



# **Tax Laws Amendment (2011 Measures No. 1) Act 2011**

**No. 31, 2011**

**An Act to amend the law relating to taxation and  
the *First Home Saver Accounts Act 2008*, and for  
related purposes**

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



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**An Act to amend the law relating to taxation and  
the *First Home Saver Accounts Act 2008*, and for  
related purposes**

[Assented to 25 May 2011]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2011  
Measures No. 1) Act 2011*.

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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 this Act receives the Royal Assent.	25 May 2011
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	25 May 2011
3. Schedule 1, Part 2	1 July 2014.	1 July 2014
4. Schedule 2, Part 1	The day this Act receives the Royal Assent.	25 May 2011
5. Schedule 2, Part 2	1 July 2014.	1 July 2014
6. Schedule 3	The day after this Act receives the Royal Assent.	26 May 2011

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Tax exemption for payments to individuals for recent disasters**

### **Part 1—Main amendments**

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

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

Before:

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

insert:

Assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year..... 51-30

Disaster Income Recovery Subsidy for the floods that occurred in Australia during the period starting on 29 November 2010, or for Cyclone Yasi..... 51-30

##### **2 Section 51-30 (after table item 5.1)**

Insert:

5.1A	an individual in receipt of an ex-gratia payment from the Commonwealth known as Disaster Income Recovery Subsidy for:	the payment	the payment must be claimed:
	(a) the floods that occurred in Australia during the period starting on 29 November 2010; or		(a) after 9 January 2011; and
	(b) Cyclone Yasi		(b) before 1 March 2011

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5.1B	an individual in receipt of an ex-gratia payment from the	the payment	the payment must be claimed:
			(a) after

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**Schedule 1** Tax exemption for payments to individuals for recent disasters

**Part 1** Main amendments

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Commonwealth known as assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 * financial year	30 January 2011; and (b) before 1 August 2011
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## **Part 2—Sunsetting on 1 July 2014**

### *Income Tax Assessment Act 1997*

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

Omit:

Assistance for New Zealand non-protected special category  
visa holders for a disaster that occurred in Australia during the  
2010-11 financial year..... 51-30

Disaster Income Recovery Subsidy for the floods that  
occurred in Australia during the period starting on  
29 November 2010, or for Cyclone Yasi..... 51-30

#### **4 Section 51-30 (table items 5.1A and 5.1B)**

Repeal the items.

## Schedule 2—Tax exemption for recovery grants for the 2010-11 floods and Cyclone Yasi

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

##### **1 Section 11-55 (at the end of the table item headed “disasters”)**

Add:

2010-11 floods—recovery grants for primary producers .....	59-55
2010-11 floods—recovery grants for small businesses ....	59-55
Cyclone Yasi—recovery grants for primary producers ....	59-60
Cyclone Yasi—recovery grants for small businesses .....	59-60

##### **2 At the end of Division 59**

Add:

##### **59-55 2010-11 floods—recovery grants for small businesses and primary producers**

Payments under the Natural Disaster Relief and Recovery Arrangements (set out in a determination made by the Minister for Local Government, Territories and Roads on 21 February 2007) are not assessable income and are not \*exempt income, if:

- (a) the payments are part of a Category C measure (within the meaning of the determination); and
- (b) the Category C measure relates to the floods that occurred in Australia during the period that:
  - (i) occurred during the 2010-11 \*financial year; and
  - (ii) started on 29 November 2010; and
- (c) the payments are:
  - (i) recovery grants for small businesses; or
  - (ii) recovery grants for primary producers.

**59-60 Cyclone Yasi—recovery grants for small businesses and primary producers**

Payments under the Natural Disaster Relief and Recovery Arrangements (set out in a determination made by the Minister for Local Government, Territories and Roads on 21 February 2007) are not assessable income and are not \*exempt income, if:

- (a) the payments are part of a Category C measure (within the meaning of the determination); and
- (b) the Category C measure relates to Cyclone Yasi; and
- (c) the payments are:
  - (i) recovery grants for small businesses; or
  - (ii) recovery grants for primary producers.

