the direction; or
 - (ii) make an objection in the manner set out in Part IVC against a taxation decision that relates to your liability to pay an amount referred to in the direction.
- (2) The period specified in the direction under paragraph 265-90(3)(c) is extended by one day for each day in the period that begins on the day the objection is made and ends at the end of the later of the following days:
 - (a) the day 21 days after the day the Commissioner notifies you of the Commissioner's decision under section 14ZY in relation to the objection;
 - (b) if, before the end of the day referred to in paragraph (a), you:
 - (i) apply to the *ART in accordance with Division 4 of Part IVC for review of the Commissioner's decision; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) lodge an appeal against the Commissioner's decision with the Federal Court of Australia under Division 5 of that Part;
the day the review or the appeal is finally determined.
- (3) To avoid doubt, the extension of the period under subsection (2) does not affect any liability that you may have to pay an amount referred to in the direction.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 268-1

Division 268—Estimates

Table of Subdivisions

	Guide to Division 268
268-A	Object
268-B	Making estimates
268-C	Liability to pay estimates
268-D	Reducing and revoking estimates
268-E	Late payment of estimates
268-F	Miscellaneous

Guide to Division 268

268-1 What this Division is about

This Division enables the Commissioner to make an estimate of:

- (a) amounts not paid as required by Part 2-5 of this Act (Pay as you go (PAYG) withholding); or
- (b) unpaid superannuation guarantee charge; or
- (c) net amounts in respect of GST, wine equalisation tax and luxury car tax;

and to recover the amount of the estimate.

If you are given an estimate, you are liable to pay the amount of the estimate. That liability is distinct from your liability to pay the amounts required by Part 2-5 or the *Superannuation Guarantee (Administration) Act 1992*. In the case of an estimate of a net amount that has been assessed by the Commissioner, that liability is distinct from your liability to pay the amount of the assessment. However, you can ensure that the Commissioner does not require you to pay more than the relevant unpaid amounts.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Other Divisions of this Part provide for the recovery of amounts payable under this Division.

Subdivision 268-A—Object

Table of sections

268-5 Object of Division

268-5 Object of Division

The object of this Division is to enable the Commissioner to take prompt and effective action to recover:

- (a) amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding); or
- (b) unpaid superannuation guarantee charge that has not been assessed; or
- (c) *net amounts under the *GST Act.

Subdivision 268-B—Making estimates

Table of sections

268-10 Commissioner may make estimate

268-15 Notice of estimate

268-10 Commissioner may make estimate

Estimate

- (1) The Commissioner may estimate the unpaid and overdue amount of a liability (the ***underlying liability***) of yours:
 - (a) under section 16-70 in this Schedule (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules); or
 - (b) to pay superannuation guarantee charge for a *quarter under section 16 of the *Superannuation Guarantee (Administration) Act 1992*, to the extent the superannuation guarantee charge

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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has not been assessed before the Commissioner makes the estimate; or

- (c) to pay a *net amount for a *tax period, to the extent that the net amount has not been assessed before the Commissioner makes the estimate.

(1A) For the purposes of this Division, your superannuation guarantee charge for a *quarter is treated as being payable on the day by which you must lodge a superannuation guarantee statement for the quarter under section 33 of the *Superannuation Guarantee (Administration) Act 1992*, even if, on that day, the charge has not been assessed under that Act.

(1B) For the purposes of this Division, if you have a *net amount for a *tax period:

- (a) you are treated as being liable to pay that net amount; and
- (b) that liability is treated as having arisen on the day by which you must give your *GST return for the tax period to the Commissioner in accordance with Division 31 of the *GST Act; and
- (c) that liability is treated as being payable on that day; and
- (d) the entire amount of that liability is treated as being unpaid.

Amount of estimate

- (2) The amount of the estimate must be what the Commissioner thinks is reasonable.
- (3) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant.

Example 1: In the case of an underlying liability under section 16-70 (requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the Commissioner may have regard to information about amounts you withheld under the Pay as you go rules before the period in relation to which the underlying liability arose.

Example 2: In the case of an underlying liability to pay superannuation guarantee charge for a quarter, the Commissioner may have regard to

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

information about your contributions to RSAs and complying
superannuation funds for earlier quarters.

Only one estimate for each liability

- (4) While the estimate is in force, the Commissioner cannot make another estimate relating to the underlying liability.
- (5) For the purposes of subsection (4), the estimate is in force if:
 - (a) the Commissioner has given you notice of the estimate; and
 - (b) the estimate has not been revoked; and
 - (c) your liability to pay the estimate has not been discharged.

268-15 Notice of estimate

Commissioner must give notice of estimate

- (1) The Commissioner must give you written notice of the estimate.

Content of notice

- (2) The notice must:
 - (a) identify the underlying liability; and
 - (b) specify the date of the estimate; and
 - (c) set out the amount of the estimate; and
 - (d) state that the amount of the estimate is due and payable; and
 - (e) explain how you may have the amount of the estimate reduced or the estimate revoked.
- (3) To avoid doubt, a single notice may relate to 2 or more estimates, but must comply with subsection (2) in relation to each of them.

When notice is given

- (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Subdivision 268-C—Liability to pay estimates

Table of sections

268-20	Nature of liability to pay estimate
268-25	Accuracy of estimate irrelevant to liability to pay
268-30	Estimate provable in bankruptcy or winding up

268-20 Nature of liability to pay estimate

Liability to pay amount of estimate

- (1) You must pay to the Commissioner the amount of the estimate if the Commissioner gives you notice of the estimate in accordance with section 268-15. The amount is due and payable when the Commissioner gives you the notice.

Note: The amount of the estimate may be reduced, or the estimate revoked, under Subdivision 268-D.

Liability to pay amount of estimate is distinct from underlying liability

- (2) Your liability to pay the amount of the estimate is separate and distinct from the underlying liability. It is separate and distinct for all purposes.

Example: In a case covered by paragraph 268-10(1)(a) or (b), the Commissioner may take:

- (a) proceedings to recover the unpaid amount of the estimate; or
- (b) proceedings to recover the unpaid amount of the underlying liability; or
- (c) proceedings of both kinds.

Discharging one liability discharges other liabilities

- (3) Despite subsection (2), if, at a particular time, one of the liabilities to which this subsection applies is discharged, to the extent of an amount, for either of the following reasons, each of the other

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

liabilities to which this subsection applies is discharged to the extent of the same amount:

- (a) an amount is paid or applied towards discharging the liability;
 - (b) the liability is discharged because of section 269-40 (Effect of director paying penalty or company discharging liability).
- (4) Subsection (3) applies to whichever of the following liabilities are in existence at the particular time:
- (a) your liability to pay the amount of the estimate;
 - (b) the underlying liability;
 - (c) a liability of yours under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).
- (4A) In a case covered by paragraph 268-10(1)(c) (estimate of liability in relation to net amount under GST Act), treat the reference in paragraph (4)(b) to the underlying liability as being a reference to a liability under Division 33 or 35 of the *GST Act for an *assessed net amount in respect of the underlying liability.
- (5) Subsection (3) does not discharge a liability to a greater extent than the amount of the liability.

268-25 Accuracy of estimate irrelevant to liability to pay

You are liable to pay the unpaid amount of the estimate even if:

- (a) the underlying liability never existed or has been discharged in full; or
- (b) the unpaid amount of the underlying liability is less than the unpaid amount of the estimate.

Note 1: Section 268-40 revokes the estimate if you give the Commissioner a statutory declaration, or file an affidavit, to the effect that the underlying liability never existed.

Note 2: Subdivision 268-D provides ways in which you can challenge the estimate or its amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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268-30 Estimate provable in bankruptcy or winding up

- (1) Your liability (the *estimate liability*) to pay the unpaid amount of the estimate is provable in a bankruptcy or winding up, even if the estimate was made after:
 - (a) the date of the bankruptcy; or
 - (b) the relevant date (within the meaning of the *Corporations Act 2001*).
- (2) However, the estimate liability is provable only to the extent that the underlying liability would be provable if the unpaid amount of the underlying liability were the same as the unpaid amount of the estimate.

Example: Subsection (2) prevents proof of the estimate liability if the underlying liability could not be proved because, for example, of when it arose.
- (3) Subsections (1) and (2) do not apply if:
 - (a) the underlying liability has already been admitted to proof; and
 - (b) the proof has not been set aside.
- (4) If the estimate liability has been admitted to proof at a particular amount, the underlying liability is provable only to the extent the unpaid amount of the underlying liability exceeds that particular amount.
- (4A) In a case covered by paragraph 268-10(1)(c) (estimate of liability in relation to net amount under GST Act), treat the references in paragraph (3)(a) and subsection (4) to the underlying liability as being references to a liability under Division 33 or 35 of the *GST Act for an *assessed net amount in respect of the underlying liability.
- (5) To the extent that a liability is provable because of this section, it is taken, for the purposes of the *Bankruptcy Act 1966*, to be provable in bankruptcy under that Act.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 268-D—Reducing and revoking estimates

Table of sections

268-35	How estimate may be reduced or revoked—Commissioner’s powers
268-40	How estimate may be reduced or revoked—statutory declaration or affidavit
268-45	How estimate may be reduced or revoked—rejection of proof of debt
268-50	How estimate may be reduced—amount paid or applied
268-55	When reduction or revocation takes effect
268-60	Consequences of reduction or revocation—refund
268-65	Consequences of reduction or revocation—statutory demand changed or set aside
268-70	Consequences of reduction or revocation—underlying liability

268-35 How estimate may be reduced or revoked—Commissioner’s powers

Reduction

- (1) The Commissioner may at any time reduce the amount of the estimate, but is not obliged to consider whether or not to do so.
- (2) If the Commissioner reduces the amount of the estimate under subsection (1), he or she must give you a written notice that:
 - (a) identifies the underlying liability; and
 - (b) sets out the reduced amount of the estimate.

Note: The estimate is taken always to have had effect as reduced: see section 268-55.

Revocation

- (3) The Commissioner may at any time revoke the estimate, but is not obliged to consider whether or not to do so.
- (4) If the Commissioner revokes the estimate under subsection (3), he or she must give you a written notice that:
 - (a) identifies the underlying liability; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(b) states that the estimate has been revoked.

Note: The estimate is taken never to have been made: see section 268-55.

Matters for Commissioner to consider

- (5) In exercising his or her power under this section to reduce the amount of the estimate, or to revoke the estimate, the Commissioner must have regard to:
- (a) the following principles:
 - (i) the estimate is of the unpaid amount of the underlying liability as at a particular time;
 - (ii) the purpose of reducing the amount of the estimate is to bring it closer to the unpaid amount of the underlying liability as at the time the estimate was made;
 - (iii) reductions of the unpaid amount of the underlying liability that happen after the time the estimate was made are dealt with by section 268-20 (Nature of liability to pay estimate) and so should not be taken into account in exercising such a power; and
 - (b) the effects of sections 268-55 and 268-70 (effect of reduction or revocation on liabilities).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

268-40 How estimate may be reduced or revoked—statutory declaration or affidavit

Scope

(1) This section applies as set out in the following table:

Statutory declaration or affidavit			
Item	This section applies if ...	and ...	within ...
1	the Commissioner gives you notice of the estimate	you give the Commissioner a statutory declaration for the purposes of this section	(a) 7 days after the Commissioner gives you the notice; or (b) a longer period allowed by the Commissioner.
2	you are a party to proceedings before a court that relate to the recovery of the unpaid amount of the estimate	you: (a) file an affidavit for the purposes of this section; and (b) serve a copy on the Commissioner	(a) 14 days after you first take a procedural step as a party to the proceedings; or (b) a longer period allowed by the court.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Statutory declaration or affidavit			
Item	This section applies if ...	and ...	within ...
3	(a) the estimate is of the unpaid amount of a liability of a company; and (b) the Commissioner serves on the company a * statutory demand relating to the company's liability to pay the unpaid amount of the estimate; and (c) an application is made to a court under section 234, 459P, 462 or 464 of the <i>Corporations Act 2001</i> for the company to be wound up	the company: (a) files an affidavit for the purposes of this section; and (b) serves a copy on the applicant	(a) 14 days after notice of the application was served on the company; or (b) a longer period allowed by the court.

Example: For the purposes of item 2 of the table, taking a procedural step as a party to proceedings includes entering an appearance, filing a notice of intention to defend, or applying to set aside judgment entered in default of appearance.

Note 1: Section 459C of the *Corporations Act 2001* creates a presumption that a company is insolvent, and may be wound up, if the company fails to comply with a statutory demand.

Note 2: See section 268-90 for what the statutory declaration or affidavit must contain and who must make, swear or affirm it.

Reduction

- (2) The amount of the estimate is reduced if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that a specified lesser amount is the unpaid amount of the underlying liability.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Example: Subsection (2) will apply if the statutory declaration etc. is to the effect that the underlying liability has been discharged in full (and therefore the unpaid amount of the liability is nil).

- (3) The amount of the reduction is the amount by which the unpaid amount of the estimate (just before the reduction) exceeds the amount specified.

Note: The effect of subsection (3) is to reduce the unpaid amount of the estimate to the amount specified.

Revocation

- (4) The estimate is revoked if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that the underlying liability never existed.

268-45 How estimate may be reduced or revoked—rejection of proof of debt

Scope

- (1) This section applies if:
- (a) the Commissioner lodges a proof of debt relating to the unpaid amount of the estimate; and
 - (b) section 268-95 applies to an entity (your *supervising entity*) in relation to you.

Rejection of proof of debt

- (2) Your supervising entity may give the Commissioner a statutory declaration to the effect that:
- (a) the underlying liability has been discharged in full; or
 - (b) the unpaid amount of the underlying liability is a specified, lesser amount; or
 - (c) the underlying liability never existed.

Note: See section 268-90 for what the statutory declaration must contain and who must make it.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (3) If your supervising entity does so, he or she may reject the proof of debt (in whole or in part) on the ground made out in the statutory declaration.
- (4) If the Commissioner appeals, or applies for review of, your supervising entity's decision to reject the proof of debt, nothing in subsection (2) or (3) prevents evidence being adduced to contradict statements in the declaration.

Note: Such evidence might also be relevant to a prosecution for an offence, such as an offence against section 11 of the *Statutory Declarations Act 1959* (False declarations).

Revocation or reduction of estimate

- (5) The following table applies in relation to the outcome following all (if any) appeals from, and applications for review of, your supervising entity's decision to reject the proof of debt. (If there are no appeals or applications for review, the outcome is your supervising entity's decision as originally made.)

Rejecting proof of debt		
Item	If the outcome is that ...	then ...
1	the proof is rejected in whole on the ground that the estimate has been discharged in full	the amount of the estimate is reduced by the unpaid amount of the estimate (just before the reduction).
2	the proof is rejected in part	the amount of the estimate is reduced by so much of the unpaid amount of the estimate (just before the reduction) as is rejected.
3	the proof is rejected in whole on the ground that the underlying liability never existed	the estimate is revoked.

Note 1: The effect of item 1 of the table is to reduce the unpaid amount of the estimate to nil.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Note 2: The effect of item 2 of the table is to reduce the unpaid amount of the estimate to the amount admitted to proof.

268-50 How estimate may be reduced—amount paid or applied

- (1) This section applies if:
 - (a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and
 - (b) the amount paid or applied exceeds the unpaid amount of the underlying liability as at the time just before the payment or application.
- (2) The amount of the estimate is reduced so that it does not exceed the unpaid amount, at the time mentioned in paragraph (1)(b), of the underlying liability.

268-55 When reduction or revocation takes effect

Scope

- (1) This section applies for the purposes of the following:
 - (a) Subdivision 268-C (Liability to pay estimates);
 - (b) section 268-60 (refund of overpayments);
 - (c) Subdivision 268-E (Late payment of estimates);
 - (d) Division 269 (Penalties for directors of non-complying companies).

When reduction or revocation takes effect

- (2) If the amount of the estimate is reduced, the estimate has effect, and is taken always to have had effect, as if the original amount of the estimate had been the reduced amount.
- (3) If the estimate is revoked, the estimate is taken never to have been made.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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268-60 Consequences of reduction or revocation—refund

- (1) This section applies if:
- (a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and
 - (b) the amount paid or applied exceeds the unpaid amount of the estimate as at the time just before the payment or application.

Example: You pay an amount towards discharging the estimate and the estimate is later reduced to a lesser amount.

Note: Section 268-50 provides for the reduction of the amount of the estimate in the case of overpayment.

- (2) The Commissioner must pay you the excess.

Note: See Division 3A of Part IIB of this Act for the rules about how the Commissioner must pay you. Division 3 of that Part allows the Commissioner to apply the amount owing as a credit against tax debts that you owe the Commonwealth.

