



Taxation Laws Amendment Act (No. 3) 2002

No. 97, 2002

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

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
4	Amendment of assessments.....	2
Schedule 1—Goods and services tax		4
Part 1—Supplies in return for rights to develop land		4
<i>A New Tax System (Goods and Services Tax) Act 1999</i>		4
Part 2—Special transitional credits for rental cars		6
<i>A New Tax System (Goods and Services Tax Transition) Act 1999</i>		6
<i>Income Tax Assessment Act 1997</i>		9
Part 3—Income tax-related transactions		10
<i>A New Tax System (Goods and Services Tax) Act 1999</i>		10
Schedule 2—General insurance		12
<i>Income Tax Assessment Act 1936</i>		12
<i>Income Tax Assessment Act 1997</i>		21
Schedule 3—Inter-corporate dividend rebate		24
<i>Income Tax Assessment Act 1936</i>		24



Taxation Laws Amendment Act (No. 3) 2002

No. 97, 2002

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

[Assented to 10 November 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 3) 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	10 November 2002
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent	10 November 2002
3. Schedule 3	The earlier of: (a) the day on which this Act receives the Royal Assent; and (b) immediately before Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2002</i> commences	3 July 2002 (paragraph (b) applies)

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

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the

commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Goods and services tax

Part 1—Supplies in return for rights to develop land

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

1 Section 9-39 (after table item 9)

Insert:

9A	Supplies in return for rights to develop land	Division 82
----	---	-------------

2 Section 37-1 (after table item 30)

Insert:

30A	Supplies in return for rights to develop land	Division 82
-----	---	-------------

3 At the end of subsection 81-5(1)

Add:

Note: Under Division 82, the payment might not be treated as consideration for a supply if it is in return for an Australian government agency supplying a right to develop land.

4 After Division 81

Insert:

Division 82—Supplies in return for rights to develop land

82-1 What this Division is about

GST does not apply to transactions for making supplies (commonly referred to as in kind developer contributions) in return for the supply by an Australian government agency of a right to develop land.
--

82-5 Supplies of rights to develop land do not constitute consideration in certain cases

- (1) The supply, by an *Australian government agency, of a right to develop land is not treated as *consideration for another supply if the other supply complies with requirements imposed by or under an *Australian law.
- (2) It does not matter whether the other supply is made to the *Australian government agency.
- (3) This section has effect despite section 9-15 (which is about consideration).

82-10 Supplies by Australian government agencies of rights to develop land are not for consideration

- (1) The supply, by an *Australian government agency, of a right to develop land is treated as a supply that is not made for *consideration to the extent that it is made in return for another supply that complies with requirements imposed by or under an *Australian law.
- (2) It does not matter whether the other supply is made to the *Australian government agency.
- (3) If the other supply constitutes the payment of an *Australian tax, fee or charge to which subsection 81-5(1) applies, this section overrides subsection 81-5(1) in relation to the payment.
- (4) This section has effect despite section 9-15 (which is about consideration).

5 Section 195-1 (note at the end of the definition of consideration)

After “81-5,”, insert “82-5, 82-10,”.

6 Application

The amendments made by this Part of this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2000.

Part 2—Special transitional credits for rental cars

A New Tax System (Goods and Services Tax Transition) Act 1999

7 After section 19A

Insert:

19B Sales etc. of cars held on 1 July 2000 for the purpose of rental

Entitlement to special credit

- (1) If, in relation to a supply of a car, all of the following conditions are met, the entity referred to in subsection (6) is entitled to a special credit under this section in relation to the supply:
 - (a) the supply takes place, or took place:
 - (i) on or after 1 July 2000; and
 - (ii) before 1 July 2002;
 - (b) the entity held the car at the start of 1 July 2000;
 - (c) the supply is, or was, the first sale of the car on or after 1 July 2000;
 - (d) during the entire period at the start of 1 July 2000 until the entity ceases to hold the car:
 - (i) the entity held the car, for the purposes of supply by way of rental, in the course or furtherance of an enterprise; and
 - (ii) the car was covered by the appropriate compulsory third party insurance under subsection (4);
 - (e) the car has been the subject of sales tax.
- (2) For the purposes of paragraph (1)(c), a sale of the car to the entity at the end of a period during which the entity was the lessee of the car is not treated as a sale of the car.
- (3) For the purposes of subsection (1), a supply of the car to an insurer in settlement of a claim under an insurance policy is treated as a sale of the car.