***Tax Laws Amendment (2009 Measures No. 2) Act 2009***

**3 Item 3 of Schedule 8**

Repeal the item, substitute:

**3 Section 11-55 (table item headed “disasters”)**

Omit:

2009 Victorian bushfires—Clean-up and Restoration	
Grants for primary producers .....	59-50
2009 Victorian bushfires—Clean-up and Restoration	
Grants for small businesses .....	59-50

**Schedule 2** Tax exemption for recovery grants for the 2010-11 floods and Cyclone Yasi

**Part 2** Sunsetting on 1 July 2014

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## **Part 2—Sunsetting on 1 July 2014**

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

#### **4 Section 11-55 (table item headed “disasters”)**

Repeal the item.

#### **5 Sections 59-55 and 59-60**

Repeal the sections.

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## Schedule 3—First Home Saver Accounts

### *First Home Saver Accounts Act 2008*

#### **1 At the end of subsection 15(2)**

Add:

; or (e) the FHSA was closed following the transfer of its balance to another FHSA as the initial contribution to the other FHSA.

#### **2 At the end of section 15**

Add:

*Disregard requirement that person never held a qualifying interest*

(3) Disregard paragraph (1)(c) if:

- (a) the person has given a notice under section 20 that contains a statement under paragraph 20(4)(aa) (about the person intending to seek an FHSA mortgage payment); and
- (b) the person has not given a revocation of that notice under subsection 20(5).

Note 1: The following heading to subsection 15(1) is inserted “*When person meets the FHSA eligibility requirements*”.

Note 2: The following heading to subsection 15(2) is inserted “*Requirement for each FHSA that was closed*”.

#### **3 Section 16**

Before “A”, insert “(1)”.

Note: The following heading to new subsection 16(1) is inserted “*When acquisition payments are ineligibility payments*”.

#### **4 At the end of section 16**

Add:

*When mortgage payments are ineligibility payments*

- (2) A payment from an FHSA held by a person is an **FHSA ineligibility payment** if:
- (a) the payment is an FHSA mortgage payment; and

(b) the person did not satisfy the FHSA eligibility requirements when the payment was made.

Note 1: For paragraph (b), the person's acquisition of a qualifying interest in his or her main residence can be disregarded (see subsection 15(3)).

Note 2: This Act does not provide for the consequences of the payment being an FHSA ineligibility payment. However, the FHSA holder will be liable for FHSA misuse tax in accordance with Subdivision 345-C of the *Income Tax Assessment Act 1997*.

## 5 At the end of subsection 17(2)

Add:

Note: This Act does not provide for the consequences of a payment failing to satisfy the FHSA payment conditions. However, the FHSA holder will be liable for FHSA misuse tax in accordance with Subdivision 345-C of the *Income Tax Assessment Act 1997*.

Note: The following heading to subsection 17(1) is inserted "*Payment conditions for FHSA home acquisition payments*".

## 6 At the end of subsection 17(4)

Add:

Note: This Act does not provide for the consequences of a payment failing to satisfy the FHSA payment conditions. However, the FHSA holder will be liable for FHSA misuse tax in accordance with Subdivision 345-C of the *Income Tax Assessment Act 1997*.

## 7 At the end of section 17

Add:

*Payment conditions for FHSA mortgage payments*

(5) An FHSA mortgage payment satisfies the ***FHSA payment conditions*** for a qualifying interest in a dwelling if:

- (a) no later than 28 days after the payment is made, the person who held the FHSA uses an amount equal to the payment in repaying all or part of a loan secured by a genuine mortgage:
  - (i) over the qualifying interest; and
  - (ii) for which the person is a mortgagor; and
- (b) for a continuous period that is at least 6 months long, and that starts within the period mentioned in subsection (6):
  - (i) the person holds the qualifying interest; and
  - (ii) the dwelling is the person's main residence; and

- 
- (c) if the construction of the dwelling is not complete when the payment is made—that construction is complete within a reasonable period after the payment is made.
- (6) The period:
- (a) starts:
- (i) if the construction of the dwelling is not complete when the payment is made—when the construction of the dwelling is complete; or
- (ii) otherwise—when the payment is made; and
- (b) ends 12 months after the period starts, or at a later time that the Commissioner considers reasonable in the circumstances.