268-65 Consequences of reduction or revocation—statutory demand changed or set aside

Scope

- (1) This section applies if:
- (a) the estimate is of the unpaid amount of a liability of a company; and
 - (b) the Commissioner has served a *statutory demand on the company relating to the company's liability to pay the unpaid amount of the estimate; and
 - (c) the amount of the estimate is later reduced, or the estimate is revoked.

Statutory demand changed

- (2) The *statutory demand is changed accordingly.
- (3) The *statutory demand is taken to have had effect (as so changed) from the time the Commissioner served it on the company.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Statutory demand set aside

- (4) The *statutory demand is set aside if subsection (2) reduces the amount of the debt (or the total of the amounts of the debts) below the statutory minimum (within the meaning of the *Corporations Act 2001*).

268-70 Consequences of reduction or revocation—underlying liability

Reduction of the amount of the estimate, or revocation of the estimate, does not affect the Commissioner's rights or remedies in relation to the underlying liability (except to the extent that this Division expressly provides otherwise).

Subdivision 268-E—Late payment of estimates

Table of sections

268-75	Liability to pay the general interest charge
268-80	Effect of paying the general interest charge

268-75 Liability to pay the general interest charge

- (1) This section applies if:
- (a) your liability to pay the amount of the estimate remains undischarged at the end of 7 days after the Commissioner gives you notice of the estimate; and
 - (b) the underlying liability is not a liability to pay superannuation guarantee charge.
- (2) You are liable to pay the *general interest charge on the unpaid amount of the estimate for each day in the period that:
- (a) started at the beginning of the day by which the underlying liability was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the amount of the estimate;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) general interest charge on any of the amount of the estimate.

Note: The general interest charge is worked out under Part IIA of this Act.

268-80 Effect of paying the general interest charge

Scope

- (1) If you are liable to pay the *general interest charge under section 268-75 in relation to the estimate, this section applies to the following liabilities:
 - (a) your liability to pay the general interest charge;
 - (b) a liability of yours to pay a general interest charge, under a corresponding provision of Subdivision 16-B, because the underlying liability remains undischarged;
 - (c) liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b);
 - (d) a liability of yours to pay interest carried by a judgment debt, to the extent that the judgment debt is based on:
 - (i) the liability to pay the estimate; or
 - (ii) the liability to pay the general interest charge under section 268-75 on an unpaid amount of the estimate.
- (1A) In a case covered by paragraph 268-10(1)(c) (estimate of liability in relation to net amount under GST Act), treat the reference in paragraph (1)(b) to the underlying liability as being a reference to a liability under Division 33 or 35 of the *GST Act for an *assessed net amount in respect of the underlying liability.

Discharging one liability discharges other liabilities

- (2) If, at a particular time, an amount is paid or applied towards discharging one of the liabilities, each of the other liabilities that is in existence at that time is discharged to the extent of the same amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) However, this section does not discharge a liability to a greater extent than the amount of the liability.
- (4) If, because a judgment debt carries interest, section 8AAH of this Act reduces the amount of a *general interest charge payable as mentioned in paragraph (1)(b) of this section, the amount of the reduction is taken, for the purposes of subsection (2) of this section, to have been applied towards discharging your liability to the charge.

Subdivision 268-F—Miscellaneous

Table of sections

268-85	Effect of judgment on liability on which it is based
268-90	Requirements for statutory declaration or affidavit
268-95	Liquidators, receivers and trustees in bankruptcy
268-100	Division not to limit or exclude Corporations or Bankruptcy Act

268-85 Effect of judgment on liability on which it is based

Estimate payable despite judgment

- (1) The unpaid amount of the estimate, or of the underlying liability, does not stop being payable merely because a judgment has been given by, or entered in, a court.

Division applies to liability under judgment

- (2) This Division applies in relation to liability under a judgment, to the extent that it is based on your liability to pay the amount of the estimate, in the same way as this Division applies to that estimate liability.
- (3) This Division applies in relation to liability under a judgment, to the extent that it is based on the underlying liability, in the same way as this Division applies to the underlying liability.
- (4) Subsections (2) and (3) do not apply for the purposes of the following:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) section 268-20 (Nature of liability to pay estimate);
- (b) section 268-30 (Estimate provable in bankruptcy or winding up);
- (c) section 268-45 (rejection of proof of debt).

Judgment conclusive as to amount of liability

- (5) Nothing in this Division affects the conclusiveness of a judgment as to the amount of a liability on which it is based.

268-90 Requirements for statutory declaration or affidavit

Scope

- (1) This section applies to a statutory declaration given, or an affidavit filed, for the purposes of section 268-40 or 268-45 in relation to the estimate.

Content

- (2) In a case covered by paragraph 268-10(1)(a) (estimate of liability under requirement to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules), the statutory declaration or affidavit must verify the following facts:
 - (a) whichever of the following are applicable:
 - (i) the sum of all amounts you withheld under Division 12 during the relevant period, or the fact that you did not withhold any such amounts during the period;
 - (ii) the sum of all amounts you were required to pay under Division 13 (Alienated personal services payments) during the relevant period, or the fact that you were not required to pay any such amounts during the period;
 - (iii) the sum of all amounts you were required to pay under Division 14 (non-cash benefits and accruing gains) during the relevant period, or the fact that you were not required to pay any such amounts during the period;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) what has been done to comply with Division 16 (Payer's obligations and rights) in relation to the amounts referred to in paragraph (a).
- (2A) In a case covered by paragraph 268-10(1)(b) (estimate of liability to pay superannuation guarantee charge), the statutory declaration or affidavit must verify the following facts:
- (a) your name and address;
 - (b) for each employee for whom you have an *individual superannuation guarantee shortfall for the relevant *quarter:
 - (i) the employee's name and postal address and, if the employee has *quoted the employee's *tax file number to you, the employee's tax file number; and
 - (ii) the amount of the shortfall;
 - (c) what has been done to comply with your obligation to pay the relevant superannuation guarantee charge to the Commissioner.

Note: The amount of the individual superannuation guarantee shortfall mentioned in paragraph (b) is a factor in determining the amount of the superannuation guarantee charge mentioned in paragraph 268-10(1)(b). The lesser amount mentioned in subsection 268-40(2) may therefore differ from the amount of that shortfall.

- (2B) In a case covered by paragraph 268-10(1)(c) (estimate of liability in relation to net amount under GST Act), the statutory declaration or affidavit must verify the following facts:
- (a) your *net amount for the *tax period;
 - (b) what has been done to comply with Division 31 and 33 of the *GST Act (obligation to give GST return and liability in respect of assessed net amounts) in relation to that tax period;
 - (c) your *taxable supplies and *creditable acquisitions that are attributable to that tax period;
 - (d) your assessable dealings (within the meaning of the *Wine Tax Act) and *wine tax credits that are attributable to that tax period.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Maker or deponent

- (3) The statutory declaration or affidavit must be made, sworn or affirmed by:
- (a) an individual specified in the following table; or
 - (b) your liquidator, receiver or trustee in bankruptcy (if and as applicable).

Who must make the statutory declaration or swear or affirm the affidavit		
Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
1	an individual	that individual.
2	a body corporate	<p>(a) in the case of a company that has a director or a company secretary (within the meaning of the <i>Corporations Act 2001</i>)—a director of the company or the company secretary; or</p> <p>(b) in the case of an [*]Australian government agency—an individual prescribed by the regulations; or</p> <p>(c) in any case—the public officer of the body corporate (for the purposes of the <i>Income Tax Assessment Act 1936</i>).</p>
3	a body politic	an individual prescribed by the regulations.
4	a partnership	a partner of the partnership.
5	any other unincorporated association or body of persons	<p>(a) a member of the association's or body's committee of management; or</p> <p>(b) the public officer of the association or body (for the purposes of the <i>Income Tax Assessment Act 1936</i>).</p>

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Who must make the statutory declaration or swear or affirm the affidavit

Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
6	a trust	(a) the trustee of the trust; or (b) the public officer of the trust (for the purposes of the <i>Income Tax Assessment Act 1936</i>).
7	a *superannuation fund or an *approved deposit fund	(a) the trustee of the fund; or (b) if the fund does not have a trustee—the entity managing the fund.

- (4) If the entity specified in the table in subsection (3) is not an individual, the table is taken to specify the individual who, under that subsection, would be eligible to make a statutory declaration in relation to an estimate of a liability of that entity.

268-95 Liquidators, receivers and trustees in bankruptcy

Scope

- (1) This section applies to an entity (your ***supervising entity***), in relation to you, if:
- (a) the entity is your liquidator, receiver, trustee in bankruptcy or administrator, or the administrator of a deed of company arrangement executed by you; or
 - (b) your property is vested in the entity, or the entity has control of your property.
- (2) For the purposes of this Division, this section applies to an entity in relation to a partnership if it applies to the entity in relation to a partner of the partnership.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Notices from the Commissioner

- (3) For the purposes of this Division, a notice given by the Commissioner to your supervising entity is taken to have been given to you.
- (4) You must give your supervising entity a copy of any notice given to you by the Commissioner under this Division. You must do so as soon as practicable, and in any event within 7 days, after:
 - (a) if the Commissioner gave you the notice before the day when your property vested in, or control of your property passed to, the supervising entity—that day; or
 - (b) if subsection (2) applies and the Commissioner gave you the notice before the day when the relevant partner's property vested in, or control of the relevant partner's property passed to, the supervising entity—that day; or
 - (c) otherwise—the day when the Commissioner gave you the notice.
- (5) If the Commissioner gives you and your supervising entity a notice at different times, each notice is taken to have been given at the later of those times.

Action taken by your supervising entity

- (6) For the purposes of this Division, a statutory declaration given to the Commissioner by your supervising entity is taken to have been given by you.
- (7) For the purposes of this Division, an affidavit filed by your supervising entity is taken to have been filed by you.
- (8) For the purposes of item 2 in the table in subsection 268-40(1) (recovery proceedings), a procedural step taken by your supervising entity is taken to have been taken by you.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Multiple supervising entities

- (9) If you have 2 or more supervising entities, anything this Division provides for to be done by or in relation to your supervising entity may be done by or in relation to any of them.

268-100 Division not to limit or exclude Corporations or Bankruptcy Act

This Division is not intended to limit or exclude the operation of Chapter 5 (External administration) or Schedule 2 to the *Corporations Act 2001*, or the *Bankruptcy Act 1966*, to the extent those provisions or that Act can operate concurrently with this Division.

Note: Section 268-30 and Subdivision 268-D affect the operation of Chapter 5 of the *Corporations Act 2001* and the *Bankruptcy Act 1966*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-1

Division 269—Penalties for directors of non-complying companies

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269-A	Object and scope
269-B	Obligations and penalties
269-C	Discharging liabilities
269-D	Miscellaneous

Guide to Division 269

269-1 What this Division is about

This Division deals with obligations of a company:

- (a) under Subdivision 16-B in this Schedule (obligation to pay withheld amounts to the Commissioner); and
- (b) under Division 268 in this Schedule (obligation to pay estimates); and
- (c) under Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); and
- (d) under Divisions 33 and 35 of the GST Act in respect of assessed net amounts; and
- (e) under Division 162 of the GST Act in respect of GST instalments.

The directors of a company have a duty to ensure that the company either:

- (a) meets those obligations; or
- (b) goes promptly into voluntary administration or restructuring under the *Corporations Act 2001* or into liquidation.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

The directors' duties are enforced by penalties.

Note: The duties this Division imposes on the directors of the company are in addition to the similar duties imposed on the public officer of the company. See subsection 252(1) of the Income Tax Assessment Act 1936.

Subdivision 269-A—Object and scope

Table of sections

269-5	Object of Division
269-10	Scope of Division

269-5 Object of Division

The object of this Division is to ensure that a company either:

- (a) meets its obligations under:
 - (i) Subdivision 16-B (obligation to pay withheld amounts to the Commissioner); and
 - (ii) Division 268 (estimates of PAYG withholding liabilities and superannuation guarantee charge); and
 - (iii) Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (obligation to pay superannuation guarantee charge); and
 - (iv) Divisions 33 and 35 of the *GST Act in respect of *assessed net amounts; and
 - (v) Division 162 of the GST Act in respect of GST instalments (within the meaning of the GST Act); or
- (b) goes promptly into voluntary administration or restructuring under the *Corporations Act 2001* or into liquidation.

Note: The directors' duties are enforced by penalties on the directors. A penalty recovered under this Division is applied towards meeting the company's obligation.

269-10 Scope of Division

- (1) This Division applies as set out in the following table:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-10

Obligations that directors must cause company to comply with		
Item	Column 1 This Division applies if, on a particular day (the <i>initial day</i>), a company is a company registered under the <i>Corporations Act 2001</i>, and on the initial day ...	Column 2 and the company is obliged to pay to the Commissioner on or before a particular day (the <i>due day</i>) ...
1	the company withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.
2	the company receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	the company provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
5	a *quarter ends	superannuation guarantee charge for the quarter in accordance with the <i>Superannuation Guarantee (Administration) Act 1992</i> .
6	a *tax period ends	an *assessed net amount for the tax period in accordance with the *GST Act.
7	a GST instalment quarter (within the meaning of the *GST Act) ends	a GST instalment (within the meaning of the GST Act) for the quarter in accordance with the GST Act.

- (2) This Division applies in relation to an amount that the company purports to withhold under Division 12, but is not required to withhold, as if the company were required to withhold the amount.

Superannuation guarantee charge

- (3) For the purposes of this Division, the company's superannuation guarantee charge for a *quarter under the *Superannuation Guarantee (Administration) Act 1992* is treated as being payable

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

on the day by which the company must lodge a superannuation guarantee statement for the quarter under section 33 of that Act, even if the charge is not assessed under that Act on or before that day.

Estimates

- (4) This Division also applies if:
- (a) a company is a company registered under the *Corporations Act 2001*; and
 - (b) the company is given notice of an estimate under Division 268; and
 - (c) the company is obliged to pay the amount of the estimate to the Commissioner on or before a particular day (the ***due day***).
- (5) If this Division applies because of subsection (4), then for the purposes of this Division:
- (a) in the case of an estimate of an underlying liability referred to in paragraph 268-10(1)(a) (PAYG withholding liabilities)—the ***initial day*** is:
 - (i) for a company that is a *medium withholder or a *small withholder on the last day of the period identified in the notice of the estimate under section 268-15 as the period to which the underlying liability relates—the last day of that period; or
 - (ii) for any other company—the day by which the company is obliged to pay the amount of the underlying liability to the Commissioner; and
 - (b) in the case of an estimate of an underlying liability referred to in paragraph 268-10(1)(b) (superannuation guarantee charge)—the ***initial day*** is the last day of the *quarter to which the estimate relates; and
 - (ba) in the case of an estimate of an underlying liability referred to in paragraph 268-10(1)(c) (net amount under GST Act)—the ***initial day*** is the last day of the *tax period to which the estimate relates; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-15

- (c) the company's obligation to pay the amount of the estimate is taken to have begun on the day after the initial day identified in paragraph (a) or (b) of this subsection.
- (6) For the purposes of subsection (5), assume that the underlying liability exists as identified in the notice of the estimate under section 268-15.

Subdivision 269-B—Obligations and penalties

Table of sections

269-15	Directors' obligations
269-20	Penalty
269-25	Notice
269-30	Effect on penalty of directors' obligation ending before end of notice period
269-35	Defences

269-15 Directors' obligations

Directors' obligations

- (1) The directors (within the meaning of the *Corporations Act 2001*) of the company (from time to time) on or after the initial day must cause the company to comply with its obligation.
- (2) The directors of the company (from time to time) continue to be under their obligation until:
 - (a) the company complies with its obligation; or
 - (b) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
 - (ba) a small business restructuring practitioner for the company is appointed under section 453B of that Act; or
 - (c) the company begins to be wound up (within the meaning of that Act).
- (2A) To avoid doubt, if the obligation of the company is an obligation to pay the amount of an estimate of an underlying liability under

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 268, a director is subject to his or her obligation under subsection (1):

- (a) even if the underlying liability never existed or has been discharged in full; and
- (b) even if the unpaid amount of the underlying liability is less than the unpaid amount of the estimate; and
- (c) at all times on and after the day referred to in paragraph 269-10(5)(b) until the director's obligation ceases under subsection (2) of this section, including at any such times before the Commissioner has made the estimate or given notice of the estimate.

Instalment arrangements

- (3) The Commissioner must not commence, or take a procedural step as a party to, proceedings to enforce an obligation, or to recover a penalty, of a director under this Division if an *arrangement that covers the company's obligation is in force under section 255-15 (Commissioner's power to permit payments by instalments).

Note 1: The arrangement may also cover other obligations of the company.

Note 2: Subsection (3) does not prevent the Commissioner from giving a director a notice about a penalty under section 269-25.

