



# **Tax Laws Amendment (2009 Measures No. 1) Act 2009**

**No. 27, 2009**

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

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



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# **Tax Laws Amendment (2009 Measures No. 1) Act 2009**

**No. 27, 2009**

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

[Assented to 26 March 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 March 2009
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	26 March 2009
3. Schedule 1, Part 2	1 July 2013.	1 July 2013
4. Schedule 1, Part 3	The day on which this Act receives the Royal Assent.	26 March 2009
5. Schedules 2 and 3	The day after this Act receives the Royal Assent.	27 March 2009

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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—PAYG instalment reduction for small businesses etc.**

### **Part 1—Main amendments**

#### *Taxation Administration Act 1953*

##### **1 Before subsection 45-400(1) in Schedule 1**

Insert:

*Scope*

##### **2 Before subsection 45-400(2) in Schedule 1**

Insert:

*Working out amount of instalment*

##### **3 At the end of section 45-400 in Schedule 1**

Add:

*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.

*December 2008 reduction for small business entities*

- (6) If 31 December 2008 occurs in an \*instalment quarter in an income year, the amount worked out in accordance with the table in subsection (2) for the instalment quarter is reduced by 20% if you are:
- (a) a \*small business entity for the 2007-08 or 2008-09 income year; or
  - (b) a partner of a partnership that is a small business entity for the 2007-08 or 2008-09 income year; or
  - (c) a beneficiary of a trust that is a small business entity for the 2007-08 or 2008-09 income year.
- (7) In working out, under subsection (2), the amount of your instalment for a later \*instalment quarter in the income year, assume that the reduction under subsection (6) had not happened.



## **Part 2—Sunsetting on 1 July 2013**

### *Taxation Administration Act 1953*

#### **4 Subsections 45-400(6) and (7) in Schedule 1**

Repeal the subsections.

## **Part 3—Application**

### **5 Application**

The amendments made by Part 1 of this Schedule apply in relation to instalment quarters in:

- (a) the 2007-08 income year; and
- (b) later income years.

## **Schedule 2—Unclaimed superannuation money**

### **Part 1—Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999**

#### **1 Section 7 (simplified outline)**

Omit “At the end of each half-year”, substitute “At the times determined by the Commissioner”.

#### **2 Section 7 (simplified outline)**

Omit “On request by a person entitled to receive that money, the Commissioner must pay it to that person.”, substitute “If the Commissioner is satisfied he or she has received such a payment in respect of a person, the Commissioner must pay the amount he or she has received to the person, to a fund identified by the person or, if the person has died, to the person’s death beneficiaries or legal personal representative.”.

#### **3 Section 7 (simplified outline)**

Omit:

*Superannuation of persons who used to hold temporary visas*

The Commissioner of Taxation must give the superannuation provider for a fund a notice identifying a member of the fund if satisfied that the member used to be the holder of a temporary visa, has left Australia and is not an Australian or New Zealand citizen or the holder of a visa.

substitute:

*Superannuation of former temporary residents*

The Commissioner of Taxation must give the superannuation provider for a fund a notice identifying a member of the fund if satisfied that the member is a former temporary resident.

**Schedule 2** Unclaimed superannuation money

**Part 1** Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999

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**4 Section 7 (simplified outline)**

After “if the member has died, to the member’s”, insert “death beneficiaries or”.

**5 Section 7 (simplified outline)**

After:

If the Commissioner is satisfied he or she has received a payment under this Act for such a member, the Commissioner must pay the amount he or she has received (and interest, in some cases) to the member, to a fund identified by the member or, if the member has died, to the member’s legal personal representative.

insert:

The Commissioner of Taxation may publish, or make available, details relating to amounts paid to the Commissioner in respect of such members.

**6 Section 8**

Insert:

*former temporary resident* has the meaning given by section 20AA.

**7 Section 8 (definition of *scheduled statement day*)**

Repeal the definition, substitute:

*scheduled statement day* has the meaning given by:

- (a) in relation to a statement required by Part 3—section 15A;  
and
- (b) in relation to a statement required by Part 3A—section 20B.

**8 Section 8**

Insert:

*unclaimed money day* has the meaning given by section 15A.

**9 Before section 11**

Insert:

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## **Division 1—Preliminary**

### **10 Subsection 13(1)**

Omit “in relation to a fund”, substitute “for a fund”.

### **11 After section 15**

Insert:

### **15A Setting dates for statements and payments**

The Commissioner may, by legislative instrument, specify:

- (a) days as being *unclaimed money days* for the purposes of this Part; and
- (b) for each unclaimed money day—a day (the *scheduled statement day*) by the end of which a statement required by this Part, in relation to the unclaimed money day, is to be given to the Commissioner.

## **Division 2—Statement of unclaimed money**

### **12 Subsections 16(1) to (6)**

Repeal the subsections, substitute:

*Superannuation provider must give statement to Commissioner*

- (1) A superannuation provider must, for each unclaimed money day, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:
  - (a) all unclaimed money as at the end of the day;
  - (b) the administration of any of the following in connection with the unclaimed money:
    - (i) this Part;
    - (ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;
    - (iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

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- Note 1: Subsection (1) does not apply if the superannuation provider gives a statement, and makes a payment, to a State or Territory authority as provided for in section 18 (State or Territory public sector superannuation schemes).
- Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement required under subsection (1) includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act and Division 284 in Schedule 1 to that Act.
- Note 3: The approved form may also require the statement to include certain tax file numbers: see subsection 25(1) of this Act.

(1A) If, at the end of the unclaimed money day, there is no unclaimed money, the statement must say so.

Note: If the fund is a regulated superannuation fund that has fewer than 5 members, see subsection (2A).

- (2) The statement must also contain information, required by the form, relevant to any of the unclaimed money that, between the unclaimed money day and the day on which the statement is given to the Commissioner:
- (a) the superannuation provider pays to a person who is entitled to it; or
  - (b) otherwise ceases to be unclaimed money (other than because the provider pays the money to the Commissioner under subsection 17(1)).

(2A) Subsection (1) does not apply if, at the end of the unclaimed money day:

- (a) the fund is a regulated superannuation fund that has fewer than 5 members; and
- (b) there is no unclaimed money.

*When statement must be given*

(3) The superannuation provider must give the Commissioner the statement by the end of the scheduled statement day for the unclaimed money day.