- (4) For the purposes of subparagraph (1)(d)(ii), the appropriate compulsory third party insurance for the car is:
- (a) in any case—compulsory third party insurance for which the premium was calculated on the basis that the car was for supply by the entity by way of rental in the course or furtherance of the enterprise referred to in subparagraph (1)(d)(i); or
 - (b) if:
 - (i) the car is not required, by the law of the State or Territory in which it is registered, to be covered by compulsory third party insurance of that kind; but
 - (ii) there is another State or Territory in which it would be required to be covered by compulsory third party insurance of that kind if it were registered in that State or Territory;
- the kind of compulsory third party insurance by which the car is required, by the law of the State or Territory in which it is registered, to be covered.
- (5) This section does not apply to a supply in relation to which any entity is entitled to a special credit under section 19A.

Who is entitled to the special credit

- (6) The entity entitled to the special credit is the entity that held the car for supply by way of rental (whether or not the entity made the sale referred to in paragraph (1)(c)).

Amount of the special credit

- (7) The amount of the special credit in relation to the supply is an amount equal to $\frac{1}{11}$ of the price of the supply.
- (8) However, if the car was covered by an eligible short-term lease, the amount of the special credit is an amount equal to:

Original special credit \times (100% – Exempt percentage)

where:

exempt percentage is the exempt percentage specified in an agreement under subsection 15A(2) of the *Sales Tax Assessment*

Act 1992 that was in force on 30 June 2000 and that applies to the eligible short-term lease in question.

original special credit is the amount that would (but for this subsection) be the amount of the special credit.

Special rules for working out the price of the supply

(9) If:

- (a) the entity entitled to the special credit was so entitled as the lessee of the car; and
- (b) the entity is unable to find out the price at which the car was sold;

the price of the supply is taken to be an amount worked out in the way determined in writing by the Commissioner.

(10) If the supply of the car is part of another supply, the price of the supply of the car is an amount equal to the part of the price of the other supply that represents the supply of the car.

(11) If the supply of the car is a supply to an insurer in settlement of a claim under an insurance policy, the price of the supply is taken to be the sum of:

- (a) if the entity entitled to the special credit receives one or more payments from the insurer in settlement of the claim—the amount of the payment, or the sum of the amounts of all of the payments, as the case may be; and
- (b) if the entity entitled to the special credit receives one or more supplies from the insurer in settlement of the claim—the value of the supply, or the total value of all of the supplies, as the case may be.

When the special credit can be claimed

(12) The special credit is treated as though it were an input tax credit attributable to any one tax period of your choice ending:

- (a) on or after the day on which the *Taxation Laws Amendment Act (No. 3) 2002* received the Royal Assent; and
- (b) on or before 7 January 2003, or such later day as the Commissioner determines in writing.

Definitions etc.

(13) In this section:

car has the meaning given by subsection 995-1(1) of the ITAA 1997.

held has the meaning given by subsection 995-1(1) of the ITAA 1997 for the purposes of Division 28 of that Act.

registered: a car is registered in a State or Territory if it is registered, under the law of the State or Territory, to be driven on a public road in the State or Territory.

(14) A reference in this section to a supply of a car by way of rental does not include:

- (a) a supply that involves passengers being transported by or on behalf of the supplier; or
- (b) a supply of a car to an entity that acquires the car for the purposes of supply by way of rental in the course or furtherance of an enterprise.

Income Tax Assessment Act 1997

8 Subsection 17-30(1)

Omit “or 19A” (wherever occurring), substitute “, 19A or 19B”.

Part 3—Income tax-related transactions

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

9 Section 9-39 (after table item 5A)

Insert:

5B Income tax-related transactions Division 110

10 Section 37-1 (after table item 17)

Insert:

17A Income tax-related transactions Division 110

11 After Division 108

Insert:

Division 110—Income tax-related transactions

110-1 What this Division is about

Some transactions that relate to aspects of income tax are outside the GST system.