269-20 Penalty

Penalty for director on or before due day

- (1) You are liable to pay to the Commissioner a penalty if:
 - (a) at the end of the due day, the directors of the company are still under an obligation under section 269-15; and
 - (b) you were under that obligation at or before that time (because you were a director).

Note: Paragraph (1)(b) applies even if you stopped being a director before the end of the due day: see subsection 269-15(2).

- (2) The penalty is due and payable at the end of the due day.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-25

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Penalty for new director

- (3) You are also liable to pay to the Commissioner a penalty if:
- (a) after the due day, you became a director of the company and began to be under an obligation under section 269-15; and
 - (b) 30 days later, you are still under that obligation.

- (4) The penalty is due and payable at the end of that 30th day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Amount of penalty

- (5) The amount of a penalty under this section is equal to the unpaid amount of the company's liability under its obligation.

Note 1: See section 269-40 for the effect on your penalty of the company discharging its obligation, or of another director paying his or her penalty.

Note 2: See section 269-45 for your rights of indemnity and contribution.

269-25 Notice

Commissioner must give notice of penalty

- (1) The Commissioner must not commence proceedings to recover from you a penalty payable under this Subdivision until the end of 21 days after the Commissioner gives you a written notice under this section.

Content of notice

- (2) The notice must:
- (a) set out what the Commissioner thinks is the unpaid amount of the company's liability under its obligation; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) state that you are liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount because of an obligation you have or had under this Division; and
 - (c) explain the main circumstances in which the penalty will be remitted.
- (3) To avoid doubt, a single notice may relate to 2 or more penalties, but must comply with subsection (2) in relation to each of them.

When notice is given

- (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note 1: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Note 2: Section 269-50 of this Act is also relevant to giving a notice under subsection (1).

269-30 Effect on penalty of directors' obligation ending before end of notice period

- (1) Subject to subsection (2), a penalty of yours under this Division is remitted if the directors of the company stop being under the relevant obligation under section 269-15:
 - (a) before the Commissioner gives you notice of the penalty under section 269-25; or
 - (b) within 21 days after the Commissioner gives you notice of the penalty under that section.
- (2) The following table has effect:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-30

When appointing administrator or restructuring practitioner or winding up company does not affect penalty			
Item	Column 1 If the company's obligation is to pay to the Commissioner, on or before the due day ...	Column 2 and, because of paragraph 269-15(2)(b), (ba) or (c) (an administrator or a restructuring practitioner is appointed, or the company begins to be wound up), the directors stop being under the relevant obligation after ...	Column 3 subsection (1) does not apply ...
1	an amount in accordance with Subdivision 16-B (obligation to pay withheld amounts to the Commissioner),	the last day of the 3 months after the due day,	to the extent the company does not, on or before the last day mentioned in column 2, notify the Commissioner: (a) under section 16-150 of the amount the company is obliged to pay; or (b) under section 389-5 of the amount the company is obliged to withhold.
2	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(a) (PAYG withholding liabilities),	the last day of the 3 months after the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.
3	superannuation guarantee charge for	the due day,	(a) if the company, on or before the last day
*For definition, see section 995-1 of the <i>Income Tax Assessment Act 1997</i> .			

Section 269-30

When appointing administrator or restructuring practitioner or winding up company does not affect penalty

Item	Column 1	Column 2	Column 3
	If the company's obligation is to pay to the Commissioner, on or before the due day ...	and, because of paragraph 269-15(2)(b), (ba) or (c) (an administrator or a restructuring practitioner is appointed, or the company begins to be wound up), the directors stop being under the relevant obligation after ...	subsection (1) does not apply ...
	a *quarter,		mentioned in column 2, lodges under section 33 of the <i>Superannuation Guarantee (Administration) Act 1992</i> a superannuation guarantee statement for the quarter—the extent (if any) to which the sum mentioned in paragraph 35(1)(e) of that Act is less than the amount of the superannuation guarantee charge the company is obliged to pay for the quarter; or (b) otherwise—to any extent.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-30

When appointing administrator or restructuring practitioner or winding up company does not affect penalty			
Item	Column 1 If the company's obligation is to pay to the Commissioner, on or before the due day ...	Column 2 and, because of paragraph 269-15(2)(b), (ba) or (c) (an administrator or a restructuring practitioner is appointed, or the company begins to be wound up), the directors stop being under the relevant obligation after ...	Column 3 subsection (1) does not apply ...
4	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(b) (superannuation guarantee charge),	the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.
5	an *assessed net amount for a *tax period	the last day of the 3 months after the due day,	(a) if the company, on or before the last day mentioned in column 2, lodges its *GST return, for the tax period for the relevant *net amount—the extent (if any) to which the net amount (worked out from the information in the GST return and any other information that the company gives the Commissioner on

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

When appointing administrator or restructuring practitioner or winding up company does not affect penalty

Item	Column 1 If the company's obligation is to pay to the Commissioner, on or before the due day ...	Column 2 and, because of paragraph 269-15(2)(b), (ba) or (c) (an administrator or a restructuring practitioner is appointed, or the company begins to be wound up), the directors stop being under the relevant obligation after ...	Column 3 subsection (1) does not apply ...
			or before that last day) is less than the company's assessed net amount for the tax period; or (b) otherwise—to any extent.
6	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(c) (net amount under GST Act),	the last day of the 3 months after the day by which the company was obliged to give its *GST return, for the tax period for the relevant *net amount, to the Commissioner in accordance with Division 31 of the *GST Act,	to any extent.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-35

Note 1: An administrator or a small business restructuring practitioner of the company being appointed, or the company beginning to be wound up, after the last day mentioned in column 2 will, to the extent mentioned in column 3, have no effect on the penalty.

Note 2: The sum mentioned in paragraph 35(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* is the sum of:

- (a) the total of the company's individual superannuation guarantee shortfalls; and
- (b) the company's nominal interest component; and
- (c) the company's administration component;

specified in the superannuation guarantee statement.

Note 3: This subsection will not affect the operation of subsection (1) in respect of penalties that relate to GST instalments.

- (3) If you become a director of the company during or after the 3 months mentioned in item 1, 2, 5 or 6, treat the reference in the item to the 3 months as being a reference to the 3 months after the day you become a director of the company.

269-35 Defences

Illness

- (1) You are not liable to a penalty under this Division if, because of illness or for some other good reason, it would have been unreasonable to expect you to take part, and you did not take part, in the management of the company at any time when:
- (a) you were a director of the company; and
 - (b) the directors were under the relevant obligations under subsection 269-15(1).

All reasonable steps

- (2) You are not liable to a penalty under this Division if:
- (a) you took all reasonable steps to ensure that one of the following happened:
 - (i) the directors caused the company to comply with its obligation;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (iia) the directors caused a small business restructuring practitioner for the company to be appointed under section 453B of that Act;
 - (iii) the directors caused the company to begin to be wound up (within the meaning of that Act); or
 - (b) there were no reasonable steps you could have taken to ensure that any of those things happened.
- (3) In determining what are reasonable steps for the purposes of subsection (2), have regard to:
- (a) when, and for how long, you were a director and took part in the management of the company; and
 - (b) all other relevant circumstances.
- (3AA) If the obligation referred to in subparagraph (2)(a)(i) is an obligation to pay an amount of an estimate of an underlying liability under Division 268, that reference to an obligation includes a reference to the obligation to pay the underlying liability.
- (3AB) For the purposes of subsection (3AA), assume that the underlying liability exists as identified in the notice of the estimate under section 268-15.

*Superannuation guarantee charge and assessed net amounts—
reasonably arguable position*

- (3A) You are not liable to a penalty under this Division to the extent that the penalty resulted from the company treating the *Superannuation Guarantee (Administration) Act 1992* or the *GST Act as applying to a matter or identical matters in a particular way that was *reasonably arguable, if the company took reasonable care in connection with applying that Act to the matter or matters.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-35

When you can rely on this section

- (4) For the purposes of:
- (a) proceedings in a court to recover from you a penalty payable under this Division; or
 - (b) proceedings in a court against you in relation to a right referred to in paragraph 269-45(2)(b) (directors jointly and severally liable as guarantors);
- subsection (1) or (2) of this section does not apply unless you prove the matters mentioned in that subsection.
- (4A) For the purpose of the Commissioner recovering from you a penalty payable under this Division (other than as mentioned in subsection (4)), subsection (1) or (2) does not apply unless:
- (a) you provide information to the Commissioner during the period of 60 days starting on the day the Commissioner:
 - (i) in the case of the Commissioner recovering the penalty under section 260-5 (Commissioner may collect amounts from third party)—gives you a notice under subsection 260-5(6) in relation to the penalty; or
 - (ii) otherwise—notifies you in writing that he or she has recovered any of the penalty; and
 - (b) the Commissioner is satisfied of the matters mentioned in subsection (1) or (2) of this section on the basis of that information.

Power of courts to grant relief

- (5) Section 1318 of the *Corporations Act 2001* does not apply to an obligation or liability of a director under this Division.

Subdivision 269-C—Discharging liabilities

Table of sections

269-40	Effect of director paying penalty or company discharging liability
269-45	Directors' rights of indemnity and contribution

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

269-40 Effect of director paying penalty or company discharging liability

Liabilities

- (1) This section applies to the following liabilities:
 - (a) the liability of the company under its obligation referred to in section 269-10;
 - (b) the liability of each director (or former director) to pay a penalty under this Division in relation to the liability of the company referred to in paragraph (a);
 - (c) a liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).

Discharging one liability discharges other liabilities

- (2) If an amount is paid or applied at a particular time towards discharging one of the liabilities, each of the other liabilities in existence at that time is discharged to the extent of the same amount.
- (3) If, because of section 268-20 (Nature of liability to pay estimate), one of the liabilities is discharged at a particular time to the extent of a particular amount, each of the other liabilities in existence at that time is discharged to the extent of the same amount.
- (4) This section does not discharge a liability to a greater extent than the amount of the liability.

269-45 Directors' rights of indemnity and contribution

- (1) This section applies if you pay a penalty under this Division in relation to a liability of the company under an obligation referred to in section 269-10.
- (2) You have the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against the company or anyone else as if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 269-50

- (a) you made the payment under a guarantee of the liability of the company; and
- (b) under the guarantee you and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Division in relation to the company's obligation were jointly and severally liable as guarantors.

Subdivision 269-D—Miscellaneous

Table of sections

269-50	How notice may be given
269-52	Copies of notices
269-55	Division not to limit or exclude Corporations Act

269-50 How notice may be given

The Commissioner may give you a notice under section 269-25 by leaving it at, or posting it to, an address that appears, from information held by the *Registrar, to be, or to have been within the last 7 days, your place of residence or *business.

269-52 Copies of notices

- (1) If:
 - (a) the Commissioner gives you a notice under section 269-25 in accordance with section 269-50; and
 - (b) you have given the address of a *registered tax agent to the Commissioner as your address for service for the purposes of any *taxation law;the Commissioner may also give you a copy of the notice.
- (2) The Commissioner may do so by leaving the copy at, or posting the copy to, the address of the *registered tax agent.
- (3) To avoid doubt, this section does not affect:
 - (a) whether the Commissioner has given you the actual notice; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(b) how the Commissioner may give you the actual notice.

269-55 Division not to limit or exclude Corporations Act

To avoid doubt, this Division is not intended to limit or exclude the operation of Chapter 5 (External administration) or Schedule 2 to the *Corporations Act 2001*, to the extent those provisions can operate concurrently with this Division.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-1

Part 4-25—Charges and penalties

Division 280—Shortfall interest charge

Table of Subdivisions

	Guide to Division 280
280-A	Object of Division
280-B	Shortfall interest charge
280-C	Remitting shortfall interest charge

Guide to Division 280

280-1 Guide to Division 280

The shortfall interest charge applies to shortfalls of income tax, petroleum resource rent tax, excess non-concessional contributions tax, Division 293 tax, diverted profits tax, Laminaria and Corallina decommissioning levy, Australian IIR/UTPR tax or Australian DMT tax that are revealed when the Commissioner amends your assessment.

The charge is applied at a uniform rate that is lower than the general interest charge rate.

The Commissioner has a discretion to remit shortfall interest charge.

Subdivision 280-A—Object of Division

Table of sections

280-50	Object of Division
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*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

280-50 Object of Division

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from shortfalls of income tax, *petroleum resource rent tax, *excess non-concessional contributions tax, *Division 293 tax, *diverted profits tax, *Laminaria and Corallina decommissioning levy, *Australian IIR/UTPR tax or *Australian DMT tax, so that they do not receive an advantage in the form of a free loan over those who assess correctly.

Subdivision 280-B—Shortfall interest charge

Table of sections

280-100	Liability to shortfall interest charge—income tax
280-101	Liability to shortfall interest charge—excess exploration credit tax
280-102	Liability to shortfall interest charge—petroleum resource rent tax
280-102A	Liability to shortfall interest charge—excess non-concessional contributions tax
280-102B	Liability to shortfall interest charge—Division 293 tax
280-102C	Liability to shortfall interest charge—diverted profits tax
280-102D	Liability to shortfall interest charge—Laminaria and Corallina decommissioning levy
280-102E	Liability to shortfall interest charge—Australian IIR/UTPR tax and Australian DMT tax
280-103	Liability to shortfall interest charge—general
280-105	Amount of shortfall interest charge
280-110	Notification by Commissioner

280-100 Liability to shortfall interest charge—income tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of income tax that you are liable to pay because the Commissioner amends your assessment for an income year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which income tax under your first assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-100

- (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which income tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See Division 5 of the *Income Tax Assessment Act 1997* for when the amount of income tax and shortfall interest charge becomes due and payable. That Division also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Liability arising because of a financial benefit under a look-through earnout right

- (5) Subsection (1) does not apply if:
 - (a) you provide or receive a *financial benefit under a *look-through earnout right; and
 - (b) you request the Commissioner to amend your assessment for an income year (the **taxing year**) to take account of the financial benefit; and
 - (c) you make that request at or before the time:
 - (i) you are required to lodge your *income tax return for the income year in which the financial benefit is provided or received; or
 - (ii) you would be so required if you were required to lodge an income tax return for that income year; and
 - (d) as a result of paragraph (a), you are liable to pay an additional amount of income tax for the taxing year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

280-101 Liability to shortfall interest charge—excess exploration credit tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *excess exploration credit tax that you are liable to pay because the Commissioner amends your assessment for an income year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which *excess exploration credit tax under your first assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *excess exploration credit tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See Subdivision 418-F of the *Income Tax Assessment Act 1997* for when the amount of excess exploration credit tax and shortfall interest charge becomes due and payable. That Subdivision also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102 Liability to shortfall interest charge—petroleum resource rent tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *petroleum resource rent tax that you are liable to pay because the Commissioner amends your assessment under the *Petroleum Resource Rent Tax Assessment Act 1987* for a year of tax (within the meaning of that Act).
- (2) The liability is for each day in the period:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-102A

- (a) beginning at the start of the day on which *petroleum resource rent tax under your first assessment for that year of tax was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *petroleum resource rent tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 82 of the *Petroleum Resource Rent Tax Assessment Act 1987* for when the amount of petroleum resource rent tax and shortfall interest charge becomes due and payable. Section 85 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102A Liability to shortfall interest charge—excess non-concessional contributions tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *excess non-concessional contributions tax that you are liable to pay because the Commissioner amends your *excess non-concessional contributions tax assessment for a financial year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which *excess non-concessional contributions tax under your first *excess non-concessional contributions tax assessment for that year was due to be paid; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *excess non-concessional contributions tax under the earlier amended assessment was due to be paid.

Note: See section 292-385 of the *Income Tax Assessment Act 1997* for when the amount of excess non-concessional contributions tax becomes due and payable. See section 5-10 of that Act for when the amount of shortfall interest charge becomes due and payable. Section 292-390 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Liability arising because of a financial benefit under a look-through earnout right

- (4) Subsection (1) does not apply if:
- (a) you provide or receive a *financial benefit under a *look-through earnout right; and
 - (b) you request the Commissioner to amend your *excess non-concessional contributions tax assessment for a *financial year to take account of the financial benefit; and
 - (c) you make that request at or before the time:
 - (i) you are required to lodge your *income tax return for the income year in which the financial benefit is provided or received; or
 - (ii) you would be so required if you were required to lodge an income tax return for that income year; and
 - (d) as a result of paragraph (a), you are liable to pay an additional amount of *excess non-concessional contributions tax for the financial year.

280-102B Liability to shortfall interest charge—Division 293 tax

- (1) You are liable to pay *shortfall interest charge on an additional amount of *Division 293 tax that you are liable to pay because the Commissioner amends your assessment of an amount of Division 293 tax payable in relation to an income year.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (2) However, subsection (1) does not apply to the extent the additional amount of *Division 293 tax is *deferred to a debt account for a *superannuation interest.
- (3) The liability is for each day in the period:
 - (a) beginning on the day on which *Division 293 tax under your first assessment of Division 293 tax for that income year was due to be paid; and
 - (b) ending on the day before the day on which the Commissioner gave you notice of the amended assessment.
- (4) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *Division 293 tax under the earlier amended assessment was due to be paid.