Note 1: The Commissioner may defer the time for giving the statement: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

### **13 Subsection 16(7)**

Omit “Subsection (1)”, substitute “This section”.

Note: The following heading to subsection 16(7) is inserted “*Certain former temporary residents*”.

### **14 Subsection 16(7) (note)**

Omit “holders of temporary visas”, substitute “temporary residents”.

### **15 After section 16**

Insert:

### **16A Error or omission in statement**

#### *Scope*

- (1) This section applies if:
- (a) a superannuation provider gives the Commissioner a statement under section 16; and
  - (b) the superannuation provider becomes aware of a material error, or material omission, in any information in the statement.

#### *Superannuation provider must give information*

- (2) The superannuation provider must, in the approved form, give the Commissioner the corrected or omitted information.
- (3) Information required by subsection (2) must be given no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

## **Division 3—Payment of unclaimed money**

### **16 Subsections 17(1) and (2)**

Repeal the subsections, substitute:

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*Provider must pay Commissioner*

- (1) A superannuation provider must pay the Commissioner (for the Commonwealth) the amount, in relation to each unclaimed money day, worked out under subsection (1A). The amount is due and payable at the end of the scheduled statement day for the unclaimed money day.

Note 1: Subsection (1) does not apply if the superannuation provider gives a statement, and makes a payment, to a State or Territory authority as provided for in section 18 (State or Territory public sector superannuation schemes).

Note 2: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 3: The Commissioner may defer the time at which the amount is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 4: Section 18A provides for refunds of overpayments by the superannuation provider to the Commissioner.

- (1A) Work out the amount using the following formula:

All unclaimed money as at the  
end of the unclaimed money day – Former unclaimed money

where:

***former unclaimed money*** means any of the unclaimed money that, between the unclaimed money day and the day on which the superannuation provider gives the statement in relation to the unclaimed money day to the Commissioner under subsection 16(1):

- (a) the superannuation provider pays to a person who is entitled to it; or
  - (b) otherwise ceases to be unclaimed money (other than because the provider pays the money to the Commissioner under subsection (1)).
- (1B) Subsection (1) does not require the superannuation provider to pay the Commissioner an amount on account of unclaimed money described in subsection 12(1) payable to a person identified in a notice the Commissioner has given the provider under section 20C.



Note: Such money is payable to the Commissioner under section 20F.

*Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner*

- (1C) Subsections (2) and (2AA) apply in relation to a person if:
- (a) a superannuation provider paid unclaimed money to the Commissioner under subsection (1) in respect of the person; and
  - (b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the unclaimed money in accordance with subsection (2).
- (2) The Commissioner must pay the unclaimed money:
- (a) to a single fund if:
    - (i) the person has not died; and
    - (ii) the person directs the Commissioner to pay to the fund; and
    - (iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (b) in accordance with subsection (2AA) if:
    - (i) the person has died; and
    - (ii) the Commissioner is satisfied that, if the superannuation provider had not paid the unclaimed money to the Commissioner, the provider would have been required to pay an amount or amounts (*death benefits*) to one or more other persons (*death beneficiaries*) because of the deceased person's death; or
  - (c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or
  - (d) in any other case—to the person.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (2AA) In a case covered by paragraph (2)(b), the Commissioner must pay the unclaimed money under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

$$\text{Amount of unclaimed money payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

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Note: If there is only one death beneficiary, the whole of the unclaimed money is payable to that beneficiary.

Note: The heading to section 17 is altered by omitting “to Commissioner”.

**17 Subsection 17(2A)**

Omit “Subsection (2) does”, substitute “Subsections (1C) to (2AA) do”.

**18 Subsections 17(3), (5) and (6)**

Repeal the subsections.

**19 After section 17**

Insert:

**17A Payments of unclaimed money—late payments**

*General interest charge on late payment*

- (1) If any of the amount a superannuation provider must pay under subsection 17(1) remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the time it is due and payable; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid when it is due and payable;
    - (ii) general interest charge on any of the amount.

*Offence of failing to make payment to Commissioner*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection 17(1); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct breaches the requirement.

Penalty for an offence against subsection (2): 100 penalty units.

**Division 4—Various rules for special cases**

**20 Subsections 18(2) and (3)**

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Repeal the subsections, substitute:

- (2) The superannuation provider does not have to comply with subsection 16(1) or 17(1) in relation to an unclaimed money day if the provider, in accordance with that law of a State or Territory:
  - (a) gives to a State or Territory authority a statement that complies with items 1 and 2 of the table in subsection (4) in relation to the first half year that ends on or after the unclaimed money day; and
  - (b) pays the amount worked out under item 3 of that table to the State or Territory authority.

**21 Subsection 18(4) (at the end of table item 3, column headed “Effect of provision”)**

Add “, as in force just before the commencement of Schedule 5 to the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*”.

**22 Subsection 18(5)**

Omit “provisions corresponding to the provisions, and with the effects, set out in the following table:”, substitute:

provisions:

- (a) corresponding to the provisions of this Act, as in force just before the commencement of Schedule 5 to the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*, set out in the following table; and
- (b) with the effects set out in the table:

**23 After section 18**

Insert:

**18A Refund of overpayment made by superannuation provider**

- (1) This section applies if:
  - (a) a superannuation provider for a fund (the *first fund*) has made a payment under subsection 17(1) in respect of a person; and
  - (b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that subsection in respect of the person.

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- (2) The Commissioner must pay the excess:
- (a) to the superannuation provider; or
  - (b) to a superannuation provider for another fund if the Commissioner is satisfied that:
    - (i) the first fund no longer exists; and
    - (ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

**18B Commissioner may recover overpayment**

- (1) This section applies if:
- (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  - (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person.
- (2) The Commissioner may recover all or part of the excess from a person (the *debtor*) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.
- (3) The persons from whom the Commissioner may recover are as follows:
- (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);
  - (b) the superannuation provider for the fund to which the payment was made;
  - (c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.
- (4) The conditions for recovery are that:
- (a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and
  - (b) at least 28 days have passed since the notice was given; and

- (c) the amount recovered is not more than the amount specified in the notice.
- (5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.
- (6) The Commissioner may revoke a notice described in paragraph (4)(a).
- (7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.
- (8) A notice described in paragraph (4)(a) is not a legislative instrument.