Note: This Act does not provide for the consequences of a payment failing to satisfy the FHSA payment conditions. However, the FHSA holder will be liable for FHSA misuse tax in accordance with Subdivision 345-C of the *Income Tax Assessment Act 1997*.

## **8 Section 18**

Insert:

*arm's length* has the same meaning as in the *Income Tax Assessment Act 1997*.

## **9 Section 18**

Insert:

*associate* has the same meaning as in the *Income Tax Assessment Act 1997*.

## **10 Section 18**

Insert:

*FHSA mortgage payment* means a payment from an FHSA if the FHSA provider must make the payment under section 32A (about a payment for repaying a mortgage if a home is acquired before the qualifying period ends).

## **11 Section 18 (definition of *FHSA payment conditions*)**

Repeal the definition, substitute:

*FHSA payment conditions*:

- (a) an FHSA home acquisition payment satisfies the *FHSA payment conditions* in the circumstances set out in subsections 17(1) to (4); and
- (b) an FHSA mortgage payment satisfies the *FHSA payment conditions* in the circumstances set out in subsections 17(5) and (6).

## 12 Section 18

Insert:

*genuine mortgage*: a mortgage is a *genuine mortgage* if:

- (a) when entering into the mortgage, the mortgagors and mortgagees deal with each other at arm's length; and
- (b) none of the mortgagors is an associate of any of the mortgagees.

## 13 At the end of paragraph 19(1)(b)

Add:

- (v) if the person already holds an FHSA that is inactive only because of paragraph 23(1)(c) or (e)—the FHSA to be opened or issued will be inactive because of paragraph 23(1)(e); and

## 14 Subsection 19(1) (note)

Repeal the note, substitute:

- Note 1: For paragraph (b), the person may still satisfy the FHSA eligibility requirements even though the person has acquired a qualifying interest in his or her main residence (see subsection 15(3)).
- Note 2: Making a false statement in the application may constitute an offence: see subsection 8J(9) and sections 8K and 8N of the *Taxation Administration Act 1953*.

## 15 After paragraph 20(4)(a)

Insert:

- (aa) if:
  - (i) the FHSA holder does not satisfy the FHSA eligibility requirements only because of paragraph 15(1)(c) (about never holding a qualifying interest); and
  - (ii) the FHSA holder wants the FHSA to remain open until an FHSA mortgage payment can be paid;



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a statement to that effect; or

**16 Paragraph 20(5)(a)**

Repeal the paragraph, substitute:

- (a) if the notice contains a statement under paragraph (4)(a) or an authority under paragraph (4)(b)—the FHSA holder becomes satisfied that he or she satisfies the FHSA eligibility requirements; and
- (aa) if the notice contains a statement under paragraph (4)(aa)—the FHSA holder becomes satisfied that he or she satisfies paragraph 15(1)(c); and

**17 Subsection 21(1) (note)**

Repeal the note, substitute:

- Note 1: The Commissioner may give the provider a notice under subsection 67(2) if a correct TFN was not quoted for the FHSA holder.
- Note 2: The person may still satisfy the FHSA eligibility requirements even though the person has acquired a qualifying interest in his or her main residence (see subsection 15(3)).