Note 1: See section 5-10 of the *Income Tax Assessment Act 1997* for when the amount of shortfall interest charge becomes due and payable.

Note 2: See Subdivision 293-C of that Act for when the amount of assessed Division 293 tax becomes due and payable. That Subdivision also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Liability arising because of a financial benefit under a look-through earnout right

- (5) Subsection (1) does not apply if:
 - (a) you provide or receive a *financial benefit under a *look-through earnout right; and
 - (b) you request the Commissioner to amend your assessment of *Division 293 tax payable in relation to an income year (the **taxing year**) to take account of the financial benefit; and
 - (c) you make that request at or before the time:
 - (i) you are required to lodge your *income tax return for the income year in which the financial benefit is provided or received; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (ii) you would be so required if you were required to lodge an income tax return for that income year; and
- (d) as a result of paragraph (a), you are liable to pay an additional amount of Division 293 tax for the taxing year.

280-102C Liability to shortfall interest charge—diverted profits tax

- (1) Subsection (2) applies if:
 - (a) the Commissioner has given an entity an assessment of income tax for an income year; and
 - (b) the Commissioner subsequently gives the entity a *DPT assessment for that income year.
- (2) The entity is liable to pay *shortfall interest charge equal to the amount of shortfall interest charge that the entity would be liable to pay under section 280-100 if:
 - (a) the Commissioner amended the assessment of income tax mentioned in paragraph (1)(a) on the day that the Commissioner gave the entity the *DPT assessment mentioned in paragraph (1)(b); and
 - (b) the entity were liable to pay an additional amount of income tax because of that amendment; and
 - (c) the Commissioner made that amendment on the basis that the *tax benefit or tax benefits to which the DPT assessment related were cancelled.
- (3) An entity is also liable to pay *shortfall interest charge on an additional amount of *diverted profits tax that the entity is liable to pay because the Commissioner amends the entity's *DPT assessment in respect of an income year.
- (4) The liability is for each day in the period:
 - (a) beginning at the start of the day on which *diverted profits tax under the entity's first *DPT assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) ending at the end of the day before the day on which the Commissioner gave the entity notice of the amended *DPT assessment.
- (5) However, if an amended *DPT assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended DPT assessment, the period for the reinstated liability begins at the start of the day on which *diverted profits tax under the earlier amended DPT assessment was due to be paid.

Note 1: See subsection 177P(3) of the *Income Tax Assessment Act 1936* for when the amount of diverted profits tax becomes due and payable.

Note 2: Section 177Q of the *Income Tax Assessment Act 1936* provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

Note 3: See section 177R of the *Income Tax Assessment Act 1936* for when the amount of shortfall interest charge becomes due and payable.

280-102D Liability to shortfall interest charge—Laminaria and Corallina decommissioning levy

- (1) You are liable to pay *shortfall interest charge on an additional amount of *Laminaria and Corallina decommissioning levy that you are liable to pay because the Commissioner amends your assessment of an amount of levy payable for a financial year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which levy under your first assessment for that financial year was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you the notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which levy under the earlier

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 125-10 for when the amount of levy and shortfall interest charge becomes due and payable. That section also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-102E Liability to shortfall interest charge—Australian IIR/UTPR tax and Australian DMT tax

- (1) A *Group Entity is liable to pay *shortfall interest charge on an additional amount of *Australian GloBE tax that the Group Entity is liable to pay because the Commissioner amends the Group Entity's assessment of an amount of such tax payable for a *Fiscal Year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which such tax under the *Group Entity's first assessment for such tax for that *Fiscal Year was due to be paid, or would have been due to be paid if there had been any; and
 - (b) ending at the end of the day before the day on which the Commissioner gave the Group Entity notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which such tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 127-70 for when the amount of such tax and shortfall interest charge becomes due and payable. That section also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Joint Ventures

- (4) A reference in this section to a *Group Entity is taken to include a reference to a *GloBE Joint Venture or *GloBE JV Subsidiary that, under the *Minimum Tax Rules, is treated as a *Constituent Entity of a separate *Applicable MNE Group for a *Fiscal Year for the purposes of computing its *Australian GloBE tax for the Fiscal Year.

280-103 Liability to shortfall interest charge—general

- (1) Your liability to pay *shortfall interest charge exists whether or not you are liable to any penalty under this Act.
- (2) Neither the Commonwealth nor an authority of the Commonwealth is liable to pay *shortfall interest charge.

280-105 Amount of shortfall interest charge

- (1) The *shortfall interest charge for a day is worked out by multiplying the rate worked out under subsection (2) for that day by the sum of these amounts:
- (a) the additional amount of income tax, *excess exploration credit tax, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax;; and
 - (b) the shortfall interest charge on that amount from previous days.
- (2) The rate is:

$$\frac{\text{*Base interest rate for the day} + 3 \text{ percentage points}}{\text{Number of days in the calendar year}}$$

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

280-110 Notification by Commissioner

- (1) The Commissioner must give you a notice stating the amount of the *shortfall interest charge you are liable to pay for the period applicable under section 280-100, 280-101, 280-102, 280-102A, 280-102B, 280-102D or 280-102E.
- (3) A notice given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Subdivision 280-C—Remitting shortfall interest charge

Table of sections

280-160	Remitting shortfall interest charge
280-165	Commissioner must give reasons for not remitting in certain cases
280-170	Objecting against remission decision

280-160 Remitting shortfall interest charge

- (1) The Commissioner may remit all or a part of an amount of *shortfall interest charge you are liable to pay if the Commissioner considers it fair and reasonable to do so.
- (2) Without limiting subsection (1), in deciding whether to remit, the Commissioner must have regard to:
 - (a) the principle that remission should not occur just because the benefit you received from the temporary use of the shortfall amount is less than the *shortfall interest charge; and
 - (b) the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments.

280-165 Commissioner must give reasons for not remitting in certain cases

The Commissioner must give you a written statement of the reasons for a decision not to remit an amount of *shortfall interest

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 280-170

charge you are liable to pay if you requested the Commissioner, in the *approved form, to remit the amount.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

280-170 Objecting against remission decision

You may object, in the manner set out in Part IVC, against a decision of the Commissioner not to remit an amount of *shortfall interest charge you are liable to pay on an additional amount of income tax, *petroleum resource rent tax, *excess non-concessional contributions tax or *Division 293 tax, if the amount of the charge that was not remitted is more than 20% of the additional amount.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 284—Administrative penalties for statements, unarguable positions and schemes

Table of Subdivisions

	Guide to Division 284
284-A	General provisions
284-B	Penalties relating to statements
284-C	Penalties relating to schemes
284-D	Provisions common to Subdivisions 284-B and 284-C
284-E	Special rules about unarguable positions for cross-border transfer pricing

Guide to Division 284

284-5 What this Division is about

This Division sets out the circumstances in which administrative penalties apply for:

- (a) making false or misleading statements; and
- (b) taking a position that is not reasonably arguable; and
- (c) entering into schemes.

It also sets out the amounts of those penalties.

Subdivision 284-A—General provisions

Table of sections

284-10	Object of Division
284-15	When a matter is <i>reasonably arguable</i>

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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284-20	Which statements this Division applies to
284-25	Statements by agents
284-27	GloBE Information Returns, Australian IIR/UTPR tax returns and Australian DMT tax returns lodged on your behalf
284-30	Application of Division to trusts
284-35	Application of Division to partnerships

284-10 Object of Division

The object of this Division is to provide a uniform administrative penalty regime for all *taxation laws to enable administrative penalties to apply to entities that fail to meet their obligations under those laws in relation to:

- (a) making false or misleading statements; and
- (b) taking a position that is not reasonably arguable; and
- (c) entering into *schemes; and
- (d) refusing to provide documents to the Commissioner.

284-15 When a matter is *reasonably arguable*

- (1) A matter is *reasonably arguable* if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.

Note: For the effect of transfer pricing documentation on when a matter is reasonably arguable, see Subdivision 284-E.

- (2) To the extent that a matter involves an assumption about the way in which the Commissioner will exercise a discretion, the matter is only *reasonably arguable* if, had the Commissioner exercised the discretion in the way assumed, a court would be about as likely as not to decide that the exercise of the discretion was in accordance with law.
- (3) Without limiting subsection (1), these authorities are relevant:
- (a) a *taxation law;
 - (b) material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) a decision of a court (whether or not an Australian court), the Administrative Appeals Tribunal, the *ART or a Board of Review;
- (d) a *public ruling.

284-20 Which statements this Division applies to

This Division applies to a statement made orally, in a document or in any other way (including electronically) for a purpose connected with a *taxation law.

284-25 Statements by agents

This Division applies to a statement made by your agent as if it had been made by you.

284-27 GloBE Information Returns, Australian IIR/UTPR tax returns and Australian DMT tax returns lodged on your behalf

- (1) Subsection (2) applies if, under section 127-10, 127-20, 127-40 or 127-50, you are taken to give a *GloBE Information Return, *Australian IIR/UTPR tax return or *Australian DMT tax return (the **return**) to the Commissioner because an entity gives the return to the Commissioner or a *foreign government agency.
- (2) This Division applies in relation to a statement in the return, as if the return, or a statement made by you in relation to the return, were given to the Commissioner:
 - (a) by the entity, acting as your *agent; and
 - (b) for a purpose connected with a *taxation law.

284-30 Application of Division to trusts

If you are a trustee of a trust and:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-35

- (a) you make a statement to the Commissioner or to an officer who is exercising powers or performing functions under a *taxation law about the trust; and
- (b) the statement:
 - (i) is false or misleading in a material particular, whether because of things in it or omitted from it; or
 - (ii) treated an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; or
 - (iii) treated a taxation law as applying in a particular way to a *scheme;

this Division applies to you as if any *shortfall amount or *scheme shortfall amount of a beneficiary of the trust as a result of the statement were your shortfall amount or scheme shortfall amount.

284-35 Application of Division to partnerships

- (1) If you are a partner in a partnership and:
 - (a) a statement about the partnership net income or partnership loss is made by a partner or the partnership's agent to the Commissioner or to an entity who is exercising powers or performing functions under a *taxation law about the partnership; and
 - (b) the statement:
 - (i) is false or misleading in a material particular, whether because of things in it or omitted from it; or
 - (ii) treated an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable;

this Division applies to you as if you had made the statement.
- (2) If you are a partner in a partnership and:
 - (a) the partnership participated in a *scheme; and
 - (b) the partnership net income would have been greater, or the partnership loss would have been smaller, apart from the scheme;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

this Division applies to you as if the proportion of the *scheme benefit that is the same as your share of the partnership net income or partnership loss were your scheme benefit.

Subdivision 284-B—Penalties relating to statements

Guide to Subdivision 284-B

284-70 What this Subdivision is about

You are liable to an administrative penalty if:

- (a) you make a false or misleading statement about a tax-related matter; or
- (b) you take a position that is not reasonably arguable about a tax-related matter; or
- (c) the Commissioner determines a tax-related liability of yours without documents you were required to provide.

This Subdivision sets out when the penalties apply and how the amounts of the penalties are calculated.

Table of sections

Operative provisions

284-75	Liability to penalty
284-80	<i>Shortfall amounts</i>
284-85	Amount of penalty
284-90	<i>Base penalty amount</i>
284-95	Joint and several liability of directors of corporate trustee that makes a false or misleading statement

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-75

Operative provisions

284-75 Liability to penalty

- (1) You are liable to an administrative penalty if:
- (a) you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under a *taxation law (other than the *Excise Acts); and
 - (b) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

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

- (2) You are liable to an administrative penalty if:
- (a) you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under an *income tax law, the *Minimum Tax law or the *petroleum resource rent tax law; and
 - (b) in the statement, you treated an income tax law, the Minimum Tax law, or the petroleum resource rent tax law, as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and
 - (d) item 4, 5, 6 or 6A of the table in subsection 284-90(1) applies to you.

- (3) You are liable to an administrative penalty if:
- (a) you fail to give a return, notice or other document to the Commissioner by the day it is required to be given; and
 - (b) that document is necessary for the Commissioner to determine a *tax-related liability (other than one arising under the *Excise Acts) of yours accurately; and
 - (c) the Commissioner determines the tax-related liability without the assistance of that document.

Note: You are also liable to an administrative penalty for failing to give the document on time: see Subdivision 286-C.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (4) You are liable to an administrative penalty if:
- (a) you make a statement to an entity other than:
 - (i) the Commissioner; and
 - (ii) an entity exercising powers or performing functions under a *taxation law (other than the *Excise Acts); and
 - (b) the statement is, or purports to be one that:
 - (i) is required or permitted by a taxation law (other than the Excise Acts); or
 - (ii) might reasonably be expected to be used, by an entity in determining, for the purposes of the *GST law, whether you are an Australian consumer (within the meaning of the *GST Act); or
 - (iii) might reasonably be expected to be used, by an entity in determining, for the purposes of the GST law, whether a supply made to you is connected with the indirect tax zone (within the meaning of that Act) because of Subdivision 84-C of that Act; and
 - (c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

Exceptions to subsections (1) and (4)

- (5) You are not liable to an administrative penalty under subsection (1) or (4) for a statement that is false or misleading in a material particular if you, and your *agent (if relevant), took reasonable care in connection with the making of the statement.
- (6) You are not liable to an administrative penalty under subsection (1) or (4) if:
- (a) you engage a *registered tax agent or BAS agent; and
 - (b) you give the registered tax agent or BAS agent all relevant taxation information; and
 - (c) the registered tax agent or BAS agent makes the statement; and
 - (d) the false or misleading nature of the statement did not result from:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-75

- (i) intentional disregard by the registered tax agent or BAS agent of a *taxation law (other than the *Excise Acts); or
 - (ii) recklessness by the agent as to the operation of a taxation law (other than the Excise Acts).
- (7) If you wish to rely on subsection (6), you bear an evidential burden in relation to paragraph (6)(b).

Further exceptions to subsection (1)

- (8) You are not liable to an administrative penalty under subsection (1) if:
 - (a) you made the statement (the **original statement**) under section 389-5 notifying an amount under item 1, 2 or 2A of the table in subsection 389-5(1) (and no other item in that table); and
 - (b) the original statement related to the *financial year in which you made it; and
 - (c) you make a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and
 - (d) the further statement:
 - (i) is in the *approved form; and
 - (ii) if subsection 389-25(1) in that Schedule provides for a period for correcting the original statement—is made within that period; and
 - (iii) without limiting subparagraph (ii), is made within 14 days after the end of the financial year in which the original statement was made.
- (9) You are not liable to an administrative penalty under subsection (1) if:
 - (a) you made the statement (the **original statement**) under section 390-5; and
 - (b) you make a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (c) subsection 390-7(1) provides for a period for correcting the original statement; and
- (d) the further statement:
 - (i) is in the *approved form; and
 - (ii) is made within the period referred to in paragraph (c) of this subsection.

284-80 *Shortfall amounts*

- (1) You have a **shortfall amount** if an item in this table applies to you. That amount is the amount by which the relevant liability, or the payment or credit, is less than or more than it would otherwise have been.

<i>Shortfall amounts</i>	
Item	You have a shortfall amount in this situation:
1	A *tax-related liability of yours for an accounting period, or for a *taxable importation, or under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> , worked out on the basis of the statement is less than it would be if the statement were not false or misleading
2	An amount that the Commissioner must pay or credit to you under a *taxation law (other than the *Excise Acts) for an accounting period, or under a tourist refund scheme under Division 168 of the *GST Act or Division 25 of the <i>A New Tax System (Wine Equalisation Tax) Act 1999</i> , worked out on the basis of the statement is more than it would be if the statement were not false or misleading
3	A *tax-related liability of yours for an accounting period worked out on the basis of the statement is less than it would be if the statement did not treat an *income tax law, the *Minimum Tax law or the *petroleum resource rent tax law as applying in a way that was not *reasonably arguable
4	An amount that the Commissioner must pay or credit to you under an *income tax law, the *Minimum Tax law or the *petroleum resource rent tax law for an accounting period worked out on the basis of the statement is more than it would be if the statement did not treat an income tax law or the petroleum resource rent tax law as applying in a way that was not *reasonably arguable

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-80

Shortfall amounts

Item You have a *shortfall amount* in this situation:

5	You are liable to pay to the Commissioner an amount of *excess exploration credit tax
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(2) However, if:

- (a) your shortfall amount arises in the situation covered by both item 1 in the table and item 1, 2 or 3 in the table in subsection 284-90(1); and
- (b) the statement is false or misleading because of errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in it and it was made before the Commissioner became aware of the errors, your ***shortfall amount*** is instead the amount worked out using the formula:

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}} \right]$$

where:

adjusted reset cost base asset setting amount means:

- (a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

- (b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the time it joined the group, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

- (a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and
- (b) the *corporate tax rate in respect of taxable income for the income year in which that CGT event happens.