### **18C Superannuation provider to return payment from Commissioner that cannot be credited**

#### *Scope*

- (1) This section applies if:
  - (a) a payment (the **Commissioner's payment**) is made to a fund under subsection 17(2) in accordance with a person's direction; and
  - (b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the **repayment time**) that is the end of the 28th day after the day on which the Commissioner's payment was made.

#### *Repayment*

- (2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

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- (3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

*General interest charge*

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the repayment time; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid at the repayment time;
    - (ii) general interest charge on any of the amount.

## **Part 3AA—Register of unclaimed money**

### **24 Paragraph 19(1)(a)**

Omit "this Part", substitute "Part 3".

### **25 Paragraph 19(1)(b)**

Omit "member", substitute "person".

### **26 At the end of subsection 19(1)**

Add:

- ; and (c) amounts paid to the Commissioner under section 20F (unclaimed superannuation of former temporary residents); and
- (d) each person in respect of whom there is an amount referred to in paragraph (c) of this subsection.

### **27 Section 20A (simplified outline)**

Omit:

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The Commissioner must give the superannuation provider for a fund a notice if the Commissioner is satisfied that:

- (a) a person who used to be the holder of a temporary visa has a superannuation interest in the fund; and
- (b) at least 6 months have passed since the person ceased to hold the visa and left Australia; and
- (c) the person does not hold a visa and is not a citizen.

substitute:

The Commissioner must give the superannuation provider for a fund a notice if the Commissioner is satisfied that a former temporary resident has a superannuation interest in the fund.

## 28 After section 20A

Insert:

### 20AA Meaning of *former temporary resident*

(1) In this Act:

***former temporary resident***: a person is a ***former temporary resident*** if:

- (a) before, on or after the commencement of this section, the person:
  - (i) was, under the *Migration Act 1958*, the holder of a temporary visa, except a visa prescribed under subsection (2) of this section, that has ceased to be in effect; and
  - (ii) left Australia after starting to be the holder of the visa (whether the visa ceased to be in effect before, when or after the person left); and
- (b) at least 6 months have passed since the later of the following events (or either of them if they occurred at the same time):
  - (i) the visa ceased to be in effect;
  - (ii) the person left Australia; and
- (c) the person:

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- (i) is not, under that Act, the holder of a temporary visa or permanent visa; and
  - (ii) is neither an Australian citizen nor a New Zealand citizen; and
  - (iii) has not made a valid application for a permanent visa that has not been finally determined under that Act.
- (2) The regulations may prescribe a visa for the purposes of subparagraph (a)(i) of the definition of *former temporary resident* in subsection (1).

Note: The regulations may prescribe a visa by reference to a class of visas: see subsection 13(3) of the *Legislative Instruments Act 2003*.

**29 Paragraphs 20C(1)(b) to (d)**

Repeal the paragraphs, substitute:

- (b) the person is a former temporary resident.

**30 Subparagraph 20E(1)(b)(iii)**

After “the *Income Tax Assessment Act 1997*,” insert “Part 3AA of this Act,”.

**31 Paragraph 20L(1)(a)**

Omit “section 20H”, substitute “this Part”.

**32 Paragraph 20L(1)(b)**

Omit “that section”, substitute “this Part”.

**33 Subsection 23(1) (note)**

After “Note”, insert “1”.

**34 At the end of subsection 23(1)**

Add:

Note 2: The *Taxation Administration Act 1953* provides for offences if the statement includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act.

Note 3: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

**35 Subsection 23(5)**

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Repeal the subsection.

**36 Before paragraph 25(1)(a)**

Insert:

(aa) the superannuation provider; and

**37 Subsection 26(2)**

Omit “approved form”, substitute “form approved by a State or Territory authority”.

**38 Section 32 (note 1)**

Omit “, 37”.

**39 Section 37**

Repeal the section.

**40 At the end of subsection 46(4)**

Add:

Note 3: See also section 288-35 in Schedule 1 to the *Taxation Administration Act 1953*.

**41 At the end of subsection 48(5)**

Add:

Note 4: See also sections 8L, 8M, 8Q, 8R, 8T and 8V of the *Taxation Administration Act 1953* and section 288-25 in Schedule 1 to that Act.

## Part 2—Other amendments

### *Financial Transaction Reports Act 1988*

#### **42 Paragraph 18(4B)(ca)**

Omit “section 17 or 18”, substitute “Part 3 or 3A”.

### *Income Tax Assessment Act 1997*

#### **43 At the end of Subdivision 301-C**

Add:

### **Miscellaneous**

#### **301-125 Unclaimed money payments by the Commissioner**

For the purposes of this Subdivision, treat a \*superannuation lump sum paid by the Commissioner under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* as if it were paid from a \*superannuation plan.

#### **44 Paragraph 306-15(1)(d)**

Omit “for the \*superannuation plan”, substitute “, for the superannuation plan from which the benefit is paid,”.

#### **45 At the end of subsection 306-15(1)**

Add:

Note: To work out your untaxed plan cap amount in relation to an unclaimed money payment from the Commissioner, see subsection 307-350(2B).

#### **46 Subsection 307-5(1) (table item 5, column 2)**

Omit “section 17 or 18”, substitute “subsection 17(1) or (2), section 18”.

#### **47 Subsection 307-5(1) (table item 5, column 3)**

Omit “section 17, 18”, substitute “subsection 17(1) or (2) or section 18”.

#### **48 Paragraph 307-120(2)(e)**

After “payment under”, insert “subsection 17(2) or”.

#### **49 Section 307-142**

Repeal the section, substitute:

#### **307-142 Components of certain unclaimed money payments**

##### *Preliminary*

- (1) This section explains how to work out the \*tax free component, and the \*taxable component, of a \*superannuation benefit that is a payment by the Commissioner under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of a person.

##### *Tax free component*

- (2) Work out the \*tax free component as follows:

##### *Method statement*

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the \*superannuation benefit is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under section 20H of that Act may be attributable to more than one unclaimed amount.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The \*tax free component of the \*superannuation benefit consists of so much of the superannuation benefit as is attributable to the amount set out in column 3 of the table

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for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

<b>Tax free component</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Tax free component of claimed equivalent</b>
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the total of the components, of that eligible termination payment, referred to in subsection 307-225(2) of this Act
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i> )	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the taxable component includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the taxable component includes so much of the superannuation benefit as is attributable to such interest.