110-5 Transfers of tax losses and net capital losses

- (1) A supply is not a *taxable supply if the supply is:
 - (a) the transfer of a *tax loss in accordance with Subdivision 170-A of the *ITAA 1997; or
 - (b) the transfer of a *net capital loss in accordance with Subdivision 170-B of the ITAA 1997.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

110-10 Transfers of excess foreign tax credits

- (1) A supply is not a *taxable supply if:
 - (a) the supply is the transfer of an initial excess credit, or an opening excess credit balance, referred to in paragraph 160AFE(1D)(c) of the *ITAA 1936; and
 - (b) the transfer is in accordance with section 160AFE of the ITAA 1936.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

14 Section 195-1

Insert:

net capital loss has the meaning given by subsection 995-1(1) of the *ITAA 1997.

15 Section 195-1 (note at the end of the definition of *taxable supply*)

After “100-5”, insert “, 110-5, 110-10”.

16 Section 195-1

Insert:

tax loss has the meaning given by subsection 995-1(1) of the *ITAA 1997.

19 Application

The amendments made by this Part of this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting (or that started) on or after 1 July 2000.

Schedule 2—General insurance

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

general insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

2 Subsection 6(1)

Insert:

general insurance policy has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Subsection 6(1)

Insert:

insurance business has the same meaning as in the *Insurance Act 1973*.

4 Subsection 6(1)

Insert:

outstanding claims at the end of a year of income under general insurance policies issued by a general insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

5 Subsection 6(1)

Insert:

value of the outstanding claims liability of a general insurance company under general insurance policies has the meaning given by section 321-20 in Schedule 2J.

6 Subsection 6(1)

Insert:

value of the outstanding claims liability of a company for workers' compensation claims has the meaning given by section 323-15 in Schedule 2J.

7 Subsection 6(1)

Insert:

value of the unearned premium reserve of a general insurance company under general insurance policies has the meaning given by section 321-60 in Schedule 2J.

8 Subsection 82KZL(1) (at the end of the definition of *excluded expenditure*)

Add:

- ; or (e) that has been or is incurred after 21 September 1999 by a general insurance company in connection with the issue of a general insurance policy and was related or relates to the gross premiums derived by the company in respect of the policy; or
- (f) that has been or is incurred after 21 September 1999 by a general insurance company in payment of reinsurance premiums in respect of the reinsurance of risks covered by general insurance policies, other than reinsurance premiums that were or are paid in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agrees, in respect of a loss incurred by the company that is covered by the relevant policy, to pay only some or all of the excess over an agreed amount.

9 After Schedule 2H

Insert:

Schedule 2J—General insurance

Division 321—General insurance companies

Table of Subdivisions

Guide to Division 321

321-A Provision for or payment of claims

321-B Premium income

Guide to Division 321

321-1 What this Division is about

This Division deals with several disparate matters relating to the taxation of general insurance companies.

Subdivision 321-A—Provision for or payment of claims

Guide to Subdivision 321-A

321-5 What this Subdivision is about

This Subdivision contains provisions relating to the assessment of general insurance companies in respect of provision for or payment of claims.

Table of sections

Operative provisions

- 321-10 Amount to be included in assessable income for outstanding claims liability
- 321-15 Deduction for outstanding claims liability
- 321-20 How value of outstanding claims liability is worked out
- 321-25 Deduction for claims paid during year of income
- 321-30 Application: insurance business other than reinsurance business
- 321-35 Application: reinsurance business

[This is the end of the Guide]

Operative provisions**321-10 Amount to be included in assessable income for outstanding claims liability**

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability of a general insurance company under general insurance policies is less than the value, at the end of the previous year of income, of that liability, the company's assessable income of the current year of income includes an amount equal to the difference.

321-15 Deduction for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability of a general insurance company under general insurance policies exceeds the value, at the end of the previous year of income, of that liability, the company can deduct for the current year of income an amount equal to the excess.

321-20 How value of outstanding claims liability is worked out

The *value of the outstanding claims liability*, at the end of a year of income, of a general insurance company under general insurance policies issued in the course of carrying on insurance business is:

- (a) the sum of the amounts that, at that time, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:
 - (i) liabilities for outstanding claims under those policies; and
 - (ii) direct settlement costs associated with those outstanding claims;

less

- (b) any part of that sum that at that time the company expects to recover under a policy of reinsurance or in any other way.