284-85 Amount of penalty

- (1) Work out the *base penalty amount under section 284-90. If the base penalty amount is not increased under section 284-220 or reduced under section 284-225, this is the amount of the penalty.

- (2) Otherwise, use this formula:

$$BPA + [BPA \times (\text{Increase \%} - \text{Reduction \%})]$$

where:

BPA is the *base penalty amount.

increase % is the percentage increase (if any) under section 284-220.

reduction % is the percentage reduction (if any) under section 284-225.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-90

284-90 *Base penalty amount*

- (1) The **base penalty amount** under this Subdivision is worked out using this table and subsections (1A) to (2), and section 284-224 if relevant:

<i>Base penalty amount</i>		
Item	In this situation:	The base penalty amount is:
1	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from intentional disregard of a *taxation law (other than the *Excise Acts) by you or your agent	75% of your *shortfall amount or part
2	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from recklessness by you or your agent as to the operation of a *taxation law (other than the *Excise Acts)	50% of your *shortfall amount or part
3	You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount, resulted from a failure by you or your agent to take reasonable care to comply with a *taxation law (other than the *Excise Acts)	25% of your *shortfall amount or part
3A	A statement described in subsection 284-75(1) or (4) was false or misleading because of intentional disregard of a *taxation law (other than the *Excise Acts) 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 (other than the *Excise Acts) but did not result in you having a *shortfall amount	40 penalty units

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-90

Base penalty amount

Item	In this situation:	The base penalty amount is:
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 (other than the *Excise Acts) but did not result in you having a *shortfall amount	20 penalty units
4	You have a *shortfall amount, all or part of which resulted from you or your agent treating an *income tax law or the *petroleum resource rent tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable, and that amount is more than your *reasonably arguable threshold.	25% of your *shortfall amount or part
5	<p>You have a *shortfall amount because of section 284-30 (about trusts) and:</p> <p>(a) your shortfall amount or part of it resulted from you or your agent treating an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and</p> <p>(b) because of that treatment, the trust's net income would have been reduced, or the trust's *tax loss would have been increased, for the income year by more than the trust's *reasonably arguable threshold</p>	25% of your *shortfall amount or part

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-90

Base penalty amount

Item	In this situation:	The base penalty amount is:
6	<p>You have a *shortfall amount because of section 284-35 (about partnerships) and:</p> <p>(a) your shortfall amount or part of it resulted from you or your agent treating an *income tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and</p> <p>(b) because of that treatment, the partnership net income would have been reduced, or the partnership loss would have been increased, for the income year by more than the partnership's *reasonably arguable threshold</p>	<p>25% of your *shortfall amount or part</p>
6A	<p>(a) you have a *shortfall amount for a *Fiscal Year, all or part of which resulted from you or your agent treating the *Minimum Tax law as applying to a matter or identical matters in a particular way that was not *reasonably arguable; and</p> <p>(b) that amount is more than your threshold for the Fiscal Year under subsection (3A).</p>	<p>25% of your shortfall amount or part</p>
7	<p>You are liable to an administrative penalty under subsection 284-75(3)</p>	<p>75% of the tax-related liability concerned</p>

- (1A) The *base penalty amount in an item of the table in subsection (1) that applies to you is taken to be doubled if:
- (a) on or before the day (your ***trigger day***) applying to you under subsection (4) for that table item:
- (i) the Commissioner has made an assessment of your income tax for one or more income years; or
 - (ii) the Commissioner has made a determination under subsection 960-555(3) of the *Income Tax Assessment Act 1997* in relation to you, or in relation to the *global

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

parent entity for the group of which you are a member,
for a period; or

- (iii) you have given the Commissioner statements in accordance with Subdivision 815-E of that Act for an income year or another 12 month period; or
 - (iv) you were a *subsidiary member of a *consolidated group or a *MEC group for one or more income years, and the Commissioner has made an assessment of the income tax of another entity that was a *member of the group for one or more of those income years; and
- (b) you were a *significant global entity for:
- (i) whichever of those income years or periods that ends on the most recent day; or
 - (ii) if more than one of them ends on that most recent day—any of those income years or periods that ends on that most recent day.

Note: For subparagraph (a)(iii), you may be allowed to give statements for a 12 month period other than an income year (see section 815-360 of the *Income Tax Assessment Act 1997*).

(1B) However, subsection (1A) is taken never to have applied to you in relation to your trigger day if:

- (a) the Commissioner makes an assessment of:
 - (i) your income tax for the income year that includes your trigger day; or
 - (ii) if you were a *subsidiary member of a *consolidated group or a *MEC group for the income year that includes your trigger day—the income tax, for that income year, of another *member of that group; and
- (b) you are not a *significant global entity for that income year.

(1C) The *base penalty amount in an item of the table in subsection (1) that applies to a *Group Entity of an *Applicable MNE Group for a *Fiscal Year is taken to be doubled if the base penalty amount arises in relation to *Australian IIR/UTPR tax or *Australian DMT tax in relation to the Applicable MNE Group.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-90

- (2) If 2 or more items in that table apply and one of them produces a greater *base penalty amount than any of the others, use that item.
- (3) An entity's ***reasonably arguable threshold*** for an income year is:
 - (a) unless paragraph (b) applies—the greater of \$10,000 or 1% of whichever of the following applies:
 - (i) the income tax payable by the entity for the income year, worked out on the basis of the entity's *income tax return;
 - (ii) the *petroleum resource rent tax payable by the entity for the year of tax (within the meaning of the *Petroleum Resource Rent Tax Assessment Act 1987*) most closely corresponding to the income year, worked out on the basis of the entity's return under Division 1 of Part VI of that Act; or
 - (b) if the entity is a trust or partnership—the greater of the following amounts:
 - (i) \$20,000;
 - (ii) 2% of the entity's *net income (if any) for the income year worked out on the basis of the entity's *income tax return.
- (3A) For the purposes of item 6A of the table in subsection (1), an entity's threshold for a *Fiscal Year is the greater of:
 - (a) \$10,000; and
 - (b) 1% of whichever of the following applies:
 - (i) the amount of *Australian IIR/UTPR tax payable by the entity for the Fiscal Year, worked out on the basis of the entity's *Australian IIR/UTPR tax return for the Fiscal Year;
 - (ii) the amount of *Australian DMT tax payable by the entity for the Fiscal Year, worked out on the basis of the entity's *Australian DMT tax return for the Fiscal Year.
- (4) For the purposes of paragraph (1A)(a), the following day applies to you for the relevant item of the table in subsection (1):

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) for any of table items 1 to 3C—the day you made the statement referred to in that item;
- (b) for any of table items 4 to 6A—the day you made the statement to which that item relates and that is referred to in subsection 284-75(2);
- (c) for table item 7—the day the return, notice or other document to which that item relates, and that is referred to in subsection 284-75(3), was required to be given.

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.

Subdivision 284-C—Penalties relating to schemes

Guide to Subdivision 284-C

284-140 What this Subdivision is about

You are liable to an administrative penalty if you attempt to reduce your tax-related liabilities or increase your credits through a scheme.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-145

This Subdivision sets out when the penalties apply and how the amounts of the penalties are calculated.

Table of sections

Operative provisions

284-145	Liability to penalty
284-150	<i>Scheme benefits</i> and <i>scheme shortfall amounts</i>
284-155	Amount of penalty
284-160	<i>Base penalty amount</i> : schemes
284-165	Exception—threshold for penalty arising from cross-border transfer pricing

Operative provisions

284-145 Liability to penalty

- (1) You are liable to an administrative penalty if:
- (a) you would, apart from a provision of a *taxation law or action taken under such a provision (the ***adjustment provision***), get a *scheme benefit from a *scheme; and
 - (b) having regard to any relevant matters, it is reasonable to conclude that:
 - (i) an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; or
 - (ia) for a scheme to which Part IVA of the *Income Tax Assessment Act 1936* applies because of section 177DA of that Act—an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a scheme benefit from the scheme; or
 - (ii) for a scheme referred to in Division 165 of the *GST Act or Division 75 of the *Fuel Tax Act 2006*—the principal effect of the scheme, or of part of the scheme,

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

is that you would, apart from the adjustment provision, get the scheme benefit from the scheme directly or indirectly.

- (2A) You are also liable to an administrative penalty if:
- (a) you would, apart from a determination under section 815-30 of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***), get a *scheme benefit from a *scheme; and
 - (b) neither subparagraph (1)(b)(i) nor subparagraph (1)(b)(ia) is satisfied for the scheme.
- (2B) You are also liable to an administrative penalty if:
- (a) to give effect to Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***) in relation to a *scheme, the Commissioner:
 - (i) amends your assessment for an income year; or
 - (ii) serves you with one or more notices under subsection 128C(7) of the *Income Tax Assessment Act 1936* in respect of income that is taken because of the application of the adjustment provision to have been derived in the income year; and
 - (b) as a result, you are liable to pay an additional amount of income tax or *withholding tax (as the case requires).
- Note: Subdivisions 815-B and 815-C of the *Income Tax Assessment Act 1997* apply the arm's length principle (about transfer pricing) to entities and permanent establishments respectively.
- (2C) You are also liable to an administrative penalty if:
- (a) you are the trustee of a *managed investment trust in relation to an income year; and
 - (b) to give effect to Subdivision 275-L of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***) in relation to a *scheme, the Commissioner amends your assessment for the income year; and
 - (c) as a result, you are liable to pay an additional amount of income tax (as the case requires).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-150

Note: Subdivision 275-L of the *Income Tax Assessment Act 1997* applies to non-arm's length income of managed investment trusts.

- (3) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

284-150 Scheme benefits and scheme shortfall amounts

- (1) An entity gets a **scheme benefit** from a *scheme if:
- (a) a *tax-related liability of the entity for an accounting period is, or could reasonably be expected to be, less than it would be apart from the scheme or a part of the scheme; or
 - (b) an amount that the Commissioner must pay or credit to the entity under a *taxation law for an accounting period is, or could reasonably be expected to be, more than it would be apart from the scheme or a part of the scheme.
- (2) The amount of the *scheme benefit that you would, apart from the adjustment provision, have got from the *scheme is called your **scheme shortfall amount**.
- (3) However, to the extent that your scheme shortfall amount is due to errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in a statement that was made before the Commissioner became aware of the errors, your **scheme shortfall amount** is instead the amount worked out using the formula:

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}} \right]$$

where:

adjusted reset cost base asset setting amount means:

- (a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

- (b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the joining time, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

- (a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and
- (b) the *corporate tax rate in respect of taxable income for the income year in which that CGT event happens.

Scheme shortfall amount for cross-border transfer pricing

- (4) Despite subsection (2), your ***scheme shortfall amount*** for a *scheme to which subsection 284-145(2B) applies is the total amount of additional income tax and *withholding tax you are liable to pay as mentioned in that subsection.
- (5) Disregard your *scheme shortfall amount for a *scheme to which subsection 284-145(1) applies to the extent that scheme shortfall amount is attributable to additional tax that is, or is part of, your scheme shortfall amount for a scheme to which subsection 284-145(2B) applies.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-155

Scheme shortfall amount for managed investment trust non-arm's length income

- (6) Despite subsection (2), your scheme shortfall amount for a *scheme to which subsection 284-145(2C) applies is the total amount of additional income tax you are liable to pay as mentioned in that subsection.
- (7) Disregard your *scheme shortfall amount for a *scheme to which subsection 284-145(1) applies to the extent that scheme shortfall amount is attributable to additional tax that is, or is part of, your scheme shortfall amount for a scheme to which subsection 284-145(2C) applies.

284-155 Amount of penalty

- (1) Work out the *base penalty amount under section 284-160. If the base penalty amount is not increased under section 284-220 or reduced under section 284-225, this is the amount of the penalty.
- (2) Otherwise, use this formula:
$$BPA + [BPA \times (\text{Increase \%} - \text{Reduction \%})]$$
where:
BPA is the *base penalty amount.
increase % is the percentage increase (if any) under section 284-220.
reduction % is the percentage reduction (if any) under section 284-225.
- (3) However, the amount of the penalty is twice the amount worked out under subsection (1) or (2) of this section if:
 - (a) you are a *significant global entity during an income year that consists of, or includes all or part of, the accounting period to which your *scheme shortfall amount relates; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) it is not *reasonably arguable that the adjustment provision does not apply.

284-160 Base penalty amount: schemes

- (1) The **base penalty amount** for a *scheme to which subsection 284-145(1) or (2C) applies is, subject to section 284-224:
- (a) 50% of your *scheme shortfall amount; or
 - (b) 25% of your scheme shortfall amount if it is *reasonably arguable that the adjustment provision does not apply.
- (2) The **base penalty amount** for a *scheme to which subsection 284-145(2A) applies is, subject to section 284-224:
- (a) 25% of your *scheme shortfall amount; or
 - (b) 10% of your scheme shortfall amount if it is *reasonably arguable that the adjustment provision does not apply.
- (3) The **base penalty amount** for a *scheme to which subsection 284-145(2B) applies is worked out using this table and section 284-224 if relevant:

Base penalty amount		
Item	Column 1	Column 2
	In this situation:	The base penalty amount is:
1	having regard to any relevant matters, it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the *scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a *transfer pricing benefit from the scheme	the sum of: <ul style="list-style-type: none">(a) 50% of your *scheme shortfall amount, to the extent that it is not attributable as mentioned in paragraph (b); and(b) 25% of your scheme shortfall amount, to the extent (if any) that it is attributable to the entity, or the entity's agent, treating the adjustment provision as applying (including not applying) to a matter (or identical matters) in a particular way that is *reasonably arguable

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-165

Base penalty amount

Item	Column 1 In this situation:	Column 2 The <i>base penalty amount</i> is:
2	item 1 does not apply	<p>the sum of:</p> <p>(a) 25% of your *scheme shortfall amount, to the extent that it is not attributable as mentioned in paragraph (b); and</p> <p>(b) 10% of your scheme shortfall amount, to the extent (if any) that it is attributable to the entity, or the entity's agent, treating the adjustment provision as applying (including not applying) to a matter (or identical matters) in a particular way that is *reasonably arguable</p>

Note: For special rules about when transfer pricing treatment is not reasonably arguable, see Subdivision 284-E.

284-165 Exception—threshold for penalty arising from cross-border transfer pricing

- (1) You are not liable to an administrative penalty under subsection 284-145(2B) if your *scheme shortfall amount is equal to or less than your *reasonably arguable threshold.
- (2) You are also not liable to an administrative penalty under that subsection if:
 - (a) you have the *scheme shortfall amount because of section 284-30 (about trusts); and
 - (b) the amount by which the trust would, apart from the application of Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997*, have had a greater *net income, or a lesser *tax loss, is equal to or less than the trust's *reasonably arguable threshold.
- (3) You are also not liable to an administrative penalty under that subsection if:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) you have the *scheme shortfall amount because you are a partner in a partnership that participated in the *scheme; and
- (b) the amount by which the partnership would, apart from the application of Subdivision 815-B or 815-C of that Act, have had a greater *net income, or a lesser *partnership loss, is equal to or less than the partnership's *reasonably arguable threshold.

Nil amounts

- (4) For the purposes of this section:
 - (a) treat a trust or a partnership that has no *net income for an income year as having a net income for the year of a nil amount; and
 - (b) treat a trust that has no *tax loss for an income year as having a tax loss for the year of a nil amount; and
 - (c) treat a partnership that has no *partnership loss for an income year as having a partnership loss for the year of a nil amount.

Subdivision 284-D—Provisions common to Subdivisions 284-B and 284-C

Table of sections

284-220	Increase in base penalty amount
284-224	Reduction of base penalty amount if law was applied in an accepted way
284-225	Reduction of base penalty amount if you voluntarily tell the Commissioner

284-220 Increase in base penalty amount

- (1) The *base penalty amount is increased by 20% if:
 - (a) you took steps to prevent or obstruct the Commissioner from finding out about a *shortfall amount, or the false or misleading nature of a statement, in relation to which the base penalty amount was calculated; or
 - (b) you:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-224

- (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
 - (c) the base penalty amount was worked out using item 1, 2 or 3 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
 - (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
 - (d) the base penalty amount was worked out using item 4, 5, 6 or 6A of that table and a base penalty amount for you was worked out under that item previously; or
 - (e) your liability to a penalty arises under subsection 284-75(3) and you were previously liable to a penalty under that subsection.
- (2) The *base penalty amount for your *scheme shortfall amount, or for part of it, for an accounting period is increased by 20% if:
- (a) you took steps to prevent or obstruct the Commissioner from finding out about the scheme shortfall amount or the part; or
 - (b) a base penalty amount for you was worked out under section 284-160 for a previous accounting period.