*Taxable component*

- (4) The \*taxable component is so much (if any) of the \*superannuation benefit as is not the \*tax free component.

**50 At the end of subsection 307-145(1)**

Add:

Note: This section does not apply to an unclaimed money payment.

**51 Section 307-300**

Repeal the section, substitute:

**307-300 Certain unclaimed money payments**

*Preliminary*

- (1) This section explains how to work out the \*element taxed in the fund, and the \*element untaxed in the fund, of the \*taxable component of a \*superannuation benefit that is a payment by the Commissioner under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

*Element taxed in the fund*

- (2) Work out the *element taxed in the fund* as follows:

*Method statement*

Step 1. Work out the amount (the *unclaimed amount*) (or amounts), set out in column 1 of the table in subsection (3), to which the \*taxable component is attributable.

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Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under section 20H of that Act may be attributable to more than one unclaimed amount.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The ***element taxed in the fund*** of the \*taxable component consists of so much of the taxable component as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

<b>Element taxed in the fund</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Taxed element of claimed equivalent</b>
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the taxed element of the post-June 83 component of that eligible termination payment under Subdivision AA of Division 2 of Part III of the <i>Income Tax Assessment Act 1936</i> , as in force just before

<b>Element taxed in the fund</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Unclaimed amount</b>	<b>Claimed equivalent</b>	<b>Taxed element of claimed equivalent</b>
			1 July 2007
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i> )	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the element untaxed in the fund includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the element untaxed in the fund of the taxable component includes so much of the superannuation benefit as is attributable to such interest.

*Element untaxed in the fund*

- (4) The *element untaxed in the fund* of the \*taxable component is so much (if any) of the taxable component as is not the element taxed in the fund.

**52 After subsection 307-350(2A)**

Insert:

- (2B) For the purposes of the application of this section in relation to \*superannuation lump sums paid by the Commissioner under subsection 17(2) and section 20H of the *Superannuation*

*(Unclaimed Money and Lost Members) Act 1999*, treat all such lump sums as if they were paid from a single \*superannuation plan.

### ***Small Superannuation Accounts Act 1995***

#### **53 Section 4**

Insert:

*leave Australia* has the same meaning as in the *Migration Act 1958*.

#### **54 Section 14 (simplified outline)**

Omit:

*Permanent departure from Australia*

- The balance of the amount standing to the credit of an individual's account may be debited from the Special Account if:
  - (a) the individual was the holder of an eligible temporary residents visa that has expired or been cancelled; and
  - (b) the individual has permanently departed from Australia.

substitute:

*Former temporary resident*

- The balance of the amount standing to the credit of an individual's account may be debited from the Special Account if the individual is a former temporary resident.

#### **55 Section 62 (simplified outline)**

Omit:

- The balance of an individual's account may be withdrawn if:



- |   |
|---|
| <p>(a) the individual was the holder of an eligible temporary residents visa that has expired or been cancelled; and</p> <p>(b) the individual has permanently departed from Australia.</p> |
|---|

substitute:

- |   |
|---|
| <ul style="list-style-type: none"><li>• The balance of an individual's account may be withdrawn if the individual is a former temporary resident.</li></ul> |
|---|

### **56 Paragraph 67A(1)(b)**

Repeal the paragraph, substitute:

- (b) the individual satisfies the Commissioner of Taxation that before, on or after the commencement of this section, the individual:
- (i) was, under the *Migration Act 1958*, the holder of a temporary visa that has ceased to be in effect; and
  - (ii) left Australia after starting to be the holder of the visa (whether the visa ceased to be in effect before, when or after the person left); and
- (c) the individual satisfies the Commissioner of Taxation that the individual:
- (i) is not, under the *Migration Act 1958*, the holder of a permanent visa; and
  - (ii) is neither an Australian citizen nor a New Zealand citizen.

Note: The heading to section 67A is altered by omitting “**permanent departure from Australia**” and substituting “**former temporary resident**”.

### **57 Subsection 67A(6)**

Repeal the subsection.

## ***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

### **58 Paragraph 6(1)(f)**

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Repeal the paragraph, substitute:

(f) the person:

- (i) is not the holder of a temporary visa under the *Migration Act 1958* at any time in the income year; or
- (ii) at all times when he or she holds such a temporary visa during the income year, is a New Zealand citizen or the holder of a visa prescribed for the purposes of subsection 20AA(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**59 Section 56 (definition of *eligible temporary resident visa*)**

Repeal the definition.

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

**60 Subsection 65(1)**

After “section”, insert “65AA,”.

**61 After section 65**

Insert:

**65AA Shortfall component and former temporary resident**

- (1) This section applies if the employee is a former temporary resident (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*).
- (2) The Commissioner must treat the amount of the shortfall component as if it had been paid to the Commissioner by a superannuation provider in respect of the employee under section 20F of that Act.

**62 Section 65A**

Omit “The Commissioner must”, substitute “Except in a case covered by section 65AA, the Commissioner must”.

**63 Sections 66 and 67**

Omit “If”, substitute “Except in a case covered by section 65AA, if”.

***Taxation Administration Act 1953***

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**64 Subsection 8AAB(5) (after table item 13A)**

Insert:

13AA	17A	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
13AB	18C	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>

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**65 Subsection 15-10(2) in Schedule 1**

After “12-FA,”, insert “12-FAA,”.

**66 Subsection 250-10(2) in Schedule 1 (after table item 67)**

Insert:

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>

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## Part 3—Application, transitional and saving provisions

### 67 Unclaimed money days

- (1) An unclaimed money day, specified by the Commissioner under paragraph 15A(a) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, must be a day that occurs on or after 1 July 2009.
- (2) Despite the amendments of sections 16, 17 and 18 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* made by this Schedule, those sections, as in force just before the commencement of this Schedule, continue to apply, from that commencement, in relation to half-years ending before 1 July 2009.

### 68 Errors or omissions in statements

Section 16A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, as inserted by this Schedule, does not apply in relation to statements given to the Commissioner under section 16 of that Act as in force just before the commencement of this Schedule.