**18 After paragraph 21(3)(a)**

Insert:

- (aa) if the FHSA holder does not satisfy the FHSA eligibility requirements only because of paragraph 15(1)(c) (about never holding a qualifying interest)—subparagraph 23(1)(b)(iii) (about holder needing to notify provider if wants FHSA to remain open until an FHSA mortgage payment can be paid);

**19 Paragraph 21(4)(a)**

Repeal the paragraph, substitute:

- (a) if paragraph (3)(aa) applies to the notice—the Commissioner becomes satisfied that the FHSA holder satisfies paragraph 15(1)(c); and
- (aa) if paragraph (3)(aa) does not apply to the notice—the Commissioner becomes satisfied that the FHSA holder satisfies the FHSA eligibility requirements; and

**20 At the end of subsection 22(1)**

Add:

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- ; or (c) the provider of an FHSA makes an FHSA mortgage payment from the FHSA on a particular day (also the *trigger day*), and the balance of the FHSA immediately after the payment is more than nil.

Note: The heading to section 22 is replaced by the heading “**FHSA provider to close FHSA if inactive in some cases or FHSA mortgage payment made**”.

## 21 Subsection 23(1)

Repeal the subsection, substitute:

- (1) An FHSA is *inactive* if:
- (a) the FHSA provider receives a notice from the FHSA holder under subsection 20(1) that contains:
    - (i) a statement under paragraph 20(4)(a); or
    - (ii) an authority under paragraph 20(4)(b);(and does not receive a revocation of that notice under subsection 20(5)); or
  - (b) all of the following subparagraphs apply:
    - (i) the FHSA provider receives a notice from the Commissioner under subsection 21(1);
    - (ii) the FHSA provider does not receive a revocation of that notice under subsection 21(4);
    - (iii) within 30 days after receiving that notice, the FHSA provider does not receive a notice from the FHSA holder under subsection 20(1) that contains a statement under paragraph 20(4)(aa); or
  - (c) the FHSA provider receives a notice from the FHSA holder under subsection 20(1) that contains a statement under paragraph 20(4)(aa) (and does not receive a revocation of that notice under subsection 20(5)); or
  - (d) the FHSA provider receives a notice from the Commissioner under subsection 67(2) (and does not receive a revocation of that notice); or
  - (e) the FHSA is opened or issued in response to an application to which subparagraph 19(1)(b)(ii) applies, where the other FHSA referred to in that subparagraph was inactive only because of:
    - (i) paragraph (c) of this subsection; or
    - (ii) an earlier application of this paragraph.

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Note: Paragraph (a) or (b) applies if the FHSA holder does not satisfy the FHSA eligibility requirements. However, neither paragraph need apply if the only one of those requirements not satisfied is the one about never holding an interest in a main residence. In that case, the FHSA holder can cause paragraph (c) to apply, keeping the FHSA open until an FHSA mortgage payment can be paid.

## **22 At the end of section 23**

Add:

- (5) An FHSA can become inactive under a provision even if it has already become inactive under another provision.

## **23 Subsection 26(2)**

Repeal the subsection, substitute:

- (2) The FHSA provider does not contravene subsection (1) if:
- (a) the provider repays the amount from the FHSA to the FHSA holder within 30 days after receiving it; or
  - (b) the amount is a Government FHSA contribution; or
  - (c) the FHSA is inactive only because of paragraph 23(1)(e), and the amount:
    - (i) was the initial contribution to the FHSA; and
    - (ii) immediately before being contributed, was the balance of another FHSA.

## **24 After subparagraph 31(1)(a)(i)**

Insert:

- (ia) section 32A (FHSA mortgage payment); or

## **25 After section 32**

Insert:

### **32A Payment from FHSA for repaying a mortgage if home acquired before qualifying period ends**

- (1) This section applies if:
- (a) the holder of an FHSA acquires at a particular time (the *acquisition time*) a qualifying interest in a dwelling in Australia or Norfolk Island; and