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:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (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.

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

- (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.
- (2) 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 under subsection (3), (4) or (4A) if you voluntarily tell the Commissioner, in the *approved form, about the shortfall amount, the part of it or the false or misleading nature of the statement *before*:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-225

- (a) the day the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; or
 - (b) if the Commissioner makes a public statement requesting entities to make a voluntary disclosure by a particular earlier day about a *scheme or transaction that applies to your affairs—that earlier day.
- (3) The *base penalty amount for your *shortfall amount, or for part of it, is:
 - (a) reduced by 80% if the shortfall amount, or the part of it, is \$1,000 or more; or
 - (b) reduced to nil if the shortfall amount, or the part of it, is less than \$1,000.
- (4) The *base penalty amount for your *scheme shortfall amount, or for part of it, is reduced by 80%.
- (4A) The *base penalty amount for your false or misleading statement that does not result in you having a *shortfall amount is reduced to nil.
- (5) If you voluntarily tell the Commissioner, in the *approved form, about your *shortfall amount or *scheme shortfall amount, part of it or the false or misleading nature of the statement *after* the Commissioner tells you that an examination is to be conducted of your affairs relating to a *taxation law for a relevant period, the Commissioner may treat you as having done so *before* being told about the examination if the Commissioner considers it appropriate to do so in the circumstances.

Subdivision 284-E—Special rules about unarguable positions for cross-border transfer pricing

Table of sections

284-250	Undocumented transfer pricing treatment not reasonably arguable
284-255	Documentation requirements

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

284-250 Undocumented transfer pricing treatment not reasonably arguable

This Division has effect in relation to an entity as if a matter was not *reasonably arguable if:

- (a) the matter is a particular way of applying (including not applying) Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* to a matter (or identical matters); and
- (b) the entity does not have records that meet the requirements in this Subdivision for the application of the Subdivision mentioned in paragraph (a) to that matter (or those matters) in that way.

Note: For the Commissioner's power to remit an administrative penalty imposed by this Part, see section 298-20.

284-255 Documentation requirements

- (1) Records kept by an entity meet the requirements in this Subdivision for the application (or non-application) of Subdivision 815-B or 815-C of the *Income Tax Assessment Act 1997* to a matter (or identical matters) in a particular way if the records:
 - (a) are prepared before the time by which the entity lodges its *income tax return for the income year relevant to the matter (or matters); and
 - (b) are in English, or readily accessible and convertible into English; and
 - (c) explain the particular way in which the Subdivision applies (or does not apply) to the matter (or matters); and
 - (d) explain why the application of the Subdivision to the matter (or matters) in that way best achieves the consistency mentioned in section 815-135 or 815-235 of that Act (as the case requires) (about guidance material).
- (2) Without limiting subsection (1), the records must allow each of the following to be readily ascertained:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 284-255

- (a) the *arm's length conditions relevant to the matter (or matters);
- (b) the particulars of the method used and comparable circumstances relevant to identifying those arm's length conditions;
- (c) unless the records are for the non-application of the Subdivision to a matter (or matters)—the result that the application of the Subdivision in that particular way, as compared to the non-application of the Subdivision, has for the operation of this Act in relation to the entity;
- (d) for Subdivision 815-B—the actual conditions relevant to the matter (or matters);
- (e) for Subdivision 815-C:
 - (i) the actual profits mentioned in paragraph 815-220(1)(a) of that Act and the *arm's length profits, to the extent that they are relevant to the matter (or matters); and
 - (ii) the particulars of the activities and circumstances mentioned in subsection 815-225(1) of that Act, to the extent they are relevant to the matter (or matters).

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Division 286—Penalties for failing to lodge documents on time

Table of Subdivisions

286-A	Guide to Division 286
286-B	Object of Division
286-C	Penalties for failing to lodge documents on time

Subdivision 286-A—Guide to Division 286

286-1 What this Division is about

You are liable to an administrative penalty if you are required to give a return, statement, notice or other document by a particular time and you do not do so.

This Division sets out when the penalty applies and how the amounts of the penalty are calculated.

Subdivision 286-B—Object of Division

Table of sections

286-25	Object of Division
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286-25 Object of Division

The object of this Division is to provide a uniform administrative penalty regime for all *taxation laws to enable administrative penalties to apply for failure to give returns, notices, statements or other documents on time.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 286-75

Subdivision 286-C—Penalties for failing to lodge documents on time

Table of sections

286-75	Liability to penalty
286-80	Amount of penalty

286-75 Liability to penalty

- (1) You are liable to an administrative penalty if:
- (a) you are required under a *taxation law to give a return, notice, statement or other document to the Commissioner in the *approved form by a particular day; and
 - (b) you do not give the return, notice, statement or document to the Commissioner in the approved form by that day.

Note: You may not be liable to a penalty in relation to a failure to notify an amount referred to in item 1, 2 or 2A of the table in subsection 389-5(1) during the period provided for by subitem 22(2) of Schedule 23 to the *Budget Savings (Omnibus) Act 2016* (see also item 16 of Schedule 3 to the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019*).

- (1A) However, you are not liable to an administrative penalty under subsection (1) if:
- (a) you engage a *registered tax agent or BAS agent; and
 - (b) you give the registered tax agent or BAS agent all relevant taxation information to enable the agent to give a return, notice, statement or other document to the Commissioner in the *approved form by a particular day; and
 - (c) the registered tax agent or BAS agent does not give the return, notice, statement or other document to the Commissioner in the approved form by that day; and
 - (d) the failure to give the return, notice, statement or other document to the Commissioner did not result from:
 - (i) intentional disregard by the registered tax agent or BAS agent of a *taxation law; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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

(1B) If you wish to rely on subsection (1A), you bear an evidential burden in relation to paragraph (1A)(b).

(2) Subsection (1) does not apply to a return, notice, statement or other document under any of these Acts:

- (a) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;
- (b) the *Superannuation Guarantee (Administration) Act 1992*; or
- (c) the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*.

(2AA) You are also liable to an administrative penalty if:

- (a) you are required under section 136-90 (about commutation authorities) to give a notice to an entity (other than the Commissioner) in the *approved form by a particular day; and
- (b) you do not give the notice in the approved form to the entity by that day.

(2AB) You are also liable to an administrative penalty if:

- (a) you are required under section 276-455 of the *Income Tax Assessment Act 1997* (AMMA statements) to give information to an entity (other than the Commissioner) by a particular day; and
- (b) you do not give the information to the entity by that day.

(2A) You are also liable to an administrative penalty if:

- (a) you are required under Division 390 to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and
- (b) you do not give the statement in the approved form to the other entity by that day.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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(2BA) You are also liable to an administrative penalty if:

- (a) you are required under Division 392 (Employee share scheme reporting) to give a statement to an entity (other than the Commissioner) in the *approved form by a particular day; and
- (b) you do not give the statement in the approved form to the entity by that day.

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

- (a) you are required under section 713-540 of the *Income Tax (Transitional Provisions) Act 1997* to notify another entity of the happening of an event by a particular day; and
- (b) you do not notify the other entity of the happening of that event by that day.

(5) Subsection (6) applies if:

- (a) an entity is liable to an administrative penalty under subsection (1) or (2A) as the *superannuation provider in relation to a *self managed superannuation fund; and
- (b) the entity is a body corporate.

(6) 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.

(7) You are also liable to an administrative penalty if:

- (a) you are required under subsections 57-7(2) and (3) of the *New Tax System (Goods and Services Tax) Act 1999* to notify another entity by a particular day; and
- (b) you do not give the notice in the *approved form to the entity by that day.

286-80 Amount of penalty

(1) The amount of the penalty is worked out in this way:

- (a) work out the *base penalty amount under subsection (2); and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) work out whether the base penalty amount is increased under subsection (3), (4), (4A) or (4C).

(2) The **base penalty amount** is:

- (a) for failing to give a return, notice or other document on time or in the *approved form, as mentioned in subsection 286-75(1), (2AA), (2AB), (2A), (2B), (2BA) or (2C)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the document is due and ending when you give it (up to a maximum of 5 penalty units); or
- (c) for failing to notify the happening of an event as mentioned in subsection 286-75(4)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the notification is due and ending when you notify the happening of the event (up to a maximum of 5 penalty units).

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Example: An entity lodges a return 31 days late. The base penalty amount under subsection (2) is 2 penalty units.

(3) The *base penalty amount is multiplied by 2 if:

- (a) the entity concerned is a *medium withholder for the month in which the return, notice or other document was required to be given; or
- (b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is more than \$1 million but less than \$20 million; or
- (c) the entity's *current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is more than \$1 million but less than \$20 million.

(4) The *base penalty amount is multiplied by 5 if:

- (a) the entity concerned is a *large withholder for the month when the return, notice or other document was required to be given; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is \$20 million or more; or
 - (c) the entity's *current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is \$20 million or more.
- (4A) Neither subsection (3) nor (4) applies to the entity, and the *base penalty amount is multiplied by 500, if:
 - (a) the failure referred to in subsection (2) is a failure to give a return, notice or other document on time or in the *approved form, as mentioned in subsection 286-75(1); and
 - (b) on or before the day the return, notice or other document is required to be given:
 - (i) the Commissioner has made an assessment of the entity's income tax for one or more income years; or
 - (ii) the Commissioner has made a determination under subsection 960-555(3) of the *Income Tax Assessment Act 1997* in relation to the entity, or in relation to the *global parent entity for the group of which the entity is a member, for a period; or
 - (iii) the entity has given the Commissioner statements in accordance with Subdivision 815-E of that Act for an income year or another 12 month period; or
 - (iv) the entity was a *subsidiary member of a *consolidated group or a *MEC group for one or more income years, and the Commissioner has made an assessment of the income tax of another entity that was a *member of the group for one or more of those income years; and
 - (c) the entity was a *significant global entity for:
 - (i) whichever of those income years or periods that ends on the most recent day; or
 - (ii) if more than one of them ends on that most recent day—any of those income years or periods that ends on that most recent day.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note: For subparagraph (b)(iii), an entity may be allowed to give statements for a 12 month period other than an income year (see section 815-360 of the *Income Tax Assessment Act 1997*).

- (4B) However, subsection (4A) is taken never to have applied to the entity in relation to the day the return, notice or other document is required to be given if:
- (a) the Commissioner makes an assessment of:
 - (i) the entity's income tax for the income year that includes that day; or
 - (ii) if the entity was a *subsidiary member of a *consolidated group or a *MEC group for the income year that includes that day—the income tax, for that income year, of another *member of that group; and
 - (b) the entity is not a *significant global entity for that income year.
- (4C) Neither subsection (3) nor (4) applies to the entity, and the *base penalty amount is multiplied by 500, if:
- (a) the base penalty amount arises in relation to *Australian IIR/UTPR tax or *Australian DMT tax in relation to an *Applicable MNE Group for a *Fiscal Year; and
 - (b) the entity concerned is a *Group Entity of the Applicable MNE Group.
- (5) In working out the *base penalty amount, the amount of a penalty unit is the amount applying at the start of the relevant 28 day period.
- (6) The fact that you have not yet given the relevant return, notice or other document does not prevent the Commissioner notifying you that you are liable to an administrative penalty under this Subdivision. That penalty may be later increased under this section.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 288-10

Division 288—Miscellaneous administrative penalties

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288-10 Penalty for non-electronic notification

An entity that:

- (a) under subsection 31-25(2) of the *GST Act, is required to *lodge a *GST return electronically; or
- (aa) under subsection 45-20(2A) in this Schedule, is required to give a notification electronically; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

(b) under section 388-80 in this Schedule, is required to notify another *BAS amount electronically;
but lodges, gives or notifies it in another way, is liable to an administrative penalty of 5 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

288-20 Penalty for non-electronic payment

An entity that:

(a) under subsection 33-10(2) of the *GST Act, is required to pay an *assessed net amount for a tax period electronically; or
(b) under section 8AAZMA, or section 45-72 in this Schedule, is required to pay an amount electronically;
but pays it another way, is liable to an administrative penalty of 5 penalty units for each payment of one or more such amounts.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

288-25 Penalty for failure to keep or retain records

- (1) You are liable to an administrative penalty of 20 penalty units if:
- (a) a provision of a *taxation law requires you to keep or retain a record; and
 - (b) you do not keep or retain that record in the manner required by that law.
- (2) Subsection (1) does not apply to:
- (a) documents required to be retained under Part X of the *Fringe Benefits Tax Assessment Act 1986* (about statutory evidentiary documents); or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) documents required to be kept or retained under Division 900 of the *Income Tax Assessment Act 1997* (about substantiation of expenses); or
- (c) if you are given a *tax-records education direction—documents to which a record-keeping failure specified in the direction relates, unless you have not complied with the direction.

Note 1: For paragraph (c):

- (a) for tax-records education directions, see section 384-12; and
- (b) for whether you have complied with the direction, see subsection 384-15(3).

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-30 Penalty for failure to retain or produce declarations

You are liable to an administrative penalty of 20 penalty units if:

- (a) a provision of a *taxation law requires you to retain or produce a declaration you made about an agent giving an *approved form to the Commissioner on your behalf; and
- (b) you do not retain or produce that declaration in the manner required by that law.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-35 Penalty for preventing access etc.

You are liable to an administrative penalty of 20 penalty units if:

- (a) a provision of a *taxation law confers a power on an officer authorised under that law:
 - (i) to enter or remain on land, premises or a place that you occupy; or
 - (ii) to have access to documents, goods or other property in your possession; or
 - (iii) to inspect, copy or take extracts from documents in your possession; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (iv) to inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property in your possession and, to that end, take samples; and
- (b) you refuse to provide the officer with all reasonable facilities for the officer effectively to exercise that power in accordance with that law.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-40 Penalty for failing to register or cancel registration

You are liable to an administrative penalty of 20 penalty units if you fail to apply for registration, or to apply for cancellation of registration, as required by the *GST Act.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-45 Penalty for failing to issue tax invoice etc.

- (1) You are liable to an administrative penalty of 20 penalty units if you fail to issue a tax invoice as required by section 29-70 of the *GST Act.
- (2) You are liable to an administrative penalty of 20 penalty units if you fail to issue an adjustment note as required by section 29-75 of the *GST Act.
- (2A) You are liable to an administrative penalty of 20 penalty units if you fail to give a notice as required by subsection 84-89(3) of the *GST Act.
- (3) You are liable to an administrative penalty of 20 penalty units if you fail to issue a third party adjustment note as required by section 134-20 of the *GST Act.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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288-46 Penalty for failing to ensure tax information about supplies of low value goods is included in customs documents

You are liable to an administrative penalty of 20 penalty units if:

- (a) you are required by section 84-93 of the *GST Act to ensure that the information set out in subsection 84-93(2) of that Act is included in one or more of the documents referred to in subsection 84-93(3) of that Act; but
- (b) you fail to take reasonable steps to do so.

288-50 Penalty for both principal and agent issuing certain documents

An entity is liable to an administrative penalty of 20 penalty units if both the entity and its agent issue:

- (a) separate tax invoices relating to the same taxable supply, contrary to subsection 153-15(2) of the *GST Act; or
- (b) separate adjustment notes, or third party adjustment notes, for the same decreasing adjustment, contrary to subsection 153-20(2) of that Act.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-70 Administrative penalties for life insurance companies

Complying superannuation asset pool—calculation of an amount

- (1) A *life insurance company is liable to an administrative penalty if the company:
 - (a) is required to calculate a particular amount under section 320-175 of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 60 days that is required by that section.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Complying superannuation asset pool—transfer following valuation

- (2) A *life insurance company is liable to an administrative penalty if the company:
- (a) is required to transfer assets having a particular *transfer value from its *complying superannuation assets under subsection 320-180(1) of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 30 days that is required by subsection 320-180(2) of that Act.

Segregated exempt assets—calculation of an amount

- (3) A *life insurance company is liable to an administrative penalty if the company:
- (a) is required to calculate a particular amount under section 320-230 of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 60 days that is required by that section.

Segregated exempt assets—transfer following valuation

- (4) A *life insurance company is liable to an administrative penalty if the company:
- (a) is required to transfer assets having a particular *transfer value from its *segregated exempt assets under subsection 320-235(1) of the *Income Tax Assessment Act 1997*; but
 - (b) fails to do so within the period of 30 days that is required by subsection 320-235(2) of that Act.

How to work out the administrative penalty

- (5) The administrative penalty under subsection (1), (2), (3) or (4) for a failure to make a calculation or transfer is equal to 5 penalty units for each period of 28 days or part of a period of 28 days:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (a) starting immediately after the end of the period mentioned in paragraph (b) of that subsection; and
- (b) ending at the end of the day on which the calculation or transfer is made.