### 69 Payments made before commencement

- (1) To avoid doubt, a reference in a law of the Commonwealth to a payment made under subsection 17(1) or (2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* includes a reference to a payment made under that subsection as in force before the commencement of this Schedule.
- (2) However, sections 17A, 18A, 18B and 18C of that Act, as inserted by this Schedule, do not apply in relation to such a payment.

### 70 Saving—regulations

- (1) If, just before the commencement of this Schedule, regulations made for the purposes of subparagraph 20C(1)(b)(i) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* were in force, the regulations have effect, from that commencement, as if they had been made for the purposes of subsection 20AA(2) of that Act, as inserted by this Schedule.

- (2) If, just before the commencement of this Schedule, regulations made for the purposes of paragraph 20L(4)(a) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* were in force, the regulations have effect, from that commencement, as if they had also been made for the purposes of paragraph 18B(4)(a) of that Act, as inserted by this Schedule.

**71 Application—the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

The amendment of section 6 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* made by this Schedule applies in relation to:

- (a) the 2009-10 income year; and
- (b) later income years.

## Schedule 3—Reforms to income tests

### Part 1—Key concepts

#### *Income Tax Assessment Act 1936*

##### 1 Subsection 6(1)

Insert:

*adjusted fringe benefits total* of a taxpayer for a year of income is the amount worked out using the formula:

$$\text{Taxpayer's reportable fringe benefits total} \times \left(1 - \text{FBT rate}\right)$$

where:

**FBT rate** is the rate of tax set by the *Fringe Benefits Tax Act 1986* for the FBT year (as defined in the *Fringe Benefits Tax Assessment Act 1986*) beginning on the 1 April just before the start of the year of income.

##### 2 Subsection 6(1)

Insert:

*rebate income* of an individual for a year of income is the sum of:

- (a) the individual's taxable income for the year of income; and
- (b) the individual's reportable superannuation contributions for the year of income; and
- (c) the individual's total net investment loss for the year of income; and
- (d) the individual's adjusted fringe benefits total for the year of income.

##### 3 Subsection 6(1) (definition of *reportable fringe benefits total*)

Repeal the definition, substitute:

*reportable fringe benefits total* has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

#### **4 Subsection 6(1)**

Insert:

*reportable superannuation contributions* has the same meaning as in the *Income Tax Assessment Act 1997*.

#### **5 Subsection 6(1)**

Insert:

*total net investment loss* has the same meaning as in the *Income Tax Assessment Act 1997*.

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

#### **6 Subsection 995-1(1)**

Insert:

*financial investment* includes the following:

- (a) a \*share in a company;
- (b) an interest in a managed investment scheme (within the meaning of the *Corporations Act 2001*);
- (c) a \*forestry interest in a \*forestry managed investment scheme;
- (d) a right or option in respect of an investment referred to in paragraph (a), (b) or (c);
- (e) an investment of a like nature to any of those referred to in paragraphs (a) to (d).

#### **7 Subsection 995-1(1)**

Insert:

*income for surcharge purposes*, for a person and an income year, means the sum of the following:

- (a) the person's taxable income for the income year (disregarding subsection 271-105(1) of Schedule 2F to the *Income Tax Assessment Act 1936*);
- (b) the person's \*reportable fringe benefits total (if any) for the income year;
- (c) the person's \*reportable superannuation contributions for the income year;

(d) the person's \*total net investment loss for the income year; less the amount mentioned in subsection 301-20(3) for the person for the income year if the person is entitled to a tax offset under subsection 301-20(2) for the income year.

### 8 Subsection 995-1(1)

Insert:

*reportable employer superannuation contribution* has the meaning given by section 16-182 in Schedule 1 to the *Taxation Administration Act 1953*.

### 9 Subsection 995-1(1)

Insert:

*reportable superannuation contributions*, for an individual and an income year, means the sum of:

- (a) the individual's \*reportable employer superannuation contributions (if any) for the income year; and
- (b) the individual's deductions (if any) under Subdivision 290-C for the income year.

### 10 Subsection 995-1(1)

Insert:

*total net investment loss* of an individual for an income year means the sum of:

- (a) the amount (if any) by which the individual's deductions for the income year that are attributable to \*financial investments exceed the individual's gross income for that year from those investments; and
- (b) the amount (if any) by which the individual's deductions for the income year that are attributable to rental property exceed the individual's gross income for that year from rental property.

## *Taxation Administration Act 1953*

### 11 At the end of Subdivision 16-C in Schedule 1

Add:

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**16-182 Definition of *reportable employer superannuation contribution***

- (1) A ***reportable employer superannuation contribution***, for an individual for an income year, is an amount contributed:
  - (a) by an employer of the individual, or an \*associate of the employer, for the individual's benefit in respect of the income year; and
  - (b) to a \*superannuation fund or an \*RSA;to the extent that either or both of the following paragraphs apply:
  - (c) the individual has or has had, or might reasonably be expected to have or have had, the capacity to influence the size of the amount;
  - (d) the individual has or has had, or might reasonably be expected to have or have had, the capacity to influence the way the amount is contributed so that his or her assessable income is reduced.
- (2) However, an amount is not a ***reportable employer superannuation contribution*** to the extent that it is included in the individual's assessable income for the income year.
- (3) For the purposes of this section, ***employer*** has the expanded meaning given by section 12 of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).
- (4) For the purposes of this section, disregard whether any \*superannuation benefits arising from a contribution are payable to a \*SIS dependant of the individual if the individual dies before or after becoming entitled to receive the benefits.

## Part 2—Amendment of payment summary provisions

### *Taxation Administration Act 1953*

#### **12 At the end of subsection 16-153(2) in Schedule 1**

Add:

; or (d) the entity made \*reportable employer superannuation contributions in respect of a person’s employment.

Note: The heading to section 16-153 in Schedule 1 is altered by omitting “**about withholding payments and reportable fringe benefits**”.

#### **13 Subparagraph 16-153(3)(b)(i) in Schedule 1**

Omit “and \*reportable fringe-benefit amounts”, substitute “, \*reportable fringe-benefit amounts and \*reportable employer superannuation contributions”.

#### **14 At the end of subsection 16-155(1) in Schedule 1**

Add:

; or (d) the recipient is an individual and \*reportable employer superannuation contributions have been made by the payer, in respect of the individual’s employment, during the year.