- (b) before that time, the FHSA holder had never held a qualifying interest in a dwelling in Australia or Norfolk Island at a time when the dwelling was the FHSA holder's main residence; and
- (c) the FHSA holder gives the FHSA provider an application in the approved form requesting an amount to be paid from the FHSA; and
- (d) the FHSA holder declares in the application that the payment will satisfy the FHSA payment conditions mentioned in subsection 17(5) for the qualifying interest; and
- (e) any of the following requirements are met:
  - (i) the requirement in subparagraph 32(1)(c)(i) would be met if the FHSA holder were taken to have made a personal FHSA contribution of at least \$1,000 for the financial year that includes the acquisition time and for each later financial year;
  - (ii) the FHSA holder is in breach of the account balance cap, and has held an FHSA in at least 4 financial years (one of which may be the financial year in which the payment is to be made);
  - (iii) the FHSA holder declares in the application that he or she holds the qualifying interest together with another FHSA holder in respect of whom the requirement in subparagraph 32(1)(c)(i), or in subparagraph (i) or (ii) of this paragraph, is met; and
- (f) the provider is satisfied that the requirements (if any) specified in the regulations are met; and
- (g) the FHSA is inactive only because of paragraph 23(1)(c) or (e) (about an FHSA remaining open until an FHSA mortgage payment can be paid), and is yet to be closed.

Note 1: The FHSA holder will need to use the payment to repay all or part of a loan secured by a genuine mortgage over the qualifying interest (see subsection 17(5)).

Note 2: Making a false or misleading statement in the application may constitute an offence: see subsection 8J(9) and sections 8K and 8N of the *Taxation Administration Act 1953*.

- (2) The FHSA provider must pay the amount as requested:
  - (a) as soon as practicable after the application is made; and
  - (b) no later than 30 days after the application is made.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

- (4) A contravention of subsection (2) does not affect the validity of a transaction.

**26 Paragraph 35(1)(a)**

After “of the FHSA”, insert “(the *first FHSA*)”.

**27 Paragraph 35(1)(c)**

Repeal the paragraph, substitute:

(c) either:

- (i) the first FHSA is not inactive; or
- (ii) the first FHSA is inactive only because of paragraph 23(1)(c) or (e) (about an FHSA remaining open until an FHSA mortgage payment can be paid).

**28 At the end of subsection 36(1)**

Add:

Note: A person’s acquisition of a qualifying interest in a dwelling after a personal FHSA contribution has been made for the person in that financial year, does not of itself stop a Government FHSA contribution from being payable for the financial year.

**29 At the end of subsection 51C(2) (after the penalty)**

Add:

Note: For subparagraph (b)(i), the person may still satisfy the FHSA eligibility requirements even though the person has acquired a qualifying interest in his or her main residence (see subsection 15(3)).

**30 Subparagraph 67(2)(c)(iii)**

After “32,”, insert “32A,”.

**31 At the end of subsection 128A(5)**

Add:

Note: The person may still satisfy the FHSA eligibility requirements even though the person has acquired a qualifying interest in his or her main residence (see subsection 15(3)).

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

#### **32 Section 345-100 (after the heading)**

Insert:

*Payments to acquire a home*

#### **33 Section 345-100**

Before “A”, insert “(1)”.

#### **34 At the end of section 345-100**

Add:

*Payments for repaying a mortgage*

- (2) A person is liable to pay tax imposed by the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008* in respect of an \*FHSA mortgage payment from an \*FHSA held by the person if:
- (a) the payment fails to satisfy the \*FHSA payment conditions;
  - or
  - (b) the payment satisfies the FHSA payment conditions, but is an \*FHSA ineligibility payment.

Note: The Commissioner may make an assessment of the amount of the tax under section 169 of the *Income Tax Assessment Act 1936*.

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

Insert:

*FHSA mortgage payment* has the meaning given by the *First Home Saver Accounts Act 2008*.

#### **36 Application provision**

The amendments made by this Schedule apply in relation to acquisitions of qualifying interests in dwellings on or after the commencement of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 24 February 2011  
Senate on 25 March 2011]*

(21/11)

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*Tax Laws Amendment (2011 Measures No. 1) Act 2011 No. 31, 2011 19*