However, the maximum penalty for that failure must not exceed 25 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for the penalties provided by this section.

288-75 Administrative penalty for a copyright or resale royalty collecting society

- (1) A *copyright collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-5 of the *Income Tax Assessment Act 1997*.
- (2) The *resale royalty collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice as required by section 410-50 of the *Income Tax Assessment Act 1997*.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

288-80 Administrative penalty for over declaring conduit foreign income

- (1) An *Australian corporate tax entity is liable to an administrative penalty if:
 - (a) the entity makes a *frankable distribution that has an *unfranked part; and
 - (b) the entity declares an amount of the unfranked part to be *conduit foreign income; and
 - (c) the sum of the amounts declared exceeds the amount of the entity's conduit foreign income at:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) if the entity declares the distribution before making the distribution—the time of the declaration; or
 - (ii) otherwise—the time the distribution is made.
- (2) The amount of the penalty is the sum of the amounts worked out under subsections (3) and (4).
- (3) The amount is:

$$\text{*Corporate tax rate} \times \frac{\text{Excess mentioned in paragraph (1)(c)}}{\text{Total membership interests}} \times \frac{\text{Australian membership interests}}{\text{Total membership interests}}$$

where:

Australian membership interests means the number of *membership interests or *non-share equity interests in the entity that are not covered by the definition of ***foreign membership interests*** in subsection (4).

total membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution.

- (4) The amount is:

$$\frac{\text{Applicable withholding tax rate}}{\text{Applicable withholding tax rate}} \times \frac{\text{Excess referred to in paragraph (1)(c)}}{\text{Total membership interests}} \times \frac{\text{Foreign membership interests}}{\text{Total membership interests}}$$

where:

applicable withholding tax rate means 50% of the rate of tax set out in paragraph 7(a) of the *Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974*.

foreign membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution and in relation to whom

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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the entity is required to withhold amounts under section 12-210 disregarding the operation of section 12-300 (about limits on the amount withheld).

total membership interests means the number of *membership interests or *non-share equity interests in the entity held by entities that are entitled to receive the *distribution.

288-85 Failure by Reporting Financial Institution to obtain self-certification

An entity that:

- (a) is:
 - (i) a Reporting Financial Institution (within the meaning of the *CRS); or
 - (ii) an institution that a notice under subsection 396-130(5) requires to act as a Reporting Financial Institution; and
 - (b) is required to obtain a self-certification, in relation to an account maintained by the institution, when applying the due diligence procedures described in the CRS; and
 - (c) fails to obtain the self-certification:
 - (i) if the account is a Reportable Account (within the meaning of the CRS) or an account that a notice under subsection 396-130(2) requires the entity to treat as a Reportable Account—by the time by which a statement under subsection 396-105(2) relating to the account must be given to the Commissioner; or
 - (ii) otherwise—by the time by which such a statement would be required to be given to the Commissioner if the account were such a Reportable Account;
- is liable to an administrative penalty of 1 penalty unit.

288-95 Failing to comply etc. with release authority

- (2) A *superannuation provider that has been given a transitional release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997* and that fails to comply

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

with subsection 292-80C(1) of that Act is liable to an administrative penalty of 20 penalty units.

- (3) A *superannuation provider that fails to comply with section 131-35 (about release authorities for superannuation) is liable to an administrative penalty of 20 penalty units.
- (4) A *superannuation provider that fails to comply with section 135-75 (about release authorities for debt account discharge liabilities) is liable to an administrative penalty of 20 penalty units.

288-100 Excess money paid under release authority

- (1) A person is liable for an administrative penalty of 20 penalty units if:
 - (a) the person gives one or more *superannuation providers a release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; and
 - (b) the total of the amounts paid by the superannuation provider or providers to the person and the Commissioner as a result of being given the release authority exceeds the amount required to be paid in respect of the release authority under section 292-80C of that Act.
- (2) An individual is liable to an administrative penalty of 20 penalty units if one or more *superannuation benefits that the individual receives (or is taken to receive), paid in relation to a release authority issued in accordance with Subdivision 135-A in this Schedule, is assessable income to any extent.

288-105 Superannuation provider to calculate crystallised pre-July 83 amount of superannuation interest by 30 June 2008

- (1) An entity is liable to an administrative penalty of 5 penalty units if:
 - (a) the entity is the *superannuation provider in relation to a *superannuation plan (other than a *constitutionally protected fund) on 30 June 2008; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the entity has not ensured that the crystallised pre-July 83 amount in relation to each superannuation interest in the plan has been calculated on or before that day.
- (2) For the purpose of paragraph (1)(b), disregard a *superannuation interest unless the *element taxed in the fund of the *taxable component of the interest exceeds nil just before 1 July 2007.
- (3) For the purpose of paragraph (1)(b), disregard a *superannuation interest that supported a *superannuation income stream just before 1 July 2007.

288-110 Contravention of superannuation data and payment regulation or standard

Liability to penalty—RSA providers and trustees of eligible superannuation entities

- (1) An entity is liable to an administrative penalty if the entity contravenes:
 - (a) subsection 34M(1) of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) subsection 45D(1) of the *Retirement Savings Accounts Act 1997*.
- (2) An entity is liable to an administrative penalty if the entity contravenes:
 - (a) subsection 34P(6) of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) subsection 45F(6) of the *Retirement Savings Accounts Act 1997*.

Liability to penalty—employers

- (3) An entity is liable to an administrative penalty if the entity contravenes:
 - (a) subsection 34N(1) of the *Superannuation Industry (Supervision) Act 1993*; or

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (b) subsection 45E(1) of the *Retirement Savings Accounts Act 1997*.
- (4) An entity is liable to an administrative penalty if the entity contravenes:
 - (a) subsection 34Q(6) of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) subsection 45G(6) of the *Retirement Savings Accounts Act 1997*.

Amount of the penalty

- (5) The amount of the penalty is:
 - (a) for an administrative penalty under subsection (1) or (3)—4 penalty units; or
 - (b) for an administrative penalty under subsection (2) or (4)—10 penalty units.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

288-115 AMIT under or over resulting from intentional disregard of or recklessness as to taxation law

- (1) An entity is liable to an administrative penalty if:
 - (a) the entity is a trustee of an *AMIT for an income year (the *base year*); and
 - (b) the AMIT has an *under or *over for the base year; and
 - (c) at least one of the items in the table in subsection (3) applies in respect of the under or over.
- (2) To avoid doubt, subsection (1) has a separate operation in respect of each *under or *over mentioned in paragraph (1)(b).
- (3) The amount of the penalty is 47% of the amount worked out using this table:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Amount of penalty			
Item	Column 1 In this situation ...	Column 2 in the case of an *under or *over covered by subsection (5), the amount is:	Column 3 in the case of an *under or *over covered by subsection (6), the amount is:
1	if the *under or *over resulted from intentional disregard of a *taxation law (other than the *Excise Acts) by the trustee of the *AMIT or the trustee's agent	75% of the under or over	30% of the under or over
2	if the *under or *over resulted from recklessness by the trustee of the *AMIT or the trustee's agent as to the operation of a *taxation law (other than the *Excise Acts)	50% of the under or over	20% of the under or over

(4) Despite subsection (3):

- (a) if the penalty specified under column 3 of item 1 of the table in that subsection is less than 60 penalty units—the amount of the penalty is 60 penalty units; and
- (b) if the penalty specified under column 3 of item 2 of the table in that subsection is less than 40 penalty units—the amount of the penalty is 40 penalty units.

(5) This subsection covers the following:

- (a) an *under of:
 - (i) a character relating to assessable income; or
 - (ii) a character relating to *exempt income; or
 - (iii) a character relating to *non-assessable non-exempt income;
- (b) an *over of a character relating to a *tax offset.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (6) This subsection covers the following:
 - (a) an *over of:
 - (i) a character relating to assessable income; or
 - (ii) a character relating to *exempt income; or
 - (iii) a character relating to *non-assessable non-exempt income;
 - (b) an *under of a character relating to a *tax offset.
- (7) If both items in the table in subsection (3) apply, use item 1 and not item 2.
- (8) If the income year corresponds to a financial year that is a temporary budget repair levy year (within the meaning of section 4-11 of the *Income Tax (Transitional Provisions) Act 1997*), treat the reference in subsection (3) to 47% as instead being a reference to 49%.

288-120 Prohibited offsets of liabilities using interest etc. accrued on farm management deposits

- (1) The person who made or is making a *farm management deposit is liable to an administrative penalty if:
 - (a) the fact that the person made or is making the deposit is the reason why, or one of the reasons why, an amount of interest payable to the *FMD provider in respect of loans or other debts falls short of what it would otherwise be; and
 - (b) the shortfall:
 - (i) contravenes a requirement, contained in the agreement mentioned in paragraph 393-20(1)(b) of the *Income Tax Assessment Act 1997* in relation to the deposit, as set out in item 8 of the table in section 393-35 of that Act; or
 - (ii) would contravene such a requirement if it were contained in that agreement.
- (2) The amount of the penalty is 200% of so much of the shortfall as contravenes that requirement, or would contravene such a requirement.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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288-125 Producing or supplying electronic sales suppression tools

- (1) You are liable to an administrative penalty of 60 penalty units if you:
 - (a) manufacture, develop or publish an *electronic sales suppression tool; or
 - (b) *supply or make available for use:
 - (i) an electronic sales suppression tool; or
 - (ii) a *right to use an electronic sales suppression tool; or
 - (c) provide a service to an entity that involves the use of an electronic sales suppression tool.

Note: Division 298 contains machinery provisions for administrative penalties.

- (3) You are not liable to an administrative penalty under this section for conduct undertaken for the purpose of preventing or deterring tax evasion or enforcing a *taxation law.

288-130 Possessing electronic sales suppression tools

- (1) You are liable to an administrative penalty of 30 penalty units if:
 - (a) you are required under, or pursuant to, a *taxation law (other than an *Excise Act) to keep or make a record; and
 - (b) you acquire, or have possession or control of:
 - (i) an *electronic sales suppression tool; or
 - (ii) a *right to use an electronic sales suppression tool.
- (2) You are liable to an administrative penalty of 30 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative penalties.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (3) You are not liable to an administrative penalty under this section for conduct undertaken for the purpose of preventing or deterring tax evasion or enforcing a *taxation law.

288-135 Incorrectly keeping records using electronic sales suppression tools

- (1) You are liable to an administrative penalty of 60 units if:
- (a) you are required under, or pursuant to, a *taxation law (other than an *Excise Act) to keep or make a record; and
 - (b) the record is kept, made or altered with the use of an *electronic sales suppression tool, or is prevented by the use of an electronic sales suppression tool from being kept, made or altered; and
 - (c) as a result of the use:
 - (i) the record does not correctly record and explain the matter, transaction, act or operation to which it relates; or
 - (ii) you do not keep or make the record in accordance with the taxation law.
- (2) You are liable to an administrative penalty of 60 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative penalties.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 290-5

Division 290—Promotion and implementation of schemes

Table of Subdivisions

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290-B	Civil penalties
290-C	Injunctions
290-D	Voluntary undertakings

Subdivision 290-A—Preliminary

Table of sections

290-5	Objects of this Division
290-10	Extra-territorial application

290-5 Objects of this Division

The objects of this Division are:

- (a) to deter the promotion of tax avoidance *schemes and tax evasion schemes; and
- (aa) to deter the promotion of schemes on the basis of conformity with a *public ruling, *private ruling or *oral ruling if the scheme is materially different from that described in the ruling; and
- (b) to deter the implementation of schemes that have been promoted on the basis of conformity with a public ruling, private ruling or oral ruling in a way that is materially different from that described in the ruling.

290-10 Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 290-B—Civil penalties

Table of sections

290-50	Civil penalties
290-55	Exceptions
290-60	Meaning of <i>promoter</i>
290-65	Meaning of <i>tax exploitation scheme</i>

290-50 Civil penalties

Promoter of tax exploitation scheme

- (1) An entity must not engage in conduct that results in that or another entity being a *promoter of a *tax exploitation scheme.

Promoting scheme otherwise than in accordance with ruling

- (1A) An entity must not engage in conduct that results in a *scheme that is materially different from that described in a *public ruling, *private ruling or *oral ruling being promoted on the basis of conformity with that ruling.

Implementing scheme otherwise than in accordance with ruling

- (2) An entity must not engage in conduct that results in a *scheme that has been promoted on the basis of conformity with a *public ruling, *private ruling or *oral ruling (whether or not the ruling actually relates to the scheme) being implemented in a way that is materially different from that described in the ruling.

Note: A scheme will not have been implemented in a way that is materially different from that described in a ruling if the tax outcome for participants in the scheme is the same as that described in the ruling.

- (2A) For the purposes of subsections (1A) and (2), disregard:
- (a) subsection 82KZMGA(1A) of the *Income Tax Assessment Act 1936*; and
 - (b) subsection 394-10(5A) of the *Income Tax Assessment Act 1997*.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Note 1: Those 2 subsections relate to forestry managed investment schemes.

Note 2: The effect of this subsection is that a scheme will have been implemented in a way that is materially different from that described in a ruling if the tax outcome for participants in the scheme is the same as that described in the ruling only because of the operation of the subsections mentioned in paragraphs (a) and (b).

Civil penalty

- (3) If the Federal Court of Australia is satisfied, on application by the Commissioner, that an entity has contravened subsection (1), (1A) or (2), the Court may order the entity to pay a civil penalty to the Commonwealth.

Note: If the entity is a registered tax agent or BAS agent, being penalised under this subsection may affect the continued registration of the entity: see section 20-45 and Subdivision 40-A of the *Tax Agent Services Act 2009*.

Amount of penalty

- (4) The maximum amount of the penalty for a contravention by an entity is the greater of:
- (a) 5,000 penalty units; and
 - (b) 3 times the total value of all benefits received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4A) Despite subsection (4), the maximum amount of the penalty for a contravention by an entity that is a body corporate is the greatest of the following:
- (a) 50,000 penalty units;
 - (b) 3 times the total value of all benefits received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme;
 - (c) either:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (i) 10% of the *aggregated turnover of the entity for the most recent income year to end before the entity contravened, or began to contravene, the provision; or
- (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4B) Despite subsections (4) and (4A), the maximum amount of the penalty for a contravention by an entity that is:
- (a) a partner in a partnership that is a *significant global entity; or
 - (b) a trustee of a trust that is a significant global entity;
- is the greatest of the following:
- (c) 50,000 penalty units;
 - (d) 3 times the total value of all benefits received or receivable (directly or indirectly) by the significant global entity and *associates of the significant global entity in respect of the *scheme;
 - (e) either:
 - (i) 10% of the *aggregated turnover of the significant global entity for the most recent income year to end before the entity contravened, or began to contravene, the provision; or
 - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Principles relating to penalties

- (5) In deciding what penalty is appropriate for a contravention of subsection (1), (1A) or (2) by an entity, the Federal Court of

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Australia may have regard to all matters it considers relevant, including:

- (a) the amount of the benefit received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme; and
- (b) the deterrent effect that any penalty may have; and
- (c) the amount of loss or damage incurred by scheme participants; and
- (d) the nature and extent of the contravention; and
- (e) the circumstances in which the contravention took place, including the deliberateness of the entity's conduct and whether there was an honest and reasonable mistake of law; and
- (f) the period over which the conduct extended; and
- (g) whether the entity took any steps to avoid the contravention; and
- (h) whether the entity has previously been found by the Court to have engaged in the same or similar conduct; and
- (i) the degree of the entity's cooperation with the Commissioner.

Recovery of penalty

- (6) The penalty is a civil debt payable to the Commonwealth, and the Commissioner may, on behalf of the Commonwealth, enforce an order for an entity to pay the penalty as if it were an order made in civil proceedings against the entity to recover a debt due by the entity. The debt arising from the order is taken to be a judgment debt.

290-55 Exceptions

Reasonable mistake or reasonable precautions

- (1) The Federal Court of Australia must not order the entity to pay a civil penalty if the entity satisfies the Court:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (a) that the conduct in respect of which the proceedings were instituted was due to a reasonable mistake of fact; or
 - (b) that:
 - (i) the conduct in respect of which the proceedings were instituted was due to the act or default of another entity, to an accident or to some other cause beyond the entity's control; and
 - (ii) the entity took reasonable precautions and exercised due diligence to avoid the conduct.
- (2) The other entity referred to in paragraph (1)(b) does not include:
- (a) someone who was an employee or agent of the entity when the alleged conduct occurred; or
 - (b) if the entity is a body corporate—someone who was a director of the entity when the alleged conduct occurred; or
 - (c) if the entity is a partner in a partnership—someone who was also a partner in the partnership when the alleged conduct occurred; or
 - (d) if the entity is a trustee of a trust that has more than one trustee—someone who was also a trustee of the trust when the alleged conduct occurred.