#### **15 At the end of subsection 16-155(2) in Schedule 1**

Add:

; and (c) if paragraph (1)(d) applies—the total of the \*reportable employer superannuation contributions, except so much of those contributions as are covered by a previous payment summary given by the payer to the recipient under section 16-160.

#### **16 At the end of paragraph 16-160(1)(c) in Schedule 1**

Add “or”.

#### **17 After paragraph 16-160(1)(c) in Schedule 1**

Insert:

- (d) \*reportable employer superannuation contributions made by the payer, in respect of the recipient's employment, during the financial year;

**18 After paragraph 16-170(1)(e) in Schedule 1**

Insert:

- (f) specifies the \*reportable employer superannuation contributions (if any) that it covers and the income year to which those contributions relate; and

## Part 3—Amendment of income tests

### *A New Tax System (Family Assistance) Act 1999*

#### 19 Paragraph 2(1)(d) of Schedule 3

Repeal the paragraph, substitute:

- (d) the individual's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

#### 20 After paragraph 2(1)(e) of Schedule 3

Insert:

- (f) the individual's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

#### 21 Clause 6 of Schedule 3

Repeal the clause.

### *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*

#### 22 Subsection 3(1)

Insert:

*income for surcharge purposes* has the same meaning as in the *Income Tax Assessment Act 1997*.

#### 23 Subsection 3(1) (definition of *reportable fringe benefits total*)

Repeal the definition, substitute:

*reportable fringe benefits total* has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

#### 24 Subsection 3(1) (definition of *taxable income*)

Repeal the definition.

#### 25 Section 9

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Repeal the section.

**26 Paragraph 12(1)(a)**

Repeal the paragraph, substitute:

- (a) the person's income for surcharge purposes for the year of income exceeds the singles surcharge threshold for the year of income; and

**27 Paragraph 13(1)(a)**

Repeal the paragraph, substitute:

- (a) the person's income for surcharge purposes for the year of income exceeds the person's family surcharge threshold for the year of income; and

**28 Paragraphs 15(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the sum of the person's income for surcharge purposes, and the person's spouse's income for surcharge purposes, for the year of income exceeds the person's family surcharge threshold for the year of income; and
- (c) the person's income for surcharge purposes for the year of income exceeds \$17,309.

**29 Paragraph 15(2)(a)**

Omit "taxable income", substitute "income for surcharge purposes".

**30 Paragraphs 16(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the sum of the person's income for surcharge purposes, and the person's spouse's income for surcharge purposes, for the year of income exceeds the person's family surcharge threshold for the year of income; and
- (c) the person's income for surcharge purposes for the year of income exceeds \$17,309.

**31 Paragraph 16(3)(b)**

Repeal the paragraph, substitute:

- (b) the person's income for surcharge purposes for the year of income exceeds the person's family surcharge threshold for the year of income.

**32 Paragraph 16(5)(a)**

Omit "taxable income", substitute "income for surcharge purposes".

***Child Support (Assessment) Act 1989***

**33 Subsection 5(1) (definition of *net rental property loss*)**

Repeal the definition.

**34 Paragraph 43(1)(d)**

Repeal the paragraph, substitute:

- (d) the parent's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year of income;

**35 At the end of subsection 43(1)**

Add:

- ; (f) the parent's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year of income.

***Higher Education Support Act 2003***

**36 Paragraph 154-5(1)(b)**

Repeal the paragraph, substitute:

- (b) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and

**37 Paragraph 154-5(1)(d)**

Repeal the paragraph, substitute:

- (d) the person's \*exempt foreign income for the income year; and
- (e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.

**38 Subsections 154-5(2) and (3)**

Repeal the subsections.

**39 Clause 1 of Schedule 1 (definition of *rental property loss*)**

Repeal the definition.

***Income Tax Assessment Act 1936***

**40 Subsection 160AAAA(3)**

Omit “taxpayer has a taxable income for the year of income”, substitute “taxpayer’s rebate income for the year of income is”.

**41 Subsection 160AAAA(4)**

Repeal the subsection, substitute:

- (4) If the taxpayer is the spouse of another person, the amount applicable to the taxpayer under subsection (3) is half of the sum of:
- (a) the taxpayer’s rebate income for the year of income; and
  - (b) the taxpayer’s spouse’s rebate income for the year of income (reduced by any amount included in the spouse’s assessable income under section 100); and
  - (c) any share of the net income of a trust estate to which the taxpayer’s spouse is presently entitled and that is assessed under section 98.

**42 Subsection 160AAAB(3)**

Omit “has a taxable income”, substitute “has an amount applicable under subsection (4) or (5)”.

**43 Subsections 160AAAB(4) and (5)**

Repeal the subsections, substitute:

- (4) If the beneficiary is not the spouse of another person, the amount applicable to the beneficiary under subsection (3) is the amount that would be the beneficiary’s rebate income for the year of income if the beneficiary’s taxable income for that year were the beneficiary’s share of the net income of the trust estate.

- (5) If the beneficiary is the spouse of another person, the amount applicable to the beneficiary under subsection (3) is half the sum of:
- (a) the amount that would be applicable to the beneficiary under subsection (3) if the beneficiary were not the spouse of another person; and
  - (b) the beneficiary's spouse's rebate income for the year of income (reduced by any amount included in the spouse's assessable income under section 100); and
  - (c) any share of the net income of a trust estate to which the beneficiary's spouse is presently entitled and that is assessed under section 98.

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

#### **44 After paragraph 61-570(1)(b)**

Insert:

- (c) the total of your \*reportable employer superannuation contributions for the year;

#### **45 At the end of paragraph 61-580(1)(d)**

Add:

- ; (v) your \*reportable superannuation contributions for the current year;
- (vi) your \*total net investment loss for the current year.

#### **46 At the end of subsection 290-160(2)**

Add:

- ; (c) the total of your \*reportable employer superannuation contributions for the income year.

#### **47 Paragraph 290-230(2)(c)**

Repeal the paragraph, substitute:

- (c) the total of your spouse's:
  - (i) assessable income; and
  - (ii) \*reportable fringe benefits total; and
  - (iii) \*reportable employer superannuation contributions; for the income year is less than \$13,800; and



## ***Medicare Levy Act 1986***

### **48 Subsection 3(1)**

Insert:

*income for surcharge purposes* has the same meaning as in the  
*Income Tax Assessment Act 1997*.