321-25 Deduction for claims paid during year of income

A general insurance company can deduct amounts paid during the year of income in respect of claims under general insurance policies.

321-30 Application: insurance business other than reinsurance business

- (1) Subject to this section, this Subdivision applies, and is taken to have applied, to assessments in respect of insurance business other than reinsurance business, for the 1991-92 year of income and all later years of income.
- (2) In determining whether an amount is to be included under section 321-10 in a general insurance company's assessable income for the 1991-92 year of income in respect of insurance business other than reinsurance business, the value of the company's outstanding claims liability under general insurance policies (other than policies of reinsurance) at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.
- (3) In determining whether a general insurance company can deduct an amount under section 321-15 for the 1991-92 year of income in respect of insurance business other than reinsurance business, the value of the company's outstanding claims liability under general insurance policies (other than policies of reinsurance) at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.

321-35 Application: reinsurance business

- (1) Subject to this section, this Subdivision applies, and is taken to have applied, to assessments in respect of reinsurance business for the 1995-96 year of income and all later years of income.
- (2) In determining whether an amount is to be included under section 321-10 in a general insurance company's assessable income for the 1995-96 year of income in respect of reinsurance business, the value of the company's outstanding claims liability

under general insurance policies that are policies of reinsurance at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.

- (3) In determining whether a general insurance company can deduct an amount under section 321-15 for the 1995-96 year of income, the value of the company's outstanding claims liability under general insurance policies that are policies of reinsurance at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.

Subdivision 321-B—Premium income

Guide to Subdivision 321-B

321-40 What this Subdivision is about

This Subdivision contains provisions relating to the assessment of general insurance companies in respect of premium income.

Table of sections

Operative provisions

- 321-45 Assessable income to include gross premiums
- 321-50 Amount to be included in assessable income for reduction in value of unearned premium reserve
- 321-55 Deduction for increase in value of unearned premium reserve
- 321-60 How value of unearned premium reserve is worked out
- 321-65 Application

[This is the end of the Guide]

Operative provisions

321-45 Assessable income to include gross premiums

The assessable income of a general insurance company for a year of income includes the gross premiums received or receivable by

the company during the year of income in respect of general insurance policies.

321-50 Amount to be included in assessable income for reduction in value of unearned premium reserve

If the value, at the end of a year of income (the *current year of income*), of the unearned premium reserve of a general insurance company under general insurance policies is less than the value, at the end of the previous year of income, of that reserve, the company's assessable income of the current year of income includes an amount equal to the difference.

321-55 Deduction for increase in value of unearned premium reserve

If the value, at the end of a year of income (the *current year of income*), of the unearned premium reserve of a general insurance company under general insurance policies exceeds the value, at the end of the previous year of income, of that reserve, the company can deduct for the current year of income an amount equal to the excess.

321-60 How value of unearned premium reserve is worked out

The *value of the unearned premium reserve*, at the end of a year of income (the *current year of income*), of a general insurance company under general insurance policies issued in the course of carrying on insurance business is so much of the sum of the net premiums received or receivable by the company in relation to those policies as the company determines, based on proper and reasonable estimates, to relate to risks covered by the policies in respect of later years of income where:

apportionable issue costs means so much of the costs incurred by the company in connection with the issue of the relevant policies as relate to the gross premiums and, without limiting the generality of the above, includes the following:

- (a) commission and brokerage fees;
- (b) administration costs of processing insurance proposals and renewals;
- (c) administration costs of collecting premiums;

- (d) selling and underwriting costs;
- (e) fire brigade charges;
- (f) stamp duty;
- (g) other charges, levies and contributions imposed by governments or governmental authorities that directly relate to general insurance policies.

net premiums means:

- (a) the sum of:
 - (i) the gross premiums received or receivable by the company in relation to the relevant policies in the current year of income or an earlier year of income; and
 - (ii) any reinsurance commissions received or receivable by the company that relate to relevant reinsurance premiums;

less

- (b) the sum of:
 - (i) the apportionable issue costs; and
 - (ii) any relevant reinsurance premiums.

relevant reinsurance premiums means premiums paid by the company in the current year of income or an earlier year of income for the reinsurance of risks covered by the relevant policies, other than:

- (a) reinsurance premiums that the company cannot deduct because of the application of subsection 148(1); and
- (b) treaty non-proportional reinsurance premiums.

treaty non-proportional reinsurance premiums means reinsurance premiums that were paid in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agreed to pay, in respect of a loss incurred by the company that is covered by the relevant policy, some or all of the excess over an agreed amount.