Reliance on advice from the Commissioner

- (3) The Commissioner must not make an application under section 290-50 for conduct referred to in subsection 290-50(1) in relation to an entity's involvement in a *scheme if:
- (a) the scheme is based on treating a *taxation law as applying in a particular way; and
 - (b) that way agrees with:
 - (i) advice given to the entity or the entity's agent by or on behalf of the Commissioner; or
 - (ii) a statement in a publication approved in writing by the Commissioner.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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Time limitation

- (4) The Commissioner must not make an application under section 290-50 in relation to an entity's involvement in a *tax exploitation scheme more than 6 years after the entity last engaged in conduct that resulted in the entity or another entity being a *promoter of the tax exploitation scheme.
- (5) The Commissioner must not make an application under section 290-50 in relation to an entity's involvement in a *scheme that has been promoted on the basis of conformity with a *public ruling, *private ruling or *oral ruling more than 6 years after the entity last engaged in conduct in relation to:
 - (a) if the scheme has been implemented—the implementation of the scheme; or
 - (b) if the scheme has not been implemented—the promotion of the scheme.
- (6) However, the limitation in subsection (4) or (5) does not apply to *schemes that involve, or if implemented would involve, tax evasion.

Exception where entity does not know result of conduct

- (7) The Federal Court of Australia must not order an entity to pay a civil penalty in relation to the entity's engaging in conduct:
 - (a) that results in another entity being a *promoter of a *tax exploitation scheme; or
 - (aa) that results in a *scheme that is materially different from that described in a *public ruling, *private ruling or *oral ruling being promoted on the basis of conformity with that ruling; or
 - (b) that results in a scheme that has been promoted on the basis of conformity with a public ruling, private ruling or oral ruling being implemented in a way that is materially different from that described in the ruling;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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if the entity satisfies the Court that the entity did not know, and could not reasonably be expected to have known, that the entity's conduct would produce that result.

- (7A) The other entity referred to in paragraph (7)(a) does not include:
- (a) if the entity mentioned first in subsection (7) is a partner in a partnership:
 - (i) the partnership; or
 - (ii) someone who was a partner in the partnership when the alleged conduct occurred; or
 - (b) if the entity mentioned first in subsection (7) is a trustee of a trust:
 - (i) the trust; or
 - (ii) if the trust has more than one trustee—someone who was also a trustee of the trust when the alleged conduct occurred.

Employees

- (8) The Commissioner must not make an application under section 290-50 in relation to an individual's involvement in a *scheme as an employee if the Federal Court of Australia has ordered the individual's employer to pay a civil penalty under this Division in relation to the same scheme.

290-60 Meaning of *promoter*

- (1) An entity is a ***promoter*** of a *tax exploitation scheme if:
- (a) the entity:
 - (i) markets the scheme; or
 - (ii) otherwise encourages the growth of the scheme or interest in it; and
 - (b) the entity or an *associate of the entity receives (directly or indirectly) a benefit in respect of that marketing or encouragement; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (c) having regard to all relevant matters, it is reasonable to conclude that the entity has had a substantial role in respect of that marketing or encouragement.
- (2) However, an entity is not a ***promoter*** of a **tax exploitation scheme* merely because the entity provides advice about the **scheme*.
- (3) An employee is not to be taken to have had a substantial role in respect of that marketing or encouragement merely because the employee distributes information or material prepared by another entity.

290-65 Meaning of *tax exploitation scheme*

- (1) A **scheme* is a ***tax exploitation scheme*** if, at the time of the conduct mentioned in subsection 290-50(1):
 - (a) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the scheme did so with the sole or dominant purpose of that entity or another entity getting a **scheme* benefit from the scheme;
 - (ii) if the scheme has not been implemented—it is reasonable to conclude that, if an entity (alone or with others) had entered into or carried out the scheme, it would have done so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; and
 - (b) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is not **reasonably arguable* that the scheme benefit is available at law;
 - (ii) if the scheme has not been implemented—it is not reasonably arguable that the scheme benefit would be available at law if the scheme were implemented.

Note: The condition in paragraph (b) would not be satisfied if the implementation of the scheme for all participants were in accordance

^{*}For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

with binding advice given by or on behalf of the Commissioner of Taxation (for example, if that implementation were in accordance with a public ruling under this Act, or all participants had private rulings under this Act and that implementation were in accordance with those rulings).

- (1A) A *scheme is also a **tax exploitation scheme** if, at the time of the conduct mentioned in subsection 290-50(1):
- (a) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—Part IVA of the *Income Tax Assessment Act 1936* applies to the scheme because of section 177DA or 177J of that Act;
 - (ii) if the scheme has not been implemented—it is reasonable to conclude that, had the scheme been entered into or carried out, Part IVA of that Act would apply to the scheme because of section 177DA or 177J of that Act; and
 - (b) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a *scheme benefit from the scheme;
 - (ii) if the scheme has not been implemented—it is reasonable to conclude that if an entity (alone or with others) had entered into or carried out the scheme, it would have done so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a scheme benefit from the scheme; and
 - (c) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is not *reasonably arguable that the scheme benefit is available at law;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (ii) if the scheme has not been implemented—it is not reasonably arguable that the scheme benefit would be available at law if the scheme were implemented.
- (2) In deciding whether it is *reasonably arguable that a *scheme benefit would be available at law, take into account any thing that the Commissioner can do under a *taxation law.

Example: The Commissioner may cancel a tax benefit obtained by a taxpayer in connection with a scheme under section 177F of the *Income Tax Assessment Act 1936*.

Subdivision 290-C—Injunctions

Table of sections

290-120	Conduct to which this Subdivision applies
290-125	Injunctions
290-130	Interim injunctions
290-135	Delay in making ruling
290-140	Discharge etc. of injunctions
290-145	Certain limits on granting injunctions not to apply
290-150	Other powers of the Federal Court unaffected

290-120 Conduct to which this Subdivision applies

This Subdivision applies to conduct of the kind referred to in subsection 290-50(1), (1A) or (2).

290-125 Injunctions

If an entity has engaged, is engaging or is proposing to engage in conduct to which this Subdivision applies or would apply, the Federal Court of Australia may, on the application of the Commissioner, grant an injunction:

- (a) restraining the entity from engaging in the conduct; and
- (b) if, in the Court's opinion, it is desirable to do so—requiring the entity to do something.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

290-130 Interim injunctions

The Federal Court of Australia may, before considering an application for an injunction under section 290-125, grant an interim injunction restraining an entity from engaging in conduct to which this Subdivision applies.

290-135 Delay in making ruling

If:

- (a) an entity applied in writing to the Commissioner for a *public ruling, *private ruling or *oral ruling in relation to a *scheme; and
- (b) the Commissioner has neither made the ruling nor told the entity in writing that the Commissioner has declined to make the ruling;

the Commissioner must not make an application under section 290-125 in relation to conduct or proposed conduct by an entity in relation to the scheme until the Commissioner makes the ruling or tells the entity in writing that the Commissioner has declined to make the ruling.

290-140 Discharge etc. of injunctions

The Federal Court of Australia may discharge or vary an injunction granted under this Subdivision.

290-145 Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the Federal Court of Australia under this Subdivision to grant an injunction restraining an entity from engaging in conduct of a particular kind may be exercised:
 - (a) if the Court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the Court that the

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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entity intends to engage again, or to continue to engage, in conduct of that kind; or

- (b) if it appears to the Court that, if an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to anyone if the entity engages in conduct of that kind.

Performance injunctions

- (2) The power of the Federal Court of Australia under this Subdivision to grant an injunction requiring an entity to do something may be exercised:
 - (a) if the Court is satisfied that the entity has refused or failed to do that thing—whether or not it appears to the Court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the entity will refuse or fail to do that thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to anyone if the entity refuses or fails to do that act or thing.

290-150 Other powers of the Federal Court unaffected

The powers conferred on the Federal Court of Australia under this Subdivision are in addition to, and not instead of, any other powers of the Court, however conferred.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Subdivision 290-D—Voluntary undertakings

Table of sections

290-200 Voluntary undertakings

290-200 Voluntary undertakings

- (1) The Commissioner may accept a written undertaking given by an entity for the purposes of this section in connection with furthering the objects of this Division.
- (2) The entity may withdraw or vary the undertaking at any time, but only with the consent of the Commissioner.
- (3) If the Commissioner considers that the entity that gave the undertaking has breached any of its terms, the Commissioner may apply to the Federal Court of Australia for an order under subsection (4).
- (4) If the Court is satisfied that the entity has breached a term of the undertaking, the Court may make one or both of the following orders:
 - (a) an order directing the entity to comply with that term of the undertaking;
 - (b) any other order that the Court considers appropriate.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 295-70

Division 295—Miscellaneous civil penalties

Table of Subdivisions

- 295-B Civil penalty for possession of tobacco without relevant documentation

Subdivision 295-B—Civil penalty for possession of tobacco without relevant documentation

Guide to Subdivision 295-B

295-70 What this Subdivision is about

A person is liable to a civil penalty if the person possesses 2 kilograms or more of tobacco and the person:

- (a) does not provide certain documents (such as a tax invoice) indicating how the person obtained the tobacco; or
- (b) has stated that the possession was engaged in on behalf of or at the request of another person, but does not provide information enabling the other person to be identified and located.

However, the person will not be liable to the civil penalty in certain circumstances, such as where:

- (a) the person is an individual, and possesses the tobacco for his or her personal use; or
- (b) the person has reasonable grounds to suspect that excise duty or customs duty has been paid on the tobacco, or excise duty and customs duty is not payable on the tobacco.

Table of sections

- 295-75 Possession of tobacco without relevant documentation etc.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

295-80 Things treated as tobacco

295-75 Possession of tobacco without relevant documentation etc.

- (1) A person contravenes this subsection if:
 - (a) the person possesses a thing; and
 - (b) the thing is tobacco; and
 - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
 - (d) the condition in subsection (2) is satisfied; and
 - (e) the weight of the tobacco equals or exceeds 2 kilograms.
- (2) For the purposes of paragraph (1)(d), the condition in this subsection is satisfied if:
 - (a) the person has not provided any of the following:
 - (i) a *tax invoice indicating how the person obtained the tobacco;
 - (ii) a bill of lading indicating how the person obtained the tobacco;
 - (iii) a customs declaration indicating how the person obtained the tobacco; or
 - (b) the person:
 - (i) has stated that the possession was engaged in on behalf of or at the request of another person; and
 - (ii) has not provided information enabling the other person to be identified and located.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Penalty: 100 penalty units.
- (4) Section 308-510 applies to this section in the same way that it applies to Division 308.
- (5) Subsection (1) does not apply if:
 - (a) the person is an individual; and

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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- (b) the person possesses the tobacco for his or her personal use.
- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises for which there is in force:
 - (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
 - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- (7) Subsection (1) does not apply if:
 - (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
 - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
 - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.
- (8) Subsection (1) does not apply if:
 - (a) the person has permission (within the meaning of the *Excise Act 1901*):
 - (i) to possess the tobacco; or
 - (ii) to move the tobacco; or
 - (b) the tobacco is covered by an authority under section 55 of that Act; or
 - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.
- (9) Subsection (1) does not apply if:
 - (a) any of the following circumstances exist:
 - (i) *excise duty has been paid on the tobacco;
 - (ii) *customs duty has been paid on the tobacco;
 - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
 - (b) the person has reasonable grounds to suspect that any of those circumstances exist.
- (10) If person wishes to rely on subsection (5), (6), (7), (8) or (9) in civil penalty proceedings, the person bears an *evidential burden in relation to that matter.

295-80 Things treated as tobacco

- (1) For the purposes of this Division, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.
- (2) To avoid doubt, for the purposes of this Division:
 - (a) treat tobacco seed, tobacco plant (whether or not in the ground) and tobacco leaf as tobacco; and
 - (b) treat cigars, cigarettes and snuff as tobacco.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 298-5

Division 298—Machinery provisions for penalties

Subdivision 298-A—Administrative penalties

Table of sections

298-5	Scope of Subdivision
298-10	Notification of liability
298-15	Due date for penalty
298-20	Remission of penalty
298-25	General interest charge on unpaid penalty
298-30	Assessment of penalties under Division 284 or section 288-115

298-5 Scope of Subdivision

This Subdivision applies if:

- (a) an administrative penalty is imposed on an entity by another Division in this Part; or
- (b) a penalty is imposed on an entity by Subdivision 162-D of the *GST Act; or
- (c) an administrative penalty is imposed on an entity by a provision of Subdivision 12-H, 14-D or 14-E, Division 16 or section 384-17, 420-5, 426-120 or 426-195 in this Schedule; or
- (d) an administrative penalty is imposed on an entity by section 166 of the *Superannuation Industry (Supervision) Act 1993*.

298-10 Notification of liability

The Commissioner must give written notice to the entity of the entity's liability to pay the penalty and of the reasons why the entity is liable to pay the penalty. The Commissioner is not required to give reasons if he or she decides to remit all of the penalty.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

298-15 Due date for penalty

The penalty becomes due for payment on the day specified in the notice, which must be at least 14 days after the notice is given to the entity.

Note: For provisions about collection and recovery of the penalty, see Part 4-15.

298-20 Remission of penalty

(1) The Commissioner may remit all or a part of the penalty.

(2) If the Commissioner decides:

- (a) not to remit the penalty; or
- (b) to remit only part of the penalty;

the Commissioner must give written notice of the decision and the reasons for the decision to the entity.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

(3) If:

- (a) the Commissioner refuses to any extent to remit an amount of penalty; and
- (b) the amount of penalty payable after the refusal is more than 2 penalty units; and

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(c) the entity is dissatisfied with the decision;
the entity may object against the decision in the manner set out in Part IVC.

298-25 General interest charge on unpaid penalty

If any of the penalty remains unpaid after it is due, the entity is liable to pay the *general interest charge on the unpaid amount of the penalty for each day in the period that:

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

Section 298-30

- (a) started at the beginning of the day by which the amount was due to be paid; and
- (b) finishes at the end of the last day, at the end of which, any of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

Note: The general interest charge is worked out under Part IIA.

298-30 Assessment of penalties under Division 284 or section 288-115

- (1) The Commissioner must make an assessment of the amount of an administrative penalty under Division 284 or section 288-115.
- (2) An entity that is dissatisfied with such an assessment made about the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Subdivision 298-B—Civil penalties

Table of sections

298-80	Application of Subdivision
298-85	Civil evidence and procedure rules for civil penalty orders
298-90	Civil proceedings after criminal proceedings
298-95	Criminal proceedings during civil proceedings
298-100	Criminal proceedings after civil proceedings
298-105	Evidence given in proceedings for penalty not admissible in criminal proceedings
298-110	Civil double jeopardy

298-80 Application of Subdivision

This Subdivision applies for the purposes of the following provisions (the *civil penalty provisions*):

- (a) Division 290 of this Schedule (civil penalties for the promotion and implementation of schemes);

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

- (aa) subsection 295-75(1) in this Schedule (possession of tobacco without relevant documentation);
- (b) Part 5 of the *Tax Agent Services Act 2009* (civil penalties for providing tax agent services while unregistered and for certain conduct when providing tax agent services).

298-85 Civil evidence and procedure rules for civil penalty orders

The Federal Court of Australia must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order under the civil penalty provisions.

298-90 Civil proceedings after criminal proceedings

The Court must not make a civil penalty order under the civil penalty provisions against an entity if the entity has been convicted of an offence constituted by conduct that is substantially the same as the conduct in relation to which the civil penalty order would be made.

298-95 Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order under the civil penalty provisions against an entity are stayed if:
 - (a) criminal proceedings are started or have already been started against the entity for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct in relation to which the civil penalty order would be made.
- (2) The proceedings for the order may be resumed if the entity is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

298-100 Criminal proceedings after civil proceedings

Criminal proceedings may be started against an entity for conduct that is substantially the same as conduct in relation to which a civil

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.

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penalty order under the civil penalty provisions could be made regardless of whether a civil penalty order has been made against the entity.

298-105 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an entity is not admissible in criminal proceedings against the entity if:

- (a) the entity previously gave the evidence or produced the documents in proceedings for a civil penalty order under the civil penalty provisions against the entity (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct in relation to which the civil penalty order was sought.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the entity in the proceedings for the civil penalty order.

298-110 Civil double jeopardy

If an entity is ordered to pay a civil penalty under the civil penalty provisions in respect of particular conduct, the entity is not liable to a civil penalty under some other provision of a *Commonwealth law in respect of that conduct.

*For definition, see section 995-1 of the *Income Tax Assessment Act 1997*.