### **49 Subsection 3(1) (definition of *reportable fringe benefits total*)**

Repeal the definition.

### **50 Subsection 3(2)**

Repeal the subsection, substitute:

- (2) In this Act, a reference to income for surcharge purposes, net income or taxable income is to be read as a reference to that term for the year of income.

### **51 Subsection 8B(2)**

Omit “total of a person’s taxable income and reportable fringe benefits total (if any)”, substitute “person’s income for surcharge purposes”.

Note: The heading to section 8B is altered by omitting “**Increase in levy**” and substituting “**Levy surcharge**”.

### **52 Subsection 8C(3)**

Omit “If the total of a person’s taxable income and reportable fringe benefits total (if any) exceeds the family surcharge threshold”, substitute “If the person’s income for surcharge purposes exceeds the person’s family surcharge threshold”.

Note: The heading to section 8C is altered by omitting “**Increase in levy**” and substituting “**Levy surcharge**”.

### **53 Paragraphs 8D(3)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the sum of the person’s income for surcharge purposes and the person’s spouse’s income for surcharge purposes exceeds the person’s family surcharge threshold; and
- (c) the person’s income for surcharge purposes exceeds \$17,309.

Note: The heading to section 8D is altered by omitting “**Increase in levy**” and substituting “**Levy surcharge**”.

#### **54 Subparagraphs 8D(4)(a)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) the sum of the person’s income for surcharge purposes and the person’s spouse’s income for surcharge purposes exceeds the person’s family surcharge threshold;
- (ii) the person’s income for surcharge purposes exceeds \$17,309; or

#### **55 Paragraph 8D(4)(b)**

Repeal the paragraph, substitute:

- (b) the person’s income for surcharge purposes exceeds the person’s family surcharge threshold, if the person is married for only some of the year of income.

#### **56 Subsection 8D(5)**

Repeal the subsection, substitute:

- (5) In this section:

*income for surcharge purposes*, in relation to the person’s spouse, includes any share in the net income of a trust estate:

- (a) to which the spouse is presently entitled as a beneficiary; and
- (b) in respect of which the trustee of the trust estate in that capacity is liable to be assessed under section 98 of the Assessment Act.

Note: The heading to section 8E is altered by omitting “**Increase in levy**” and substituting “**Levy surcharge**”.

#### **57 Subsection 8F(2)**

Omit “family surcharge threshold”, substitute “beneficiary’s family surcharge threshold”.

Note: The heading to section 8F is altered by omitting “**Increase in levy**” and substituting “**Levy surcharge**”.

#### **58 Paragraph 8G(2)(b)**

Repeal the paragraph, substitute:

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- (b) the sum of the beneficiary's trust income and the beneficiary's spouse's income for surcharge purposes exceeds the beneficiary's family surcharge threshold; and

Note: The heading to section 8G is altered by omitting "**Increase in levy**" and substituting "**Levy surcharge**".

### **59 Subparagraph 8G(3)(a)(i)**

Repeal the subparagraph, substitute:

- (i) the sum of the beneficiary's trust income and the beneficiary's spouse's income for surcharge purposes exceeds the beneficiary's family surcharge threshold; and

### **60 Paragraph 8G(3)(b)**

Omit "family surcharge threshold", substitute "beneficiary's family surcharge threshold".

### **61 Subsection 8G(4)**

Repeal the subsection, substitute:

- (4) In this section:

*income for surcharge purposes*, in relation to the beneficiary's spouse, includes any share in the net income of a trust estate:

- (a) to which the spouse is presently entitled as a beneficiary; and
- (b) in respect of which the trustee of the trust estate in that capacity is liable to be assessed under section 98 of the Assessment Act.

Note: The heading to section 9 is altered by omitting "**(other than certain levy increases)**".

## ***Social Security Act 1991***

### **62 Subsection 10A(2) (definition of *net rental property loss*)**

Repeal the definition.

### **63 Subsection 10A(15)**

Repeal the subsection.

### **64 Subsection 10B(2) (definition of *business*)**

Repeal the definition, substitute:

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*business* includes:

- (a) the carrying on of primary production; and
- (b) the provision of professional services; and
- (c) the earning of income as a rentier;

but does not include employment (whether or not the employment is remunerated by wages or salary).

**65 Subsection 10B(2) (definition of *net passive business loss*)**

Repeal the definition.

**66 Subsection 10B(2) (definition of *passive business*)**

Repeal the definition.

**67 Subsection 10B(2)**

Insert:

*total net investment loss* has the same meaning as in the *Income Tax Assessment Act 1997*.

**68 Paragraph 10B(3)(e)**

Omit “net passive business loss”, substitute “total net investment loss”.

**69 Subsection 19AB(2) (definition of *rental property loss*)**

Repeal the definition.

**70 Paragraph 1061ZZFA(1)(b)**

Repeal the paragraph, substitute:

- (b) the person’s total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and

**71 Paragraph 1061ZZFA(1)(d)**

Repeal the paragraph, substitute:

- (d) the person’s exempt foreign income for the income year; and
- (e) the person’s reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.

**72 Subsections 1061ZZFA(2) and (3)**

Repeal the subsections.

**73 Paragraph 1067G-F10(d)**

Repeal the paragraph, substitute:

- (d) the parent's total net investment loss for that year;
- (e) the parent's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

**74 Point 1067G-F10 (note 5)**

Repeal the note, substitute:

Note 5: For *total net investment loss*, see subsection 10B(2).

**75 Subpoint 1067G-F11(4)**

Repeal the subpoint.

**76 Point 1067G-F19A**

Repeal the point.

**77 Paragraph 1067G-G9(4)(b)**

Repeal the paragraph, substitute:

- (b) the reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) of each of the following people for the appropriate tax year:
  - (i) the person;
  - (ii) each family member of the person.

**78 Subpoint 1067G-G13(1) (formula)**

Repeal the formula, substitute:

$$2 \left[ \frac{\text{GAM}}{2} + \text{TNITML} \right] + \text{TNIL}$$

**79 Subpoint 1067G-G13(2) (definition of NPBL (net passive business loss))**

Repeal the definition.

**80 Subpoint 1067G-G13(2)**

Insert:

*TNIL (total net investment loss)* means the sum of the total net investment losses of each of the parents of the claimant/recipient in the appropriate tax year.