321-65 Application

This Subdivision applies to assessments for the 1999-2000 year of income and all subsequent years of income.

Division 323—Companies that are not required by law to insure in respect of workers' compensation liabilities

Guide to Division 323

323-1 What this Division is about

This Division deals with provision for and payment of outstanding claims for workers' compensation liabilities against companies that are not required by law to insure, and do not insure, in respect of such liabilities.

Table of sections

Operative provisions

323-5	Amount to be included in assessable income for outstanding claims liability
323-10	Deduction for outstanding claims liability
323-15	How value of outstanding claims liability is worked out
323-20	Deductions for claims paid during year of income
323-25	Application

[This is the end of the Guide]

Operative provisions

323-5 Amount to be included in assessable income for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability for workers' compensation claims of a company that is not required by law to insure, and does not insure, against liability for such claims is less than the value, at the end of the previous year of income, of that liability, the company's assessable income of the current year of income includes an amount equal to the difference.

323-10 Deduction for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability for workers' compensation claims of a company that is not required by law to insure, and does not insure, against liability for such claims exceeds the value, at the end of the previous year of income, of that liability, the company can deduct for the current year of income an amount equal to the excess.

323-15 How value of outstanding claims liability is worked out

The *value of the outstanding claims liability*, at the end of a year of income, of a company for workers' compensation claims is the sum of the amounts that, at that time, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

- (a) liabilities for those claims; and
- (b) direct settlement costs associated with those claims.

323-20 Deductions for claims paid during year of income

A company that is not required by law to insure, and does not insure, against liability for workers' compensation claims can deduct amounts paid during the year of income in respect of such claims.

323-25 Application

This Division applies, and is taken to have applied, to assessments for the 1996-97 year of income and all later years of income.

Income Tax Assessment Act 1997

9A Section 10-5 (after table item headed "franked dividends")

Insert:	
general insurance	
gross premiums	321-45 of Schedule 2J

reduction in value of outstanding claims liability	321-10 and 323-5 of Schedule 2J
reduction in value of unearned premium reserve	321-50 of Schedule 2J

9B Section 12-5 (after table item headed “fringe benefits”)

Insert:

general insurance

claims paid	321-25 and 323-20 of Schedule 2J
increase in value of outstanding claims liability	321-15 and 323-10 of Schedule 2J
increase in value of unearned premium reserve	321-55 of Schedule 2J

10 Subsection 995-1(1)

Insert:

general insurance company means a body corporate that carries on *insurance business.

11 Subsection 995-1(1)

Insert:

insurance business has the same meaning as in the *Insurance Act 1973*.

12 Subsection 995-1(1)

Insert:

outstanding claims at the end of an income year (the *current income year*) under *general insurance policies means claims under the policies that:

- (a) the *general insurance company concerned is liable to pay; and
- (b) arose from insured events that occurred in the current income year or an earlier income year; and

(c) were not paid in full before the end of the current income year.

Schedule 3—Inter-corporate dividend rebate

Income Tax Assessment Act 1936

1 Subsection 46F(3)

Repeal the subsection, substitute:

(3) Subsection (2) does not apply if:

- (a) the shareholder is a group company in relation to the company paying the dividend in relation to the year of income in which the dividend is paid; or
- (b) were the tests in section 160AFE for working out relationships between companies to apply to a particular time rather than in relation to a year of income—the shareholder would have been a group company in relation to the company paying the dividend at all times during the period of 12 months ending on the day on which the dividend was paid.

2 Application

The amendment made by this Schedule applies to dividends paid on or after 1 July 2000.

*[Minister's second reading speech made in—
House of Representatives on 21 March 2002
Senate on 15 October 2002]*

(94/02)