**81 Paragraph 1071-3(d)**

Repeal the paragraph, substitute:

(d) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

**82 Point 1071-3 (note 4)**

Repeal the note.

**83 Point 1071-8**

Repeal the point, substitute:

*Total net investment loss*

1071-8 For the purposes of this Part, a person's *total net investment loss* for a particular tax year is the person's accepted estimate of the amount of that loss for that year.

***Student Assistance Act 1973***

**84 Subsection 3(1) (definition of *rental property loss*)**

Repeal the definition.

**85 Paragraph 12ZL(1)(b)**

Repeal the paragraph, substitute:

(b) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and

**86 Paragraph 12ZL(1)(d)**

Repeal the paragraph, substitute:

(d) the person's exempt foreign income for the income year; and

- (e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.

**87 Subsections 12ZL(2) and (3)**

Repeal the subsections.

***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

**88 At the end of subsection 8(1)**

Add:

- ; and (c) the total of the person's reportable employer superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.

***Veterans' Entitlements Act 1986***

**89 Paragraph 118ZZA-3(d)**

Repeal the paragraph, substitute:

- (d) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

**90 Point 118ZZA-3 (note 4)**

Repeal the note.

**91 Point 118ZZA-7**

Repeal the point, substitute:

*Total net investment loss*

- 118ZZA-7 For the purposes of this Division, a person's ***total net investment loss*** for a particular tax year is the person's accepted estimate of the amount of that loss for that year.

## Part 4—Exclusion of certain employer superannuation contributions from test for exceptional circumstances relief payment

### *Farm Household Support Act 1992*

#### 92 At the end of section 24A

Add:

*Certain superannuation contributions disregarded*

- (9) For the purposes of calculating a rate referred to in subsection (1) for a person who has not reached pension age, disregard contributions made by the person's employer to a superannuation fund or RSA for the person's benefit, other than contributions made by a company or trust if the person is:
- (a) an attributable stakeholder of the company or trust; or
  - (b) an associate under paragraph 1207C(1)(e), (h), (i) or (j) of the *Social Security Act 1991* of a person who is an attributable stakeholder of the company or trust.

Note: Those paragraphs of the *Social Security Act 1991* cover a relative, a business partner, a spouse or child of a business partner and a trustee of a trust (where the person concerned can benefit from the trust).

- (10) In subsection (9):

*attributable stakeholder* of a company or trust has the meaning given by section 1207X of the *Social Security Act 1991*.

*pension age* has the meaning given by section 23 of the *Social Security Act 1991*.

*RSA* has the meaning given by the *Retirement Savings Accounts Act 1997*.

*superannuation fund* has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

#### 93 At the end of section 24AA

Add:

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*Certain superannuation contributions disregarded*

- (11) For the purposes of calculating a rate referred to in subsection (1) for a person who has not reached pension age (within the meaning of section 23 of the *Social Security Act 1991*), disregard contributions that are disregarded under subsection 24A(9).

## Part 5—Dependency rebates

### *Income Tax Assessment Act 1936*

#### 94 Subsection 159J(1AB)

Repeal the subsection, substitute:

- (1AB) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1, 2, 5 or 6 in the table in subsection (2) if:
- (a) for a dependant included in class 1—the taxpayer’s adjusted taxable income for the year is more than the income limit for family tax benefit (Part B) for the year; or
  - (b) for a dependant included in class 2, 5 or 6—subsection (1AC) applies to the taxpayer for the year.
- (1AC) This subsection applies to a taxpayer for a year of income if the sum of:
- (a) the taxpayer’s adjusted taxable income for the year; and
  - (b) if the taxpayer has a spouse during the year—the spouse’s adjusted taxable income for the year; and
  - (c) if the taxpayer has a spouse during only part of the year—this amount:

$$\text{Spouse's adjusted taxable income for the year} \times \frac{\text{Number of days a spouse}}{\text{Number of days in the year}}$$

is more than the income limit for family tax benefit (Part B) for the year.

Note: If the taxpayer has a different spouse during different parts of the year, the adjusted taxable income of each spouse will be included under paragraph (c).

#### 95 Subsection 159J(4)

Omit “separate net income derived by the dependant in”, substitute “dependant’s adjusted taxable income for”.

#### 96 Subsection 159J(5)

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Omit “a separate net income in”, substitute “an adjusted taxable income for”.

**97 Subsection 159J(6)**

Insert:

*adjusted taxable income* has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*, except that, for the purposes of this section, clauses 3 and 3A of Schedule 3 to that Act are taken not to have been enacted.

**98 Subsection 159J(6)**

Insert:

*income limit for family tax benefit (Part B)* means the amount specified in subclause 28B(1) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*, as indexed under Part 2 of Schedule 4 to that Act.

**99 Subsection 159J(6) (definition of separate net income)**

Repeal the definition.

**100 Subsection 159L(3B)**

Repeal the subsection, substitute:

- (3B) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section if subsection 159J(1AC) applies to the taxpayer for the year.

***Social Security Act 1991***

**101 Subpoint 1067G-G13(2) (paragraph (b) of the definition of NITML (notional income tax/medicare levy))**

Omit “a separate net income within the meaning of section 159J of the *Income Tax Assessment Act 1936* in that year”, substitute “an adjusted taxable income within the meaning of the *A New Tax System (Family Assistance) Act 1999* in that year”.

## Part 6—Application

### 102 Application

- (1) The amendments made by this Schedule apply in relation to income years starting on or after 1 July 2009.
- (2) However, the amendments do not apply in relation to the following:
  - (a) a claim for baby bonus (within the meaning of the *A New Tax System (Family Assistance) Act 1999*) if an estimate contained in the claim is for a period beginning before 1 July 2009;
  - (b) an election to work out a parent's adjusted taxable income under section 60 of the *Child Support (Assessment) Act 1989* if the remaining period (within the meaning of subsection 60(5) of that Act) concerned starts before 1 July 2009;
  - (c) working out a parent's real remaining period adjusted taxable income under section 64 of the *Child Support (Assessment) Act 1989* in relation to an election covered by paragraph (b) of this subitem.

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[Minister's second reading speech made in—  
House of Representatives on 12 February 2008  
Senate on 19 March 2009]

(11/09)

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